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Report of the International Commission of Inquiry on Libya* ** ***

* Late submission.
** The annexes are reproduced as received, in the languages of the submission only.
*** Pursuant to General Assembly resolution 66/1, the credentials of the National Transitional Council were accepted and a change was made in the name of the country, which was previously known as the "Libyan Arab Jamahiriya".

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 *thuwar* 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.

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Annexes

I. Introduction

1. On 25 February 2011, the United Nations 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. On 15 March 2011, the President of the Human Rights Council established the International Commission of Inquiry and appointed its three members, Ms. Asma Khader (Jordan), Mr. Philippe Kirsch (Canada), and Mr. M. Cherif Bassiouni (Egypt). The President also designated Mr. Bassiouni as Chairperson, a role taken over by Mr. Kirsch in October 2011. The Office of the United Nations High Commissioner for Human Rights (OHCHR) supported the Commission with a Secretariat.

3. Resolution S-15/1 requested the Commission "to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, 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." Given the Security Council's referral of events in Libya to the International Criminal Court, the Commission also considered events in light of international criminal law.

4. On 15 June 2011 the Commission submitted a report to the Human Rights Council setting out its findings. The Council extended the mandate of the Commission in light of the extensive and on-going allegations of abuses. It requested the Commission to provide a second report at the Council's nineteenth session in March, 2012.

5. The Commission previously noted that the legal regimes applicable during each phase of the conflict differed. International Humanitarian Law and International Human Rights Law applied throughout Phase II (armed conflict). With the end of armed conflict (Phase III), international human rights law became predominant.

6. As with its first report, the Commission took a cautious approach in assessing the information gathered. It relied where possible on its own observations and first-hand accounts. The Commission bore in mind that it was not seeking evidence of a standard to support a criminal conviction, but an assessment based on a "balance of probabilities" to determine whether a violation had occurred.

7. The Commission faced a number of significant challenges (see Annex I, sect. I). Security and administrative difficulties prevented a return to the field until October 2011 and no substantive investigations were possible before December 2011. There were also logistical difficulties in accessing places and individuals.

8. Notwithstanding these constraints, the Commission has gathered substantial evidence. This official report is strictly limited in length and allows only for a general summary of the findings in relation to some of the most serious allegations investigated. Detailed information, including all significant evidence, is contained in the Annexes.

9. The Commission is grateful to the new Libyan Government, other states, a number of United Nations agencies, NATO, and other organizations who have provided assistance to the Commission. The Commission is especially appreciative of the victims and witnesses of violations who have shared their information

II. Background

10. It is not possible to understand the current conditions in Libya without understanding the damage caused to the fabric of the society by decades of corruption, serious human rights violations and sustained repression of any opposition. Those factors are described in more detail in Annex I.

11. This report has focussed on alleged violations committed by all parties. Given the shift in power, a significant amount of this report focuses on abuses by those who rose up against the Qadhafi government. While major abuses are still occurring, the difference between the past and the present is that those responsible for abuses now are not as part of a system of brutality sanctioned by the central government. The Commission is cognizant of the challenges facing the new Libyan leadership in rebuilding a country left by the Qadhafi government devoid of independent institutions, a civil society, political parties, and a judiciary able to provide justice and redress.

12. Few officials spoken to by the Commission have demonstrated a real understanding of basic legal and human rights standards. Most existing prisons do not meet basic standards. Prison guards and police exhibited little concept of prisoners' rights. Judges, prosecutors, the judicial police and others involved in the administration of justice and detention centres require training in human rights standards. Existing Libyan laws will need to be repealed or amended. The judicial system is not functioning effectively and suffers from the legacy of being used as a tool of repression. The vast majority of detainees are still held outside the legal framework, despite efforts to centralise detentions.

13. Some senior Government officials have expressed commitments to human rights. They have failed, however, to publicly condemn violations taking place since the fall of the Qadhafi government. In meetings with the Commission, government officials emphasized the precariousness of the security situation, the weakness of the national police and judicial police force, and the inability of the central authorities to enforce rule of law. The Commission acknowledges these difficulties, and welcomes the Government's plans to disarm militias, and integrate fighters into the National Army or police force. A law on transitional justice and a law on amnesty have recently been adopted (See Annex I, sect. V). Delays in the administration of justice, however, increase risks of individual victims or their family members taking the law into their own hands.

14. The Commission gathered information on military forces and structures of the Qadhafi Government and the *thuwar* (See Annex I, sect. II) to obtain a better understanding of the conflict and to be able to identify specific units involved in violations. In many instances, the Commission has been able to assign responsibility to specific individuals. The Annex to this report contains details of these forces. In most cases, the Commission has withheld the names of individuals believed to hold responsibility for violations. This is partly to prevent reprisals and partly to avoid prejudicing future fair trials. The Commission will, however, provide a list of such individuals to the High Commissioner for Human Rights.

III. The Commission's findings

A. Excessive use of force [1]

1. Introduction

15. In its first report, the Commission concluded that Qadhafi forces used excessive force against demonstrators in February 2011. The Commission subsequently conducted over 60 interviews looking at this issue.

2. Qadhafi forces

16. The Commission interviewed medical personnel on duty during the protests. Testimony, medical records, and photographs received show predominantly head and chest wounds, in some cases consistent with the use of high-calibre weapons. It also received a videotape of a purported senior regime figure giving instructions to "crush" demonstrators in Benghazi and received a first-hand account of orders from Colonel Qadhafi to suppress demonstrations "with all means necessary". While former Qadhafi officials claimed the initial approach was not to fire until fired upon, evidence collected does not support this.

17. Witnesses detailed how, in Benghazi, protesters were shot near the Juliana Bridge. On 18 February 2011, after rocks were thrown as the funeral procession passed a military base, soldiers fired shots, killing several people. Witnesses reported later finding nine burnt bodies inside the base with their hands bound and with gunshots to the head.

18. The Commission determined that Qadhafi forces fired on protesters in Misrata, leading to deaths and injuries. A senior military figure indicated that the 32nd brigade passed instructions to ground commanders to shoot civilians.

19. The Commission received testimony and medical records relating to protesters killed in Tripoli. Doctors informed the Commission that between 20-21 February 2011 over 200 bodies were brought into morgues. Protesters were denied access to medical care while others did not seek medical treatment due to a well-founded fear of being detained. Further, the Commission received reports of protesters being shot outside mosques after Friday prayers throughout February and March 2011. Qadhafi forces reportedly seized ambulances to use for security patrols and for the arrest of protesters.

20. The Commission found local authorities exercised initial restraint when engaging protesters in the central square in Al Zawiyah. The Commission determined a violent response began after the 32nd Brigade arrived on 23 February 2011 and shot at unarmed protesters, killing seven, and prompting an escalation of violence on both sides.

21. Following the eruption of protests in Zintan, Qadhafi forces set up checkpoints encircling the town, cutting off supplies of fuel and food. The Commission received reports that Qadhafi forces shot at and beat protesters in the central square. The Commission was further informed that Qadhafi forces removed the injured from hospitals and detained men at the checkpoints.

3. Conclusion

22. The Commission finds that Qadhafi forces engaged in excessive use of force against demonstrators in the early days of the protests, leading to significant deaths and injuries.

[1] See Annex I, chap. III, sect. A for a detailed analysis.

The nature of the injuries indicates an intention to kill; the level of violence suggests a central policy of violent repression. These actions breach international human rights law as an arbitrary deprivation of life.

B. Unlawful killings[2]

1. Introduction

23. In its second phase, the Commission concentrated on the larger scale executions by Qadhafi forces, but is aware that many individual killings also occurred.

2. Qadhafi Forces

24. On 6 June 2011, 18 detainees died in Al Khums from suffocation due to being held by Qadhafi forces in poorly ventilated metal containers in rising temperatures. Seventeen died in side the containers while 1 died later in hospital. The Commission was able to corroborate much of the testimony of survivors through physical evidence at the site. The Commission also interviewed one of the guards present at the time.

25. A number of detainees were tortured at a boy scouts camp used by Qadhafi forces as a military base and detention centre in Al Qalaa. Following the retreat of Qadhafi forces in July 2011, footage reportedly taken from the telephone of a soldier showed bodies in a mass grave behind the base. Witnesses, together with the local prosecutor, uncovered the bodies of 34 men and boys, blindfolded and with their hands tied behind their backs. There were three other bodies lying nearby. The Commission interviewed witnesses who participated in the exhumation and identification of bodies as well as former detainees at the Boy Scouts' base who had been released prior to the executions. The Commission also visited the site. Rifle cartridge cases remained at the scene along with some skeletal remains.

26. An informal detention centre was established in a warehouse adjacent to the 32nd Brigade's base in Yarmouk, Tripoli. According to testimony received, torture and ill-treatment of detainees was routine there. On 23 August 2011, as Tripoli fell, guards threw grenades into the warehouse and then began to fire through the door, killing dozens. As the prisoners were so tightly packed, however, some survived and managed to escape. Two days later, the guards burned the bodies of those killed. Of the 157 detainees, only 51 survivors were confirmed. The Commission interviewed survivors, as well as two of the guards who admitted direct or indirect involvement. The testimony is broadly consistent and corroborative. The Commission's forensic pathologist identified skeletal remains inside the warehouse. Other forensic evidence remaining at the site is considerable and supports the testimony closely. Six detainees, including three medical doctors, were shot a day earlier in a second warehouse, a few hundred metres away. Three of the six died.

27. Gargur, in Tripoli, was the site of another unofficial detention centre. Locals knew the building as the former "Green Security Building". Witnesses and survivors told the Commission that on 23 August 2011 guards opened fire on the detainees. Twenty-one people were shot and killed.

28. Further evidence of executions carried out by Qadhafi forces was found in Bab Al Aziziyah. On 23 August 2011, a witness described how he helped gather 15 bodies, all men in civilian clothes and all handcuffed. The Commission interviewed two witnesses who reportedly saw the killing of three medical personnel, taken from an ambulance and shot.

[2] See Annex I, chap. III, sect. B for a detailed analysis.

The Commission was able to corroborate the testimony with photographs showing decomposing bodies.

29. The Commission found further mass executions had occurred in Bani Walid, as well as significant numbers of individual killings elsewhere.

3. *Thuwar*

30. In its first report, the Commission found that a number of Chadian nationals were executed by groups of *thuwar* in Benghazi in late February 2011. The Commission confirmed further similar killings during Phase II of the conflict. In February 2011 in Al Zawiyah, eyewitnesses told the Commission how two captured Qadhafi soldiers were killed by a mob. One was beaten to death, while the other was hanged from a bridge. Individual cases of killings of members of communities perceived by the *thuwar* to be Qadhafi loyalists. (see Annex I, sect. IV.)

31. The Commission received reports of executions by *thuwar*. Over a dozen Qadhafi soldiers were reportedly shot in the back of the head by *thuwar* around 22-23 February 2011 in a village between Al Bayda and Darnah. This is corroborated by mobile phone footage. Scores of Qadhafi soldiers and alleged loyalists (estimates ranging from 65 to 78) were executed in October 2011 at the Mahari Hotel in Sirte by *thuwar*. The victims had their hands bound behind their backs and were shot. Physical evidence and video footage corroborated witness testimony of the killings. Some of the dead were captured fighters, while others were believed to have been those previously receiving treatment at the Ibn Sina Hospital. Still others were civilians reportedly arrested at checkpoints established by *thuwar*. The Commission also documented 12 cases of men who died in custody in detention facilities controlled by *thuwar*. The cases involve either agents of Qadhafi's security apparatus or Tawerghans who are a community targeted by the Misrata *thuwar* (see Annex I, chap. III, sect. E). Bodies were abandoned in hospitals with visible signs of torture. The Commission's forensic pathologist concluded that the injuries were consistent with torture.

4. The deaths of Muammar and Mutassim Qadhafi

32. Both Muammar and Mutassim Qadhafi were captured separately on 20 October 2011 outside Sirte by Misrata *thuwar*. Though wounded, both were alive on capture and subsequently died in *thuwar* custody.

33. In relation to the death of Muammar Qadhafi, the Commission was not provided access to the autopsy report despite numerous requests to the authorities. Photos of Muammar Qadhafi's body were provided to the Commission and reviewed by the Commission's forensic pathologist but it was not possible to conclusively determine the cause of death from the photographs provided. While the Commission has eyewitness testimony of those with Muammar Qadhafi at the time of capture, it has not been able to obtain a first-hand account of the circumstances of his death and has received inconsistent accounts from secondary sources. Consequently, the Commission has been unable to confirm the death of Muammar Qadhafi as an unlawful killing and considers that further investigation is required.

34. In relation to the death of Mutassim Qadhafi, the Commission has reviewed video footage showing him alive and in the custody of *thuwar* post-capture, but has been unable to obtain any account of the circumstances of his death. Consequently, the Commission has been unable to confirm the death of Mutassim Qadhafi as an unlawful killing and considers that further investigation is required.

5. Conclusions

35. The Commission finds that the Qadhafi forces executed and tortured to death large numbers of prisoners in detention centres. Executions tended to occur immediately prior to retreats. During the armed conflict, this amounts to a war crime. Insofar as many of the detainees were part of the civilian population rather than captured fighters, the systematic and widespread executions constitute a crime against humanity.

36. *Thuwar* have executed and tortured to death perceived Qadhafi loyalists and suspected mercenaries. These were either hors de combat fighters or members of civilian population. During the armed conflict, this amounts to the war crime of murder. Once the conflict ended, it constituted an arbitrary deprivation of life.

37. The Commission is also deeply concerned that no independent investigations or prosecutions appear to have been instigated into killings committed by *thuwar*.

C. Arbitrary detentions and enforced disappearances[3]

1. Introduction

38. In its first Report, the Commission concluded that Qadhafi forces arbitrarily detained a significant number of persons and subjected others to enforced disappearance, while it received very little information on violations in respect of *thuwar*. In its second phase, the Commission met with 197 persons who referred to such violations by parties to the conflict, 158 of those were direct victims or their immediate family members.

2. Qadhafi forces

39. The Commission confirmed its earlier findings with respect to arbitrary arrests by the Qadhafi forces and found that the practice continued until the Qadhafi Government's disintegration. The Commission found evidence of unlawful detentions in Tripoli, Al Zawiyah and the Nafusa Mountains. A significant number were held in unofficial or unacknowledged sites. Detainees were not provided access to counsel and many were not allowed to challenge the lawfulness of their detention. Credible accounts related that the detainees were tortured.

40. As Qadhafi forces retreated, detainees were either released or in some instances killed. Others were freed when *thuwar* intervened. The Commission confirmed dozens of disappearance cases.

3. *Thuwar*

41. *Thuwar* involvement in arbitrary arrest and enforced disappearance increased considerably since the Commission's first report. When they overran cities, *thuwar* arrested en masse former soldiers, police officers, suspected mercenaries, and others they perceived to be Qadhafi loyalists. The arrests continued well into January 2012. It initially held the detainees outside the domestic legal framework, often in unacknowledged places of detention. A large number were tortured.

4. Conclusions

42. The Commission concludes that Qadhafi's forces arbitrarily detained persons it suspected were supporting *thuwar*. While many detainees may have been fighters, the

[3] See Annex I, chap. III, sect. C for a detailed analysis.

Commission finds that family members and peaceful demonstrators were also detained. Detainees were not afforded the requisite legal protections in violation of both Libya's domestic and international human rights obligations.

43. *Thuwar* have been involved in arbitrary arrest and enforced disappearance of perceived Qadhafi loyalists, security officers and members of the former government. The Commission is concerned that the *thuwar* have applied a presumption of guilt to those who fought against them or who are believed to have supported the Qadhafi Government. Moreover, many detainees are being held outside the framework of the law rendering their continued detention arbitrary *per se*.

D. Torture and other forms of ill-treatment[4]

1. Introduction

44. The Commission received reports of torture and other forms of ill-treatment perpetrated on a wide scale by both Qadhafi forces and *thuwar*. The Commission visited more than 20 places of detention, both official and unofficial, under the control of the former government and *thuwar*. The Commission interviewed 150 detainees, victims and perpetrators. The Commission's investigators examined wounds of torture victims and reviewed medical files. The Commission also met with relatives of victims, prison commanders and NGOs. The Commission established that torture was both widespread and systematically perpetrated in Libya throughout Phases II and III of the conflict.

2. Qadhafi forces

45. The Commission interviewed 35 people who were tortured by Qadhafi forces. Torture methods catalogued included severe beatings including on the soles of the feet (falaqa), electric shocks on genitalia; burning, threatening with dogs, suspension over doors, hanging from bars, and locking in small spaces or in solitary confinement for extended periods. The Commission verified most claims by examining victims' wounds, scars and medical reports and by visiting the sites.

46. Cases of torture occurred in official and unofficial detention facilities as Qadhafi's forces sought information on opposition activities. Torture also occurred during arrest or searches of houses of suspected *thuwar*. The most severe torture generally occurred immediately after arrest and during interrogations about *thuwar* strategy and weapons' locations. The Commission gathered compelling evidence of torture of suspected fighters and other opponents in various prisons including Ein Zara, Abu Salim, and Jdeida, and the locations of former intelligence agencies.

47. Torture was also rampant in unofficial detention centres including in Yarmouk and Al Khums. The Commission interviewed former detainees in such facilities who reported severe beatings and electric shocks. Conditions of detention – including lack of toilet facilities and severe overcrowding – constitute ill-treatment of detainees.

48. Rape and other types of sexual violence were also inflicted in detention. The Commission interviewed several former male and female detainees who described rape and other sexual assaults.

[4] See Annex I, chap. III, sect. D for a detailed analysis.

3. *Thuwar*

49. During the second phase of its work, the Commission visited detention facilities in Misrata, Tripoli, Al Zawiyah, Tajoura and Zintan run by individual brigades, security committees or military councils or by the interim Government. It interviewed more than 100 current and former Libyan and foreign detainees. The Commission encountered compelling evidence of torture and ill-treatment. Most frequently used methods included beating with objects such as electric wires, rubber hoses, wooden sticks; electric shocks; falaqa; and suspension in contorted positions. The purpose of torture appeared to be the extraction of information or confessions, and\or punishment for alleged crimes.

50. At the time of writing, most detained Qadhafi soldiers and alleged loyalists were held in unofficial centres outside the legal framework.

51. The Commission noted that detainees were especially vulnerable to torture upon arrest, during the first days of detention, and during interrogations. Many of those arrested were tortured in temporary facilities before being transferred to prisons or other locations. The Commission documented a pattern of severe torture perpetrated in particular against Tawerghans by Misratan *thuwar*, who accuse them of committing rapes and other crimes in Misrata. Detainees told the Commission that they confessed to serious crimes including rape – that they denied committing – after they could no longer withstand the torture.

4. Conclusions

52. The Commission found that Qadhafi forces committed torture and ill-treatment in a widespread and systematic manner.

53. The Commission further finds that the Qadhafi forces and the *thuwar* perpetrated torture and ill-treatment. These acts are violations of international human rights law, and when committed during armed conflict constitute war crimes.

E. Targeted Communities[5]

1. Introduction

54. The Commission has received reports of abuses against particular groups. It interviewed 111 witnesses in this regard and conducted on-site visits to Misrata, Tawergha, Al Khums, Tripoli, Abu Kammesh, Tiji, Awaniya and other towns.

2. Qadhafi forces

55. While the Qadhafi government targeted people for arrest, torture and killing based on their opposition to the government, the Commission has not found evidence that one particular group was targeted more than others. While some towns were historically oppressed by Qadhafi's government, there is no indication they were treated during the conflict in a worse way as a consequence of this previous discrimination.

3. *Thuwar*

56. Misratans believe Tawerghans to be Qadhafi loyalists and responsible for crimes, including rape. With the capture of Tawergha by *thuwar*, most Tawerghans left, fearing reprisals. When Tripoli fell to the *thuwar*, brigades from Misrata entered a Tawergha IDP camp in the city and arrested and beat 85 Tawerghan men. In September 2011, they arrested

[5] See Annex I, chap. III, sect. E for a detailed analysis.

between 40-50 more. According to eyewitnesses, as recently as 6 February 2012 Misratan *thuwar* attacked the Tripoli IDP camp and killed five Tawerghans, including an old man, a woman, and three minors.

57. The Commission received multiple reports that, in the months which followed the capture of Tripoli, there were arbitrary arrests of Tawerghans by Misratan *thuwar* on the streets of Tripoli. Their whereabouts often remain unknown. Those who have been released report being beaten. The Commission has documented multiple incidents of Tawerghans held in detention in Misrata being subjected to torture. The Commission has examined corroborating injuries on victims.

58. A similar pattern of arrests, torture, other forms of ill-treatment, and killings was documented by the Commission in Sirte, Zlitan, Al Jufra, Shawarif, Alut and Benghazi.

4. Tawergha

59. In the months after Tawergha was emptied of its population, houses and public buildings continue to be looted and destroyed by the Misratan *thuwar*. The Commission found that roads into the town had been blocked. The Commission observed houses being set alight. Buildings appeared to have been bulldozed. The Commission observed that the word "Tawergha" had been scratched off road signs. The words "New Misrata" has been written over them. The Commission notes that the Misratan *thuwar* have been open about their views of the Tawerghans. One fighter told the Commission he thought that Tawerghans deserved "to be wiped off the face of the planet". The language reportedly used by the Misratans during the arrests was often of a racist and derogatory nature, for example calling them "slaves", "blacks", and "animals". Some have been told that they cannot ever return.

5. Targeting of other communities

60. *Thuwar* from Zintan have targeted Mashashiya towns, perceived as loyalist. The Commission was able to confirm reports that Mashashiya detainees have been tortured, towns looted, and property burnt. Mashashiyans who have attempted to return to their homes have reportedly been beaten. In December 2011, Zintani *thuwar* reportedly shelled a town containing Mashashiya IDPs. The Military Council twice refused to allow the Commission to enter one of the towns. Nonetheless, damage was visible. Graffiti was written on the town signs, including "Mashashiya - Qadhafi's dogs".

61. The inhabitants of Tiji and Badr are Arabs in an originally Amazigh region. When Nalut *thuwar* entered Tiji and Badr in August 2011 they reportedly demanded that its remaining residents leave, and killed three brothers. *Thuwar* from Nalut subsequently shelled Tiji in October 2011 with Grad rockets, killing at least three young women. According to testimony received, Nalut *thuwar* detained a number of adult men, called them "Arab dogs" and told them "this is not your land". The Commission observed that evidence of burning could still be seen in the town.

62. The Commission has received reports of beatings and looting in Abu Kammesh by Zowara *thuwar*. One interviewee stated that a work colleague told him "you're an Arab living on Amazigh land, we're going to kick you all out". Sub-Saharan Africans were also arbitrarily arrested and beaten in detention and even killed, by various *thuwar*.

6. Conclusions

63. The Misrata *thuwar* have killed, arbitrarily arrested and tortured Tawerghans across Libya. The destruction of Tawergha has been done to render it uninhabitable. Murder, torture and cruel treatment, and pillaging which occurred during the hostilities constitute a war crime. Where they have continued since, they violate international human rights law.

13

The torture and killing by Misratan *thuwar* would also, given the widespread and systematic manner in which they have occurred here, be capable of constituting a crime against humanity and the facts indicate crimes against humanity have taken place.

64. The Commission finds that Zintan *thuwar* have killed, arbitrarily arrested and tortured members of the Mashashiyan community; that Nalut *thuwar* have committed unlawful killings and torture in Tiji, as well as looting and destroying property; and that Zowara *thuwar* have committed unlawful killings and torture, as well as looting and destruction of property in Abu Kammesh. In these cases, while there were clear indications that the communities were targeted and the consequences for individuals were severe, the Commission did not find the necessary evidence to indicate that the attacks against these communities were as widespread or as systematic as is the case with the Misratan *thuwar* and Tawergha. Insofar as these acts took place within the context of the armed conflict, however, they constitute war crimes; where they have occurred since the armed conflict ceased, they constitute a violation of international human rights law.

F. Sexual Violence[6]

1. Introduction

65. The Commission is aware of numerous media accounts of rapes in Libya and endeavoured to investigate the allegations. The Commission interviewed more than 20 male and female victims of sexual violence. The Commission met with another 30 witnesses including doctors, attorneys, and individuals with direct contact with victims or perpetrators. The Commission interviewed five perpetrators accused of committing rape and also reviewed relevant reports of NGOs and other material.

2. Qadhafi forces

66. One pattern of sexual violence identified was that of women who were beaten and raped by armed men in their homes, or abducted and beaten and raped elsewhere, sometimes for days. Some victims were targeted because of their allegiance to the *thuwar* and others were assaulted for no known reason. Of those targeted, rape appeared to be used as a means to punish, terrorize, and send a message to those who supported the revolution.

67. A second pattern was of sexual violence and torture of males and females in detention centres who were *thuwar* or supportive of the *thuwar,* to extract information, humiliate and punish. Victims were arrested and normally taken to a location where they were interrogated and tortured. The allegations of rape and sexual violence made to the Commission included vaginal rape, sodomy and penetration with an instrument, as well as electrocution and burning of the genitals. The majority of their allegations came from men detained in Abu Salim and several men and women detained in Ein Zara.

68. The Commission interviewed five perpetrators accused of raping men and women during the conflict. While they provided some specific details, the Commission believes that there is a strong possibility that the confessions were made under torture and therefore cannot be relied upon. The Commission received one credible interview from a local organization which detailed five different rapes over five nights committed in Misrata by the perpetrator and his colleagues.

[6] See Annex I, chap. III, sect. F for a detailed analysis.

3. *Thuwar*

69. The Commission has received limited evidence of rapes and sexual violence committed by the *thuwar*. The Commission interviewed two victims, known to be Qadhafi loyalists, who had been sexually tortured by *thuwar* in detention centres.

4. Conclusions

70. The prevailing culture of silence, the lack of reliable statistics, the evident use of torture to extract confessions, and the political sensitivity of the issue combine to make this issue the most difficult one for the Commission to investigate. The Commission found that sexual violence occurred in Libya and played a significant role in provoking fear in various communities. The Commission established that sexual torture was used as a means to extract information from and to humiliate detainees. The Commission did not find evidence to substantiate claims of a widespread or a systematic attack, or any overall policy of sexual violence against a civilian population. The information received is, however, sufficient to justify further investigation to ascertain the extent of sexual violence.

G. Attacks on Civilians, Civilian Objects, Protected Persons and Objects[7]

1. Introduction

71. In its first report, the Commission indicated that in relation to attacks on civilians, civilian objects, protected persons and objects, it has "not had access to full information allowing it to definitively evaluate allegations of these violations of international humanitarian law". As part of its continuing investigations, the Commission subsequently conducted over 75 interviews looking at this issue and inspected destruction in towns across Libya.

2. Qadhafi forces

72. The Commission visited a number of areas affected by the fighting including Misrata, Al Zawiyah, Nalut, Yafran, Zintan and Sirte. The Commission found that Qadhafi forces used inherently indiscriminate weapons, as well as weapons prohibited by many nations, including landmines and cluster bombs, causing considerable suffering to the civilian population and damage to civilian objects.

73. The city of Misrata endured some of the most protracted fighting during the conflict. Misrata was under siege for over three months, between March and May 2011 when Qadhafi forces retreated from the centre of town. Indiscriminate shelling of the city continued sporadically until August 2011. Unlike other areas, where the civilian population was evacuated, civilians were trapped inside the city. Its port, which provided the only means of evacuation of war-wounded and civilians as well as entry of humanitarian aid, was also targeted by Qadhafi forces. Senior Qadhafi military officers interviewed by the Commission confirmed that there were several attempts, some of them successful, to mine the Misrata port. The Commission found remains of Chinese-manufactured Type-84 rocket-dispensed scatterable anti-tank mines and their rockets at the port.

74. In surveying the damage to the city, the Commission's military expert noted that the damage to buildings was consistent with the use of small arms (7.62x39mm and other), heavy machine guns (12.7mm and 14.5mm), anti-aircraft guns (23mm), tube and rocket artillery, large calibre weapons (HEAT - "high-explosive anti-tank" tank rounds and HESH

[7] See Annex I, chap. III, sect. G for a detailed analysis.

- “high explosive squash head” tank rounds), mortars (various from 60-120mm), rockets (122mm Grad entry holes were found with the rear of the rockets still protruding from ground), RPGs and recoilless rifles

75. Qadhafi forces launched a military assault on Al Zawiyah after it fell to the opposition in late February 2011. Those interviewed by the Commission, including a former senior security official, stated that Qadhafi forces fired Grad rockets and mortars into Al Zawiyah. They also used tanks, rocket launchers and 14.5mm anti-aircraft guns.

76. Opposition-held towns in the Nafusa Mountains also sustained heavy shelling from Qadhafi forces. The majority of the civilian population evacuated, with the exception of Zintan, where at least 55 civilian casualties, including women and children, were reported. The most extensive damage was observed in Yafran, which was occupied by Qadhafi forces between 18 April and the first week of June 2011.

77. The Commission received numerous allegations of attacks on hospitals, medical personnel and ambulances, including in Al Zawiyah, Misrata, Tripoli and Yafran. Medical personnel treating *thuwar* were subject to killings, arbitrary arrests and detentions accompanied with torture, ill-treatment and harassment; ambulances were reportedly shot at by Qadhafi forces several times during the course of the conflict and were misused to transport armed soldiers. Hospitals were shelled, medical supplies restricted, and wounded demonstrators and *thuwar* reportedly denied medical treatment.

78. The Commission investigated reports of Qadhafi forces deliberately targeting places of worship, including the mosque on the central square in Al Zawiyah. The Commission found that in some instances civilian buildings including mosques were inappropriately used for military purposes by the *thuwar*, and could therefore be considered lawful targets.

3. *Thuwar*

79. The Commission found that *thuwar* also used inherently indiscriminate weapons in their military offensives against cities perceived as loyalist. Of particular concern is their conduct in Sirte. The Commission found that almost every building exhibited damage. The most common damage and weapon debris observed was from Grad rockets, and heavy machine-gun fire from 14.5mm and 23mm weapons. Dozens of buildings are uninhabitable due to their structural integrity being compromised, with multiple walls and roofs collapsed. Numerous buildings exhibited impacts from shells consistent with fire from 106mm recoilless rifles and 107mm rocket artillery, using both High-Explosive Anti-Tank rounds and High Explosive Squash Head rounds. Although some of the buildings were likely used by the Qadhafi forces and were therefore legitimate targets for attacks, damage was so widespread as to be clearly indiscriminate in nature.

4. Conclusions

80. The Commission found that both the Qadhafi forces and the *thuwar* launched unguided munitions into residential areas in breach of the fundamental principle of distinction.

81. The Qadhafi forces launched sustained shelling on many towns and cities across Libya during the conflict. Some of these towns, such as Misrata, still contained civilians. The use of unguided weapons in these cases constituted an indiscriminate attack. While these attacks damaged and destroyed some apparently civilian objects such as mosques, the *thuwar* were using individual buildings for military purposes, removing their protected status.

82. The same principle applies to the *thuwar's* attack on Sirte. The scale of the destruction there and the nature of the weaponry employed indicated that the attacks were indiscriminate.

H. North Atlantic Treaty Organization[8]

1. Introduction

83. On 17 March 2011, the United Nations Security Council adopted resolution 1973 which authorized "all necessary measures" to "protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya" short of a "foreign occupying force." On 19 March 2011 military forces from France, the United Kingdom, and the United States began attacks. On 31 March 2011, NATO assumed command of all offensive operations.

2. Findings

84. NATO aircraft flew a total of 17,939 armed sorties in Libya, employing precision guided munitions exclusively. NATO told the Commission that it had a standard of "zero expectation" of death or injury to civilians, and that no targets were struck if there was any reason to believe civilians would be injured or killed by a strike. NATO also told the Commission that the majority of munitions employed used delayed fusing to minimize collateral effects and that it also employed the minimum-sized munitions necessary to achieve the objective. NATO also provided warning to the population in the form of leaflets and radio broadcasts.

85. The Commission took account of claims by the Qadhafi Government in regard to civilian casualties, but subsequent testimony from former regime members and others, as well as its own interviews at the sites, confirmed to the Commission that the Government deliberately misstated the extent of civilian casualties. In one case, the Commission received a credible report of Libyan forces moving the bodies of children from a hospital morgue and bringing them to the site of a NATO airstrike.

86. Despite precautions taken by NATO as described above, the Commission notes incidents of civilian deaths and damage to civilian infrastructure. Amongst the 20 NATO airstrikes investigated, the Commission documented five airstrikes where a total of 60 civilians were killed and 55 injured. The Commission also investigated two NATO airstrikes which damaged civilian infrastructure and where no military target could be identified.

87. The single largest case of civilian casualties from a NATO airstrike in Libya took place in the town of Majer on 8 August 2011 where the Commission found NATO bombs killed 34 civilians and injured 38. After the initial airstrike killed 16, a group of rescuers arrived and were hit by a subsequent attack, killing 18.

88. Of the five targets where the Commission identified civilian casualties, four were termed command and control (C2) nodes or troop staging areas by NATO. The Commission saw no physical evidence of this during its site visits. Witnesses also denied that the sites had military utility. NATO told the Commission that "the regime was using civilian rather than military structures in support of military action". Assuming this to be the case, the Commission remains concerned about the resulting civilian harm.

[8] See Annex I, chap. III, sect. H for a detailed analysis.

3. Conclusions

89. The Commission found NATO did not deliberately target civilians in Libya. For the few targets struck within population centres, NATO took extensive precautions to ensure civilians were not killed. However, there were a small number of strikes where NATO's response to the Commission has not allowed it to draw conclusions on the rationale for, or the circumstances of

the attacks. The Commission is unable to conclude, barring additional explanation, whether these strikes are consistent with NATO's objective to avoid civilian casualties entirely, or whether NATO took all necessary precautions to that effect. NATO's characterization of four of five targets where the Commission found civilian casualties as "command and control nodes" or "troop staging areas" is not reflected in evidence at the scene and witness testimony. The Commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or out-dated intelligence and, therefore, whether they were consistent with NATO's objective to take all necessary precautions to avoid civilian casualties entirely.

I. Prohibited Weapons[9]

90. The Commission examined the use of weapons prohibited by treaty and customary international law. The Commission is aware that not all weapons discussed here are prohibited for all countries involved. Qadhafi forces employed cluster munitions and anti-personnel and anti-vehicle landmines, including in civilian areas. The Commission found considerable evidence of the use of cluster munitions and mines against civilian areas of Misrata in April 2011. The Commission also found evidence of the use of landmines in the Nafusa Mountains. Minefields were not properly recorded by Qadhafi forces. Many of the mines used contained low metal content, complicating detection and removal, further endangering civilians. There was some very limited use of landmines by individual *thuwar*. There was no evidence of the use of chemical weapons, phosphorous or dum-dum bullets by any party to the conflict.

J. Mercenaries[10]

91. The Commission established that an organised group of Sudanese fighters were brought in by the Qadhafi government specifically to fight the *thuwar*. The Commission has not found that these fighters were promised or paid material compensation substantially in excess of that promised or paid to local Qadhafi forces, a requirement for these individuals or groups to fall within the definition of a "mercenary" under the United Nations Convention against Mercenaries or under Organization of African Unity (OAU) Convention on Mercenarism. The Commission also determined that there were fighters within the Qadhafi forces who, though of foreign descent, were born in Libya or resident there. They would also fall outside the definition of mercenaries.

[9] See Annex I, chap. III, sect. I for a detailed analysis.
[10] See Annex I, chap. III, sect. J for a detailed analysis.

K. Child Soldiers[11]

92. The Commission found evidence suggesting that the Qadhafi government recruited and used children under the age of 18 in its armed forces, in breach of Libya's obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. The Commission interviewed four minors detained by *thuwar* as a result of their participation in the fighting. They are held together with adults in contravention to the Convention on the Rights of the Child. The Commission also received concerning reports of children involved in fighting alongside *thuwar*, or in providing logistical support at frontlines, but determines that further investigation is needed.

L. Pillaging[12]

93. The Commission received reports of theft on a small scale perpetrated by Qadhafi forces during the conflict. The Commission established that *thuwar* and other groups of armed men were responsible for widespread pillaging and destruction of public and private property across the country during Phase II and III of the conflict. Victims included entire communities perceived as Qadhafi loyalists and individuals seen as having provided support to Qadhafi forces during the conflict, as well as their relatives (sometimes distant ones). Such violations mostly took place after cities fell under the control of *thuwar*, as well as during arrests of perceived loyalists at their homes. In some cases documented by the Commission, relatives of the alleged loyalists were driven out of their homes or prevented from returning by *thuwar* who had appropriated their homes and other belongings. Evidence of pillage by *thuwar* was found - but is not limited to - Abu Kammesh, Al Zawiyah, Awaniya, Beni Walid, Garabulli, Tawergha, Tiji, Tripoli, and Sirte.

94. The Commission is concerned that no full, impartial and independent investigations appear to have been carried out into any of allegations of pillage and the destruction of property. At times, government officials downplayed the gravity of the violation, noting that Qadhafi forces did the same thing to opposition, so "it is now their turn."

IV. Accountability[13]

1. Introduction

95. The Commission's mandate includes the requirement "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 therefore tried to identify individuals who may have been responsible for violations and crimes either directly or through command responsibility. The Commission decided not to include the names of these individuals, apart from senior figures who are publicly known in the report.

96. The Commission has also reviewed institutional and legislative issues, and efforts of the interim Government to ensure accountability in the longer term.

[11] See Annex I, chap. III, sect. K for a detailed analysis.
[12] See Annex I, chap. III, sect. L for a detailed analysis.
[13] See Annex I, chap. IV.

2. Applicable Law

97. International human rights law places an obligation on States "to ensure that any person whose rights or freedoms… are violated shall have an effective remedy" and "to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy".

98. Due process and fair trial rights of the accused must be guaranteed. Fair trial standards cannot be suspended during emergency situations.

99. The Convention against Torture obliges Libya to investigate all allegations of torture and to prosecute all alleged perpetrators.

100. A duty to prosecute crimes against humanity and war crimes is part of customary international humanitarian law.

3. Current Situation in Libya

101. Accountability mechanisms in Libya are deficient in a number of respects, many of which are the direct consequence of the legacy of the Qadhafi era.

102. Libya's existing Criminal Code does not adequately define international crimes. The Code provides for statutory limitation of 10 years for crimes, after which there can be no prosecution. Although a law that came into effect in 1998 repealed this provision, it does not have retrospective effect. The Military Penal Code precludes statutory limitations.

103. In practice, the current situation shows that the law has not been applied consistently or equally. The Commission has received information of attacks, including unlawful killings, torture and arbitrary arrests by *thuwar* on members of the former government and those perceived to be among its supporters. The Commission is not aware of any *thuwar* arrested or detained for these crimes

104. While the interim Government is making progress in re-establishing courts, the absence of a functioning court system prevents perpetrators being held accountable.

105. The Libyan authorities face considerable challenges in dealing with recent and past violations. They are likely to have difficulties in processing the approximately 8,000 detainees currently in custody.

106. In February 2012, criminal proceedings commenced before a military court in Benghazi against 41 Qadhafi loyalists accused of crimes during the conflict. The Commission notes the case has now appropriately been transferred the case to a civilian court.

107. In December 2011, the NTC issued a law establishing the National Council for Civil Liberties and Human Rights, and appointed its members. The Council has authority to receive complaints on violations of human rights and to file cases in court.

108. The NTC recently adopted a Transitional Justice Law, which created a National Fact-finding and Reconciliation Commission charged with investigating incidents of human rights violations committed over the past 42 years. The law also establishes a victims' compensation fund.

109. A law on amnesty has recently been adopted by the NTC. The law seen by the Commission allows amnesty to perpetrators of crimes on certain conditions. Crimes of murder, serious injuries, rape, torture and abduction are excluded from amnesty. The draft law provides, however, that reconciliation between the perpetrator and the victim dismisses

the criminal charges or penalty. Granting amnesty will not preclude the right of victims to restitution and compensation.

4. Conclusions

110. The Commission has gathered information linking individuals to human rights violations or crimes and will hand over the list to the UN High Commissioner for Human Rights.

111. The Commission considers it imperative that appropriate mechanisms be established to ensure accountability for such crimes and violations in the long term.

112. The Commission is concerned that allegations of violations are not treated on an equal basis. Failure to apply criminal law to crimes committed by *thuwar* during and after the end of the conflict creates a climate of impunity. Those detained are also unable to challenge their detention or to lodge complaints of torture against *thuwar*.

113. Such problems are due in part to the current conditions in Libya but are also in part systemic. The courts lack judges and properly trained staff. Libya's existing legislation does not adequately provide for the prosecution of international crimes. Unless repealed, the existing statute of limitations will prevent the prosecution of serious Qadhafi era crimes. The absence of a functioning justice system allows violations to go unpunished and allows for a cycle of reprisals.

114. The Commission notes steps to address some of those issues, including the creation of a National Council for Civil Liberties and Human Rights and adoption of a Transitional Justice Law. However, it is concerned at the lack of an independent and impartial process for appointing members to the National Fact-finding and Reconciliation Commission.

115. The Commission considers it important to ensure that the reconciliation process under amnesty law is applied in a manner consistent with Libya's obligations under international law.

V. Assessment and findings

1. Introduction

116. 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 and because witnesses were 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.

117. 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 site visits 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. 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.

2. Qadhafi Forces

118. 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 and certain acts of sexual violence 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.

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

3. *Thuwar*

120. 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 acts of extra-judicial executions, torture, enforced disappearance, indiscriminate attacks and pillage. No investigations have been carried out into any violations committed by the *thuwar*.

121. The Commission was unable to reach conclusions in relation to the deaths of Muammar and Mutassim Qadhafi, and recommends further investigation.

4. NATO

122. 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 investigations.

5. Current situation in Libya

123. The interim Government has expressed a commitment to human rights and its concerns about torture, ill-treatment and other violations, though implementation of that commitment in practice has remained uneven. The interim Government will need considerable support from the United Nations and the international community in achieving this goal.

124. The deterioration of the legislative framework, judicial and national institutions generally during the Qadhafi era resulted in a judiciary that lacked the independence to hold security institutions accountable. The interim Government is gradually restoring the judiciary by reopening courts and recalling judges, but there still exists a 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 remain under the control of individual 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.

125. 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.

126. The current 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. The Libyan authorities will have to ensure that any future amnesty process under the amnesty law is in conformity with Libya's obligations under international law with respect to accountability.

VI. Recommendations

127. 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.

128. 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.

129. 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.

130. 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.

131. 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.

132. The Commission calls upon the Human Rights Council to:

(a) Establish a mechanism to ensure the implementation of the recommendations in this report.

133. The Commission calls upon the United Nations Secretary-General to:

(a) 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.

134. The Commission calls upon the League of Arab States to:

(a) Assist, to the extent possible, in the implementation of the above recommendations.

135. The Commission calls upon the African Commission on Human and Peoples' Rights to:

(a) Establish a mechanism to monitor the implementation of the above recommendations, in particular measures taken to ensure longer term respect for human rights.

Annex 1

Full Report of the International Commission of Inquiry

to investigate all alleged violations of international law in Libya

Contents

Acronyms and abbreviations

Protocol I	Protocol I to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflict
Protocol II	Protocol II to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflict
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CEDAW	Convention on the Elimination of all forms of Discrimination against Women
CMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
CERD	Convention on the Elimination of All Forms of Racial Discrimination
CRC	Convention on the Rights of the Child
HRC	Human Rights Council
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for former Yugoslavia
IOM	International Organization for Migration
NFRC	National Fact-finding and Reconciliation Commission
NATO	North Atlantic Treaty Organization
NGO/NGOs	Non-governmental Organization(s)
NTC	National Transitional Council
OAU	Organization of African Unity
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCRC-AC	Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
Rome Statute	Rome Statute of the International Criminal Court
RPG	Rocket propelled grenade
UNOSAT	United Nations Operational Satellite Application Programme

I. Introduction

A. Mandate and Methods of Work

1. On 25 February 2011, the 15th Special Session of the United Nations Human Rights Council (HRC) 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 HRC established the United Nations International Commission of Inquiry and appointed its three members, Ms. Asma Khader (Jordan), Mr. Philippe Kirsch (Canada), and Mr. M. Cherif Bassiouni (Egypt). The President also designated Mr. M. Cherif Bassiouni as the Chair of the Commission, a role taken over by Mr. Kirsch in October 2011. The Office of the United Nations High Commissioner for Human Rights (OHCHR) supported the Commission with a Secretariat.

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, 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. In fulfilment of that mandate, on 31 May 2011 the Commission submitted a report to the HRC setting out its findings and conclusions covering the period from the Commission's inception until 31 May.[14] Welcoming the report, the HRC decided to extend the mandate of the Commission in light of the continued fighting in Libya and the extensive and on-going allegations of abuses. It requested the Commission to report back to the HRC with an oral update in September 2011 at its 18th session, and with a second report at the HRC's 19th session in March, 2012.[15] This second report is to be read in conjunction with the Commission's first report, updating and supplementing the findings therein.

5. The Commission determined that events in Libya between 15 February 2011 and 6 February 2012 fell into three distinct phases.[16] Phase I: the protests (15 – 24 February 2011); Phase II: an armed conflict (25 February – 24 October 2011)[17]; and Phase III: post-conflict (24 October 2011 – present). More information on this progression of events is contained in the "Timeline of Events" section below. The differing legal regimes applicable to each phase are described (see chap I, sect. D).

6. In view of the timeframe within which it had to complete its work and the large number of allegations, the Commission necessarily had to be selective in the choice of issues and incidents for investigation. The report does not purport to be exhaustive. Nevertheless, the Commission considers that the report is illustrative of the main patterns of violations. The Commission based its work on an independent and impartial analysis, and on international investigative standards developed by the United Nations. The

[14] A /HRC/17/44.
[15] A/HRC/17/17.
[16] See A/HRC/17/44, paras. 26-35 for a description of the first two phases.
[17] On 23 October 2011, the NTC formally declared that Libya had been liberated. On 31 October 2011, NATO formally concluded "Operation Unified Protector." Available from http://www.nato.int/cps/en/natolive/71679.htm

Commission adopted an inclusive approach to receiving information and views on matters within its mandate. This included:

(a) Interviews with victims, witnesses and other persons having relevant information. The Mission conducted more than 400 individual interviews. In order to ensure both the safety and privacy of the interviewees and the integrity of the information provided, such interviews were conducted in private to the greatest extent possible. To continue to protect their safety and privacy, the names of the victims, witnesses and other sources are generally not explicitly referred to in the report;

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

(c). Site visits on October and December 2011 and January 2012 to specific locations in Libya where incidents had occurred, including in Misrata, Benghazi, Ajdabiya, Bani Walid, Nalut, Yafran, Zintan,Tripoli, Al Zawiyah, Zowara, Al Khums and Al Qalaa, as well as site surveys of battle damage across Libya;

(d) Analysis of video and photographic images, including satellite imagery provided by UNOSAT;

(e) Review of medical reports about injuries to victims;

(f) Forensic analysis of weapons and ammunition remnants found at incident sites;

(g) Meetings with members of the diplomatic community, government officials, NGOs, professional associations, military analysts, medical doctors, legal experts, scientists and United Nations staff; and

(h) Invitations to United Nations Members States and United Nations agencies, departments and bodies to provide information relating to the Commission's investigation requirements.

7. As with its first report, the Commission took a cautious approach in assessing the information gathered.[18] It relied where possible on facts which it observed first-hand or which came from first-hand accounts. The Commission bore in mind that it was not seeking evidence of a standard to support a criminal conviction, rather it made its assessments based on a "balance of probabilities" as to whether the information gathered supported a finding that a violation had in fact occurred.[19]

8. The Commission emphasizes that it is not a court of law and that its investigations were not undertaken with the time, resources, and judicial tools (such as subpoena powers) that normally characterize criminal investigations. It further recognizes that the legal regimes applicable to the crimes and violations under review here comprise a complex arena of international law and the jurisprudence on some issues is not altogether settled. Thus, the findings and conclusions with respect to specific crimes and violations must be read in that light.

[18] A/HRC/17/44., para. 237.

[19] See *The UN Human Rights Council: Commissions of Inquiry Conference brief*, 1 December 2011, p. 3 recommending "balance of probabilities" as the starting point for standards of proof in Commissions of Inquiry. Available from http://www.adh-geneve.ch/docs/news/HR-council-inquiry-conference-brief.pdf.

B. Challenges faced by the Commission

9. The Commission faced a number of significant challenges in carrying out its mandate in the period covered by this report:

(a) Having decided to return to Libya as soon after the HRC extended the mandate as possible, the Commission was nevertheless forced to postpone a visit scheduled in August 2011 due in part to lack of staff. The Secretariat had disbanded after the issuance of the first report, with its staff returning to their previous posts or having their contracts terminated. Despite the Commissioners' urgings, recruitment procedures precluded a rapid return of the Secretariat staff. Indeed entirely new staff was recruited for the second stage, without input from the Commissioners although they sought to provide it, and the ensuing administrative process meant that the Secretariat did not return to full strength until mid-November 2011.[20]

(b) Security considerations also impacted the Commission's ability to go to Libya in the period following its first report. Fighting continued throughout the summer with Tripoli falling to the *thuwar*[21] in late August 2011. Pitched battles in Bani Walid, Misrata, Sirte and the Nafusa Mountains – all priority areas for the Commission to visit – precluded access. Even after the close of hostilities in late October 2011, tensions amongst the various *thuwar* brigades remaining in and around Tripoli resulted in armed confrontations and deaths. The high number of security-related incidents prompted logistical and administrative restrictions on the movements of United Nations staff, significantly curtailing the number and scope of meetings and interviews.

(c) The Commission experienced some logistical difficulties in accessing detention centres. The obstacles were primarily due to difficulties in determining the entity in effective control of those facilities during the period of transition from control by individual *thuwar* brigades to control by interim Government. The Commission's work was further hampered by the fact that centralised information on prisoner categories was limited. Despite requests to the Ministries of Justice and Defence, the Commission was only able to identify the nature of prisoners upon actually visiting each centre, which significantly hindered planning and prioritization.

(d) While the Commission insisted on, and for the most part succeeded in, conducting interviews with detainees in private, detention centre guards sometimes interrupted these private interviews to insist that detainees tell the Commission how well they were being treated, or to demand they "tell the truth". Further, the Commission is aware that the most serious abuses are alleged to have occurred in "unacknowledged" detention centres in private houses and elsewhere, outside of the control of interim Government. The Commission was not able to identify specific unacknowledged detention centres.

(e) Certain locations where violations had allegedly occurred had been disturbed and/or cleaned prior to the Commission's arrival, limiting the physical evidence available. Other locations were unsafe for investigation due either to structurally unsound buildings, the existence of unexploded ordnance (UXO), or authorities otherwise refusing to give permission for access.

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[20] The Commission understands that these procedures have since been replaced in part by a "roster" recruitment system which should avoid a repetition of these delays in the future. Also, the Secretariat had a somewhat different composition during its second phase. Among the changes were the additions of a forensic pathologist and a senior military expert.

[21] The Commission's first report referred to opposition forces as 'rebels'. *Thuwar* is the term used by opposition forces at the time, and now, to describe themselves and is used here generally to refer to armed anti-Qadhafi groups, rather than demonstrators or opposition supporters *per se*.

(f) Many victims and prospective witnesses feared, or may have feared, speaking of their experiences given the on-going risk to themselves or to their families. The Commission was mindful of the need to avoid taking any actions which would endanger victims and witnesses.

10. Notwithstanding these constraints, the Commission considers that it has been able to gather a substantial body of material with respect to the violations of international human rights, international humanitarian law and international criminal law that have occurred.

C. Cooperation and Acknowledgements

11. The Commission is grateful to the numerous Libyan and other foreign nationals, especially victims and witnesses of violations, who have shared with it their stories - at times accepting an amount of personal risk.

12. The Commission wishes to formally thank the interim Government of Libya for its cooperation during the Commission's visits.

13. The Commission is grateful to the Permanent Delegations to the UN, a number of United Nations agencies, NATO, and various other international and domestic governmental and non-governmental organizations who have provided materials, information, and testimony to the Commission.

14. The Commission has been in contact with the Office of the Prosecutor of the International Criminal Court (ICC) whose Office has been investigating alleged international crimes committed in Libya since 15 February 2011. In undertaking this liaison, the Commission and the ICC have been committed to respecting appropriate confidentiality and independence requirements of each body.

D. Applicable law

15. In its first report, the Commission set out the three major bodies of international law most relevant to its inquiry: international human rights law, international humanitarian law, and international criminal law.[22] A summary of each regime is set out below, whereas a more detailed discussion is available in the Commission's first report.

1. International human rights law

16. At all times relevant to this report Libya was a party to major United Nations human rights treaties and a number of optional protocols.[23] The Qadhafi Government did

[22] A/HRC/17/44, paras 57 - 70.

[23] The International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, were both ratified by Libya on 15 May 1970. The Convention on the Elimination of All Forms of Racial Discrimination was ratified on 3 July 1968. The Convention on the Elimination of Discrimination Against Women, the Convention on the Prevention and Punishment of the Crime of Genocide, the Convention on the Non-Application of Statutory Limits to War Crimes and Crimes against Humanity, and the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment and Punishment, were all ratified by Libya on 16 May 1989. The Convention on the Rights of Child was ratified on 15 April 1993. The International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families was ratified by Libya on18 June 2004. Libya has ratified the Optional Protocol to the Convention on the Rights of Child on the involvement of children in armed conflict on 29 October 2004 with a binding declaration made under Article 3. (See in chap. III, sect. K) At a regional level, Libya is a party to the African Charter on Human and Peoples' Rights which it joined on 19 July 1986, the African Charter on the Rights and Welfare of the Child, which it ratified on 23 September 2000, the Protocol to the African

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not declare a state of emergency nor otherwise seek to derogate from any of the aforementioned obligations which consequently remained in effect throughout the conflict, irrespective of the applicability of other legal regimes.[24]

17. All branches of the former Libyan government were therefore bound to respect, protect, promote and fulfill the human rights of all persons within its jurisdiction. The obligation included the right to afford an effective remedy to those whose rights were violated (including the provision of reparations) and to investigate and bring to justice perpetrators of particular violations.[25] Libya was also bound by relevant rules of international human rights law which form a part of customary international law.

18. **Non-state actors and international human rights law:** In its first report, the Commission noted that while non-state actors cannot formally become parties to the international human rights treaties, they must nevertheless respect the fundamental human rights of persons in areas where such actors exercise de facto control.[26] The Commission therefore examined allegations of human rights violations committed by the Qadhafi Government and the *thuwar*.

2. International humanitarian law

19. International humanitarian law, also known as the law of armed conflict, is binding on all parties participating in an armed conflict that meets the threshold criteria. It comprises the four Geneva Conventions of 12 August 1949 as well as its Protocols I and II and an array of other instruments and customary principles that protect those most vulnerable to the effects of armed conflict.[27] In its first report, the Commission noted that

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Charter on Human and Peoples' Rights on the Establishment of an African Court on Human and Peoples' Rights, which it ratified on 19 November 2003 and the Protocol on the Rights of Women in Africa which it ratified on 23 May 2004.

[24] *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, "[t]he protection offered by human rights conventions does not cease in case of armed conflict." 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.

[25] See Human Rights Committee, General Comment No. 31 on The Nature of the General Legal Obligation Imposed on State Parties to the Covenant (2004), paras. 15-19. In this General Comment, the 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 recognised in a consensus resolution of the UN Commission on Human Rights in 2005).

[26] See A/HRC/17/44, para. 62. 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). To similar effect, see UN 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.

[27] One repository of the principles of customary international humanitarian law can be accessed in *Customary International Humanitarian Law* (3 vols.), by Jean-Marie Henckaerts and Louise Doswald-Beck for the International Committee of the Red Cross, (Cambridge, Cambridge University Press, 2005) (*ICRC Study*).

Libya was a party to the Geneva Conventions and its Protocols[28] as well as several other international humanitarian law instruments concerning weaponry and mercenaries.[29]

20. The Commission previously observed that the non-international armed conflict which developed in Libya in late February 2011 triggered the applicability of Protocol II to the Geneva Conventions Relating to the Protection of Victims of Non-International Armed Conflict (Protocol II) together with the provisions of Common Article 3 of the Geneva Conventions.

21. In relation to the international armed conflict that ensued once the international forces engaged the Qadhafi forces,[30] the full provisions of the four Geneva Conventions, as well as customary international humanitarian norms relating to international armed conflict applied.[31] Libya and most of the States involved in the military intervention have also ratified Protocol I to the Geneva Conventions Relating to the Protection of Victims of International Armed Conflict (Protocol I) bringing its provisions into effect.[32]

22. 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.[33]

3. International criminal law

23. International criminal law provides the means of enforcement at the international level of penalties for egregious violations of international human rights law and serious violations of international humanitarian law which are recognized as attracting individual liability. The International Criminal Court (ICC) is a treaty-based organ that tries persons accused of such crimes, namely genocide, crimes against humanity and war crimes.[34] The

[28] A/HRC/17/44, para. 63. Libya ratified the four Geneva Conventions on 22 May 1956. Protocol I and Protocol II to the Geneva Conventions were both ratified on 7 June 1978.

[29] 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 (ratified on 29 December 1971), 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 (ratified on 19 January 1982), the Convention on the Prohibition on the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (ratified on 6 January 2004). Libya is also a party to the OAU Convention for the Elimination of Mercenarism in Africa and the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Both were ratified by Libya on 22 September 2000. Libya 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. Libya is also a party to the Convention for the Protection of Cultural Property in the Event of Armed Conflict.

[30] A/HRC/17/44, para. 56.

[31] See J. Pictet *et al*. (eds.), *Geneva Convention I for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field: Commentary*, Geneva, ICRC, 1952, p. 32.

[32] 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.

[33] See also S/RES/1820.

[34] 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* 2nd ed., (Oxford, Hart Publishing,

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treaty creating the ICC, known as the "Rome Statute" has been joined by 120 countries as of February 2012.[35] Although Libya has not become a party to the Rome Statute, pursuant to its Article 13(b), the Security Council referred the situation of Libya to the ICC Prosecutor on 26 February 2011.[36]

24. **War Crimes**: A detailed listing of which actions constitute war crimes under the Rome Statute is contained within its Article 8. In the context of non-international armed conflict, this comprises serious violations of Common Article 3 and Protocol II, as well as other serious violations of the laws and customs of international law. In the context of an international armed conflict, crimes include 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.

25. **Crimes against humanity**: Crimes against humanity are those crimes which "shock the conscience of humanity." Under the Rome Statute, crimes against humanity occur where certain acts are undertaken as part of a widespread or systematic attack against a civilian population where the perpetrator has knowledge of the attack.[37] The elements of crimes against humanity are well established in international criminal law:[38]

i. There must be one or more attacks;

ii. The acts of the perpetrator must be part of the attack(s);

iii. The attack(s) must be directed against any civilian population;

iv. The attack(s) must be widespread or systematic;

v. The perpetrator must know that his or her acts constitute part of a pattern of widespread or systematic crimes directed against a civilian population and know that his or her acts fit into such a pattern.

vi. The underlying acts – or crimes – referred to paragraph v. above have been enumerated in the Rome Statute of the International Criminal Court.[39] The list includes a number of the violations the elements of which are set out elsewhere in this report, for example, unlawful killings;[40] enforced disappearances;[41] torture and other cruel, inhuman and degrading treatment;[42] and/or rape,[43] and their elements are not repeated here.

2008) and M. Cherif Bassiouni, *International Criminal Law* (3 vols.) 3rd ed., (Boston, Martinus Nijhoff, 2008).

[35] See http://www.icc-cpi.int.

[36] Security Council resolution 1970 (2011).

[37] Article 7, Rome Statute. See M. Cherif Bassiouni, *Crimes Against Humanity: Historical Evolution and Contemporary Practice* (Cambridge, Cambridge University Press, 2011).

[38] *Prosecutor v. Kunarac et al*., IT-96-23-T & IT-96-23/1-T, Judgement, Trial Chamber, 22 February 2001. The 'Elements of Crimes' applied to cases at the International Criminal Court

[39] The list in the Statute includes murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance, apartheid and other inhumane acts. See Article 7(1)(a-k)

[40] Listed as murder under Article 7(1)(a) of the Rome statute. See chap. IIII, sect. B.

[41] Article 7(1)(h) of the Rome statute. See chap. IIII, sect. C.

[42] See chap. III, sect. D.

[43] See chap. III, sect. F.

26. **Widespread or Systematic:**[44] Widespread has long been defined as encompassing "the large scale nature of the attack, which should be massive, frequent, carried out collectively with considerable seriousness and directed against a multiplicity of victims".[45] As such, the element refers to both the large-scale nature of the attack and the number of resultant victims. The assessment is neither exclusively quantitative, nor geographical, but must be carried out on the basis of the individual facts. Accordingly, a widespread attack may be the "cumulative effect of a series of inhumane acts or the singular effect of an inhumane act of extraordinary magnitude".[46]

27. The ICC Pre-Trial Chamber in its Decision to open an Investigation into the Situation in the Republic of Kenya, held that "in contrast to the large-scale character of "widespread", the term "systematic" refers to the "organised nature of the acts of violence and the improbability of their random occurrence". An attack's systematic nature can "often be expressed through patterns of crimes, in the sense of non-accidental repetition of similar criminal conduct on a regular basis." The Chamber notes that the "systematic" element has been defined by the ICTR as (i) being thoroughly organised, (ii) following a regular pattern, (iii) on the basis of a common policy, and (iv) involving substantial public or private resources, whilst the ICTY has determined that the element requires (i) a political objective or plan, (ii) large-scale or continuous commission of crimes which are linked, (iii) use of significant public or private resources, and (iv) the implication of high-level political and/or military authorities".[47]

4. Legal regimes in effect

28. In its first report, the Commission set out in some detail the legal regimes applicable during Phases I and II of the conflict.[48] It noted that at the outset of the conflict, Libya was in a state of peace and the applicable international legal regime comprised international and regional human rights law. The Commission determined that the organization of the *thuwar* and the intensity of the violence gave rise on 24 February 2011 to a non-international armed conflict which triggered the application of international humanitarian law, and more specifically Protocol II and Common Article 3. This situation remained in place as the Security Council adopted resolution 1973 putting in place a no-fly zone and permitting "all necessary measures" to protect civilians. An international coalition enforcing resolution 1973 began employing force on approximately 19 March 2011. In so doing, the Commission concluded that the necessary elements of an "international armed conflict" had been fulfilled. The Commission further concluded that this was legally separate to the non-international armed conflict, and was thus a "co-existing international armed conflict."[49]

29. The legal regimes applicable during the international and non-international armed conflicts in Libya, including international human rights law, remained in force until the

[44] ICC Pre-Trial Chamber, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19, 31 March 2010.
[45] Pre-Trial Chamber 1, *Katanga* decision, ICC-01/04-01/07-717, paras 395 and 398; ICTR, *The Prosecutor v. Akayesu*, Case No. ICTR-96-40-T, "Trial Judgment", 2 September 1998, para. 580.
[46] ICTY, *Dusko Tadic* Judgment, 7 May 1997, para 648.
[47] ICC Pre-Trial Chamber, Situation in the Republic of Kenya, Decision Pursuant to Article 15 of the Rome Statute on the Authorization of an Investigation into the Situation in the Republic of Kenya, ICC-01/09-19, 31 March 2010, para. 96.
[48] A/HRC/17/44, paras. 50-70.
[49] A/HRC/17/44, paras. 50-56.

close of hostilities on 24 October 2011.[50] From that point onward, human rights law was once again predominant as the applicable international legal regime, save for residual international humanitarian law matters.[51]

5. Other Legal Matters

30. The Commission notes that on 16 September, 2011 the United Nations General Assembly formally recognized the NTC as the interim Government of Libya.[52] The Commission therefore considered the NTC and Libya's interim Government as representing the successor state with respect to the country's international human rights and humanitarian law treaty obligations.

II. Background

A. The legacy of the Qadhafi Government

31. It is not possible to understand the violence which occurred in Libya during the course of 2011, and still continues to a lesser extent today, without understanding first how profoundly damaged Libyan society has been over the last 40 years. As discussed in its first report, the Commission has tried to place the demonstrations and conflict within the broader human rights and democratic context of Libya. This includes widespread corruption and nepotism, the manner of governance, and serious human rights abuses over decades. Human rights concerns about Libya under the Qadhafi Government were repeatedly raised in international forums, in particular by United Nations human rights treaty bodies and special procedures mechanisms. Notwithstanding this, Libya was elected to chair the HRC in 2003 and elected to the Commission's successor, the HRC, in May 2010.

32. A large number of documented enforced disappearances and cases of extrajudicial, summary or arbitrary executions were noted in 2007 by the HRC, along with concerns expressed about the lack of information concerning effective investigation and redress. It also raised concerns regarding arbitrary arrest, the absence of judicial review of detention, the length of pre-trial detention and the systematic use of torture and cruel, inhuman or degrading treatment or punishment. Although torture was considered a crime under the Libyan Penal Code, the Committee against Torture, in 1998, was critical of the absence of prompt and impartial investigations into incidents of torture.[53] During Libya's Universal Periodic Review in November 2010, members of the HRC raised concerns regarding serious human rights violations including arbitrary detention; torture and other forms of ill-treatment; constraints to the freedom of expression, association and assembly; and impunity for gross human rights violations including enforced disappearances and the

[50] On 23 October 2011 the NTC formally declared that Libya had been liberated. BBC News *Libya's new rulers declare country liberated*, available from http://www.bbc.co.uk/news/world-africa-15422262. On 31 October 2011, NATO formally concluded operation "Unified Protector." Available from http://www.nato.int/cps/en/natolive/71679.htm, 29 January, 2011.

[51] For example, the Geneva Conventions require Contracting Parties to facilitate the return of civilian populations to their homes (See ICRC Study Rules 133 and 134). Customary IHL also provides that at the end of hostilities that the authorities in power must endeavour to grant the broadest possible amnesty to those who have not breached international criminal law (Rule 159), and to release from detention as soon as practicable anyone detained in relation to the conflict (Rule 128).

[52] A/Rec/66/1, September 2011.

[53] A/HRC/17/44, para 20.

killings of over 1,200 prisoners in Abu Salim Prison in 1996. The Qadhafi Government of Libya dismissed the criticism, and rejected all recommendations regarding specific violations and steps to address them. [54]

33. Muammar Qadhafi's four decade rule was characterized by severe repression of all dissent, and marred by widespread human rights abuses. Qadhafi built and consolidated a system in which he was essentially the sole decision-maker, while claiming to be a "spiritual guide" or "Brother Leader" and not to have any official government role. The survival of the system heavily relied on brutal repression of any opposition via a network of intelligence agencies including the Internal Security Agency (*Jihaz Al-Amn Al-Dhakhli)*, the External Security Agency (*Jihaz Al-Amn Al-Kharaji*), the Military Intelligence Service (*Jihaz Al-Amn Al-Askari or Istikhbarat*), the Revolutionary Committees (*Al-Lijan Al-Thawria*), Revolutionary Guard (*Al-Haras Al-Thawri*) and informants, who acted with complete impunity and were above the law.[55] In fact, by the time of the "17 February Revolution", most opponents had been killed, jailed, or were in exile. Those who dared to criticize the political system did so with utmost care and lived under constant threats and harassment.

34. Freedom of speech and freedom to engage in public affairs were significantly curtailed in law and in practice. Political parties were illegal. "Political activity" for this purpose was defined broadly to include any activity based on a political ideology contrary to the principles of the Al-Fateh Revolution of 1 September 1969. The Penal Code could still impose the death penalty for the establishment of prohibited groups or criticizing the "Leader". Free speech was curtailed if it 'prejudices the People's Authority or is used for personal interest'. Other laws prevented the exercise of the right to freedom of association. As a result, there were no independent human rights organizations or other civil society groups in Libya for over four decades.

35. Libya had the highest literacy and educational enrolment rates in North Africa and high rates of female students in schooling.56 Education was free of charge, primary school attendance nearly universal and health services free for all children. However, many Libyans expressed frustration at the quality of education and the removal from the curriculum of any material that would endanger the survival of the political system. For instance, English language was not taught. On the other hand, the teaching of Muammar Qadhafi's political ideology laid down in the Green Book was mandatory.

36. The Libyan economy depends primarily upon income from oil and natural gas, which contributes about 95% of export earnings, 65% of gross domestic product (GDP) and 80% of Government revenue. The substantial income from oil, coupled with a small population of about 6.5 million (2010 estimate), gives Libya one of the highest per capita GDP in Africa at approximately $11,000.[57] However, the country's economic wealth was not shared. For example, 28% of the population did not have sustainable access to an improved water source and the country suffered from severely under-developed infrastructure despite its oil wealth. There was also internal discrimination, particularly

[54] A/HRC/16/15, para 93-97.

[55] The Military and Security agencies are described below.

[56] The UNDP Human Development Report, 2011, states that 55.6% of the female population in Libya has completed secondary education, available from http://hdrstats.undp.org/images/explanations/LBY.pdf

[57] Economy Watch, *Libya Economic Indicators for the Year 2010*, available from http://www.economywatch.com/economic-statistics/country/Libya/.

against the Amazigh population, who were not recognized as a minority and were impeded from preserving and expressing their cultural and linguistic identity.[58]

37. Libyan society was and remains male-dominated, with gender-based discrimination widespread. In addition to entrenched discriminatory norms within Libyan culture and stereotypes of women's roles in family and society, the enforcement of laws itself displayed discrimination and did not provide for equal rights for women and men particularly in terms of marriage, divorce and inheritance rights.

38. As discussed in its first report, the Commission heard repeatedly during its investigation that past human rights violations have had a deep psycho-social impact on the community. Notable cases included the extrajudicial killing of 1,272 prisoners by machine gun fire in Abu Salim Prison in June 1996 and the public hanging of university students accused of directly or indirectly opposing the government at the university, with others forced to watch. This is in addition to the widespread and systematic cases of torture, disappearance and extra-judicial executions perpetrated by the Qadhafi Government and reported to the Commission in the course of its work, with families left powerless to complain and often with no knowledge of what happened to their family members. Families of those killed in the Abu Salim Prison in 1996 were the first to protest on 15 February 2011 in Benghazi after the arrest of their representative, and were instrumental in triggering the uprising. 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 and the behaviour of individuals and units of those revolutionaries or *thuwar* who subsequently took up arms against the Qadhafi Government.

39. In accordance with the mandate of the Commission, this report has focused on violations committed by both sides in the recent conflict. Given the shift in power since the revolution began, a significant amount of this report focuses on abuses by those who rose up against the Qadhafi Government. The Commission is mindful that such abuses are not to be excused. They must, however, be viewed in the context of systematic torture, murder and repression of the people of Libya by Muammar Qadhafi and his Government over four decades. It is also mindful of the fact that, while major abuses are still occurring, the significant difference between the past and the present is that those responsible for abuses now are committing them on an individual or unit level, and not as part of a system of brutality sanctioned by the central government. The Commission is cognizant of the challenges facing the new Libyan leadership in rebuilding a country left by the Qadhafi Government devoid of independent institutions, a civil society, political parties, and a judiciary able to provide justice and redress.

1. Libyan institutions

40. The Commission understands that the interim Government is new and faces many challenges. Few of the officials or others such as human rights lawyers met by the Commission have demonstrated a real understanding of basic legal and human rights standards (such as the right to defence). The existing Libyan laws do not always conform to human rights standards[59] and will need to be repealed or amended. Even those limited existing legal safeguards of human rights were routinely flouted in practice. Government officials informed the Commission that many prison buildings and police stations were destroyed during the conflict, either by retreating Qadhafi forces or by *thuwar* who

[58] Interview 0259; Excluded from cabinet: Reuters, *Libya's Berbers fear isolation*, available from http://af.reuters.com/article/libyaNews/idAFL5E7MO0KJ20111125.

[59] See chap. III.

associated them with repression. The Commission inspected the destruction at the notorious Abu Salim Prison. Therefore, the existing prisons, both official and unofficial, are of varying quality, but for the most part do not meet the United Nations Standard Minimum Rules for the Treatment of Prisoners. Prison guards and police under the former government had no concept of human rights. The adherence of those who have taken their place in recent times is variable. Several government officials, including the Minister of Justice and the head of the newly formed National Council for Civil Liberties and Human Rights, acknowledged to the Commission that judges, prosecutors, the judicial police and others involved in the administration of justice require training in human rights standards. While there was a human rights commission under the Qadhafi Government, it lacked impartiality and integrity.

2. Judicial System

41. The judicial system is not functioning effectively, and suffers from the legacy of its past, when it was used as a tool of repression. At the time of the uprisings in February 2011, Libya had a parallel judicial system for cases deemed political and was subject to political pressure. Lawyers, judges, activists and other Libyans interlocutors told the Commission that while the judicial system was generally adequate for common law or civil cases; it lacked any independence and credibility in political cases. In fact, exceptional courts and prosecutions were created to address political cases. The People's Court first created in 1971 to try members of the former royal family and others accused of corruption, continued to conduct closed-door trials of political opponents of the government and usually imposed harsh penalties. Until its abolition by Qadhafi in January 2005, this court spread fear and repression amongst the population and discouraged dissent of any kind. Even though abolished, a replacement was established in 2007 and renamed the Special Security Court. Government opponents and others perceived as a threat were convicted by the court in trials that did not meet the minimum standards of fair trial, including the right to adequate defence, the right to be informed of charges, and the right to appeal. It is therefore unsurprising that the judicial system collapsed in the aftermath of the conflict and continues to suffer from a lack of trust by victims seeking redress and the Libyan public at large.

42. Even those limited safeguards guaranteed by Libyan law – such as the right to a lawyer – were routinely flouted in political cases. Most suspects did not see their lawyers until their trial hearings, and lawyers were not provided information on their client's case, severely impeding their ability to adequately defend them. Lawyers were not allowed into notorious political prisons like Abu Salim and Ein Zara, despite legal provisions stipulating the right of lawyers to visit their clients in detention. Such practices and abuses appear to now be repeating in the new Libya.

43. An additional political obstacle to judicial independence was Muammar Qadhafi's almost unlimited power. The "Charter of Revolutionary Legitimacy" gave Qadhafi control over all of Libya's political, judicial and economic institutions. His directives were of greater force and authority than any judicial rulings. This Charter also authorized him to intervene in judicial issues and to establish special or emergency courts to override the decisions of other courts.[60]

[60] Luis Martinez, *Countries at the Crossroads 2011: Libya*, Freedom House, Accessed from http://www.freedomhouse.org/sites/default/files/inline_images/LibyaFinal.pdf

B. Gains made by the interim Government

44. In meetings with the Commission, senior Government officials (and many local officials) have expressed commitments to human rights and concerns about torture, ill-treatment and other violations, albeit downplaying the gravity of violations taking place since the fall of the Qadhafi Government. However, there has been a failure by senior Government figures to publicly condemn such abuses and other violations, including the attacks on entire communities such as Tawerghans and Mashashiyas. This failure to hold individual *thuwar* brigades to account at this time may reflect the fragility of the interim Government's power and the potential difficulties and risks for the interim Government in doing so. The security situation remains very difficult, with the widespread availability of weapons and frequent clashes between different *thuwar* brigades seeking to establish dominance and preserve vested interests.

45. In meetings with the Commission, several Government officials and members of the National Council for Civil Liberties and Human Rights emphasized the precariousness of the security situation, the weakness of the national police and judicial police force, and the inability of the central authorities to enforce decisions including arrest warrants. The raid on the General Prosecutor's office by a group of armed men, who forced him to sign a release order at gun-point in December 2011,[61] reflects the challenges facing the interim Government in re-establishing the rule of law. The Commission acknowledges these difficulties, and welcomes the interim Government's plans to disarm the *thuwar*, and integrate fighters into the National Army or police force.

46. There has been some limited progress in the transfer of detainees and detention facilities from local Military Councils, Security Committees and local councils to the control of the Ministry of Justice and the Ministry of Defence (see chap. III, sect C). However, individual thuwar brigades continue to hold detainees outside the framework of the law.

47. There has been some movement on a process of transitional justice. The Law on Transitional Justice, which creates a Fact-finding and Reconciliation Commission, was recently adopted by the NTC. After several reviews, a law on amnesty has recently been adopted by the NTC (see chap. IV). Several Libyan lawyers and human rights activists expressed fears that delays in the administration of justice increase risks of individual victims or their family members taking the law into their own hands and carrying out revenge attacks.

48. The judicial system has yet to function properly. While some members of the judicial police, judges and prosecutors resumed their work, and trials have started in some civil law cases, the vast majority of the approximately 8,500 detainees held on suspicion of being soldiers or loyalists of the former Government continue to be held outside the legal framework. One trial of alleged loyalists has started in Benghazi in February 2012 before a military court, but on application of the defence lawyers the case has been transferred to a civilian court. The accused alleged that they have been tortured and their right to adequate defence is not fully respected.

C. Military Forces and Structures

49. The Commission has gathered information on military forces and structures of the Qadhafi Government and *thuwar* to obtain a better understanding of the armed forces involved during the conflict, and to be able to identify specific military or security units

[61] Interview 0379.

involved in specific incidents constituting violations. In many instances, the Commission has been able to obtain information on the commanders of specific military or security units allegedly involved in violations, and thereby to assign responsibility to senior military officers based on their command and control of those under their supervision. In other instances, victims and witnesses interviewed by the Commission were unable to identify either individuals or the entities allegedly responsible for the atrocities. The information on the various military or security units in this section will also provide a better understanding of the information presented in the report on different violations.

a. Qadhafi Forces

50. The security arrangements in Libya under the Qadhafi Government were 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. The Commission noted a number of different structures operating in different capacities at different times and at different places. The description below of the Qadhafi 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.

51. With the Qadhafi Government's control of the judiciary, the security forces benefited from complete impunity. The various arms of the security forces therefore exercised sweeping powers with no requirement for accountability.

52. Military Forces: The Qadhafi Government's military was comprised of an army, an air force and a navy. In 2004, the armed forces were believed to have 116,000 active personnel.[62] In recent years, the regular armed forces had reportedly been marginalized and not involved in internal security operations, although Military Intelligence held formidable sway.[63] Whilst there was a hierarchy within the army, other factors such as tribal membership and known loyalty to the Revolution appeared to play an important role in the level of responsibility accorded to individuals within the military.

53. **The *Kataeb*** (brigades) were increasingly at the forefront of internal security. Each *Katiba* (individual brigade) had a name bearing a measure of political significance, such as the name of its commander. For example, the 32nd Reinforced Brigade was known as the Khamis Brigade was named after one of Colonel Qadhafi's sons. Individual *Katiba* were said to number up to 3,000 men and were armed with heavy weaponry. Membership in the Qadhafi brigades was 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 person who may be suspected of disloyalty. In general, it is difficult to ascertain, how and why a given *Katiba* was organized and dissolved and under whose command it was at any given time.

54. **The 32nd (Khamis) Reinforced Brigade**, headed by Khamis Qadhafi, the son of Muammar Qadhafi, was trained for repelling external threats.[64] Unlike other brigades, this brigade was equipped as a small army, and included ground forces, Special Forces, artillery units, Grad missiles units, airborne units, in addition to the intelligence units. The Commission was informed that the soldiers of this Brigade had special privileges not available to other military units, such as access to cars and their own recreation facilities, and received three times the salary of a soldier in the regular army.[65] The 32nd (Khamis)

[62] Available from http://www.bbc.co.uk/news/world-africa-12692068
[63] The formal head of the Military Intelligence Service was [008]. Interview 0335.
[64] Interview 0335.
[65] Interview 0170.

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Brigade had advanced, modern weapons not available to other brigades, and was able to procure weapons directly from suppliers without going through the military procurement office.[66]

55. The National Security Council (*Majlis Al-Amn al-Khawmi*[67]), was created during 2007, and was headed by Mutassim Qadhafi, who was designated National Security Adviser by his father. According to information available to the Commission, the membership of the Council included the Prime Minister, Foreign Minister, Minister of Public Security, Minister of Economy and Trade and Chief of Defense.[68] The Council was considered a link between the military and the security agencies.[69]

56. **The Revolutionary Committees**, which were set up in 1977 to "safeguard the Revolution", were originally composed of students who believed in Qadhafi's populist theories. After 17 February 2011, the head of the Revolutionary Committees was [084]. The Committees had offices throughout the country and school children were required to attend camps regularly, and by the time they enrolled at university, they were already de facto members of the Committees.[70] Their members wore civilian clothes and were armed with light weapons (handguns and AK-47s). Sources that the Commission spoke with estimated that the Revolutionary Committees had tens of thousands of members, possibly between 60,000 and 100,000 members. According to information collected by the Commission, the Revolutionary Committees were 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. Prior to February 2011, the Revolutionary Committees were known as an important security organization close to Qadhafi. During the uprisings in February 2011, the Revolutionary Committees formed an integral part of Qadhafi's loyalist supporters who faced the demonstrators.[71]

57. **The Jamahiriya Security Organization** (*Haiat Amn Al Jamahiriya*)[72] included the Internal Security Agency and the External Security Agency. According to information provided to the Commission, the Internal Security Agency was tasked with countering terrorism and monitoring alleged anti-Qadhafi organizations, such as lawyers and doctors' unions and individuals to evaluate the extent of any internal threat to the Government.[73] The Internal Security Agency reported directly to Muammar Qadhafi. The External Security Agency was commanded until March 2009 by [052].[74] This agency reportedly planned, coordinated and provided support to military operations and terrorist activities abroad. External security dealt also with military intelligence and overseas intelligence assessments but was not usually directly involved in internal security affairs. While regular prisons fell under the authority of the General People's Committee for Justice [the

[66] Interview 0344.

[67] Interview 0335.

[68] Available from http://www.telegraph.co.uk/news/wikileaks-files/libya-wikileaks/8294769/LIBYAS-NATIONAL-SECURITY-COUNCIL-EXPERIENCING-GROWING-PAINS.html

[69] Interview 0335.

[70] Ibid.

[71] Interview 0329.

[72] Available from http://www.globalsecurity.org/intell/world/libya/jso.htm

[73] According to information received by the Commission, the commander for the eastern region of the Internal Security Agency at the time of the events in February 2011 was [079]; and the commander for the Internal Security Agency was [078]. Interview 0335.

[74] According to information received by the Commission, [023] took over as head of the External Security Agency, succeeding [052]. Interview 0335.

Ministry of Justice], it was the Internal Security Agency that held jurisdiction over the Abu Salim and Ein Zara prisons.[75] Members of both the Internal Security Agency and External Security Agency wore civilian clothes and their vehicles were not marked with any distinctive signs.

58. **Special Police Forces** were within the chain of command of the Ministry of Interior, headed prior to the conflict by General Abdul Fatah Younis.

59. **The Revolutionary Guard** (also known as the Republican Guard) was a structured political and paramilitary apparatus within the armed forces tasked with ensuring loyalty to the Government and suppressing any opposition[76]. According to information provided to the Commission, the Revolutionary Guard included six brigades (a Special Forces Brigade, an Infantry Brigade, an Artillery Brigade, and three tank brigades all stationed on the outskirts of Tripoli).[77] It was thought to have been approximately 40,000 strong[78] and "the real frontier protection force."[79] The force had access to battle tanks, armoured personnel carriers, helicopters and possibly anti-aircraft artillery and guided weapons. A unit from the Guard, composed solely of female soldiers and known as the "Green Nuns" or "Revolutionary Nuns" served as Muammar Qadhafi's bodyguards. Members of the Revolutionary Guard were uniformed.

60. The Commission was informed that Revolutionary Guards were not employed full time but were volunteers, and were accepted for training on the recommendations of other members of the Revolutionary Guards. They were provided about four months of training, especially in the use of weapons, and had to attend annual refresher courses. Thorough security checks were completed in respect of each member of the Revolutionary Guard to ensure that they were completely loyal to the government. At the time of graduation, each member was required to swear an oath never to betray Qadhafi. Members of the Revolutionary Guard had access to many privileges.[80]

a. *Thuwar*

61. The *thuwar* brigades were formed autonomously at the outset of the conflict and in some cases managed over time to fashion their ranks into reasonably well-organized command structures. Given constraints in telephone and internet communication during the conflict[81], there was little coordination across regional lines leading to the development of independent military structures and chains of command.

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[75] These two prisons held political prisoners for years without trial. See Human Rights Watch, *Truth and Justice Can't Wait*, 12 December 2009. Available from http://www.hrw.org/en/node/87096/section/8.

[76] Interview 0315.

[77] Interview 0170.

[78] See Intelligence/World/Libya/Maktab Maaloumat al-Kaed, *Al Haras Assauri, Revolutionary Guard,* available from http://www.globalsecurity.org/intell/world/libya/rg.htm

[79] Progressive Management, *Libya: Federal Research Study and Country Profile with Comprehensive Information, History, and Analysis - Politics, Economy, Military - Mu'ammar al Qadhafi*, 5 February 2011.

[80] Interview 0254.

[81] Internet connection was unavailable through all opposition-held territory until August. Telephone networks were also severely disrupted. For instance, individuals in Benghazi and other opposition controlled territory in the east were unable to take calls internationally and to western Libya; and landlines and mobile phones were shut off in Misrata until August-September 2011.

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62. As a result, a number of geographically-rooted armed *kataeb* proliferated across Libya. Such geographically-rooted militias were responsible for taking control and securing their own areas, and maintained their independence even after the end of hostilities. The on-going existence and visibility of a multitude of militias across Libya, each with its own structures, caches of weapons, chains of command and procedures is largely a reflection of the trajectory of the conflict, which was fought along numerous fragmented frontlines with little – and in some instances no - central control or coordination.

63. The vast majority of *thuwar* who took up arms against the Qadhafi Government were civilian volunteers, who joined their neighbourhood militia. Their efforts were aided by defectors from the Libyan armed forces (*Al-Sha'ab al-Musalah*) who brought with them expertise, weapons and military discipline.

64. While there was an attempt in Benghazi to create a central command for the *thuwar* in the shape of a Libyan National Army, essentially composed of deserters, initially under the leadership of General Abdul Fatah Younis, it was marred by divisions from the onset. Younis' leadership remained contentious, given his ties with the government since the al-Fateh Revolution, which brought Muammar Qadhafi to power in 1969. General Khalifa Hufter, one of the field commanders in the Libya-Chad war, was another key senior military figure to join the opposition. After the killing of General Abdul Fatah Younis in unclear circumstances on 28 July 2011, Sliman Mahmoud, Deputy Chief-of-Staff of the Libyan National Army, assumed control, while Khalifa Hufter remained a key commander on the eastern frontline in Brega. In January 2012, the NTC appointed Youssef Mankoush as Chief-of-Staff.

65. The NTC established a Military Council, headed by Omar Hariri, to co-ordinate security matters, and a NTC operations centre responsible for military coordination and intelligence gathering under the leadership of Brigadier General Abdulsalam al-Hasi was created. The military leadership established "training camps" in eastern Libya, where volunteers received a few days of training before joining the front lines.

66. The Libyan National Army neither coordinated nor led the military struggle against Qadhafi forces, and was largely confined to the stagnant eastern frontline around Brega throughout the conflict. Even in eastern Libya, the base of the Libyan National Army, independent *kataeb* were established by civilians, who did not wish to join the army. Among the largest independent *kataeb* was the 17 February Martyrs (*Katiba Shuhada*) Brigade in Benghazi, while further *kataeb* sprung-up in al-Bayda, Darna and Ajdabiya.

67. In other regions of Libya, far from the opposition stronghold of Benghazi, *kataeb* were formed around regional centres, in principle reporting to local civilian and military councils and local security committees, but in some cases acting autonomously with little coordination beyond their neighbourhood reach and largely under the command and control of individual commanders. The exact number of such *kataeb* across the country is difficult to establish, with estimates ranging from 100 to 300.[82] The most prominent, best organized, and well-equipped *kataeb* were established in Misrata and in the Nafusa Mountains.

68. Misrata, which saw some of the most protracted fighting during the conflict, witnessed the development of numerous *kataeb* that fought simultaneously on several fronts as the city was besieged by all sides but the sea. The fiercest fighting took place

[82] International Crisis Group, *Holding Libya Together: Security Challenges after Qadhafi*, 14 December 2011, p 19.

from mid-March until mid-May 2011, when Qadhafi forces withdrew from Tripoli Street in central Misrata. In its isolation during the conflict, Misrata developed its own leadership under the command of Khalifa Zway, who headed the local Misrata Council, and included representatives from the Misrata Military Council and Security Committee. In financing the conflict, Misrata largely relied on private donations from wealthy Misratan individuals, as well as weapons reaching Misrata by the sea from Benghazi and Malta.

69. According to information received by the Commission, the weapons and vehicles available to the *thuwar* initially comprised equipment taken from Qadhafi forces, such as AK-47 rifles, rocket propelled grenades (RPG) and the signature anti-aircraft machine guns mounted on pick-up trucks. As the conflict progressed, *thuwar* used heavy weapons seized in battle including tanks and Grad rockets, particularly in Sirte and Bani Walid.

70. *Thuwar* forces are also believed to have received equipment from foreign countries, including Qatar and France, including uniforms and communication equipment.[83] Weapons were smuggled into Libya through the Tunisia border. They were also distributed from Benghazi and Malta to the besieged city of Misrata by sea.

71. In the Nafusa Mountains, numerous regionally-based *kataeb* were formed from the onset of the conflict in Zintan, Nalut, and Yafran, among others. As the conflict progressed, control was centralized around the Western Military Council based in Zintan, which reportedly not only coordinated operations in the Nafusa Mountains but also commanded *thuwar* in Al Zawiyah and the southern and western suburbs of Tripoli.[84] The Nafusa Mountains were also used as a training ground for *thuwar* who escaped from Qadhafi controlled territory in Tripoli, Zowara and Al Zawiyah; and it was an important hub for supplies – weapons, food and medicines – smuggled across the Tunisian border, as well as flown in from Benghazi.

72. Armed Misrata and Zintan *kataeb,* who participated in taking control of Tripoli in late August 2011, remain in the capital despite calls for their withdrawal. They continue to control strategic areas and buildings including the Tripoli International Airport, and maintain their own detention facilities in the capital. They share – and at times compete for - territorial control of the capital with the Tripoli Military Council headed by Abdelhakim Belhaj[85], which also possesses its own procedures, detention facilities, weapons depots, and registration systems. Smaller military councils assume control on the neighbourhood level. According to one senior official, there are at least 132 military councils in Tripoli alone.[86]

73. Since the close of hostilities at the end of October 2011, the number of reported cases of clashes between militias particularly in the capital has increased, in some cases leading to deaths and serious injuries.[87] Some of these clashes witnessed the use of anti-aircraft machine guns in residential areas and near the Tripoli Central Hospital on Al

[83] BBC News, *France airdropped arms to the rebels*, 29 June 2011 and Reuters, *Qatari weapons reaching rebels in the Libyan Mountains*, 31 March 2011

[84] Interview 0079.

[85] The Tripoli Military Council is based at the Mitiga Military Airport.

[86] Mohamed al-Allagi, head of Libyan National Council for Civil Liberties and Human Rights and former acting Minister of Justice and Human Rights. New Quryna, *Al-Allagi warns against the spread of weapons in Tripoli*, 8 January 2012. Available from http://www.libyaalmostakbal.net/news/clicked/17241

[87] Examples of deadly clashes include those between Wershefana and Al-Zawiyah militias on 10 November; Zintan and General Halifa Heftar's Brigades from the east on 11 December 2011, and Misrata and Tripoli militias on 2 January 2012.

Zawiyah Street. Since early December 2011, Tripoli residents have held protests at the central Martyrs' Square (formerly Green Square) calling for the withdrawal of non-Tripoli *kataeb* and heavy weapons from the capital.

74. According to a number of national and international organizations, members of the NTC, and other political observers[88], the biggest challenge facing Libya today is convincing the multitude of *kataeb* to either disarm or join the Libyan National Army or police force.

Timeline of Events

i. Phase 1: the protests (15 February – late February 2011)

75. Following the mass anti-government protests in neighbouring Tunisia and Egypt, Libyans called for similar demonstrations to be held on 17 February 2011 against the 42-year rule of Muammar Qadhafi.[89]

76. In an effort to quell the protests, the Libyan government arrested several pro-democracy activists and journalists in the first half of February 2011. Rather than quelling the unrest, the detention of two prominent activists of the Organizing Committee of Families of Abu Salim in Benghazi, Fathi Tirbil[90] and Faraj al-Sharabi, triggered demonstrations in Benghazi on 15 February 2011.[91] While the government promptly released the pair, the move failed to placate public anger. By 16 February 2011, protests intensified in Benghazi and began to spread to cities across Libya, including al-Bayda, Darnah, Tobruq in the east,[92] Zintan in the west,[93] and the Tripoli suburbs of Fashloum and Souq al-Jum'a.[94] Qadhafi forces responded to the protests with lethal force, firing live ammunition including into protesters without warning.[95]

77. The crackdown on protesters triggered further demonstrations. Libyans took to the streets in Misrata on 19 February 2011 and Al Zawiya and central Tripoli on 20 February 2011.[96] In Tripoli, protests were particularly violent with Qadhafi forces firing on protesters[97] and protesters attacking government buildings. Protests in eastern Libya continued to grow in size and number.

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[88] Egypt Independent, *NTC Chief: militias may drive Libya into civil war*, 5 January 2012; The Daily Star, *NTC: Crackdown on Militias Needed to Avoid Libyan Civil War*, 5 January 2012; Middle East Online, *British FM: Militias must be integrated with new regime*, 17 October 2011; UN Security Council, *Briefing by Ian Martin: Special Representative of the Secretary General on Libya*, 26 October 2011.

[89] Designated as a "Day of Rage", the date marked the five year anniversary since a Government crackdown on protest about cartoons depicting the Prophet Mohamed outside the Italian Embassy in Tripoli.

[90] Fathi Tirbil was appointed Minister of Youth and Sports in November 2011.

[91] BBC News, *Libya: second city Benghazi hit by protests*, 16 February 2011. Available from http://www.bbc.co.uk/news/world-africa-12477275; Al Jazeera, *Protestors clash with police in Benghazi*, 16 February 2011, available from http://english.aljazeera.net/indepth/spotlight/libya/2011/03/20113175840189620.htm. As to the 1996 Abu Salim massacre, the Commission's first report (A/HRC/17/44), para. 34.

[92] A/HRC/17/44, para 37.

[93] Interview 0106.

[94] Interview 0094.

[95] A/HRC/17/44, paras. 75-88.

[96] Amnesty International, *The Battle for Libya*, 13 September 2011, p. 16.

[97] Interview 0094, 0121.

78. Between 16 and 21 February 2011, some protesters and bystanders were killed in Benghazi and al-Bayda and over 200 protesters were killed in Tripoli[98], with further casualties reported in Tobruq, Al Zawiyah and Misrata.[99]

79. By late February 2011, people had taken up arms - seized from abandoned government depots - and clashed with security forces. Some also obtained weapons from defecting members of Qadhafi security forces. On 22 February 2011, Muammar Qadhafi, in his first public speech on Libyan National Television since the start of the protests, blamed foreigners for the problems and said that the country needed to be "purified" from protestors, whom he called "rats".[100]

i. Phase 2: Armed Conflict (late February – late October 2011)

80. By late February 2011, an armed conflict had developed between Qadhafi forces and *thuwar*. In the eastern cities, the now armed *thuwar* forces began to organise themselves, assisted by the knowledge and experience of the defectors.

81. By 25 February 2011, most of eastern Libya had fallen to the *thuwar*. In Al Zawiyah, Zintan and Misrata, Qadhafi forces either withdrew or defected. As *thuwar* took control, there were reprisal killings of captured Qadhafi fighters.[101] Black Libyans and black migrant workers were targets for both lynching and beatings, presumably because the *thuwar* believed them to be mercenaries.

82. On 26 February 2011, in response to the escalating violence and reports of serious human rights violations, the United Nations Security Council passed resolution 1970 imposing an arms embargo and referring the situation in Libya to the International Criminal Court. Shortly afterwards, on 2 March 2011, the NTC, led by Mustafa Abdul Jalil (the former Minister of Justice), was established in Benghazi. It declared itself to be the "sole representative of all Libya" and vowed to respect human rights and the rule of law and to uphold Libya's international obligations.

83. In early March 2011 in an effort to regain territory lost, Qadhafi forces launched a military campaign. Battles were conducted on several fronts including Al Zawiyah, Zintan, Misrata and Ben Jawad. The eastern towns of Al-Brega and Adjabiya were the scenes of fierce fighting.

84. On 10 March 2011, Qadhafi forces recaptured Al Zawiyah, with Zowara falling to them shortly thereafter. Qadhafi forces also besieged opposition-controlled territory in the Nafusa Mountains and Misrata and advanced eastwards. As Qadhafi forces recaptured towns, reports emerged of indiscriminate attacks, killings, arbitrary arrests and detention, disappearances and ill-treatment of prisoners.[102]

85. On 17 March 2011, the United Nations Security Council adopted resolution 1973, authorising a no-fly zone over Libya and the taking of "all necessary measures", short of foreign occupation, to protect civilians against Qadhafi forces. Airstrikes began on 19 March 2011, averting the potential recapture of Benghazi. In late March 2011 NATO assumed control of military operations, initially coordinated by an international alliance led by the United States, the United Kingdom and France.

[98] Interview 0094, 0121.
[99] Amnesty International, *The Battle for Libya*, 13 September 2011.
[100] The speech can be viewed on http://www.youtube.com/watch?v=I7rPT09Al9U.
[101] Interview 0079. See A/HRC/17/44, paras. 194-195. Also, Amnesty International, *The Battle for Libya*, 13 September 2011, p. 70-74 and p. 82-87.
[102] Amnesty International, *Libya: Detainees, Disappeared and Missing*, 29 March 2011; Human Rights Watch, *Libya: At least 370 Missing from the country's east*, 30 March 2011.

86. As evidence of human rights violations mounted, the Qadhafi Government became increasingly diplomatically isolated. One by one, former allies condemned the Qadhafi Government's human rights record and officially recognised the NTC, a move pioneered by France and Qatar. Libya's membership was suspended from international and regional bodies including the HRC and the League of Arab States.

87. During the armed conflict, different areas of Libya were disproportionately affected by the fighting. Misrata, Libya's third largest city, experienced the most protracted fighting as Qadhafi forces laid siege to the opposition-controlled city from all sides and launched barrages of rockets, mortars and artillery shells, as well as cluster bombs into residential neighbourhoods, leading to numerous civilian casualties.[103] Misrata's port, the only lifeline for humanitarian aid and an evacuation route for the war-wounded, also came under fire, further endangering civilians and impeding the delivery of humanitarian assistance.[104] Shelling of the city was particularly relentless between mid-March and mid-May 2011, resumed in June 2011 and continued sporadically until early August 2011.

88. Towns in the Nafusa Mountains came under sustained attack by Qadhafi forces with waves of shelling taking place from early March until late July 2011. This, together with the stoppage of supplies of food and fuel at encircling checkpoints, prompted the majority of the civilian population to flee the Nafusa Mountains.[105] In mid-April 2011 Qadhafi forces took over Yafran hospital for six weeks, using it as a base of operations.[106]

89. After months of a military stalemate, August 2011 saw thuwar make rapid advances. On 12 August 2011, thuwar from Misrata advanced on Tawergha, some 40 kilometres south-east. Tawergha is home to a long-standing community of black Libyans. During the siege and shelling of Misrata, Qadhafi forces had positioned themselves several nearby towns, including Tawergha. Additionally many Tawerghans had aligned themselves with the Qadhafi Government and had joined its forces. As a result, most of its population of some 30,000-35,000 fled, fearing attacks. [107]

90. On 14 August 2011, *thuwar* in Al Zawiyah launched an offensive, seizing full control of the town by 19 August 2011. The fall of Al Zawiyah further isolated the Qadhafi Government by cutting Tripoli off from the coastal road to Tunisia, the only supply route for food, fuel and other basic necessities. By 18 August 2011, *thuwar* fighters from the Nafusa Mountains had consolidated their grip on Gharyan, a strategic town controlling the southern access to Tripoli. Rapid advances were also made east of the city, with the fall of Zlitan on 19 August 2011. Simultaneously, the forces in the Nafusa Mountains gained further ground seizing control of Tiji, the last bastion of Qadhafi control in the Nafusa Mountains. Progress was also reported at the eastern front, including the capture of Al Brega by *thuwar* on 20 August 2011, paving the way for the capture of Ben Jawad further west.[108]

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[103] New York Times, *Shell in Misratah adds to a city's grim toll*, 1 May 2011; Evening Standard, *Children among the victims as his troops push into Misrata*, 18 April 2011; Amnesty International, *Misratah: Under siege and under fire*, 6 May 2011.

[104] New York Times, *Libyan port city filled with migrants desperate to exit*, 14 April 2011.

[105] Amnesty International, *Libya: Disappearances in the besieged Nafousa Mountain as thousands seek safety in Tunisia*, 27 May 2011.

[106] Interviews 0321, 0319. Also see Human Rights Watch, *Libya: Qadhafi Forces Occupy Hospital, Terrify Patients and Staff*, 29 June 2011.

[107] See chap. III, sect. E.

[108] For a day-to- day timeline of Libya's internal conflict, see Libya Al-Mostaqbal, available from http://www.libyaalmostakbal.net/

91. Fighting reached Tripoli suburbs by 20 August 2011, including Tajoura, Souq al-Jum'a and Fashloum. *Thuwar* in Tripoli were reinforced by *kataeb* (brigades) advancing from the east, west and south - Misrata and Benghazi, al-Zawiyah, and Zintan, respectively. They encountered little resistance, entering the "Green Square", symbol of Muammar Qadhafi's 42 year grip of power, on 21 August 2011. After days of street clashes, *thuwar* forces stormed the central military compound in Bab al-Aziziya on 23 August 2011. Intermittent fighting continued in some parts of the city, notably the area of Abu Salim, believed to be a stronghold of Qadhafi loyalists, until around 27 August 2011.

92. Thousands of detainees held in custody by Qadhafi forces in Jdeida, Ein Zara and Abu Salim prisons in Tripoli were freed by *thuwar* between 20 and 24 August 2011. Many had been disappeared from Al Zawiyah, Misrata and towns further east and had suffered torture, including electrocution, beatings, and rape while in detention. Before withdrawing, Qadhafi forces executed prisoners at several detention facilities including Khilit al-Firjan in Yarmouk and Gargur in Tripoli.[109]

93. By the end of August 2011, *thuwar* had seized control of the vast majority of Libyan territory, with the notable exceptions of Muammar Qadhafi's hometown of Sirte, Bani Walid, and Sabha. Qadhafi went into hiding while several of his relatives and close associates fled Libya for Algeria, Tunisia and Niger.

94. On 9 September 2011, *thuwar* surrounded Bani Walid after negotiations for surrender with the town's chiefs failed. Fighting by *thuwar*, continued until the fall of Bani Walid on 17 October 2011. [110]

95. *Thuwar*, mainly from Misrata and Benghazi, surrounded Sirte in early September 2011. Their military offensives, mounted from 16 September 2011 onwards, encountered heavy resistance. Intense fighting gripped Sirte.[111]

96. On 20 October 2011, Qadhafi and his son Mutassim were captured after NATO jets bombed their armoured convoy as it attempted to escape from Sirte. Both were killed in unclear circumstances after capture but it is apparent that both were initially captured alive.

97. Three days after the killing of Muammar Qadhafi, Mustafa Abdel Jalil formally declared Libya's "liberation". The "Declaration of Liberation" set in motion the transitional process outlined in the NTC's Constitutional Declaration, adopted on 3 August 2011. The Constitutional Declaration stipulated that within 240 days from the "Declaration of Liberation", Libyans are to elect a National Congress, entrusted with the task of appointing a committee to draft the Constitution. Once passed by the National Congress, the Constitution would be voted upon in a nationwide referendum.[112] On 12 February 2012, the NTC adopted a Libyan Electoral Law; and elections for the National Congress are scheduled for June 2012.[113]

98. The fall of Sirte and the "Declaration of Liberation" marked the official end of hostilities in Libya, prompting the United Nations Security Council to pass resolution 2016 on 27 October 2011 lifting the no-fly zone. NATO discontinued its operations in Libya on 31 October 2011.[114]

[109] See chap. III, sect. B and D.
[110] Interview 0079.
[111] BBC News, *Libya: Hundreds of civilians flee Sirte*, 2 October 2011.
[112] See NTC, Constitutional Declarations, 3 August 2011.
[113] See Libya's Final Elections Law.
[114] NATO, *Operation UNIFIED Protector Final Mission Stats*, 2 November 2011.

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i. Phase 3: post-conflict (1 November 2011 – January 2012)

99. After the "Declaration of Liberation", Abdelrahman Kib was appointed Prime Minister replacing Mahmoud Jibril. Kib's cabinet, composed of a Deputy Prime Minister and 24 Ministers including two women, was sworn-in on 24 November 2011. The interim Government publicly set out its key goals including ensuring the respect of human rights and the rule of law; achieving transitional justice and national reconciliation; and guaranteeing public security. [115]

100. On 16 September 2011, the United Nations Security Council adopted resolution 2009 establishing a United Nations Support Mission in Libya (UNSMIL) for an initial period of three months. In resolution 2016, adopted on 2 December 2011, the United Nations Security Council extended UNSMIL's presence in Libya until March 2012, and added the assistance and support of Libyan national efforts to address the threats of proliferation of all arms and related material to UNSMIL's mandate.

101. The internal conflict has caused significant internal displacement and movement of persons into neighbouring countries. As of 3 November 2011, the International Organization for Migration (IOM) estimated that some 768,372 non-Libyans to have left Libya.[116] Most were migrant workers from Egypt, Tunisia, Niger, Algeria and Chad. Those who fled included individuals with international protection needs such as nationals of Eritrea and Somalia.

102. Hundreds of thousands of Libyans also fled their homes during the conflict. As Qadhafi forces launched their military offensive on the eastern front in March 2011, residents of Ajdabiya, Ras Lanouf and Bani Jawad fled eastward staying with families, in camps or other temporary shelter. As fighting in the Nafusa Mountains intensified in April 2011, civilians fled their homes and found shelter with either host families or camps in Ramada and Tataouine in Tunisia. During the conflict, over 250,000 Libyans also crossed into Tunisia.[117] At later stages of the conflict, Office for the Coordination of Humanitarian Affairs (OCHA) estimated that 80,000 people had fled from Bani Walid and Sirte by October 2011[118], many of them settling in areas around Tripoli, Misrata and Benghazi or in makeshift camps on the outskirts of the cities.

103. As the conflict subsided, many were able to return to their homes, particularly those displaced from eastern Libya and the Nafusa Mountains. The return of residents of Bani Walid and Sirte was delayed, however, by war-related damage to the electricity supply and the water and sanitation systems, as well as severe destruction of property, particularly in the case of Sirte. In some cases, returns were also delayed due to the contamination of residential areas with the explosive remnants of war. Other internally displaced poeple have not been bale to return to their home due to fears for their safety from attack by the *thuwar.* Particularly vulnerable groups include the Mashashiya from the Nafusa Mountains and the Tawerghan community from Tawergha.

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[115] NTC Executive Bureau, *Summary of the second meeting of the transitional Cabinet*, 27 November 2011.

[116] Available from http://www.migration-crisis.com/libya/main

[117] IOM, *Overall Cross Border Movements on 8 June*, available from http://www.migration-crisis.com/libya/reports/view/551

[118]Internal Displacement Monitoring Centre, *Libya: Thousands still displaced from Bani Walid and Sirte,* 25 November 2011.

104. United Nations High Commissioner for Refugees estimated that some 172,000 IDPs remained scattered across Libya by December 2011.[119] Some internally displaced people, perceived as having supported the Qadhafi Government, have not been able to return to their homes due to fears for their safety from attack by the *thuwar*. The NTC's national reconciliation efforts have thus far been unable to find political solutions for these IDPs.

III. The Commission's findings

1. Excessive Use of Force

Introduction

105. In its first report, the Commission concluded that there was sufficient evidence to suggest that Qadhafi forces engaged in excessive use of force against demonstrators in mid to late February 2011. [120] The Commission subsequently conducted over 60 interviews looking at this issue.

106. Analysis of allegations of excessive use of force by Qadhafi forces and the *thuwar* during attacks on towns and cities is contained in the examination of alleged indiscriminate attacks (see chap. III, sect. G).

Applicable Law

107. The attacks on the demonstrators took place in Phase I when international human rights law was applicable. International human rights law prohibits arbitrary deprivation of life (Article 6 ICCPR) and guarantees security of persons (Article 9 ICCPR), the right to peaceful assembly (Article 21 ICCPR) and the right to freedom of expression (Article 19 ICCPR). Excessive use of force by law enforcement officials (whether police or military or other members of State security forces) impinges on these fundamental guarantees. International standards such as the *Code of Conduct for Law Enforcement Officials* and the *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*[121] which provide further guidance are set out in the Commission's first report.[122]

108. During Phase I, violations, if proven, might also amount to constituent acts of a crime against humanity (such as murder), if committed as part of a widespread or systematic attack against a civilian population with knowledge of that attack.

Factual Findings

Qadhafi forces

Benghazi

[119] UNHCR, UNHCR Libya Fact-sheet, December 2011.
[120] A/HRC/17/44, para. 82.
[121] Code of Conduct for Law Enforcement Officials, adopted by General Assembly Resolution 34/169, 17 December 1979; and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, 7 September 1990.
[122] A/HRC/17/44, para. 74.

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109. In the investigations for its first report, the Commission received various accounts and estimates of those killed and injured in the early demonstrations in Benghazi.[123] In its second phase, the Commission was able to confirm and augment some of this information.

110. A former senior intelligence official confirmed that the initial response of the Qadhafi Government when the demonstrations started was for [071] and [008] to take control on the ground.[124] The Commission received a videotape, reportedly found by *thuwar* in Qadhafi's Bab Al Aziziya compound in August 2011, of what appears to be [008] in discussion with Revolutionary Committees (*Al-Lijan Al-Thawriya*) members in Benghazi in February 2011. He is seen and heard giving instructions to them to "crush" the demonstrators. According to two senior military officers, [071] was in charge of most of the *Wahdat Al-Amniya* security units.[125] These were primarily units for the protection of the Qadhafi Government from possible military coup. He flew into Benghazi with men from these units to join [008] who was already present on the ground.[126]

111. A former high-level military commander [050] told the Commission how [024], had told him, together with chiefs of police and internal security, that Muammar Qadhafi had given orders to suppress demonstrations "with all means necessary". He said that at the beginning of the demonstrations, orders were given to prevent demonstrators from reaching the military camps and that only after demonstrators acquired arms did the Qadhafi forces begin using live ammunition.[127] This version of events is not, in the Commission's view, borne out by the deaths and injuries to protesters as recorded by hospitals in Benghazi.

112. The Commission interviewed a number of medical personnel on duty in the hospitals.[128] A doctor confirmed that most of the wounds during this period were of gunshots to the head and chest. He counted 64 wounded brought to the Al Hawary hospital on 18 February, and 89 people on 19 February. He provided the Commission with photographs showing that some bodies had literally been blown in two, consistent with the use of higher calibre weapons. He confirmed that his colleagues at other hospitals had reported even greater numbers of casualties being brought in. He further described how, on 21 February, he had been called to *Fadeel ben Oumar* military base, where in an underground cell, nine burned bodies were found. There was a fuel jerrycan beside the bodies. The bodies, (seemingly in civilian clothes from what remained), reportedly had their hands tied behind their back. The doctor noted they had suffered shots to the head, and he believed from the condition of the bodies that they had been burned after being killed.[129]

113. Another doctor on duty in a hospital on 17 February 2011 recalled many injuries to demonstrators as result of gun shots brought in that night. He spent the next two weeks at the hospital without going home due to the influx of the injured. He recalled one case of a

[123] A/HRC/17/44, paras. 72-76.

[124] Interviews 0100, 0344.

[125] Interviews 0100, 0344.

[126] Interview 0100.

[127] Interview 0344. See also Interview 0100.

[128] The Commission of Inquiry was provided with official hospital lists and records of those killed and injured in Benghazi and al-Bayda: a list of 77 victims from al-Jalaa hospital in Benghazi; 43 death certificates issued by the department of forensic pathology in Benghazi, and lists and death certificated of 58 in Bayda . The Commission of Inquiry also reviewed tens of death certificates from Benghazi and al-Bayda clearly indicating that victims died as a result of gunshot wounds, mostly to the upper body.

[129] Interview 0447.

woman shot while she was watching the demonstrations from her balcony. The Commission received medical records to confirm the numbers of wounded treated by the medical staff. [130]

114. Witnesses told the Commission how, on 17 February 2011, protestors were shot by the Revolutionary Guard while they were trying to reach the square in front of the court (now called Tahrir Square) after they crossed the Juliana bridge.[131] One witness said he had seen [062] the chief of the Revolutionary Guard standing in front of the Islamic Dawa office, from where the Revolutionary Guard opened fire on the demonstrators.

115. Two witnesses said they had been among those who carried 28 bodies of some of those killed in a funeral procession which passed by the *Fadeel ben Oumar* military base on 18 February 2011.[132] The building was surrounded by soldiers. Rocks were thrown, at which point the soldiers responded by opening fire. A number of people were killed. The witnesses were among those who came back and took the bodies to the cemetery. One witness recalled how, after the subsequent burial, one of the protestors bared his chest in front of the building and was shot dead.[133] The following day, a crowd gathered in front of the barracks with a bulldozer. The driver was shot dead by the soldiers and when another person took over, he was also shot dead. Once the people entered the base, the witness said they found the bodies of people killed the day before which had been burned.[134] [071] was using the building as a base during this period.[135]

Misrata

116. As noted in the Commission's first report, demonstrations in Misrata started on 19 February with the first recorded death taking place on that day.[136] The Commission has been able to confirm its findings that the first two days of the protests, which appeared to have centred around the Court's Yard and People's Hall in Misrata, were largely peaceful. Protests appeared to have escalated rapidly, however, with demonstrators attacking offices of the Revolutionary Committees, police stations and military barracks on 21 and 22 February 2011 and arming themselves with weapons found at these locations. The Qadhafi Government admitted to firing live ammunition at those who, it said, were involved in violent actions.[137]

117. A number of former senior military officers, including one who was part of the Qadhafi forces attack on Misrata, told the Commission that the 32nd Brigade, under Khamis Qadhafi, was placed in charge of bringing Misrata back under control and continued to be so until early August.[138] The 32nd Division Operations Centre reportedly had passed instructions to ground level commanders to shoot at civilians.[139]

Tripoli

118. In its first phase, the Commission received various accounts and estimates of those killed and injured in some of the demonstrations in Tripoli. The Commission also received reports that demonstrators were denied access to medical care while others did

[130] Interview 0431.
[131] Interview 0448.
[132] Interviews 0443, 0448.
[133] Interview 0448.
[134] Interview 0448.
[135] Interviews 0462, 0482.
[136] A/HRC/17/44, para. 85.
[137] A/HRC/17/44, para. 85.
[138] Interviews 0101, 0193, 0204.
[139] Interview 0193.

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not seek medical treatment for fear of being detained. This concern was well-founded: the Commission received reports of Qadhafi forces raiding hospitals and removing the injured.[140]

119. Demonstrations in Tripoli started on 20 February 2011, shortly after the protests in eastern Libya. A large number of people appear to have taken to the streets on or about 21 February 2011 in response to a rumour that Qadhafi had fled to the country to a sympathetic state.[141] While protests occurred in many locations in Tripoli, it appears that large-scale protests were seen particularly in what was the Saha-al-Khadra, or Green Square (now the *Shuhada* Square) and in the suburbs of Tajoura and Fashloum.[142]

120. While the Qadhafi Government was able regain control of the street by force, it appears that there were regular confrontations outside mosques, where protests often started after the Friday prayers throughout late February and into March 2011.[143] Seventeen people were reportedly killed outside the Tajoura mosque on 25 February 2011 after as a result of being fired upon by Qadhafi forces.[144] On the same day, those exiting a mosque in Fashloom also came under fire from Qadhafi forces.[145] Another interviewee informed the Commission that following the start of the protests, and continuing for at least ten consecutive Fridays, Qadhafi forces fired live bullets and threw teargas at those leaving mosques in Zawiyat Al-Dahmani.[146] One of the doctors interviewed told the Commission that his hospital received 3-5 bodies, dead from gunshot wounds, following protests after Friday prayers during this time.[147]

121. Doctors in Tripoli informed the Commission that between 20-21 February 2011, over 200 bodies were brought into morgues in Tripoli.[148] One indicated to the Commission that most of those killed had received gunshots to the head and upper body.[149] Two others stated that they had seen bodies which had suffered trauma consistent with being shot with a larger calibre weapon, such as an anti-aircraft gun.[150] Almost all of the bodies received were male. They could only recall the bodies of two women killed - one shot and one stabbed - during the period of the protests. One was deemed to have been a likely bystander while the other was said to have been killed allegedly for being involved in the manufacture of revolutionary flags.[151]

122. The Commission received reports that, in late February 2011, demonstrators en route to Saha-al-Khadra Square were fired upon at the Al-Masanea bridge by Qadhafi forces.[152] A doctor working in a Tripoli hospital at the time told the Commission that eight bodies of protesters were brought in from that location.[153] The same doctor said he saw Qadhafi forces seizing ambulances which the doctor believed they intended to use to transport their own wounded from scenes of confrontations and to use for security patrols

[140] Interviews 0027, 0266, 0423.
[141] Interview 0446.
[142] Interviews 0281, 0313, 0388, 0446.
[143] Interviews 0094, 0281, 0388, 0446.
[144] Interview 0446.
[145] Interview 0281.
[146] Interview 0388.
[147] Interview 0094.
[148] Interviews 0094, 0121.
[149] Interview 0094.
[150] Interviews 0094, 0121.
[151] Interviews 0094, 0281.
[152] Interview 0427.
[153] Interview 0446.

and for the arrest of protesters.[154] One protester interviewed by the Commission stated that, on 20 February 2011, he saw two ambulances with Qadhafi forces heading towards Saha-al-Khadra Square where protests were on-going.[155]

123. Another doctor confirmed that senior hospital staff sympathetic to the Qadhafi Government gave orders that no protesters were to be treated in the hospital, but some doctors treated them secretly.[156] Another doctor stated that injured demonstrators were being admitted in other hospitals, but that Qadhafi forces had priority.[157] One doctor stated that Qadhafi forces were removing injured demonstrators from their hospitals, confirming the earlier findings of the Commission.[158]

124. The Commission received multiple accounts of protesters being arrested and taken to Abu Salim, Ein Zara and Jdeida prisons.[159] Those arrested provided descriptions of being beaten, burnt with cigarettes and receiving electric shocks to different parts of the body, including the genitals, during their detention.[160]

Al Zawiyah

125. Protests started on the evening of 19 February 2011 when young men began to congregate in the central square in Al Zawiyah, now known as Martyrs' Square. The protest took the character of a sit-in. Several of those interviewed stated that the police forces in Al Zawiyah did not attack the protesters.[161] One of those interviewed stated that the head of the Al Zawiyah police spoke directly to the protesters and told them that the police were not going to shoot at them and that, having made their point, the protesters should return to their houses. The Commission conducted multiple interviews in which it was told that the situation was calm during the first three days of the sit-in protest, with the head of the Qadhafi forces in Al Zawiyah [016] attempting to hold negotiations with tribal chiefs aimed at having the protesters disperse.[162]

126. The situation appears to have turned violent on or around 23 February 2011 after the 32nd brigade under Khamis Qadhafi arrived to try to regain control of the town.[163] They invaded the square, firing on the protesters, who were reportedly still unarmed at this point.[164] It is unclear if the forces were under [016] or under Khamis Qadhafi, as it was around this point, based on information received, that a transfer of responsibility for operations in Al Zawiyah occurred.[165]

127. Reportedly, 20-30 military vehicles carrying 200 armed soldiers made its way to the central square, shooting as they entered. In multiple interviews, the Commission has been told seven male protestors died on this initial incursion.[166] It was at this point that those protesting reportedly decided to arm themselves and attacked a military camp

[154] Interview 0427.
[155] Interview 0281.
[156] Interview 0427.
[157] Interview 0121.
[158] Interview 0427.
[159] Interview 0180.
[160] Interview 0180. See chap. III, sect. D.
[161] Interviews 0022, 0184.
[162] Interviews 0079, 0184, 0203.
[163] Interview 0112.
[164] Interviews 0147, 0184.
[165] While most of those interviewed stated that Khamis Qadhafi was in charge of the forces in Az-Zawiyah at the time of the crack-down on the protesters, two interviewees, both soldiers, stated that Khamis Qadhafi had the assistance of [016] during this time: Interviews 0216, 0217.
[166] Interviews 0184, 0203, 0205, 0210.

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between Al Zawiyah and Bir-al-Ghanem[167] leading to an armed confrontation with the Qadhafi forces, under the control of Khamis Qadhafi. Running battles intensified on 5 March 2011 with Qadhafi forces re-taking Al Zawiyah on the evening of the 9 March 2011. Qadhafi forces then appear to have targeted those involved in the protesters and later armed confrontation for arrest, with many reporting abuse while they were held in detention.[168]

Zintan

128. According to testimony received, protests in Zintan started shortly after the protests in eastern Libya. The response of the Qadhafi Government was swift, with Qadhafi forces surrounding the town and establishing checkpoints, reportedly preventing access of people into the town and limiting supplies of food and fuel.[169] A number of witnesses told the Commission that protesters at Algeria Square in central Zintan were shot at and beaten in the streets.[170] It was also stated that Qadhafi forces were coming into hospitals in Zintan and removing people who had been injured in the protests.

129. The Commission has received reports of people being arrested during attempts to pass through the checkpoints surrounding Zintan (see chap. III, sect. C).

i. Conclusion

130. The Commission has confirmed many of its earlier conclusions. There is sufficient evidence to suggest that Qadhafi forces engaged in excessive use of force against demonstrators in the early days of the protests, leading to significant deaths and injuries. The nature of the injuries recorded by the Commission in its investigations in Benghazi and Tripoli indicates that those shooting were aiming at the head and upper body, evincing a clear intention to kill. The level of violence with which most of the protests were met by the Qadhafi forces, despite some initial restraint by local commanders (for example in Al Zawiyah), suggests a central policy of violent repression.

131. The Commission finds that there is sufficient evidence of an attack on civilians that was both widespread and systematic. Specifically, the Commission finds that firing on demonstrators during the protests was excessive in relation to the threat posed, and the Commission found evidence to suggest that the killing of demonstrators was unlawful and that the crime of murder was committed with knowledge of the attack.

132. The Commission finds that such actions are a serious breach of a range of rights guaranteed under international human rights law, including the right to life, the right to security of person, as well as the protesters' freedom of peaceful assembly and freedom of expression.

B. Unlawful Killings

Introduction

133. The HRC 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".

[167] Interview 0184.
[168] Interviews 0079, 0087, 0210, 0215. See chap. III, sects. C & D.
[169] Interview 0106.
[170] Interview 0138.

134. In the first phase of its work, the Commission received contrasting accounts of the particular circumstances leading up to the use of force by security forces against demonstrators. The Qadhafi Government stated that demonstrators' violent actions, in attacking police stations, necessitated the use of force by authorities. Protestors reiterated the peaceful nature of their demonstrations. It was accepted by both the Qadhafi Government and the demonstrators that Qadhafi forces used significant force, including the use of firearms and other weaponry, against persons participating in demonstrations at that time.

135. The Commission documented killings in Benghazi, al-Bayda, Darnah, Tripoli and Misrata. The Commission was not 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 limited available physical and documentary evidence. It concluded that the Government used lethal force with little evidence to suggest protestors were engaged in anything other than peaceful assembly.[171] The Commission considered there was evidence of "shoot-to-kill" operations.[172] Further work in regard to deaths during the demonstrations is contained in the Chap. III, sect. A.

136. In its second phase, the Commission confirmed much of the information received in the first phase, but concentrated on reported unlawful killings which took place after the first phase of its work had been completed and which were unrelated to the early demonstrations. In doing so, it benefited from wider geographical access and from a greater willingness of witnesses to speak out. It was also able to speak to numerous high-ranking detainees to gain information on the likely perpetrators of killings. The Commission concentrated on some of the larger scale executions by Qadhafi forces, but is aware that many individual killings were committed by Qadhafi forces which are not documented here. It is clear that the treatment of captured civilians and *thuwar* by Qadhafi forces steadily deteriorated as the armed conflict progressed in intensity. The Commission also examined allegations of unlawful killings perpetrated by the *thuwar*.

137. The Commission's findings are based on grave-site and morgue visits, eyewitness accounts, testimonies of former and current detainees and information obtained from family members of victims, forensic pathologists and other medical professionals. The Commission and its forensic expert also examined torture-related wounds and reviewed medical reports and other photographic and audio-visual evidence.

i. Applicable Law

138. So long as all applicable international humanitarian law and international human rights law requirements are met, killing an enemy combatant during an armed conflict is not illegal.[173] The converse is also true; fighters/combatants causing another person's death, even that of the enemy, during armed conflict can be unlawful when the applicable

[171] A/HRC/17/44, para 75-89.

[172] A/HRC/17/44, para 89.

[173] IHL considers enemy combatants/fighters "legitimate targets," unless they are *hors de combat*. See, *Human Rights Brief: A Legal Resource for the International Human Rights Community*: *Certain Legal Questions and Issues Raised by the September 11th Attacks* by Professor Robert K. Goldman. http://www.wcl.american.edu/hrbrief/09/1sept.cfm. "Combatants may lawfully target and kill enemy combatants, as well as civilians who directly participate in the hostilities. As these persons are legitimate targets of attack, their deaths are treated as justifiable homicide for which the attacker incurs no liability under domestic or international law. Such killings do not . . . violate, in principle, the prohibition against arbitrary deprivation of life in human rights law."

law is breached. Among the factors determining the legality of any particular conflict-related death are the intent of the person causing the death, the status of the victim, and the circumstances that resulted in the death. International humanitarian law prohibits killing certain categories of people, or killing in a certain way, or killing without taking certain precautions beforehand. For its part, international human rights law strictly prohibits taking life arbitrarily, a restriction that bars state actors from killing a person outside a legitimate and legal basis for doing so.

139. Those legitimate bases are twofold. First, when a fully-fledged judicial process in line with international standards has been followed. Second, in the most narrow of circumstances, where a person's life is under imminent threat. Only then may a state actor take life without falling afoul of international human rights law. Moreover, the state has an obligation to do its utmost to ensure that no one else under its jurisdiction or within its territory takes life arbitrarily, and it must punish those who do. The governing legal framework surrounding the use of lethal force during armed conflicts is discussed below with a view to setting out the contours of each category of violation. The aim of the analysis that follows is to assist in determining the legality of the conflict-related deaths that appear in the remainder of this chapter.

i. Unlawful killing under International Humanitarian Law

ii. Murder, as a war crime

140. In specific circumstances, killing another person during an armed conflict is murder (also known as 'wilful killing' when committed in the course of an international armed conflict[174]). The crime of murder is a recognized offense under customary law and has been codified in the Rome Statute. In internal armed conflict, the elements comprising the war crime of murder are as follows:

The perpetrator killed one or more persons.

Such person or persons were either hors de combat,[175] or were civilians, medical personnel, or religious personnel taking no active part in the hostilities.

The perpetrator was aware of the factual circumstances that established this status.

The conduct took place in the context of and was associated with an armed conflict not of an international character.

The perpetrator was aware of factual circumstances that established the existence of an armed conflict.[176]

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[174] See ICC "Elements of Crime" at Article 8 (2) (a) (i). In its first report, the Commission discussed whether NATO's involvement rendered the entire conflict international in nature or not. The Commission concluded that the international armed conflict was legally separate to the continuing non-international armed conflict, and was thus a coexisting international armed conflict. No evidence has been received to suggest in any way that deaths of non-combatants resulting from NATO action were deliberate. As such, the concept of 'wilful killing' as opposed to murder has not been discussed here. See A/HRC/17/44, para 56.

[175] The definition of *hors de combat* is provided in See chap. I, sect. E.

[176] See ICC "Elements of Crime" at Article 8 (2) (c) (i)-1. Note that the mental element (*mens rea*) is not listed among these elements because the Rome Statute sets out "knowledge and intent" as the *mens rea* generally for all crimes. See Annex I, Section I.

141. Thus, murder is committed upon the intentional killing of a protected person in the context of an armed conflict when the perpetrator is aware of the circumstances of the victim and the conflict itself. Interpretations given by the international courts to the elements of murder largely mirror those of traditional criminal law. For example, even where the perpetrator does not directly kill the victim at his own hand, the act(s) of the perpetrator must at least be a "substantial cause of the death" of the victim.[177] Premeditation does not appear as a required element.

i. Murder, as a crime against humanity

142. The element of murder as a crime against humanity are as follows,

The perpetrator killed one or more persons.

The conduct was committed as part of a widespread or systematic attack directed against a civilian population.

The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack against a civilian population.

143. If an act of murder is defined as a crime against humanity, it must be perpetrated in the context of a widespread or systematic attack against any civilian population whether conducted in a time of war or peace. The mental element of murder, as a crime against humanity, not only includes the intent to cause someone's death but also the knowledge of being part of a widespread or systematic attack against any civilian population.

i. Unlawful Killing under International Human Rights Law

144. Arbitrary deprivation of life has many permutations. A state-sponsored deprivation of life will be arbitrary in the legal sense unless it is both necessary and proportionate.[178] Therefore, when a state actor employs lethal force it must be in order to protect life (i.e., it must be proportionate) and there must also be no other means available, such as capture or incapacitation, to curtail that threat to life (i.e., it must be necessary). Only under these limited circumstances is the resort to lethal force by the State legal.[179] Stated otherwise,

> i. *The proportionality requirement limits the permissible level of force based on the threat posed by the suspect to others. The necessity requirement imposes an obligation to minimize the level of force used, regardless of the amount that would be proportionate, through, for example, the use of warnings, restraint and capture.*[180]

145. The noted international human rights law standards differ to a degree from those applicable to fighters/combatants during an armed conflict under international humanitarian law.[181] For example, one would not expect soldiers to warn their enemies

[177] *Celebici* para. 424. Also, the Elements of Crimes of the ICC equates the term "killed" with "caused death" in its footnote 31.

[178] Human Rights Committee, General Comment No. 6, HRI/GEN/1/Rev.6 (1982), para. 3. See also *Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions*, Philip Alston, A/HRC/14/24/Add.6 supra, par. 32. These principles hold even within the realm of judicially-sanctioned capital punishment.

[179] *Ibid.* par. 32

[180] *Ibid.*

[181] Circumstances in which security forces lawfully take the life of an enemy during armed conflict could well be considered "arbitrary" if the same occurred during peace time. This discussion raises once again the intersection of international humanitarian law and international human rights law during armed conflicts. The European Convention of Human Rights (ECHR) contains an exception to

before an attack. Still, international human rights law obligations remain in effect and operate to limit the circumstances when a state actor – even a soldier during internal armed conflict – can employ lethal force. This is particularly the case where the circumstances on the ground are more akin to policing than combat. For example, in encountering a member of the opposing forces in an area far removed from combat,[182] or in situations where that enemy can be arrested easily and without risk to one's own forces, it may well be that the international humanitarian law regime is not determinative. In such situations, combatants/fighters should ensure their use of lethal force conforms to the parameters of international human rights law.

i. International Customary Law

146. The following provisions of international customary law set out the rules relating to the treatment and disposal of the dead,

> *Rule 113. Each party to the conflict must take all possible measures to prevent the dead from being despoiled. Mutilation of dead bodies is prohibited.*
>
> *Rule 114. Parties to the conflict must endeavour to facilitate the return of the remains of the deceased upon request of the party to which they belong or upon the request of their next of kin. They must return their personal effects to them.*
>
> *Rule 115. The dead must be disposed of in a respectful manner and their graves respected and properly maintained.*

Factual Findings

Qadhafi forces

Al-Khums

147. Al-Khums lies approximately 120 kilometers east of Tripoli. By May 2011, Qadhafi forces had established an ad hoc detention centre in the grounds of a foreign commercial company in the town.[183] Detainees were held in two metal containers, which had bullet holes in the sides to provide ventilation.

148. A former senior intelligence official told the Commission that the site was under the control of an officer of Military Intelligence (*Jihaz Al-Amn Al-Askari,* also known locally as *Istikhbarat*), Brigadier Mohamed Abobakr Daboub Al-Qadhafi.[184] He was the head of the Search & Interrogation Office of Military Intelligence (*Maktab al-Taharyat wal-bahith*).[185] This unit reported directly to [008], head of Military Intelligence.[186] Second-in-Command of the detention centre was [002] (an officer from the Tripoli branch

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deprivations of life during armed conflict. Under the ECHR, a state-sponsored killing that constitutes a "lawful act of war" is not *per se* a violation of the Convention. See ECHR Art. 15.

[182] Although international humanitarian law is in operation in the entire territory of a country where armed conflict is taking place. See chap. I, sect. E.

[183] Interview 0288, 0341. There is some confusion over the nationality of the company. Witnesses described it variously as a French company, a Turkish company and a Chinese one. See, for example, Human Rights Watch - http://www.hrw.org/news/2011/09/09/libya-19-suffocated-gaddafi-detention.

[184] Interviews 0100, 0170. He is named because he is deceased.

[185] Interview 0100, 0341.

[186] Interview 0100.

of Military Intelligence).[187] [002] had reportedly been asked by [008] to create a 'dirty operation' brigade - *Tashkeel Sqour Al-Fateh Al-Amny (Al-Fateh Hawks Security brigade)* and to take control of the area from Garbulli to Wadi Gi'aab. Their role was reportedly to arrest and interrogate suspected *thuwar* in al-Khums, before sending them on to Tripoli for further interrogation by other authorities such as the 32nd (Khamis) brigade.[188]

149. The Commission met four survivors from the containers.[189] One described how he had been arrested in his home in May 2011 by soldiers in uniform, but with their faces covered with masks.[190] The second was arrested by officers of the Military Intelligence as he drove in his car on 22 May 2011: [011, 015 and 033]. [033] was the assistant to Brigadier Mohamed Abobakr Daboub Al-Qadhafi.[191]

150. A second survivor told the Commission that he was briefly detained at the Military Intelligence camp at al-Dreybi in Tripoli where he was beaten on the back of this thigh with a stick. One of the men began to pull down his trousers and he feared that he was going to be raped. He was then driven to the compound at al-Khums by [006]. It was based in the deserted compound of a foreign construction company. Inside the compound were a number of buildings including administration offices, a restaurant and two shipping containers. One was 40ft long and white; the other was a 20ft container and red.[192]

151. The witnesses, interviewed separately by the Commission, were consistent in their descriptions of the treatment and torture they endured at the site. They were sealed inside the containers, with inadequate ventilation, very little water and no regular access to latrines. One of them said that he was not allowed to go to the bathroom for nine consecutive days.[193] For the most part, they were kept blindfolded and their hands were tied with plastic ties. They were beaten both during interrogation in the offices and inside the containers. They were also subject to electric shocks. One witness recalled being electrocuted with an electric baton during interrogation. He heard one of the interrogator's colleagues in the room nearby complaining that he could not sleep because of the witness's screams.[194] Afterwards, fearing that he was going to die, the officer brought the other survivor interviewed by the Commission, a medical doctor, to treat him. The soldiers brought an intra-venous (IV) drip, which the doctor administered.[195] The IV drip subsequently served a second purpose - the detainees put the tube out of one of the bullet holes and then used the bottle as a urinal.[196] The first survivor related how they used the light from a digital watch to examine the wounds of detainees when they were returned to the container after being tortured.[197] He related being tortured by a "strong black soldier" [021] and another soldier named [048].[198]

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[187] Interviews 0100, 0170. [002] was described by one intelligence official as a brigadier and by another as a Colonel. Detainees were under the impression he was a Brigadier. Interview 341.
[188] Interview 0170.
[189] Interviews 0288, 0341.
[190] Interview 0228.
[191] Interview 0341.
[192] Interview 0341.
[193] Interview 0288.
[194] Interview 0288.
[195] Interview 0288.
[196] Interviews 0288, 0341.
[197] Interview 0288.
[198] Interview 0288.

152. The soldiers beat the doctor regularly and called him the “doctor of rats”.[199] He described his arrival in the container. He was told to stand on one leg in the corner. He was told that if he let his foot touch the ground he would be beaten. One night he feared he would be raped as they pulled his trousers down. He began screaming and tried to hold his trousers up. He is aware that others were threatened with rape. A father and son were detained there and the guard had threatened to rape the son in front of the father if the father did not confess. The doctor also reported severe torture. During four interrogation sessions, he said was beaten frequently and hit with an electric baton on his nose, fingertips, elbows and lips. He described it as “like being bitten by a dog”.[200]

153. He named the men responsible for his interrogation and torture as [005] and [072]. He said on one occasion, he was interrogated by someone who seemed from his voice to be a “cultured man”. While the man did not give his name, he was subsequently led to believe this had been the deputy commander of the camp, [002]. He identified [039] as the man who whipped him with an electric cable of the type used in electric heaters. [201] One of the men who beat him was [035].[202]

154. The two survivors both related how they were not allowed out of the containers to defecate and so they ate sparingly to prevent themselves from defecating. [203] The survivors both also related similar experiences with interrogations. They were made to sit on the floor with their knees up and their tied wrists held in front of the knees. An iron bar was then passed between the knees and arms, before they were lifted and the end of the bars were suspended with the bar being passed through the broken window of a door.[204] One described it as being "like a chicken roasting".[205]

155. The day of 6 June 2011 was particularly hot. As the sun heated the metal walls of the container, the temperature inside rose gradually. The survivors related how they rationed the single bottle of water they had between them. They put their noses at the small bullet holes in the walls of the container to get some air.[206] The detainees banged on the walls of container and called out for help. One survivor described how, when the water ran out, he drank his own urine.[207] The guards ignored their cries for help. One by one, detainees appear to have lost consciousness. Finally, the guards opened the door. One survivor regained consciousness as the door opened, enough to recall the reaction of the guards who covered their faces to avoid the smell and seemed “shocked” by the condition of the detainees.[208] Mohamed Abobakr Daboub, the commander, was fully aware of what had occurred as he was present at the time the doors to the containers were opened. Both survivors recounted how he had insulted them and used a Kalashnikov to fire further bullets into the sides and roofs of the containers to create more holes.[209] The guards took one of the survivors interviewed by the Commission, who was a doctor, to the second red container. He related how he had found the inmates lying on the floor. ‘They looked like dead chickens’. Some had already turned blue and through his medical training he could tell they had clearly suffered respiratory failure. Others were showing

[199] Interview 0288.
[200] Interview 0341.
[201] Interview 0341.
[202] Interview 0341.
[203] Interviews 0288, 0341.
[204] Interviews 0288, 0341.
[205] Interviews 0288, 0341.
[206] Interview 0288.
[207] Interview 0288.
[208] Interview 0341.
[209] Interviews 0288, 0341.

early signs of rigor mortis. Only two of the nine people there were still alive. The guards brought oxygen from the medical clinic in the company compound and he was able to treat those who were still breathing.[210]

156. In the smaller container, eight of the 10 detainees were dead, while one died later in hospital. In the larger white container there were 18 detainees. Nine died and nine survived. The guards removed the dead bodies and took the survivors to the bathroom where they were able to wash. By the time they finished washing and came out, one survivor said he could see a fire had been started inside the containers to burn away the smell. They were then taken to the guards' quarters and given a green military shirt and trousers to wear. They were held in the guards' quarters for the next few days.[211] They were then put into a refrigerated lorry (the cold storage was not turned on). They were all scared that they would suffocate inside, so the guards put a piece of wood in between the doors and then tied the doors together with a chain to allow air in.[212] On arrival in Tripoli, they were kept in the premises of a foreign company near the airport for some days and then transferred to a third company compound near the university. They remained here until their release by the *thuwar* at about midnight on 21 August 2011.[213]

157. After their release, both survivors interviewed by the Commission established telephone contact with their former guards.[214] One of the guards told one of the survivors the location of the bodies of those who died in the containers.[215] The soldier had reportedly received orders to burn the bodies, but had instead buried the bodies in a remote area about 200 kilometers south of al-Khums.[216] Subsequently, the bodies were exhumed on 8 September 2011 from a mass grave at Al Orban, near Gharyan and taken to the Tripoli Medical Centre morgue.[217] The first survivor told the Commission that he was asked to go to the hospital in Tripoli to identify the bodies. He was able to identify the detainees, despite the state of the bodies, from their long hair or beard or other features. It seems that not all those who died did so from suffocation. At least one who was still alive when the container doors were opened was said to have been subsequently shot, as the survivor said that he noticed entry and exit wounds in the man's temples.[218] The bodies were given a proper burial.[219]

158. The Commission was able to corroborate much of what they heard from the survivors. Three of the survivors accompanied the Commission to the site of the containers. In the adjacent office where the suspension from the bar reportedly took place, an iron bar was still there and was identified by one of the survivors as the one used to suspend him. There was also scaffolding and the survivor demonstrated to the Commission how the iron bar was suspended between the scaffolding and the window. There was also electric cable, reportedly used to beat the detainees; and plastic ties with

[210] Interview 0341. Note the number of survivors counted by the doctor differs slightly from some other published accounts.
[211] Interviews 0228, 0341.
[212] Interview 0341.
[213] Interviews 0288, 0341.
[214] Interviews 0288, 0341.
[215] Interview 0288.
[216] Human Rights Watch - http://www.hrw.org/news/2011/09/09/libya-19-suffocated-gaddafi-detention.
[217] Human Rights Watch - http://www.hrw.org/news/2011/09/09/libya-19-suffocated-gaddafi-detention.
[218] Interview 0288.
[219] Interview 0288.

which they were handcuffed.[220] The Commission's forensic pathologist also examined each of the survivors interviewed and recorded the scars he found on each was consistent with the treatment alleged.[221] Most significantly, the Commission interviewed one of the individuals named as having carried out the torture. He was a soldier in Military Intelligence in Tripoli who had been stationed at the camp in Al-Khums, under the command of Mohamed Abobakr Daboub.[222] He admitted to beating the detainees with electric rods and sticks during interrogation by orders from Mohamed Abobakr Daboub, [034] and [013]. He also admitted that he was ordered to rape some male detainees in Al-Khums by Daboub but he refused. He insists that no rape actually occurred in Al-Khums.[223] The former guard interviewed by the Commission said he was on duty when the detainees died, though he said he was guarding the gate of the camp and was not close to the containers.[224]

159. The IV bottle used to treat the prisoners was also still there. The Commission also found a number of documents left at the site. The documents confirm the presence of [002].[225] [002] was also named specifically as responsible for the deaths in the container by one of the former senior intelligence officials interviewed by the Commission.[226] He said he had heard oral reports on the incident in June from Military Intelligence (*Istikhbarat*) in Al Khums as the incident was being reported to [008]. While Daboub had not meant to kill them, [008] had been "very upset" by this incident.[227] Daboub died of a stroke in the brain a short time after the incident. [228]

Al-Qalaa

[220] Interview 0288.

[221] The forensic pathologist recorded the first survivor as having multiple healed scars of linear patterned "tram-track" bruises in the right scapular region and the left lateral and posterior region of the chest that are consistent with whipping with electrical cables. The survivor exhibited a deep psychological distress, becoming tearful, when recounting methods of torture suffered and during the site visits and reported nightmares. Interview 0288. For the second survivor, the forensic pathologist recorded two healed linear patterned "tram-track" bruises, one obliquely to the left scapular region and measuring 20 cm, the other vertically at the left lumbar region and measuring 6 cm; healed lacerations roughly rectangular or circular at the dorsal region, each measuring at most 3 cm in diameter, consistent with whipping with a power cable that he alleged; and a healed abrasion to the outer side of the left wrist consistent with suspension with hands tied. Interview 0341.

[222] Interview 0402.

[223] *Ibid.*

[224] Interview 0402.

[225] One document on a letterhead of the "Popular Army: Provisional General Committee for Defense", is permission for a weapon issued to security personnel. While the blank spaces on the document that require the date, name of the person issued the weapon and the details of the weapon are blank, the bottom of the document where a signature is required records the name as [002]. The document number is TSF 1.23 and the year is 2011/1379 (according to the Libyan calendar). The other document is a "Permission for leave" form on the letterhead of the Brigade that has not been filled in. The third is a document for handover of weapons by the Administration of Weapons and Ammunition of the Popular Army that has not been filled in. The fourth document, in English and Russian, is "Packing List No. 434/1/2/IZ" for the shipment of 7.62 mm Kalashnikov assault rifles AK-103-2, packed on 9 February 2008 and shipped from Oktyabrsk to Tripoli, Libya. The packing list provided information on the type of weapon used by the Brigade and correspond with the wooden packing cases the Commission found at the site.

[226] Interview 0170.

[227] Interview 0100.

[228] Interviews 0100, 0281, 0341.

160. Al-Qalaa lies in western Libya, near Yafran in the Nafusa Mountains. Witnesses told the Commission that the area had historically suffered from repression of its Amazigh culture and language, and the local people had been quick to rise in support of the revolution.[229] In mid-March 2011, Qadhafi forces reportedly under the command of [059], heavily armed with14.5mm and 106mm artillery, tanks, BMP armoured personnel carriers, and Grad rockets, arrived at Al Qalaa. Fighting began, with Qadhafi forces attempting to enter Al Qalaa on 10 April 2011 but being pushed back. The town was then reportedly sealed off with fuel, food and water supplies being prevented from entering through the installation of checkpoints by Qadhafi forces. At this stage many families were evacuated to Nalut and Tunisia. On 1 May 2011, additional forces from the 32nd (Khamis) brigade were deployed. From that point on, the town was shelled continuously from Safiet, northwest of Al Qalaa, until the Qadhafi forces withdrew towards the al-Mela'b forest on 5 June 2011.[230] A boy scouts' base on the edge of Al Qalaa was reportedly being used as a military base for the forces in Safiet as the forest behind the camp allowed tanks and rockets to be hidden from NATO.[231] The *thuwar* reportedly found the roads leading to Al-Qalaa with landmines both Brazilian antipersonnel and Russian anti-tank mines, which led to civilian casualties.[232]

161. Following the retreat of Qadhafi forces from the area in July 2011, footage uploaded to the internet, reportedly taken from the telephone of a member of the Qadhafi forces captured by the *thuwar*, showed a number of bodies lying in a mass grave. A witness told the Commission how, after watching the video tape several times, he recognised the body of someone he knew. He also recognized the location as the Al-Mela'b forest, behind the scout base where the executed persons were detained. He and others subsequently tried to enter the forest by themselves but could not due to the threat of landmines. A team of experts on landmines removed 30 landmines from the area of the mass grave before starting the exhumation.[233]

162. The exhumation uncovered the bodies of 34 men and boys, lying along a low narrow natural waterway. They were fully dressed in civilian clothes. With one exception, the bodies were found with their hands were tied to their backs by wire. The bodies were blindfolded by adhesive tape. There were three other bodies lying nearby. The witness participated in the process of unearthing the bodies, from 20 August to 1 September 2011, as well as facilitating identification by families and subsequent reburial at a new site.[234] One head was found disconnected from the body some meters away from the location of the common grave. The families of the deceased came to identify the bodies from their clothes, ID cards and keys. Additional belongings of persons who had been arrested were found at the nearby scouts' base. The majority of the 34 bodies were eventually identified by local people as being from Al Qalaa; the three found separately were from Um Al-Jersan, to the east of Al Qalaa. Some of the families also recognised vehicles found burned out in front of the scouts' base as having belonged to the victims. Many of the victims were from the same family including four fathers and their sons, and two sets of brothers.[235]

163. While the Commission was unable to find the original source of the video footage, it shows a number of males of varying ages, in civilian dress, lying dead in a shallow

[229] Interview 0391.
[230] Interview 0391.
[231] Interview 0391.
[232] Interview 0391.
[233] Interview 0389.
[234] Interview 0389.
[235] Interview 0389.

depression. The bodies are all blindfolded with hands tied behind their backs. At least one has a visible wound to the back of the head.[236] The audio on the footage has two men speaking. One appears to be the person filming it (apparently armed, judging by the shadows seen on the film). One man says "look at the dirty rats, the worms are eating them. Dogs. This is the fate of the rats. Look at this one…he is a child but he is a dog too". The man who is filming appears to say "I don't think this one is a Libyan, he must be Pakistani". [237] Witnesses had mentioned to the Commission that the group of detainees included one non-Libyan, but in fact this man was a Syrian national.[238]

164. The Commission located former detainees at the boy scouts' base who had been released prior to the executions. One told the Commission that he and three others had been arrested on 25 May 2011, while out searching for food in empty houses to bring back to the town. Four soldiers had arrested them and beat them with wooden sticks, military belts and the butts of their rifles. Their hands were tied behind their backs and they were blindfolded, before being taken to the scouts' base. After further interrogation, they were put in a room with 13 others. The detainee recalled there were six others in a room opposite. While he did not know all of those detained personally, he recognised them as all being from Al Qalaa. The commander [001], a short man in his mid-forties always in civilian clothes, was present for all interrogations. This detainee was fortunate in that, while being forced to move 14.5mm ammunition, a round went off in his hand injuring him and causing him to be sent to hospital for treatment. (The Commission was able to see that the witness was missing three fingers on one hand). The detained said that those he was arrested with and those he was detained with were all amongst those later executed.[239]

165. Another former detainee accompanied the Commission to the site. He stated that he was arrested at the Al-Mela'b checkpoint (in front of the boy scouts' base) on 4 June 2011 while returning from Tripoli. He and two others were taken into the boy scouts' base and detained. He stated that there were 10 people in the room they were put in, all from Al-Qalaa, including a 14 year old boy. He is aware that other detainees were kept in the cafeteria. He said that on the afternoon of 5 June 2011, Qadhafi forces lost the battle in Safiet, and when they returned back to the boy scouts' base, they were very angry, having taken a lot of casualties. He said the soldiers started beating everyone in the detention centre at random, asking if they were from Al-Qalaa, and if they responded affirmatively, beating them with electric cables, military belts, and the butts of their rifles. The Commission was able to see scars on the witness's back, shoulders and eye - his left eye was blinded – and viewed a medical report detailing the injuries sustained. The witness reported that the soldiers subsequently put salt in the wounds inflicted. The commander [001] was present during the interrogations. When no one answered his questions, he ordered the soldiers to lift one detainee up and suspend him over an open window, so that half his body was inside the room and half outside. He was then beaten from both sides. Another detainee was suspended in the same manner over the door of the room in front of his father and beaten with electrical cables and military belts until he lost consciousness. He was then taken out of the room. The witness never saw him again but his body was one of those later found in the mass grave.

166. On 7 June 2011, a brigadier [029] arrived, who (according to what the detainees overheard from the guards) was the deputy of [059]. Another six or seven detainees arrived later that day. The witness was released a few days later, after the guards had

[236] http://www.youtube.com/watch?v=HlKOy8rbiiM&skipcontrinter=1
[237] http://www.youtube.com/watch?v=HlKOy8rbiiM&skipcontrinter=1
[238] Interviews 0382, 0406.
[239] Interview 0382.

verified his story. He made a list of the names of those with him and was able to assist subsequently with identification. He was able to identify a number of the bodies on the video footage for the Commission (mainly by their clothes), including the man who had been hung over the window and a Syrian friend of his, whom he had known for the last 30 years. He recognised another body as that of a man whose leg had been broken during the torture and who had been bed-ridden subsequently. The bed itself was reportedly found in the mass grave, suggesting that he was carried to the execution place on it. Another was identified by a battery from a mobile phone which he had removed and put in his pocket to avoid his phone bleeping and giving away the fact he had it.[240]

167. The Commission visited the site of the mass grave and saw the depression in the ground where the bodies had been buried. While the bodies had been removed, along with the majority of cartridge cases during exhumation by a team including international specialists, a number of rifle cartridge cases remained at the scene along with some skeletal remains which the Commission's forensic pathologist identified as those of an adult human left foot, namely 3rd, 4th and 5th metatarsals, along with the talus and the calcaneus.

168. While the witnesses knew some details of those in command at the site, they were unable to specify which military or intelligence units to which the soldiers at the boy scouts' base belonged . Other sources suggest they may have been belonged to the Popular Guard (*Haras al-Sha'abi*). Graffiti around the base reportedly referred to the "Storm Forces". Officers from Military Intelligence were also reportedly present, as well as members of the External Security Agency (*Amn al-Kharaji*).[241]

i. Yarmouk

169. After the February 2011 demonstrations started, an informal detention centre was established in an agricultural store adjacent to the base of the 32nd (Khamis) Brigade at Yarmouk, in the Khilit al-Ferjan area of Tripoli. The 32nd (Khamis) Brigade and the base itself were controlled by the son of Muammar Qadhafi, Khamis Qadhafi.[242]

170. The warehouse was already receiving prisoners by March 2011 at the latest. The former detainees interviewed by the Commission had mainly been brought there in June 2011, by which time there were reportedly, up to 50 detainees in a space 20m by 9m. They were all accused one way or another of supporting the *thuwar*.[243] They had been brought there from as far away as Zlitan [244] and Garabulli (60 km from Tripoli)[245] as well as from Tripoli itself.[246] By the beginning of August 2011, numbers had risen to a reported 90.[247]

171. Detainees told the Commission that water and food were distributed rarely. They were not allowed out to use latrines and were forced to urinate in plastic bottles.[248] (During its visit to the site in December, the Commission observed a number of bottles on the site filled with dark brown liquid which were identified by former detainees as having been used for this purpose.[249]) All the former detainees interviewed, as well as one of the

[240] Interview 0406.
[241] http://www.hrw.org/news/2011/09/14/libya-mass-grave-yields-34-bodies.
[242] Interview 0100.
[243] Interview 0059.
[244] Interviews 0059, 0109.
[245] Interview 0177.
[246] Interview 0225.
[247] Interview 0225.
[248] Interviews 0059, 0074 and 0225.
[249] Interview 0177.

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former guards, confirmed that torture and ill-treatment was routine at the warehouse, with prisoners being beaten and electrocuted.[250]. On the basis of those testimonies, torture was carried out by numerous individuals, including [070].[251] The torture of detainees led to their death in at least four cases. One week before Ramadan [044] and [038] were interrogating one of the detainees, in the office attached to the warehouse. They beat the detainee to death. [007] threw the body behind Camp 27. Three engineers, who were working for a communication company died under torture in Yarmouk at the end of May 2011 during interrogation by an officer called [025] - they were subjected to electric shocks and severely beaten with sticks, having been accused of communicating with NATO and providing information on military locations. After they died, [007] took their bodies and threw them in the sea at the end of Camp 27.[252]

172. The immediate commander of the centre was [056], supported by a Sergeant [030].[253] [056] reported to Brigadier [028] and reportedly at that time commanding the Khilit al-Ferjan zone in which Yarmouk is located. Brigadier [028] in turn at that time reported directly to Khamis Qadhafi, although he denied this to the Commission. The guards themselves appear to have made little secret of their names and a total 15 names were provided to the Commission both by former detainees and by guards now in custody themselves. One of the guards had even written his name in graffiti on the wall of the centre. The guards were named as [080, 019, 070, 066, 017, 037, 060, 036, 038, 065, 067, 056, 044, 054, 064, 007].[254]

173. By the third week of August 2011, when the *thuwar* were closing in on Tripoli, the number of detainees had risen to 157.[255] On 23 August 2011, at approximately 4pm, (3-4 hours before the massacre), Khamis Qadhafi, [028] and [056] were together at the warehouse in Yarmouk. Later, Khamis reportedly called and instructed [056] and [030] to "conduct the operation" and then join him in fleeing the city.[256]

174. During the early evening (just after the mosques announced the start of the *iftar* signifying the end of the Ramadan fast)[257], at least one of the guards [019][258] and possibly

[250] Interviews 074, 0177, 0225, 0235.
[251] Interview 0235.
[252] *Ibid.*
[253] Interviews 0059, 0074, 0177, 0225, 0235, 0287.
[254] Interviews 0235, 0059, 0177, 0225, 0287, 0100. Note the information is based on the testimony of a guard at the centre but the Commission notes that establishing exact lines of control during this period is difficult. Interviews with former senior members of the Government and others have confirmed that command structures and roles were opaque and changeable prior to the uprising and became even more so after. Some of the guards appear to have been stationed for some of the time at a second adjacent warehouse also used as a detention centre, but the guards seem to have moved between the two.
[255] A figure confirmed by detainees who were present as the guards counted them off but supported by those who later calculated the numbers from the bodies left behind and names provided by those who survived. Interviews 0059, 0064, 0287. (Other human rights organisations have suggested different numbers, varying from 153 to 160: *32nd Brigade Massacre - Evidence of war crimes and the need to ensure justice and accountability in Libya*, Physicians for Human Rights, December 2011; , Human Rights Watch, 29 August 2011 (http://www.hrw.org/news/2011/08/29/libya-evidence-suggests-khamis-brigade-killed-45-detainees; Amnesty International 26 August 2011, http://www.amnesty.org/en/news-and-updates/libya-detainees-killed-al-gaddafi-loyalists-2011-08-26.
[256] Interview 0235. Khamis Qadhafi is named because he is reportedly deceased.
[257] Interviews 0059, 0064, 0177.
[258] Interviews 0059, 0074, 0235); interviews 0177 and 0225 confirm [019] was a guard there but made no mention of him or anyone else warning the detainees.

others [066[259] and 'Mustafa'[260]] informed the detainees that he would leave the door of the warehouse open and turn the light off to allow the detainees to escape because "they wanted you all dead". The guard then ran away, along with one of his colleagues [066].[261] The detainees did not flee, however, despite the open door. A number of other guards then came and demanded to know who had opened the door. The guards then closed the door and threw a number of grenades into the warehouse through the grill in the top of the doorway.[262] The number of grenades used has been described by former detainees as between 6-8.[263]

175. One of the two perpetrators spoken to by the Commission said that Sergeant [030] brought seven hand grenades from the military camp next door on 19 August 2011, reportedly telling one of the guards [066] that if the situation deteriorated he should use them to "carry out the task". The guard, who was later reported to have been one of those who warned the detainees and fled before the massacre, reportedly refused to take the grenades.[264] One of the guards who admitted throwing two of the grenades into the warehouse said he had been given them earlier by the centre commander [056]. The guard told the Commission that he had been threatened with being killed himself after he initially refused to take them.[265]

176. The detainees were tightly packed and in consequence, some of the blast was absorbed by the bodies. The blast blew the doors open.[266] The guards then began to fire AK-47 assault rifles through the door. As some of the survivors from the initial blast tried to get out, the perpetrators moved backwards into the yard and continued firing.[267] Detainees variously described the firing as continuing for between 10-30 minutes, before the guards ceased firing and retired to the supply room. The detainees speculated to the Commission that this was to resupply with ammunition. As the prisoners were so tightly packed however, quite a few of the prisoners were still alive and those who could, escaped through the door and ran across to one corner of the compound, where they used a vehicle as a stepping stone to climb the wall and escape into the surrounding area.[268] One detainee showed the Commission evidence of a bullet graze sustained during the escape.[269]

177. While detainees named various guards as having been responsible for the actual killings, former guards themselves specifically named four individuals as having been responsible thrown the grenades or fired the rifles [038, 036, 017] and a volunteer named [057] under the orders of Sergeant [030].[270] [036] had thrown the grenades while Sergeant [038] and [017] used AK-47s to shoot the prisoners.[271] The specific role of [056] was not

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[259] Interview 0235.
[260] Physicians for Human Rights, *32nd Brigade Massacre - Evidence of war crimes and the need to ensure justice and accountability in Libya*, December 2011
[261] Interview 0235.
[262] Interviews 0059, 0235.
[263] Interviews 0059, 0177.
[264] Interview 0235.
[265] Interview 0287.
[266] Interview 0287.
[267] Interviews 0059, 0177.
[268] Interviews 0059, 0177.
[269] Interview 0177.
[270] Interviews 0059, 0177, 0225, 0235, 0287.
[271] Interviews 0235, 0287.

stated.[272] The officer in charge of the centre [056] was not present, having already left prior to the executions.[273]

178. Following the killing, one of the guards was ordered by Sergeant [030] to collect the bodies. He counted 109 bodies, including the ones inside the warehouse, on the street and in the yard in front of the warehouse. A Caterpillar digging machine was brought but it did not function properly. Having failed to locate another, he then came back and asked one of the other guards, [019] what to do with the bodies. The other guard suggested they burn the bodies inside the warehouse and then use a tank to shell the warehouse and claim that NATO had bombed the warehouse. Two days later, on 25 August 2011, they brought fuel and burned the bodies.[274]

179. The next day, Friday 26 August 2011, local people were able to get into the warehouse, having seen that the guards had left. They found a total of 57 burnt bodies inside. There was still smoke in the air. 20 bodies lay outside on the ground with gunshot wounds. The bodies were subsequently collected in body bags and reburied at Sidi Hamed in Gargarish.[275] Of the 157 believed to be in the warehouse on 23rd August 2011, only 51 survivors were confirmed, with 106 believed to have died.[276]

180. In addition to viewing video footage taken at the time of human remains inside the warehouse,[277] the Commission also visited the Yarmouk warehouse itself and examined evidence remaining there. The Commission noted that there were still some charred fragments of human skeletal remains inside the warehouse. The Commission's forensic pathologist identified a number of these various bones as a calcaneus, fragments of the cranial vault, metatarsus, radius, tibia, fibula, pubic bone, ulna, metacarpals and 1st phalanges. Alongside the remains, the presence of maggots was noted. Empty cartridge cases were visible beside the human skeletal remains, as well as on the ground outside. The large metal door of the warehouse contained a number of holes consistent with bullet hole entry points. There were also holes in the metal doors of the warehouse consistent with bullets exiting the warehouse from the inside, along with holes in the door and roof which were consistent with shrapnel burst from the hand grenades.

181. The Commission received testimony from numerous survivors, witnesses to the aftermath and two of the guards, who admitted direct or indirect involvement in the killing to the Commission. In addition, the Commission also interviewed Brigadier [028], who was reportedly at the warehouse earlier on the day of the massacre. He told the Commission he was simply in charge of personnel at the Military Intelligence (Istikhbarat). He reported directly to [008] and him alone. All orders came through [008] and he says he never was tasked directly by members of the Qadhafi family. When asked about his knowledge of the massacre, he claimed he only heard about it after the event and "if you're interested in human rights violations then I don't know why I am here".[278]

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[272] Interviews 0235, 0287.
[273] Interview 0287.
[274] Interview 0235.
[275] Interview 0064. The numbers of those killed varies in differing accounts, for example Physicians for Human Rights suggest 53 bodies in the warehouse; Human Rights Watch suggest 45. Physicians for Human Rights, *32nd Brigade Massacre - Evidence of war crimes and the need to ensure justice and accountability in Libya*, December 2011; Human Rights Watch, *Libya: Evidence Suggests Khamis Brigade Killed 45 Detainees*, 29 August 2011 (http://www.hrw.org/news/2011/08/29/libya-evidence-suggests-khamis-brigade-killed-45-detainees).
[276] Interviews 0059, 0064.
[277] See for example http://www.youtube.com/watch?v=fWW-X5CebBk.
[278] Interview 0100.

182. The testimony from all parties who were at the warehouse at the time of the massacre is broadly consistent and corroborative. In addition the forensic evidence remaining at the site is considerable and supports the testimony closely, in relation to the conditions they were kept, the torture they sustained whilst in detention, the use of hand grenades and AK-47s to execute prisoners and finally the attempted destruction of the bodies. While there are small discrepancies, the evidence collected by the Commission is also consistent with that collected by human rights organizations at the time and in the aftermath of the massacre.[279]

The Brazilian compound[280]

183. A second warehouse, a few hundred metres away was also used as a detention centre. This was an abandoned warehouse which had belonged to a Brazilian Company. The Brazilian Company warehouse was also under the command of [056].[281] One detainee interviewed by the Commission was transferred from the agricultural warehouse to the second detention centre at the beginning of August 2011. Between 26-30 persons detained there by the beginning of August 2011.[282] Other guards reported as working here included [046] and [065].[283] Torture continued here, with one detainee naming two of the guards from the Yarmouk warehouse [038 and 036] as having beaten him unconscious with electric cable.[284]

184. On 22 August 2011, in the morning, a detainee interviewed by the Commission heard Sergeant [030] talking on his mobile phone and saying that there were a large number of detainees.[285] One of the guards recalled how [046] called [030] around 0700hrs[286], informing him that the thuwar had reached Salahadeen. [030] told them to execute the doctors and the "officers" and lock the others inside the warehouse. [287]

185. At around 10-11 am, one of the guards, a soldier from the 32nd (Khamis) Brigade, [040] came to the warehouse and took six detainees outside. After less than an hour the witness heard the sound of shooting. The witness then heard the sound of heavy bombardment in the area. A few minutes later, having not heard any movements from the guards, they opened the door and freed themselves. In an adjacent room, the witness found three of the six already dead while the other three detainees who had been taken outside were wounded. He then ran out to the street, looking for a vehicle to take them to hospital. Another doctor died before he could find a vehicle but the remaining two were evacuated to the Al-Afia Medical Centre in Qasr Ben Gushair.[288] The witness named those Qadhafi forces members present that morning as [030], [046, 073 and 040].[289]

[279] See for example: *Libya: Evidence Suggests Khamis Brigade Killed 45 Detainees*, Human Rights Watch, 29 August 2011. Available from: http://www.hrw.org/news/2011/08/29/libya-evidence-suggests-khamis-brigade-killed-45-.detainees); see also Amnesty International, 26 August 2011. Available from: http://www.amnesty.org/en/news-and-updates/libya-detainees-killed-al-gaddafi-loyalists-2011-08-26.

[280] This has been referred to in other reports as the GCC Compound.

[281] Interview 0235.

[282] Interviews 0225, 0235.

[283] Interview 0235.

[284] Interview 0225.

[285] Interview 0225.

[286] The witness thought the date was 24 August 2011, but the Commission believes from other information that it was more likely 22 August 2011. Interview 0235.

[287] Interview 0235.

[288] Interviews 0225, 0228.

[289] Interview 0235.

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186. A former guard told the Commission that the guards from the Brazilian warehouse [062 and 065] had arrived in Yarmouk shortly thereafter and reported that they had "performed the assignment".[290]

Gargur

187. Gargur, south of Bab al-Aziziyah, was the site of another ad hoc detention centre. Locals knew the building as the former "Green Security Building" (*Al-Amn Al-Akhadar*), reportedly under the command of [027][291] reporting in turn to [008].[292]

188. The Commission interviewed a number of former detainees and family members. Those held in the detention centre had mainly been arrested on 18-19 August 2011 in Tripoli. One man was arrested with his son by masked men. Another witness interviewed by the Commission was a former administrative officer with the External Security Agency (*Amn al-Kharaji*). He was arrested, seemingly at random, on the street by a group of the Popular Guard (*Al-Haras Al-Sha'abi*). They were masked with the exception of the commander, whom he knew [014].[293] Another of those who died had, according to his father, been arrested on 19 August 2011 at his home by soldiers of the Revolutionary Guard led by [026], along with [081], [041] and [042].[294] Detainees reported being held on two floors. Those interviewed by the Commission were mainly held in a kitchen on the upper floor, where there were 14 detainees in a 2m by 2m room. They were held there for five days without any food, and with water provided only in the evenings.

189. On the afternoon of 23 August 2011, there was a burst of gunfire through the door of the room on the upper floor. One of the witnesses interviewed by the Commission was hit by a bullet in the back. The rest of the detainees lay on the floor. Several witnesses told the Commission how, a short time later, the door opened. A guard [045] took one of the detainees whom he knew out of the room and shut the door. A few minutes later there was intensive gunfire on the ground floor. After a further few minutes the whole place was silent. The detainees opened the door, and quietly went downstairs, fearing that they would be killed next. They found the bodies of 21 people. There were only two men still alive.[295] The son of one of the witnesses interviewed by the Commission was among the dead. The witness himself, being wounded in the back, was dragged out of the building. There was still shooting outside from all directions. The detainees ran to the river and hid in its bank until it was dark. The wounded man was taken home by *thuwar*. His son's body was returned to him two days later. He had been shot in the back of the head.[296] The father of another of the dead men told the Commission how he had received a call from the Matiga Hospital who asked him to come and get the body. When he got to the hospital, he was told by the *thuwar* that the body had been brought from the detention centre in Gargur.[297]

190. The Commission also interviewed the only two survivors from the ground floor. One said he was arrested by soldiers from the Revolutionary Guard (*Al-Haras Al-Thawri*) led by [068]. They had been looking for his brother and found incriminating materials in the house linking the family to the *thuwar*. He told the Commission that he was beaten, subjected to electric shocks and finally transported to the Green Security building. The

[290] *Ibid.*
[291] Interviews 0150, 0238, 0240.
[292] Interview 0236.
[293] *Ibid.*
[294] Interview 0237.
[295] Interviews 0150, 0236, 0238.
[296] Interviews 0150, 0236.
[297] Interview 0237.

other was arrested near Bab al-Aziziyah two weeks before the executions. Unlike the other witnesses interviewed by the Commission, they were held on the ground floor.[298] They recounted similarly difficult conditions to those on the upper floor, with little food and water and no toilet facilities. The witnesses stated that on 23 August 2011 around1 pm, one of the guards fired at the detainees on the ground floor through the window of the room. Two of the detainees were killed and one of the survivors was wounded. The guard then continued upstairs with the other guards, saying they would return to kill the "rats" on the ground floor. After a while they heard shooting upstairs. The detainees on the ground floor believed that the people arrested upstairs were being killed and they decided to escape. However, when they stepped out of the room into the hallway, four guards came down the stairs and opened fire. The first witness, one of the last to exit the room, was shot in his right leg and right shoulder and left for dead. The second, who had been wounded, remained in the room. 21 others died. They were helped to escape by the detainees who came down from upstairs, and were taken to Matiga hospital.[299]

191. The guards at the detention centre were named by the witnesses as [010, 051, 009, 045 and 049.][300] One survivor said that two of the guards were French-speaking Africans.[301]

192. On August 26 2011, Human Rights Watch found two additional bodies in the closet under the stairs in the building and dozens of spent cartridges and bloodstains on the ground.[302] A doctor who had been monitoring where executed prisoners were buried told the Commission that he believed that up to 130 prisoners from the Gargur prison had been buried at Sidi Hamed.[303]

Bab al-Aziziyah

193. Further evidence of executions carried out by the Qadhafi forces was found in a dry riverbed between Gargur and the Qadhafi compound at Bab al-Aziziyah.

194. On 23 August 2011, a local man from Gargur joined with *thuwar* from the Nafusa Mountains to attack the Bab Al-Aziziyah compound of Muammar Qadhafi.[304] He told the Commission that as he approached the entrance to the compound, they saw many dead bodies on the street. Another group of men were putting bodies into a truck and they helped them gather 15 bodies. The bodies were all men in civilian clothes. 14 of them were handcuffed at the back by electric cable or pieces of cloth, while a fifteenth body was handcuffed with steel handcuffs. They had wounds to different parts of the body.

195. The Commission interviewed two witnesses who reportedly saw the killing of three medical personnel. On 24 August 2011 after Bab Al-Aziziyah fell to the *thuwar*, one witness related how he was fixing his car when an ambulance entered Gargur from the direction of the Souq Al-talata. The ambulance had '17 February' written on the side. A group of Qadhafi forces in green military uniform stopped the ambulance. There were three persons on board: the driver and two men in medical scrubs who he assumed were doctors. The witness saw them taken out of the ambulance, put on the ground and then

[298] Interview 0240.
[299] Interviews 0240, 0463.
[300] Interviews 0236, 0238, 0240.
[301] Interview 0240.
[302] See Human Rights Watch, *Evidence of War Crimes Before Tripoli Fell*, 28 August 2011.
[303] Interview 0064.
[304] Interview 0314.

shot, by at least four or five of the soldiers. The soldiers then drained the fuel from the ambulance.[305]

196. Another witness said he was detained at the same checkpoint with two other men earlier the same day. When their car was searched, the soldiers discovered weapons and a card identifying one of the other men as a member of the Tripoli *thuwar*. The Commander of the 32nd (Khamis) Brigade soldiers [063], took his pistol and shot the man in the head. The witness and his friend were beaten and had their hands tied behind their backs. They were taken to a disused shop in the Bab Aukara area of Gargur. There were already four detainees there, guarded by eight soldiers. Later that day, he watched as the three medical staff, described above, were executed in front of the shop. The witness was wounded in the leg later when one of the guards fired at the detainees from outside the shop. One of the guards [043], whom he knew before, intervened and saved them by releasing them. The other detainees who had been there when they arrived were unable to move, as a result of the severe torture they had gone through.[306]

197. Both witnesses returned to the site subsequently. The first witness told the Commission how the day after he had witnessed the executions, he and a group of other people from Gargur found 31 bodies in the dry riverbed between Gargur and Bab Al-Aziziyah. The bodies were lying between the Airport Road Bridge and the Falah Al-Sawani Bridge. The three medical personnel whom he had seen shot were amongst them. He came back the next day with group of volunteers and they took all the bodies to two separate cemeteries, one on the Shutt road (coastal road), near Matiga Airport and the remainder to the Al-Sebeyah cemetery, 35 km south west of Tripoli, on the road to Tarhouna. The bodies were buried in mass graves as they were unidentified.[307] The second witness also subsequently returned to the shop where he had been detained and learnt from local people that the four detainees left behind had been executed.[308]

198. Photographs obtained by the Commission from witnesses show decomposing bodies lying in the street and in the dry riverbed, with their hands in some cases tied behind their backs. Two of the bodies were wearing medical scrubs, suggesting they were doctors or medical staff. The bodies are rotting, bloated with skin slippage and with the clothes wet from putrefactive flow. Taking into account the hot climate, the Commission's forensic pathologist suggested this was consistent with death occurring more than five days previously.

Bani Walid

199. On the afternoon of 28 May 2011, there was a demonstration near the market in Bani Walid. Video footage seen by the Commission suggests that the demonstration was initially non-violent though the Commission noted that a few of the demonstrators were carrying arms. At some point, shots were fired at the demonstrators reportedly by a militia known as *Jahafal*, which, in Bani Walid, was under the command of [055].[309] There is some dispute over whether the armed demonstrators then fired at the Qadhafi forces or

[305] Interview 0375. See also Human Rights Watch, *Evidence of War Crimes Before Tripoli Fell*, 28 August 2011.
[306] Interview 0245.
[307] Interview 0375. See also Human Rights Watch, *Evidence of War Crimes Before Tripoli Fell*, 28 August 2011.
[308] Interview 0245.
[309] Interview 0344.

were merely firing in the air.[310] A number of demonstrators were wounded as Qadhafi forces fired into the crowd.

200. Together with 12 other young men, an injured man sought refuge in a room on the second floor of a nearby commercial building. Qadhafi forces, reportedly from the Al Fateh Brigade, stormed the building. One of the demonstrators told the Commission that his brother was amongst those who sought refuge in the building. He spoke to his brother by phone, trying to reassure him. While he was speaking to his brother, the phone went dead. The interviewee was informed later that all the men in the room had been shot dead. One of the soldiers of the Al-Fateh Brigade, [003], was later arrested by the thuwar. While he was in custody, the witness had the opportunity to question him. The soldier said that he had been ordered to reassure the men in the room that they would be safe. The soldier also said that the young men had a number of rifles with them but they had no ammunition. The men had then been shot. The soldier reportedly named the killers. The corpses were taken to the local hospital, transferred to Tripoli and released to the families after five days on condition that there should be no funeral procession and only close family could attend the burial.[311]

201. The Commission subsequently received footage reportedly of the execution filmed on a mobile phone captured from Qadhafi forces. The footage shows a number of dead bodies in a darkened room, with men in civilian clothes standing over them. There are three discernible voices. The first, seemingly one of the soldiers, asks the shooters to stop what they are doing. A second voice suggests using a hand grenade. At least one of the men is holding an AK-47. In the footage, a man with a pistol is observed and there is the sound of approximately a dozen gunshots, suggesting that those still alive were being finished off.[312] Another voice then says "This one is alive, stop shooting". The response from one of the previous speakers is 'No, I want to fuck this one.' He then repeats the statement.

202. A further series of executions followed the setting up of a false *thuwar* checkpoint by Qadhafi forces. A witness told the Commission that on 17 September 2011, he went to visit his brother a short distance from his house. He ran into a checkpoint with gunmen raising the rebels' flag. They stopped him and asked him if he was with the *thuwar* or with the Qadhafi forces. He immediately answered that he supported the *thuwar*. The gunmen beat him, handcuffed him and put him in the back of a pickup, before sending him to a government complex in the east of the city. He was put into a room with 13 others, beaten and insulted. The group was subsequently searched, particularly for mobile phones. Three of them, including the witness, were released as nothing was found. He later found out that eight of the 10 found with incriminating material were later shot dead.[313] A second witness was also detained at the same checkpoint on the same day, again having been asked if he was a *thuwar* or a government supporter. He was scared that if he answered "neither" they would not believe him, so he answered "*thuwar*". He was taken to the same government complex. He was beaten and interrogated before a soldier whom he knew entered and recognized him. The man vouched that he was not a "rat", at which point they let him go. They told him to run away from the camp and to not look right, left or back or he would be shot by snipers. As he ran away, he saw the corpses of the eight men lying next to each other, all handcuffed at the back.[314] One witness described how his son, three nephews and nine other men returned Bani Walid after the

[310] Interviews 0310, 0369.
[311] Interview 0310.
[312] Interview 0310.
[313] Interview 0405.
[314] Interview 0395.

fighting had subsided to check on their homes. They met armed men who gave them the victory sign and were holding revolutionary flags. He assumed the men thought they were rebel fighters. They were then ambushed and arrested by these armed men who were actually Qadhafi soldiers. The men were taken to an unknown building in the Torba district of Bani Walid. Their hands were tied and they were beaten with rifles, before 11 of them, including his son, were shot. His three nephews survived.[315]

203. A witness described how he had left his home in Bani Walid in September 2011 to avoid the shelling. On the morning of 17 September 2011, he returned to check on his home. He was arrested by 10-15 armed men near the oil station by the north entrance to the town while in a truck with 10 other men. They were taken to a building being used as the unit's headquarters. Inside a courtyard, they all were forced to line up and face a wall where their hands were tied. They then were all hit with iron bars all over their bodies by 8-10 of the brigade soldiers. The witness, his brother and a friend were the last three in the row. They all fainted under the beating and fell to the ground. The other men were taken away. The three of them remained. A couple of hours later, they were taken to the Asuk brigade headquarters where they were interrogated. They were later released. Two days later they heard that the other men had been killed.[316]

(ii) *Thuwar*

204. The Commission received multiple reports of executions and other unlawful killings committed by *thuwar* and other opponents of the Qadhafi Government. Victims included individuals and groups perceived to be loyalists, Sub-Saharan African nationals suspected of being mercenaries, and captured Qadhafi soldiers. Many documented cases took place in the immediate aftermath of *thuwar* taking control of particular cities or territories during conflict Phases I and II. Further cases of revenge killings and killings of members of communities perceived to be loyalist[317] were reported after the thuwar had consolidated control over specific territories, including after the end of hostilities (Phase III). Some victims were beaten to death, a few were hanged, and others were shot after capture or when otherwise rendered *hors de combat*.

205. The Commission also documented 13 deaths in custody as a result of beatings or shooting. Such cases were found in a number of detention facilities under the control of various brigades, local civilian and military councils, and local security committees including in Al Zawiyah, Garabulli, Misrata, Tajoura, Tripoli and Zintan.

206. The Commission obtained information regarding additional cases of unlawful killings after the fall of Tripoli in late August 2011 committed during Phases II and III. Motivations for such killings perpetrated by *thuwar* or unidentified groups of armed men were less clear. Unlike targeted revenge killings of individuals perceived to be Qadhafi loyalists, this category of unlawful killings appears to have been driven by financial gain and facilitated by the breakdown of law and order.

Killings as areas fell to the opposition

207. In late February 2011, several cities fell under opposition control. The Commission received credible accounts from eyewitnesses and local residents that, in the immediate aftermath, angry mobs beat to death, shot, or hanged perceived loyalists, Sub-Saharan nationals assumed to be mercenaries and captured Qadhafi soldiers. Lack of post-mortem reports and other official documents, coupled with the reluctance of some

[315] Interview 0365.
[316] Interview 0367.
[317] See Annex I, sect. III.F.

eyewitnesses, forensic pathologists and others to provide detailed information on abuses perpetrated by the *thuwar* has made it difficult to estimate the number.

208. On 24 February 2011 in Al Zawiyah, seven anti-government protesters were killed by gunfire as Qadhafi troops sought to disperse the anti-government sit-in at the main Square in Al Zawiyah, now known as Martyrs' Square.[318] The remainder of Qadhafi forces were overpowered by protesters and retreated outside the city. Four Qadhafi soldiers were captured. An eyewitness told the Commission that one of the captured soldiers was beaten to death in by an angry mob, while the other was hung from the Bir al-Ghanem bridge, at a distance of about 1.5 kilometres from the Square. It is unclear whether he was killed by hanging, or whether he was killed before being hanged. Two other captured soldiers were given civilian clothes by other anti-government protesters and escaped a similar fate.[319]

209. In eastern Libya, similar killings of captured soldiers and alleged African mercenaries took place in late February 2011 as the cities of Al Bayda, Benghazi, and Darnah fell under *thuwar* control. Eyewitnesses told the Commission of public hangings of men presented as "African mercenaries" in front of Benghazi's North Court building on 19 February 2011. These were filmed on mobile phones and widely circulated.[320]

210. The Commission received reports of over a dozen Qadhafi soldiers shot in the back of the head around 22-23 February 2011 in a village between al-Bayda and Darnah, apparently by *thuwar*. Two videos seen by the Commission show a group of men, most in military uniform of the type worn by Qadhafi forces, being aggressively interrogated by unidentified men regarding their use of force against anti-Government protesters. The second video shows the same group dead lying face down on the ground, with hands tied behind the back. Many were shot in the head.[321]

211. When areas first came under *thuwar* control, Sub-Saharan African nationals and dark-skinned Libyan nationals were particularly vulnerable to house raids, arbitrary detention and violent attacks including executions on account of their skin colour and the prevailing suspicion that they might be mercenaries employed by the government. In its first report, the Commission found that a number of Chadian nationals had been executed by gunfire or burning in and around Benghazi in late February 2011 by armed men.[322]

212. The Commission's evidence is consistent with information obtained by Libyan and international human rights NGOs, for by Amnesty International that "in the first days of the uprising, groups of protesters killed a number of captured soldiers and suspected mercenaries in al-Bayda, Darnah and Benghazi. Some were beaten to death, at least three were hanged, and others were shot dead after they had been captured or had surrendered".[323]

213. Such killings in eastern Libya in late February 2011 were facilitated by the security vacuum created in the aftermath of the withdrawal of Qadhafi security forces and by the availability of weapons seized in depots and military bases by anti-government protesters and others. Similar killings of individuals perceived to be Qadhafi loyalists or

[318] See chap. III, sect. A. Interview 0184.
[319] Interview 0091.
[320] A/HRC/17/44, para 196. Examples of such videos can be found at the following links: http://www.youtube.com/watch?v=3JBhcH09DsE&feature=related
[321] Interview 0366. The videos can be seen on the following link: http://www.youtube.com/watch?v=MJx7zoCgHk4&feature=related
[322] A/HRC/17/44, para 196. Interviews 028,031.
[323] Amnesty International, *Battle for Libya : Killings, Disappearances and Torture,* September 2011, p.71

mercenaries continued during Phase II of the conflict after they fell to the *thuwar*. For instance, the Commission obtained an official report from the al-Jalaa Hospital morgue addressed to the General Prosecution in Benghazi indicating that a body of an unidentified black man found in the Kawarsha outskirts of Benghazi was brought on 7 April 2011 with gunshot wounds to the back of the head. At the time, Benghazi was firmly under the control of the *thuwar* and there were no armed confrontations in the area. Other reports at the time noted similar instances.[324]

214. A further example of an individual killed immediately following taking control of an area by *thuwar* is the killing of a young man from Bani Walid – a loyalist area and one of the last Qadhafi strongholds – by Al-Zawiyah *thuwar,* who participated in the attack on the city with other NTC forces. On 17 October 2011 (the final stage of armed confrontations in Bani Walid), *thuwar* from Al-Zawiyah arrested the young man in front of his relatives, with assurances that he would be released shortly after questioning. He was driven way in the back of a pick-up truck whilst handcuffed. Shortly after, the family heard gunshots nearby. After several days of searching for his whereabouts, his relatives discovered that he was in a hospital, some 50 kilometres away from Bani Walid, receiving treatment from gunshot-wounds to the abdomen. He succumbed to his wounds nine days later. [325]

Mahari hotel killings

215. While many of the killings reported to the Commission were individual ones, at least two group executions did take place. The Commission was able to establish that tens of Qadhafi soldiers and alleged loyalists were executed in October 2011 at the Mahari Hotel in Sirte, Qadhafi's hometown and last stronghold. Local residents told the Commission that a large number of bodies (estimates ranging from 65 to 78) were discovered on 21 October 2011 at the Mahari Hotel – the day after the end of hostilities in Sirte and the capture and killing of Muammar Qadhafi.[326] Most were discovered in the back garden of the hotel, on the side facing the seafront.[327] Other bodies were scattered elsewhere at the hotel's premises, including the back terrace. At least one victim was hung down by his ankle from the first floor banister into the hotel foyer. The victims were lying in close proximity to each other; some had their hands bound.[328] Contemporaneous independent reports noted bullet holes in the back garden where the bodies were discovered, along with spent cartridges of AK-47 and FN rifles, indicating that the victims were killed where they bodies were found.[329] At the time of the Commission's visit to the site in January 2012, renovations were being carried out at the hotel and much of the evidence of the crime was being removed. Nonetheless, in the back garden the

[324] Amnesty International reported two bodies of unidentified men with Sub-Saharan African features were found in the outskirts of Benghazi on 23 and 24 April. One had his throat cut while his ankles were bound with a rope; the other was shot in the head and had multiple contusions, suggesting that he had been beaten. Amnesty International, *Battle for Libya: Killings, Disappearances and Torture*, September 2011, p.71. See also http://www.hrw.org/news/2011/06/05/libya-opposition-arbitrarily-detaining-suspected-gaddafi-loyalists. Ten other bodies indicating extrajudicial executions were found bound and shot in the head in the outskirts of Benghazi, and other parts of eastern Libya during April and May 2011. Victims were members of the Revolutionary Committees, the Internal Security Agency, and other Qadhafi intelligence bodies.

[325] Interview 0318.

[326] Interviews 0308, 0423, 0351 and http://www.hrw.org/news/2011/10/24/libya-apparent-execution-53-gaddafi-supporters

[327] Satellite imagery (Worldview-2) of Mahari Hotel dated 22 October confirms the presence of bodies in the back garden.

[328] Interviews 0308, 0351, 0465.

[329] http://www.hrw.org/news/2011/10/24/libya-apparent-execution-53-gaddafi-supporters.

location where the bodies were found remained visible, as local residents and hotel staff had burned the grass to remove blood and other human remains. There were also still a large number of spent rifle cartridges on the ground and bullet holes in the back garden.

216. In the last weeks of fighting in Sirte, the Mahari Hotel and the surrounding area were under control of *thuwar* from Misrata, who used it as a base. During Commission's visit in January 2012, names of some of the Misrata-based brigades were still visible on the inside and outside walls of the hotel, suggesting their presence or use of the Hotel during their fighting. They were the Tiger Brigade (*Katibat Al*-Nimer), the Support Brigade (*Katibat Al-Isnad*), the Jaguar Brigade (*Katibat Al-Fahad*), the Lion Brigade (*Katibat Al-Asad*), and the Citadel Brigade (*Al-Qasba*).[330]

217. According to eyewitnesses and individuals involved in the removal and identification of victims, some of those killed were residents of Sirte, particularly of Area 2, where Muammar Qadhafi and his remaining troops were based during the final days of the confrontations. A Sirte resident told the Commission that 58 victims have been identified by their families. Some were fighters while others are believed to have been civilians. He said that his cousin, who had been detained at the hotel by the Tiger Brigade, but released before the killings took place, told him that the victims included those arrested at checkpoints established by the *thuwar* or those captured in Area 2 including those previously receiving treatment at the Ibn Sina Hospital.[331] Human Rights Watch's findings that some of the bodies had visible bandages corroborate reports that some of those executed had received medical treatment shortly before their deaths.[332] The Commission's investigators were also shown video footage of a group of about 29 alleged Qadhafi loyalists, all in civilian dress, sitting outside with their backs to a wall, held in captivity by individuals who identified themselves as Misrata *thuwar*. On the video, which was reportedly shot on 20 October 2011, the *thuwar* are heard saying "we, Misrata, captured Qadhafi today." The captured men were insulted, called "Qadhafi's dogs", spat on, threatened with murder, slapped and hit. None of the captives bore any visible signs of injury. The Commission met with family members of two individuals, from the Qadhafi tribe, seen alive in the video. The family of the dead men told the Commission that the men's bodies were later brought to the Ibn Sina Hospital from the Mahari Hotel with gunshot wounds. The Commission was informed that one of the victims was a civilian who took up arms against the *thuwar* during the assault on Sirte, and the other was a member of the Qadhafi armed forces.[333] The date of the actual killings has not been established as no survivors or other eyewitnesses to the actual killings have been identified. The video date and satellite images suggest that at least some of the killings took place between 20 and 21 October 2011, when the bodies were discovered.

Killing of members of targeted communities

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218. The Commission found that the Tawerghans, a community of black Libyans perceived to be loyalist and members of which are accused of committing crimes during the Qadhafi forces attack on Misrata, were unlawfully killed by the *thuwar,* predominantly from Misrata.[334]

219. The most recent incident documented by the Commission took place on 6 February 2012, when seven Tawarghans, including three children and an elderly woman,

[330] Ibid.
[331] Interview 0308.
[332] http://www.hrw.org/news/2011/10/24/libya-apparent-execution-53-gaddafi-supporters.
[333] Interview 0351.
[334] See chap. III sect. E.

living at an IDP camp in the Janzour Naval Academy were shot and killed by Misrata *thuwar*.[335] This incident is examined in greater detail in Annex I, sect. III.F.

220. In another reported case of extrajudicial executions of Tawerghans, the Commission was informed by a Tawerghan living in an IDP camp in Tripoli near the Airport Road that his relative, a soldier with the Qadhafi forces, was shot dead upon capture in Sirte around 6 October 2011, along with 16 other Tawarghans by *thuwar* from Misrata. News of his death reached the family through the sole survivor believed to be detained in the city of Misrata.[336] The Commission requested to interview him, but were told by prison commanders and other officials in Misrata that he was not held at their detention facilities. Further killings of Tawerghans by *thuwar*, that occurred while held in detention centres, are detailed below.

221. The Commission also received reports of killings of members of other groups perceived to be Qadhafi loyalists, which typically took place in the immediate aftermath of the *thuwar* gaining control of the area. The Zintan thuwar, who accuse the Mashashiya community of providing support to the Qadhafi forces during the latter's siege and shelling of the Nafusa Mountains, have carried out attacks against the entire community including unlawful killings. For example, an 82 year-old Mashashiya man from Zawiyat al-Baqoul was shot dead at his home on 7 May 2011, reportedly by *thuwar* from Zintan.[337] Regarding another incident, the Commission was informed by two sources interviewed separately that two Mashashiya brothers were shot at point-blank range after capture by Zintan *thuwar* in front of another brother.[338] These incidents are examined in greater detail in Annex I, sect. III.F.

222. A similar pattern has been established by the Commission in relation to attacks committed by Zowara *thuwar,* who are Amazigh, against the Arab residents of Abu Kammash, originating from perceived loyalist areas of Jmel, Riqdalin, Ajilat and Zolton.[339] It was reported to the Commission that *thuwar* from Zowara apprehended an unarmed man from Riqdalin, forced him to face the wall, and shot him during confrontations between the two communities on 28 August 2011.[340]

i. Killings taking place in detention centres

223. The Commission documented 12 cases of men who died in custody in detention facilities controlled by *thuwar* brigades, local councils, and local military councils as a result of torture. It conducted interviews with family members of victims and current and former detainees who witnessed the crimes. It was also able to review the victims' medical records including autopsy reports, photographic evidence and other audio-visual material. It also received second hand information regarding additional death in custody cases from current and former detainees and from Libyan and international human rights NGOs, and medical professionals. One Tripoli-based medical professional told the Commission that his hospital received 10 bodies of individuals bearing severe signs of torture between the fall of Tripoli in late August 2011 and 5 December 2011.[341]

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[335] Interviews 0467, 0468, 0469. The entire population of Tawargha - some 30,000 residents - have been displaced since leaving their homes between 10-12 August 2011 during the advance of Misrata *thuwar* on Tawergha. See chap. III sect. E.
[336] Interview 0195.
[337] Interview 0328.
[338] Interviews 0298, 0328.
[339] See chap. III sect. E.
[340] Interview 0151. See Annex I, sect. F. for further details on reprisals by Zowara *thuwar* of communities considered as loyalists including residents of Riqdalin, Ajilat, Jmel, and Zolton.
[341] Interviews 0094, 0114, 0121, 0124, 0211, 0258, 0301, 0332, 0378.

224. The cases documented by the Commission fall into two broad categories: agents of Qadhafi's security apparatus and perceived associates of prominent former government figures, and the Tawerghan community.[342] The former have been arrested and detained by *thuwar* from different parts of Libya including Al Zawiyah, Garabulli, Misrata, Tajoura and Tripoli. Tawerghans have been arrested and detained, in almost all instances, by the Misrata *thuwar.* The recorded deaths took place between 12 September and 31 December 2011.

225. All victims in the first category were taken from their homes by armed *thuwar* without warrant or explanation for the arrest. With one exception, family members of victims were denied access to their relatives during their detention. The victims' bodies were abandoned in various hospitals either dead or in a comatose state within periods ranging from the day following their arrest to six weeks. All victims – bar one – bore visible signs of beatings including severe bruising, lesions, abrasions, open wounds, burns and swelling indicating fractures. The Commission's forensic pathologist, who examined all medical records and other available material, concluded that the injuries were consistent with the torture alleged. In the other case, the decomposition of the body was too advanced to determine whether there were specific injuries or not. The corpse was that of a former guard at Abu Salim Prison arrested by Tripoli *thuwar* on 19 September 2011 without warrant. His relatives searched for him for over two months in vain in several detention facilities in Tripoli, and surrounding areas, and also tried to find out if he was imprisoned in Misrata and Benghazi.

226. The Commission's forensic pathologist documented the deaths of two men on 9 October 2011. According to witnesses, they were arrested together with other men on 17 September 2011 in Al-Zawiyah by a heavily armed group of local *thuwar* including members of the "Committee of Arrest and Correction of Injustice" and taken to Judayem detention centre. One of those arrested – released some three weeks later – told the Commission that he witnessed one of the victims being beaten with rubber hoses. That victim was briefly released on 8 October 2011, but re-arrested at his home within hours. The Commission was informed that authorities at the Judayem detention centre explained to the victim's relatives that new facts emerged meriting further investigations. The following morning, his family was called by staff at Al-Zawiyah Hospital morgue to collect the body, which reportedly bore visible bruises on both arms, parts of the back, and thighs. The family told the Commission that the victim's arms were swollen indicating fractures. There were also visible open wounds on his shoulder and back. An initial autopsy report, a copy of which was obtained by the Commission, indicated that the victim died as a result of "multiple blows, which led to the stopping of the heart". [343] The second victim was brought to the Al Zawiyah Hospital on the same day in a comatose state, and died shortly after admission. The Commission was shown pictures of his body. Visible bruises and abrasions were visible on his whole body including his arms, legs, shoulders and thighs.[344] The Commission's forensic pathologist was of the opinion that the injuries are consistent with torture.

227. Another death in custody in Tripoli investigated by the Commission was that of a member of Qadhafi's security forces deemed to possess information about other loyalists in hiding. According to his relatives, he was arrested by *thuwar* on 11 September 2011 and his last detention location was the former Internal Security Agency building in central

[342] See chap. III sect. E.
[343] Interview 0063.
[344] Interview 0066.

Tripoli, believed to be under the control of local neighbourhood *thuwar*.[345] On 25 October 2011, his family received an anonymous call from a Tripoli hospital and upon arrival found his body in the morgue. The Commission's investigators were shown a death certificate issued on 27 October 2011, stating that the death was caused by heart and kidney failure triggered by beatings. The Commission also viewed video footage of the victim's body, showing severe bruising, missing flesh, whip marks and open wounds.[346] Another detainee died as a result of torture on 25 October 2011, some 10 days after his arrest by a group of armed *thuwar* from his neighbourhood, who neither presented a search or arrest warrant, nor explained the reasons for his arrest. An autopsy report seen by the Commission's investigators corroborated his relatives' testimony that the victim died as a result of severe beatings all over the body.[347]

228. The Commission also documented the death of another reported member of Qadhafi's security agencies as a result of beatings and electrocution in mid-November 2011. The victim was arrested at his father's house by some 90 armed men on 17 October 2011. The armed men composed of various *thuwar* from Tajoura, who did not present an arrest or search warrant, took the victim and four brothers and confiscated money, mobile phones and other valuables from the family homes. The brothers were separated during detention. Upon release, the victim's brothers asked for his whereabouts at the local military council in Tajoura and various detention centres in Tripoli and Tajoura and approached different Tajoura *thuwar* brigades. In mid-November 2011, they received an anonymous call from a Tripoli hospital informing them that their brother was in intensive care. He died the following day.[348] His body was covered in severe bruises, abrasions and swellings. Large pieces of flesh were missing from the soles of his feet and a finger. Upon examining pictures of the victim's corpse, the Commission's forensic pathologist found that in addition to severe beatings all over the body, there was evidence to suggest the victim was subjected to electric shocks.

229. A large number of the deaths in *thuwar* custody documented by the Commission were members of the Tawergha community. Most victims were arrested at checkpoints or taken from their temporary homes or IDP camps, where they found shelter after fleeing Tawergha. They were all apprehended by Misrata *thuwar*, who either transported them from the location of their arrest back to Misrata or detained them at their own brigades' bases in Tripoli.

230. The Commission met family members of two Tawerghan men who were arrested, along with 47 other Tawerghan families including women and children, by Misrata thuwar on 27 October 2011 in Shawarif, some 400 kilometres south-east of Tripoli. One witness interviewed by the Commission noted that the thuwar belonged to the Independence Brigade (*Katibat Istiqlal*).[349] All but nine men were released within a week. An elderly Tawerghan man detained with them stated that one of the men was severely beaten in front of the other detainees and lost consciousness for nearly two days before being transferred to Misrata. After his transfer, his family was informed on 16 November 2011 by a medical professional at a Misrata hospital that he had died after being brought to the hospital with fractures. His family members do not know the exact date of his death.[350] The other man, a former Qadhafi soldier, was also transferred to Misrata and

[345] Interview 0329. The agency is not named in this specific case to prevent identification of the individual.
[346] Interview 0113.
[347] Interviews 0185, 0178.
[348] Interview 0117.
[349] Interview 0197.
[350] Interview 0197.

died on 2 November 2011 as a result of a fracture in the skull, according to an initial autopsy report obtained by the family and examined by the Commission's investigators.[351] The killings are examined in greater detail in Annex I, sect. III.F.

231. A Tawerghan woman living in an IDP camp in Tripoli recounted to the Commission that she was stopped at a checkpoint by Misratah *thuwar* in Tripoli at about noon on 12 September 2011 while driving with her family. The *thuwar* took her son-in-law and the car. Some three weeks later, her son-in-law's body was discovered at the Khadra Hospital in the Abu Salim area of Tripoli. An initial autopsy report, examined by the Commission, states that he died as a result of a "nervous shock to the system" due to beatings. The death certificate stated that the victim died on 13 September 2011, or within a day of his arrest. The Commission obtained information, including an initial autopsy report, that three more Tawarghan men died in detention on 16 and 20 October 2011, and 2 November 2011, respectively.[352]

232. The Commission recorded another death in custody as a result of torture of a Tawerghan man at the hands of *thuwar* from Misrata. The man, a former soldier, was arrested along with four other Tawerghans on 31 December 2011 in Sirte, where they had travelled from an IDP camp in Benghazi to collect their pay checks. The group was held for about 18 days in various makeshift detention centres in Sirte and Kararim including two security compounds and an abandoned hospital. During their time in custody, they were consistently tortured or otherwise ill-treated, as detailed in Annex I, section III.F. The four surviving detainees told the Commission that the victim was removed from their cell at about midnight on 16 January 2012, never to return. The remaining members of the group were released following the intervention of *thuwar* from Benghazi. [353]

233. The Commission also received information concerning the death of the 13th detainee whose case stands out from others, documented above, who died as a result of torture inside detention centres. The Commission received a report from a detainee that a cell-mate had been shot and killed inside the Post Office (Barid) in Zintan, previously used as a detention centre. The perpetrator was reportedly a relative of a victim of unlawful killing during the armed conflict seeking revenge against detainees believed to be Qadhafi soldiers or loyalists. He was not a member of the Brigade controlling the facility, but was not prevented from firing his gun inside the cell at random without aiming at a particular target. Another detainee was injured in the attack. [354]

i. Killings where motivation is unclear

234. The Commission received information of unlawful killings committed by *thuwar* or other armed groups during conflict Phases II and III, seemingly not targeting individuals for their political affiliations, but rather for their perceived wealth and belongings. For instance, a member of a Tripoli brigade was fatally shot on 14 December 2011 in central Tripoli by *thuwar* from Misrata. According to an eyewitness and relatives of the victim, a group of *thuwar* from Misrata wanted to confiscate a female relative's car under the pretext that it was government property (the vehicle belonged to a woman whose spouse worked in Qadhafi's security apparatus). Following negotiations between the Misrata *thuwar* and the concerned family, themselves *thuwar* from Tripoli, the issue was seemingly resolved and the Misratah *thuwar* withdrew from the house without the wanted vehicle. The victim then proceeded to drive the vehicle in question to a safer location. His relative, driving another car in front of the victim, told the Commission that

[351] Interview 0198.
[352] Interview 0003.
[353] Interview 0460.
[354] Interview 0301.

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the same group of Misrata *thuwar* blocked the victim's way. As he was trying to evade the Misrata *thuwar*, they opened fire fatally injuring him in the heart and kidney. Three of the attackers have been apprehended, charged by the General Prosecution with murder, and continued to be detained at the time of writing. The remainder managed to escape.[355]

235. A similar incident took place two days later in central Tripoli. A survivor of the violent attack on 16 December 2011 by a group of identified armed men told the Commission that he was in a car with four friends, when their way was blocked by a pick-up truck, a 4x4 vehicle, and a regular car. Nine people armed with Kalashnikov rifles and revolvers demanded their car. When the request was refused, the assailants opened fire killing one passenger, and injuring two other passengers and the driver. The attackers managed to escape.[356]

The killing of Muammar and Mutassim Qadhafi

236. Both Muammar and Mutassim Qadhafi were captured separately on 20 October 2011 outside Sirte by Misrata *thuwar*. Both, though wounded, were alive on capture, though wounded, and subsequently died whilst in the custody of the *thuwar*.

Muammar Qadhafi[357]

237. On 19 October 2011, Qadhafi's son Mutassim decided they should leave Sirte because the *thuwar* had encircled and entered the city, trapping Muammar Qadhafi and his men in District 2. On the morning of 20 October they set off in a heavily armed convoy of approximately 50 vehicles. The convoy consisted of Muammar Qadhafi; his son Mutassim who was already wounded; [050]; Defence Minister Abubakr Younis[358], [004], and approximately 200 armed men. There were also women and children in the convoy. Some of the armed men evacuated their wounded colleagues from the hospital and these unarmed men were placed in cars with their bandages still on; some still had tubes in their bodies.

238. The convoy headed east on the main road but ran into a rebel ambush. Numerous cars were badly damaged in the ambush and a number of people were injured. They circled to the sea road and headed west. The convoy split up. At this point a Toyota Corolla in front of Muammar Qadhafi's green Landcruiser was hit by a NATO airstrike, probably by a Predator drone, and exploded.[359] The explosion set off the airbags in Qadhafi's car. Muammar Qadhafi and [050] switched cars. The front of the convoy started taking fire from *thuwar* positions near the power plant and so Muammar Qadhafi, [050] and others took refuge in a house as some of their bodyguards engaged in a fire fight with the rebel positions.

239. Moments after Muammar Qadhafi entered the house, an airstrike hit the vehicles, setting off secondary explosions. The strike and subsequent explosions left many wounded lying on the ground. At this point the *thuwar* began shelling the house where Muammar Qadhafi was hiding. Mutassim Qadhafi took approximately 20 fighters and left to look for vehicles. Muammar Qadhafi reportedly wanted to stay and fight but was persuaded to escape. The group belly-crawled to a sand berm. On the way an electrical transformer was struck and electrical wires fell on Qadhafi, striking his head, but he was saved by his blue flak jacket and a Kevlar helmet which was knocked off. The group reached the berm and ran behind it to the road where there were two drainage pipes. The

[355] Interview 0263.
[356] Interview 0280.
[357] Interviews 0036, 0289, 0333, 0344.
[358] He is named as now deceased.
[359] http://www.wired.com/dangerroom/2011/10/predator-libya/

group crawled through the pipes and took up a defensive position on the west side of the road where the pipes terminated.

240. Muammar Qadhafi crouched outside and between the two pipes. Abubakr Younis was in the right pipe. [050] and two fighters took up a position by a berm facing south and the other fighters faced north. The group was sheltered from the road and was unseen by the rebels. [050] decided the group would make a stand and opened fire on a passing rebel vehicle. There was a fire fight. One of the guards threw a grenade. The grenade hit the top of the cement wall above the pipes and fell in front of Muammar Qadhafi. The guard tried to pick up the grenade but it exploded, killing him, Abubakr Younis, and a fighter next to [050]. [050] was knocked unconscious and Qadhafi was wounded in the blast by grenade shrapnel that hit and shredded his flak jacket. He sat on the floor dazed and in shock, bleeding from a wound in the left temple.

241. At that point, one of the party fashioned a white flag from his turban and waved in surrender to the *thuwar* from the 501st Brigade. The *thuwar* laid the men on their faces and bound their wrists. Muammar Qadhafi was immediately surrounded by *thuwar* and beaten. Muammar Qadhafi was heard to ask, "What is going on?" The survivors were placed into vehicles and taken away.

242. This is where the eyewitness evidence received by the Commission ends. Videos of the scene show Muammar Qadhafi being roughly handled by the *thuwar*, many screaming "We are Misrata" to identify where they are from.[360] He is apparently stabbed with a bayonet in the buttocks.[361] He is placed on the hood of a vehicle, bloody but alive, before being placed in an ambulance.[362] He clearly has one head wound from the grenade shrapnel, but is otherwise not wounded. This is the last time Muammar Qadhafi is seen alive.

243. A televised interview of one of those who accompanied Muammar Qadhafi in the ambulance gave an account of what happened next.[363] The young man, who states he is from Benghazi but was travelling with men from the Misrata *thuwar* when the Qadhafi convoy was attacked, claims he was the one that found Muammar Qadhafi and got into the back of the ambulance with him and two men from the Misrata *thuwar*. The ambulance started to drive to Misrata. The young man claims there was an argument between himself and the men from Misrata on what to do with Muammar Qadhafi, with him wanting to bring Qadhafi back to Bengazi. He claims he shot Qadhafi in the head and abdomen.

244. The Commission is unable to verify his claims. Video shows he was in the ambulance when Muammar Qadhafi was placed in it.[364] What is clear is that Qadhafi was alive when he was taken into custody and placed in an ambulance in Sirte by members of the Misrata *thuwar* and was seemingly dead when the ambulance arrived in Misrata.

245. The Commission visited the site of Muammar Qadhafi's capture. The details of the site were consistent with the testimony provided by all interviewees. Numerous burned vehicle frames remained at the site as remnants of the NATO airstrike. The area remained scorched and unexploded ammunition lay scattered about the area. There were also numerous fragments of ammunition that had exploded during the NATO airstrike.

[360] See, for example: http://www.youtube.com/watch?v=IeZTRrLrDEQ&skipcontrinter=1; http://www.youtube.com/watch?v=eh-lUzxwRaQ
[361] http://www.youtube.com/watch?v=IB8NH_cwt1A
[362] http://www.youtube.com/watch?v=1chIX37laso&feature=related
[363] http://www.youtube.com/watch?v=8KbJgxm8GpA&feature=related
[364] http://www.youtube.com/watch?v=fXs1rsod_II

All of this corroborated testimony that the vehicles had been leaden with weapons and ammunition.

246. The layout of the area was identical to the testimony, down to the electrical transformer with broken electrical lines draping down that reportedly struck Muammar Qadhafi. Photos provided to the Commission showing the area shortly after the attack with the dead bodies of numerous fighters. Some of them were bandaged and had medical tubing coming from their corpses, as described by witnesses.

247. According to news reports, the official autopsy states Qadhafi was killed by a gunshot to the head.[365] The Commission was not provided access to the autopsy report despite numerous requests to the NTC. Photos of Muammar Qadhafi's body were provided to the Commission by members of the medical committee of Misrata who participated in the external examination of Qadhafi's body. The photos were reviewed by the Commission's forensic pathologist. He was unable to come to a definitive conclusion of the cause of death. His analysis found one possible cause of death was an injury that appeared to be consistent with a small calibre gunshot wound to the head. There were no powder burns, no muzzle tattooing, or any other sign of a gun muzzle. This indicates the shot, if it was a shot, was fired at a distance of at least 50cm. The photos do not show a clear exit wound, though there were a number of head wounds. The Commission remains equally open to the possibility that the wound to the temple might also be shrapnel from the grenade. Analysis of the photos of the abdominal wounds by the Commission's forensic pathologist determined they were penetrating wounds in the epigastric area, the nature of which was difficult to determine from photographs. Interviews with journalists who saw the body indicate Qadhafi was shot once in the head and twice in the abdomen.[366]

248. It was not possible to conclusively determine the cause of death from the photographs provided. While the Commission has eyewitness testimony of those with Muammar Qadhafi at the time of capture, it has not been able to obtain a first-hand account of the circumstances of his death and has received inconsistent accounts from secondary sources. Consequently, the Commission has been unable to confirm the death of Muammar Qadhafi as an unlawful killing and considers that further investigation is required.

i. Mutassim Qadhafi

249. In relation to the death of Mutassim Qadhafi, the Commission has reviewed video footage showing him alive and in the custody of *thuwar* post-capture but has been unable to obtain any account of the circumstances of his death. Examination of photographs of the body of Mutassim Qadhafi proved inconclusive. Consequently, the Commission has been unable to confirm the death of Mutassim Qadhafi as an unlawful killing and considers that further investigation is required.

i. Display of bodies

250. The bodies of Muammar and Mutassim Qadhafi were placed on public display in a meat locker in Misrata for three days.[367] He, his son Mutassim, and Abu Bakr Younis

[365] Available from: http://www.cbsnews.com/8301-202_162-20124313/autopsy-Qadhafi-was-killed-by-shot-to-head/

[366] Interviews 0478, 0469.

[367] http://www.washingtonpost.com/world/middle_east/libyans-delay-burial-of-gaddafi-pending-inquiries/2011/10/21/gIQAZkTQ3L_story.html. Interviews 0469, 0478.

were reportedly buried at dawn on 25 October 2011, five days after their deaths.[368] In respect of the public display of the bodies of both Muammar and Mutassim Qadhafi, the Commission found there has been be a breach of international customary law.[369]

i. Conclusion

251. The Commission has established that, in addition to shootings of demonstrators during the early phase and large numbers of individual killings during the armed conflict, the scale of executions by Qadhafi security forces increased as their defeat neared. The Commission finds that the Qadhafi forces executed, otherwise unlawfully killed and tortured to death large numbers of prisoners in detention centres prior to retreating from the *thuwar* forces. During the armed conflict, killing fighters or others who have surrendered, captured or otherwise rendered *hors de combat* amounts to a war crime. Insofar as many of the detainees were therefore part of the civilian population rather than captured fighters, the systematic and widespread executions constitute a crime against humanity.

252. The Commission established that *thuwar* from various brigades across the country, as well as other opponents of the Qadhafi government, have executed, otherwise unlawfully killed and tortured to death Qadhafi soldiers, security officials as well as those they perceive to be loyalists or mercenaries. During the armed conflict, killing fighters or others who have surrendered, captured or otherwise rendered *hors de combat* amounts to a war crime. Once the conflict ended, such acts have constituted violations of international human rights law.

253. In the section on Accountability (see chap. IV) the report addresses the need for perpetrators to be brought to justice for the crimes of the Qadhafi forces. The Commission is also deeply concerned that no full, impartial and independent investigations or prosecutions appear to have been instigated into any executions and deaths in custody of members of communities perceived to be loyalist, those suspected of being mercenaries as well as captured members of the Qadhafi forces.

254. Further the Commission notes that while there is no treaty provision requiring measures to transfer the remains of the dead to their families in the context of non-international armed conflicts, the Commission notes that in a resolution adopted in 1974, the UN General Assembly called upon parties to armed conflicts, regardless of their character, "to take such action as may be within their power … to facilitate the disinterment and the return of remains, if requested by their families",[370] and that this is reflected in international customary law.[371] The Commission concluded that both Qadhafi forces and the *thuwar* have failed to abide by this rule of international customary law.

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C. Arbitrary detentions and enforced disappearances

i. Introduction

255. In its first report, the Commission concluded that Qadhafi forces arbitrarily detained a significant number of persons in towns and cities across Libya.[372] The Qadhafi Government failed to afford proper legal protection to arrestees and targeted entire

[368] http://www.guardian.co.uk/world/2011/oct/25/muammar-gaddafi-buried-libya; http://www.huffingtonpost.com/2011/10/26/gaddafi-funeral-video_n_1032728.html
[369] *Customary International Humanitarian Law*, Rule 115.
[370] UN General Assembly, Res. 3220.
[371] *ICRC Study*, Rule 114.
[372] A/HRC/17/44, para 90.

regions suspected of supporting the opposition. The Commission also documented cases of persons who had been disappeared and concluded that the Government "engaged in a pattern of enforced disappearances" in violation of its obligations under international human rights and international humanitarian law.[373]

256. With respect to the *thuwar*, during the first phase of the Commission's work it received very little information on violations in relation to arbitrary arrest or other forms of deprivation of liberty or disappearance. With the gradual defeat of the Qadhafi forces, however, the situation with respect to *thuwar*-led detentions changed significantly. Several thousand people were arrested in the aftermath of battles where the *thuwar* prevailed, for example in Tripoli, Al Zawiyah, Misrata, Zintan, the Nafusa Mountains, Benghazi and Sirte. Persons suspected of working in the Qadhafi government, or persons from communities or areas believed to have either supported Qadhafi, or opposed the *thuwar*, were arrested, taken to unofficial detention centres or formerly functioning prisons, and held there for extended periods without charge.[374]

257. In the second phase of its work, the Commission met with 197 persons who referred to instances of arbitrary detention or enforced disappearance. Of that number, 158 were direct victims of arbitrary arrest or their immediate family members. Thirty-one of the direct victims interviewed by the Commission were women and four were minors. The Commission met with 41 persons who had either been "disappeared" themselves at some point, or whose family members had suffered that fate.

258. During its investigations the Commission obtained information from a variety of human rights organizations and local councils, including lists of "missing persons." In accordance with the applicable legal framework, the Commission describes in this chapter only those instances where there is evidence that a person was arrested or otherwise apprehended, or was being held outside the legal framework, by elements of the Qadhafi Government, or the *thuwar*. Even within this more limited context, the Commission was not in a position to investigate all of the hundreds of individual reports it received. It, however, sought to determine whether a pattern of arbitrary detentions and/or enforced disappearances occurred.

i. Applicable law

i. Arbitrary detention

259. Article 9 of the International Covenant on Civil and Political Rights (ICCPR) prohibits arbitrary arrests and detentions. 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". The Covenant further requires that all individuals apprehended be informed at the time of arrest of the reasons for the arrest and that they are promptly informed of any charges. 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. 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 to compensation for

[373] A/HRC/17/44, para. 110.

[374] Interview 0062. According to the Head of the Committee on the Affairs of Detainees, Mercenaries, and the Missing for the areas of Tripoli and Al Zawiya, there were 1,500 detainees in "official" detention centres in the Tripoli area in December, 2011. Other credible information received by the Commission puts the overall number of detainees at between 5,000 – 6,000 in all of Libya, with some organizations estimating it as high as 8,500. ICRC *Libya: Hardship and danger remain*, 16-02-2012, Operational Update No. 12/01.

unlawful arrest or detention). Lawfulness of detention is to be considered both under domestic law and under international law.[375] The term "arbitrary" is considered in terms of appropriateness, proportionality and reasonableness.[376]

260. The ICCPR provides a set of fundamental guarantees that includes the right to be presumed innocent, the right to counsel of one's own choosing , and the right not to be compelled to testify against himself or herself, which includes the use of coerced testimony, such as that rendered under torture (art. 14, para. 3).[377]

261. The Commission recalls the various legal regimes that applied to the phases of the conflict, while noting that international human rights law applied throughout (see chap. I, sect. E). It recalls that liability for violations generally attaches to state parties rather than non-state entities such as the *thuwar*. Nevertheless, the Commission notes that on 16 September 2011, the United Nations General Assembly formally recognized the NTC as the interim Government of Libya.[378] The Commission therefore continued its investigations into alleged violations of international human rights law considering the interim Government as representing the successor state with respect to the country's obligations under the ICCPR.

262. The Commission also notes that international humanitarian law was still in effect - and applied to *thuwar* actions - until the close of hostilities at the end of October 2011. International humanitarian law addresses the consequences of detentions, for example in Protocol II where it prescribes that detainees must at all times be treated humanely, irrespective of whether they participated in the armed conflict. They must further be allowed to receive individual or collective relief; to practise their religion; to send and receive letters and cards,[379] and they shall have the benefit of medical examinations.[380]

263. At the close of an armed conflict, international humanitarian law requires parties who have detained individuals in the context of the hostilities to release them unless they intend to charge them criminally in a court established by law.[381]

(b) Enforced disappearance

264. While Libya is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, it is a party to the ICCPR, provisions of which are infringed by enforced disappearance. An enforced disappearance is said to occur when a

[375] ICCPR, Article. 9(2). See, for instance, Human Rights Committee, *A. v. Australia*, communication No. 560/1993, CCPR/C/59/D/560/1993, para. 9.5. The Commission notes that according to the Libyan Code of Criminal Procedure, detainees can only be held for 48 hours before transfer to the General Prosecution who determines either to release detainees or to place them in pre-trial detention. For certain crimes, the period of detention before transfer to the General Prosecution can be extended to 7 days. Article 30 of the code apparently requires an arrest warrant in instances where a suspect is not detained *en flagranti.* According to Libyan law, suspects only have the right to see a lawyer once they are transferred to the General Prosecution.

[376] See Communication No. 458/1991, *A. W. Mukong v. Cameroon*, A/49/40 (vol. II), p. 181, para. 9.8. The Committee noted therein that "arbitrariness" must be interpreted to include appropriateness, justice, predictability and due process of law. Remand in custody, even pursuant to a lawful arrest, must be reasonable and necessary considering all circumstances, "for example, to prevent flight, interference with evidence or the recurrence of crime."

[377] ICCPR, Article 14(2) and (3).

[378] A/Rec/66/1, September 2011.

[379] Protocol II, Art. 5(2).

[380] Protocol II, Article 5(1) and (2).

[381] Protocol II, Article 6(5). See also *ICRC Study*, Rule 128, p. 451.

state apprehends someone and then refuses to acknowledge it.[382] Such action violates a person's right to recognition as a person before the law, 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 detention.[383]

265. Under international humanitarian law, persons taking no active part in the hostilities are entitled to be treated humanely.[384] Customary international humanitarian law also includes a prohibition on arbitrary deprivation of liberty[385] and requires parties to the conflict to keep a register of persons deprived of their liberty,[386] respect detainees' family life, permit detainees to receive visitors, especially near relatives to the degree practicable,[387] and allow correspondence between detainees and their families.[388] Parties to a conflict must take all feasible measures 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.[389] Holding persons outside the framework of the law often leads 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.[390]

266. 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.[391]

267. In the context of a crime against humanity, the Rome Statute defines enforced disappearance similarly to the Convention definition set out above. One important

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[382] According to the Convention, and "enforced disappearance" comprises "the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law. See International Convention for the Protection of All Persons from Enforced Disappearance, Article 2.

[383] ICCPR, Articles 9 and 16. The Human Rights Committee, in its General Comment 20 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.

[384] Protocol II, Article 4(1); Common Article 3.

[385] *Customary International Humanitarian Law*, p. 344, Rule 99.

[386] *Customary International Humanitarian Law*, p. 439, Rule 123.

[387] *Customary International Humanitarian Law*, p. 438, Rule 126.

[388] *Customary International Humanitarian Law*, p. 445, Rule 125. This right is also explicitly protected in Protocol II, Art. 5(2)(b.

[389] *Customary International Humanitarian Law*, p. 421, Rule 117.

[390] *Customary International Humanitarian Law*, p. 340, Rule 98.

[391] Rome Statute, Article 7(1)(i). The other (chapeau) elements of a crime against humanity must also be met, for example that the disappearance occurs as part of a widespread or systematic attack against a civilian population, and that the perpetrator knows his conduct is part of the attack.

difference is that under the Rome Statute, the perpetrator can act with the authorization, support or acquiescence of, a State *or* a political organization. [392]

3. Factual findings

i. Qadhafi forces

268. The Commission describes in this section the phenomenon of arbitrary arrest and enforced disappearance. However, it notes that individuals who were the subject of arbitrary arrest were frequently also subjected to other violations of their fundamental rights. Accounts of those other violations can be found in their respective sections and are cross-referenced here.

269. The Commission confirmed its earlier findings with respect to arbitrary arrests by the Qadhafi forces.[393] In the second phase of its work, the Commission interviewed 38 persons who had suffered arbitrary arrest, most of which were first-hand accounts of victims, or of those conducting the arrests. The Commission found that when persons were detained, they were not informed of the basis for the deprivation of liberty. They were not brought before a competent, independent and impartial court or other authority to have the lawfulness of their detention reviewed. They were not provided access to counsel. Rather, they were held beyond the reach of the law. Some appear to have been apprehended on the basis of to their place of origin or residence, those being used as indicators that they were supporters of the opposition.

270. Qadhafi's security apparatus identified suspects in various ways. One former Qadhafi soldier interviewed by the Commission reported that lists of wanted persons were sent out from the "Operations Room".[394] Other persons were caught at demonstrations, or were identified after having been filmed, or were reported by neighbours as expressing anti-Qadhafi sentiment or disparaging the Government. Still others were caught up at a checkpoint with suspicious materials[395] or caught up in wiretaps.[396] Once identified, if the individual was not captured at a demonstration or at a checkpoint, the individual would be arrested at their home or their workplace.

271. Most interviewees reported being blindfolded upon their arrest and taken for interrogation in locations of the Internal Security Agency (*Jihaz Al-Amn Al-Kharaji*), External Security Agency (*Jihaz Al-Amn Al-Dhakhli)*, military bases, or premises of the Military Intelligence. Due to the blindfolds, many were not able to tell precisely where they were taken.[397] Some were later released while others were eventually transferred to

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[392] Rome Statute, Art. 7(1)(e) and (i). Enforced disappearance is further defined in article 7(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."

[393] A/HRC/17/44, para. 90.

[394] Interviews 0143, 0218, 0421. The Operations room is described in Interview 0143.

[395] Interview 0426 told the Commission that he helped establish 10 checkpoints in and around Al-Zawiya on 17 March 2011 and the task of his unit was to search whoever passes through the checkpoint. They were provided with a list of people to be arrested as well as told to search passengers if they found anything that indicates that the person is supporting the thuwar "such as his mobile phone with shots of demonstrations, or weapons. Or if we suspected that he might be thuwar we were to arrest him and send him to camp 77 or hand him over to the Military Intelligence (*Istikhbarat*)."

[396] Interview 0417.

[397] Interview 0180.

prisons. The Commission visited a number of detention centres that had been in operation during the Qadhafi era. Interviewees described additional detention locations that appeared to operate outside the legal framework.[398]

272. Many individuals who were arrested by Qadhafi's security forces described how they were beaten upon arrest and also subsequently, during interrogation (see chap. III, sect. D).

273. The Commission received information about disappearances from various sources. A number of those persons were found when the *thuwar* captured cities and released the prisoners held there, for example from Abu Salim, Ein Zara and other detention facilities around the country. However many of those disappeared have still not been found.[399] The Commission has been unable to verify this number. In Misrata, 317 persons are still missing, while in Benghazi that number is estimated at 946.[400]

i. Tripoli

274. Arbitrary arrests were conducted on a large scale in Tripoli, especially following demonstrations. In one typical example, the Commission met with one former detainee who stated that, in February 2011, he and his father had been organizing the collection of information on the revolution and sending it to the international media.[401] On 26 February 2011, when the two were in their house in Al Falah area in Tripoli, six four wheel drive pickups carrying a group of about 25 armed men in civilian clothes and carrying AK-47s and other guns arrived. They said that they were from the Popular Guard, although the interviewee later learned that others in the group were from Military Intelligence. The interviewee told the Commission how the men entered his house and arrested him, but his father escaped by jumping out from the house to their neighbour's house. The men covered the son's eyes using his T-shirt and tied his hands, put him in the vehicle and took him to the criminal investigation department (CID) in the Salahadeen military camp in Tripoli. There, he was reportedly beaten and locked in a cell with eight other persons. He was interrogated some time later. The interrogators asked him about who he was working with, where his father and other *thuwar* were, and where the location of their stores of weapons was. He told the Commission how, when he refused to answer the questions, he was beaten, threatened with execution, and then raped. He told the Commission about subsequent days of beatings and torture as the officers attempted to extract from him the location of his father.

275. The Commission has noted elsewhere in this report the situation with respect to unofficial detention centres under the Qadhafi government (see chap. III, sec. B and D).[402] As the government lost control, detainees in many of these centres were either released or, in some instances, killed. Others were ultimately freed when people in the neighbourhood broke in and released them.[403]

276. In its first report, the Commission noted that persons who had been disappeared subsequently appeared on television stating their allegiance to the Government.[404] The

[398] E.g. Gargur, Yarmouk, private residences/villas and premises of buildings.

[399] The Commission is aware that not all missing persons were in fact "disappeared" in the legal sense and includes the figures of estimated missing for informational purposes.

[400] Interviews 0443, 0339.

[401] Interview 0385.

[402] A detailed description of those incidents is not repeated here.

[403] Interview 0058.

[404] A/HRC/17/44, para 104.

Commission noted that this practice stopped after the release of its first report and no further incidents were reported.

i. Benghazi

277. The Commission re-confirmed its finding in its first report of the large number of arbitrary arrests that took place as demonstrations broke out in Benghazi in February, 2011. In the second phase of its work, the Commission interviewed more residents of Benghazi who said they had been arrested while protesting and subsequently held outside the law.[405] Their accounts are consistent with those gathered during the first phase of the Commission's work.

278. The head of the Missing Persons Office within the Benghazi local council told the Commission in January 2012 that the total number of missing persons from Benghazi area was 1300.[406] When Tripoli fell in August of 2011, only 354 came home.

i. Al Zawiyah

279. Sources described to the Commission how the Qadhafi forces imprisoned those it believed had participated in the demonstrations.[407] Families were unable to visit those imprisoned; houses were randomly searched and people beaten in the street.

280. For example, the Commission met with one protestor who stated that he was arrested in one such operation. The Qadhafi forces raided his nephew's house in Al Zawiyah and detained him together with his brother and another two individuals in June 2011.[408] They were reportedly taken to a base in Al Zawiyah and kept incommunicado in a container with eight other detainees for three days before being transferred to Abu Salim prison. During these three days, they said they were told to repeat Qadhafi slogans. If they kept silent, they were beaten. They remained blindfolded with their hands tied behind their backs. They were left without food or water inside the container in the summer heat.

i. *Misrata*

281. The Commission noted a particularly high number of arbitrary arrests and disappearances in Misrata. The Commission met with one family who reported that on 16 March 2011 tanks entered the southern entrance of the city and snipers appeared on the roofs. By 10am they heard Qadhafi soldiers yell "Misrata is ours."[409] Members of one brigade reportedly came to the house and took away five male members of the family, the youngest being 14. The soldiers said the men (and boy) would be interrogated for an hour and brought back. The youngest brother returned home on 21 April 2011, another brother in May, the third June, and the remaining two in July and August 2011. They had apparently been taken to Tajoura and Abu Salim, but the family had been unable to locate them. A number of similar accounts were received which were sufficiently consistent as to satisfy the Commission as to their credibility.

i. Nafusa Mountains

282. In the first phase of its work, the Commission collected considerable information relating to arbitrary arrest and disappearances of persons from the Nafusa Mountains area

[405] Interviews 0428, 0443, 0448.
[406] Interview 0443.
[407] Interview 0184, 0203.
[408] Interview 0215.
[409] Interview 0290.

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in particular.[410] Reports were received of individuals detained at checkpoints as they left the mountains seeking supplies during the siege. Some of them were later found in the refugee camps in Tunisia, but many others were found killed, or were never found. Thirty-seven persons of those arbitrarily detained were executed by retreating Qadhafi forces in Al Qalaa (see chap. III, sect. B).

283. The Commission met a nurse who worked at a hospital in Yafran, and who told the Commission he was arrested in May for having treated *thuwar*.[411] The hospital was surrounded and controlled by the Qadhafi forces in late April. At that time the nurse told the Commission that there were no *thuwar* patients in the hospital, as all had been evacuated when the Qadhafi forces advanced on Yafran. The nurse related that on 1 May at 3pm, he was arrested by three men in military dress from inside the hospital. He was taken to a local boy-scouts camp being used by the Qadhafi forces as a base some 20 kilometres from Yafran. After describing the beatings and torture he suffered, he told the Commission that he was transferred along with others to Military Camp 77. On the road, he and other detainees were beaten at several checkpoints manned by Qadhafi forces and called "rats" and "dogs". The Commission notes that in a public speech on 22 February 2011, Qadhafi stated, "…capture the rats" (referring to anti-government demonstrators)…rats are traitors, unbelievers…don't show them any mercy…fight them…. We will march in our millions, to purify Libya inch by inch, house by house, home by home, corner by corner, person by person, until the country is clean of the dirt and impurities".[412] The Commission heard from many witnesses that Qadhafi forces had referred to them as rats during interrogation.

284. When they got to Military Camp 77, one of his captors allegedly said, "I have a nurse with me who helped the rats." After serious maltreatment including beating and electrical shocks during interrogation, the nurse was released three weeks later.

285. The Commission recorded dozens of similar cases where persons from various sectors were suspected of being *thuwar*, supporting them, or otherwise being hostile to the Qadhafi government and who were arrested without charge and held outside the framework of the law. The numbers of these incidents appeared to have decreased over time as the Qadhafi government lost its grip on the country. The last such arrest the Commission recorded was in July 2011.[413] Based on the evidence it collected, the Commission re-affirms its conclusion in its first report that the Qadhafi security forces engaged in a pattern of arbitrary arrests and enforced disappearances in violation of international human rights and humanitarian law.

i. *Thuwar*

286. The situation with respect to thuwar involvement in arbitrary arrest and enforced disappearance changed considerably since the Commission's first report. Where little information was received in the first phase, during the latter phase well over 100 individual cases of arbitrary arrest by *thuwar* were documented. There are several thousand detainees still being held in relation to the conflict.[414]

[410] A/HRC/17/44, paras 98-99.
[411] Interview 0291.
[412] New York Times, 23 February 2011.
[413] Interview 0225.
[414] The *thuwar* brigades are holding as many as 8500 detainees in some 60 locations across Libya. The bulk of these detainees are being held outside the Libyan justice system. ICRC *Libya: Hardship and danger remain*, 16-02-2012, Operational Update No. 12/01.

287. Arrests by the *thuwar* began taking place in significant numbers as soon as they began taking control of areas. For example, when Tripoli fell to the *thuwar* hundreds of former soldiers, police officers, members of the security apparatus, suspected mercenaries and perceived Qadhafi loyalists were systematically arrested, as were members of the political establishment who had not managed by then to escape. *Thuwar* in some cases appeared to be operating from lists of names they collected upon seizing a military base, a police station or government institution. The arrests continued well into December 2011,[415] and January 2012,[416] despite a public call by the Ministry of Interior to halt them.

288. The Commission is concerned that the *thuwar* applied a presumption of guilt to those who fought against them or who they believed supported the Qadhafi Government, irrespective of whether their behaviour during the conflict violated either domestic or international law. According to one interviewee in the Misrata Security Committee, his officers have "a mandate to arrest all the members of the Qadhafi Government who participated actively in the fighting against the people of Misrata and...detain them in Misrata detention facilities".[417]

289. The patterns associated with these arrests were consistent. A group of armed men, usually with machine guns mounted on pick-up trucks, would appear at suspect's home. Generally they would search the house for the wanted person and pillage items of value (see chap. III, sect L). Attempts to oppose them were dealt with harshly. All adult males were normally arrested. Sometimes, the arrestees were released a short time later if there was no evidence that they had actively opposed the *thuwar*, although in some instances their passports were kept.[418] Most often the detainees were held, sometimes for an extended period that was accompanied by maltreatment.

290. The Commission found evidence that some detainees were informed of the reason for their arrest, albeit after some delay. Some interviewees were told that a warrant existed for their arrest, however, they were not allowed to see it. Others were told that the local council had signed off on their arrest.[419] Others appear to have learned of the accusation against them based on the questions during interrogations. They were neither provided access to counsel, nor informed of their right to have one.[420] Arrestees did not appear to have the ability to challenge the lawfulness of their detention. These detainees have been held in circumstances that violate their fundamental human rights, rendering their continued detention arbitrary *per se.*

291. The Commission is aware that in Benghazi, a trial has begun against 41 Qadhafi-era security forces. They appear to have access to counsel, however it is unclear whether other facets of international human rights law are being afforded, such as sufficient time to prepare the defence and the exclusion of statements obtained through torture.

292. People are being held in official and unofficial detention centres. In addition, the Commission is aware that a number of thuwar brigades are operating "unacknowledged" detention centres beyond the reach of any internal or external monitoring – indeed beyond any legal framework. At least one detainee told the Commission they were moved just

[415] Interview 0264.
[416] Interview 0451.
[417] Interview 0458.
[418] Interview 0061.
[419] Interview 0117.
[420] Recall that under Libyan law, detainees only have access to counsel once charged. Human Rights law, particularly the ICCPR, requires that the detainee have prompt access to counsel upon arrest.

prior to the arrival of the ICRC so that they would not be recorded, although the Commission was unable to verify this claim (see chap. III, sect. D).[421]

Tripoli

293. The Commission met the family of a former Qadhafi policeman.[422] The Commission learned that while visiting his parents' home outside of Tripoli in October, 2011, the former policeman and several members of his family saw approximately 90 armed men in 30 cars, mostly pick-ups and Land Cruisers, arrive at the house early in the morning. The men reportedly did not present an arrest or search warrant. They stayed at the house for about two hours and the interviewee told the Commissioner they stole some 22,000 dinars, televisions, telephones and gold jewellery. The men arrested the former policeman and several other males at the house. They were maltreated upon arrest, including being beaten with wooden clubs. The interviewee was kept for a few days, seriously maltreated, then released.[423]

294. The Commission recorded 12 cases of a similar nature in Tripoli alone – not including the Tawergha cases which are treated separately in this report (see chap. III, sect. E) – although the level of maltreatment subsequent to arrest varied.[424]

295. In a practice reminiscent of the Qadhafi Government, those undertaking arrests appear content to arrest a different family member if the individual they are in fact seeking is not at home. For example, the Commission interviewed a man who stated how, in late November 2011, a group of *thuwar* from Misrata (*Katiba Al-Shahid Khaled Qarkas*) came to his house in Tripoli in the early afternoon.[425] They came in about five to six cars with had anti-aircraft weapons mounted on them, with the men inside carrying Kalashnikovs. The man was home with his wife and two children at the time. The *thuwar* said they were looking for the man's brother in law who had served in Qadhafi's administration, although they presented no arrest warrant. The man said they took three cars from the family home as well as several thousand dinars, and other valuables. When two of the man's brothers arrived to help, all three were arrested, blindfolded, put in cars, and questioned about the location of the brother-in-law. Having been blindfolded, the homeowner was not able to tell the Commission precisely where he was taken. All the men were released the following day and were reportedly not maltreated, although most of the stolen items were not returned.

296. The Commission also took note of the practice of re-arrest, which added emphasis to the arbitrary nature of the detention. A number of individuals detained by one brigade and then released were then re-arrested by another.[426] Others were re-arrested by a different faction within the same brigade.[427] Tawerghans, other black Libyans, and sub-

[421] Interview 0176.

[422] Interview 0117.

[423] The interviewee went on to describe to the Commission the maltreatment he suffered. The pattern fits those set out in some detail in the Torture Section of this report (see chap. III, sect. D). One day in November, the interviewee reportedly got a call from the Abu Salim Hospital telling him that the former policeman was there. When the family arrived at the hospital, they found the man in the Intensive Care Unit. He died the following day.

[424] Interviews 0142, 0176, 0178, 0179, 0181, 0185, 0186, 0254, 0261, 0264, 0265, 0435.

[425] Interview 0082.

[426] Interviews 0234 (arrested four different times) 0254 (arrested once by Zintan brigade and later by Tripoli brigade) 0265 (arrested by various brigades, then later by Abu Salim brigade), and 0463.

[427] Interview 0050, arrested by two different Misrata brigades at two different times.

Saharan Africans were particularly susceptible to this practice and their cases comprise the bulk of those registered by the Commission.[428]

297. Groups of armed men invading a home was not the only way that those perceived to be Qadhafi loyalists were apprehended. A Qadhafi government practice documented in the Commission's first report was later adopted by the *thuwar*,[429] This was the arrest of people from hospital and checkpoints.[430] Other persons from the former government decided to turn themselves in.[431] Another reported having been tricked into appearing at a brigade headquarters by one of his neighbours.[432] Yet another individual, a Tawerghan, told the Commission how he had hired a taxi and, while en route to his destination, the driver asked to make a small detour. The driver then stopped alongside a Mitsubishi pick-up truck with 'Misrata' and '17 February Brigade' written on the side. The driver told the soldiers there that there was a Tawerghan in the back seat. The man was arrested on the spot and subsequently maltreated.[433]

298. The Commission is aware that over time, the number of conflict-related arrestees still being held is declining. Some have been released after investigations, but several interviewees reported being able to buy their way out.[434] Others appear to have been released through connections.[435] All this adds to the perception of arbitrariness in the original arrest.

i. Misrata

299. The Commission has described in detail elsewhere in this report the systematic arbitrary arrests and disappearances of Tawerghan males by Misrata *thuwar* (see chap. III, sect. E).[436] One case will suffice here by way of example. In January 2012, the Commission met with a family who had several of their members arrested.[437] On 27 October 2011, a brigade from Misrata (katiba*t al-istiqlal*) detained all of the families, including women and children, in the former Social Security Building there. They were kept there for six days. Everyone was eventually released, except nine males some of who had served in the Qadhafi military. Two of those nine reportedly died under torture inflicted by their captors.

300. *Thuwar* brigades from Misrata have also detained large numbers of Qadhafi security forces and supporters who are not of Tawerghan descent. The Commission met with one 17-year-old detainee who was arrested by *thuwar* apparently under the suspicion of being either a mercenary or a sniper.[438] He said he was tortured and then, when no evidence of his involvement was found, released near the Tunisian border. He told the Commission how he walked to the border and was then re-arrested, this time by the

[428] Interviews 0266, 0271, 0283,
[429] A/HRC/17/44, par. 126-128.
[430] Interview 0266.
[431] Interview 0129. This interviewee told the Commission he decided to surrender himself when he saw one of his former colleagues being dragged in the street.
[432] Interview 0142.
[433] Interview 0234, it was the fourth time he had been arrested.
[434] Interviews 0130, 0186, 0179. Interviewee 0126 told the commission that he was told he would be released if he could come up with 250,000 Libyan Dinar.
[435] Interviews 0181, 0032, 0034, December 2011. It appeared to the Commission that some of these releases were based upon a friend, family member or colleague approaching the brigade that was holding the detainee and vouching for the detainee's innocence despite the position held in the Qadhafi government.
[436] Interviews 0001, 0002, 0003, 0004, 0005, 0006, 0007, 0048, 0049, 0050, 0051, 0052, 0053, 0088, 0200, 0201, 0222, 0229, 0230, 0234, 0242, 0243, 0244, 0248, 0250.
[437] Interview 0197.
[438] Interviews 0455, 0353.

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border guards who sent him to Tripoli. He stated that under two months of torture there he finally confessed that he was a sniper and that he had killed two *thuwar* in Sirte. He was then sent to Misrata. The Commission observed many indications of torture on the young man's body. It was clear that this individual did not understand the reasons for his detention, nor indeed the consequences of such a confession. For these reasons the Commission places limited reliance on his confession to having been a sniper.

301. The Commission met a number of former Qadhafi soldiers being held in Misrata.[439] It is unclear whether the *thuwar* holding these detainees have specific evidence linking these detainees to specific crimes.

302. The Commission was told that detainees are now – as of February 2012 – being referred to a three-judge panel that determines whether the evidence is strong enough to continue the detention.[440] The Commission understands that other judicial review committees are operating in limited circumstances elsewhere.[441] While the existence of a review in these cases is positive, the Commission is concerned these are being conducted in violation of Libya's human rights' obligations. It is unclear, for instance, the extent to which this review is independent and whether statements they have made under torture and coercion are in fact being used in the determination of their continued detention. The Commission is also concerned that the detainees have not been allowed to consult counsel.

i. Al Zawiyah

303. The Commission interviewed several perceived Qadhafi loyalists from Al Zawiyah, and received information on several others, that appear to have been subject to arbitrary arrest by *thuwar*.[442] A loyalist was arrested at home which was subsequently pillaged.[443] The victim was released two months later without charge.

304. Another person who openly declared support for Qadhafi, was arrested at home after Al Zawiyah fell to the *thuwar*.[444] The victim was reportedly alone when a group of five armed men – from the neighbourhood – entered and arrested the victim on accusations of supporting Qadhafi. They had no arrest warrant. They stole money and jewellery. The victim was then detained for five days and interrogated twice by different people. There was no torture or beatings, but the victim was insulted and called Qadhafi's "rat", before being released without charge.

i. Benghazi

305. The Commission met with a number of former Qadhafi soldiers who attempted to return to their homes in eastern Libya at the end of the conflict, but who were arrested by *thuwar*. One soldier told the Commission that he had been re-assigned from eastern Libya to guard Ein Zara prison and remained there until Tripoli fell in late August. He then returned to his home in Ras Lanuf where he was arrested by *thuwar*. He told the Commission that upon arrest he was beaten severely and tortured, but that since then his treatment has improved. It is unclear why he continues to be held and he has not seen a lawyer. The Commission met others with similar accounts.[445]

[439] Interview 0392.
[440] Interviews 0330 and 0458.
[441] Interview 0400. See Amnesty International, *Militias Threaten Hopes for New Libya*, February 2012, p. 11.
[442] Interview 0032.
[443] Interview 0081.
[444] Interview 0085.
[445] Interviews 0438, 0452.

306. As noted above, the Commission is aware that authorities in Benghazi have begun to try before a military court some 41 members of former Qadhafi security forces. They were reportedly involved in an incident in Benghazi in July 2011.[446] Those detainees appear to have access to defence counsel in line with domestic law that foresees counsel only after charges are filed. The case has since been transferred to a civilian court.

307. The Commission expresses its concern, given the instances of torture and maltreatment recorded here and elsewhere in this report, combined with the apparent lack of access to defence counsel during interrogation, that these suspects are being tried in the absence of fundamental judicial guarantees.

Zintan

308. The Commission visited Zintan in January 2012 where it met with a number of detainees in both the Zintan local prison and Manara detention facility, under the control of local officials and *thuwar*. The accounts of these detainees in relation to arbitrary arrest and maltreatment mirror those recorded elsewhere.

309. One former Qadhafi soldier reported to the Commission that he had been injured early in the fighting and did not return to active duty.[447] When Tripoli fell to the *thuwar* he told the Commission that he travelled to Sabha when he was arrested along with 30 other passengers in a bus. He and several others were sent to Zintan's Al Barid prison where he was interrogated.[448] After two months, the investigation turned up no evidence against him, so he was told he would be released; he was provided with a release document. However, on the day of his release, the administration officer in the prison found the documents of his previous service in the Qadhafi military, therefore the prison authority decided to extend his detention. He said he has not been informed of any charges against him, has not had access to a lawyer, nor has he been able to challenge his continued detention.

310. Those of the Mashashiya community appear to have been particularly targeted for arrest. One interviewee told the Commission how he was driving with four others when they were arrested by *thuwar* of Zintan and brought to the former police station where they were subjected to beatings, insults, and electric shocks.[449] They were not interrogated. When the five were later transferred to another facility, the interviewee told the Commission that individuals were allowed to enter the facility and maltreat them, including by shooting at them.[450]

i. Tiji

311. The attack by Nalut *thuwar* on the town of Tiji in early October 2011 is documented elsewhere in this report (see chap. III, sect. E). The Commission met five former detainees, among several dozen who were reportedly arrested after the attack, who described to the Commission that they were held for between two and five days prior to being released.[451] They reportedly were kicked, beaten with rifle butts and fists. They were never charged with any offence and were subsequently released.

[446] Available from: http://www.nytimes.com/2012/02/16/world/africa/in-libya-a-trials-delays-reflect-judicial-disarray.html
[447] Interview 0445.
[448] Al Barid Prison was in the post office building. It was no longer used as a detention facility when the Commission visited.
[449] Interview 0419.
[450] Although no one was killed in these shootings, one of the interviewee's co-detainees was reportedly shot in the leg.
[451] Interviews 0169, 0171, 0172, 0173, 0049.

i. Inter-thuwar detentions

312. Inter-*thuwar* clashes have occurred in the atmosphere of lawlessness that existed in several parts of Libya following the conflict. They were most pronounced in Tripoli where a number of *thuwar* brigades maintained a presence even at the time of writing. Following some clashes, brigades have arbitrarily arrested those associated with other brigades. One such detainee who the Commission interviewed had been taken by a brigade from Wershafana on 11 November 2011 and detained there along with 64 others from Al Zawiyah.[452] The Al Zawiyah brigade held about 27 men from Wershefana. The two brigades had fought over control of the "27 km" checkpoint which had led to several deaths between 10 and 12 November 2011. Both groups arrested residents of the "enemy town" in retribution. Several people were arrested in their cars apparently for no other reason that having Al Zawiyah license plates. Many, but not all were ill-treated. Members of the NTC intervened and mediated an exchange of detainees between the brigades.

i. Enforced disappearance

313. The Commission notes that in a number of the arrests described in this Section, where the detainee is not able to be visited by family, not seen by the ICRC, and not allowed to meet with legal counsel, this might fall under the legal definition of enforced disappearance.[453]

314. For example, one interviewee told the Commission that his brother, a former member of Qadhafi's security apparatus, but who had allegedly defected to the *thuwar*, was arrested at the family home in September 2011.[454] On inquiring into his brother's whereabouts, the interviewee was repeatedly told at each of several locations that his brother was elsewhere. Staff at each location seemed to know little of the actual transfer of the brother as 'they only dealt by word of mouth and no documents were passed." After being passed between two particular Misratan *thuwar* brigades for over a month, the interviewee gave up his search. Sometime thereafter, the interviewee received a phone call from a man who was being held at the former Internal Security Agency detention centre in Misrata who said he had been detained together with the brother and that the brother had succumbed to torture some 25 days prior. The Commission understands that the family has never found the brother or his body.

i. Conclusion

315. The Commission concludes that Qadhafi forces continued their practice of arbitrarily detaining persons it suspected were supporting the *thuwar* or were otherwise anti-Qadhafi. While many detainees may have been participating in armed resistance,[455] the Commission found that family members, peaceful demonstrators, and others wholly uninvolved, were caught up in the Qadhafi Government's response. In conducting these arrests, it failed to afford the requisite legal protections in violation of both its domestic and its international human rights obligations. The Commission has also followed up on

[452] Interview 0032.
[453] Enforced disappearances might amount to a crime against humanity if certain criteria are met, such as when undertaken as part of a widespread or systematic attack on a civilian population. See Rome Statute Article 7(1)(i). Under the International Convention for the Protection of All Persons from Enforced Disappearance (Art. 2), such disappearances are perpetrated by "agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State. It is unclear to the Commission the extent to which those conducting arrests are acting on behalf of the Libyan State.
[454] Interview 0176.
[455] As noted, individuals caught *en flagranti* can be held for a period under the Libyan Criminal Procedure Code. For others arrested later, a warrant for their arrest would be required.

a number of disappearance cases documented in its first report and found that although many were subsequently released and returned to their families, many others appear to have been killed while in detention, and a significant number of persons have never been found. The number of missing persons in Libya remains high.

316. *Thuwar* forces have been involved in the arbitrary arrest and enforced disappearance of perceived Qadhafi loyalists, security officers, alleged mercenaries and members of the former government. Detainees have been arrested without a warrant, without being told the reasons for their arrest, and without a reasonable suspicion that they have been individually involved in criminal activity. Such arrests have often been accompanied by extortion and pillaging. Detainees are neither informed of their rights, nor provided them in practice. The Commission has information that a number of detainees are being held outside any legal framework in unacknowledged centres, although it was unable to independently confirm this information. The Commission received accounts of enforced disappearance that it deems to be credible.

317. The Commission observed a wide variation in the treatment of detainees by the *thuwar*. Some facilities, including unofficial ones, appeared to be meeting some international standards, while other detention facilities, even those under the control of the interim Government, struggled to meet even basic conditions.

318. According to information received in February 2012, some eight detention facilities across Libya – from 60 known locations - are now under the control of the interim Government. The interim Government appears to be making some headway in extending its control over the known detention centres. The interim Government has stated to the Commission its commitment to close all unofficial and unacknowledged detention centres as quickly as possible and take steps to curb maltreatment.[456]

319. Recent statements by the NTC indicate that the new authorities are recognizing the concern and taking steps to address it, following the attention brought to this issue by the UN, and a number of national and international NGOs.[457] Nevertheless, the Commission noted that maltreatment is still taking place in centres under the control of local military councils and security committees and access to family members remains limited. Access to lawyers is still not afforded.

Torture and other forms of ill-treatment

Introduction

320. The Commission encountered reports of torture and other forms of ill-treatment perpetrated on a wide scale by both Qadhafi forces and *thuwar*. The Commission was able to build upon the findings in its first report by visiting more than 20 places of detention, both when the Qadhafi Government was in control of the centres and also during the later period when the centres were under the control of the various *thuwar* brigades and/or the interim Government.[458] In undertaking these visits the Commission interviewed 84 people currently in detention, both victims and perpetrators, and a large

[456] Meeting with Minister of Interior, 28 January 2012; Meeting with First Deputy Prime Minister, 1 February 2012; Meeting with Minister of Justice, 2 February 2012

[457] Amnesty International, *Militia threaten hopes for new Libya*. Available from http://www.amnesty.org/en/library/asset/MDE19/002/2012/en/608ac5a8-95d0-4a3b-89de-b4a1b585feee/mde190022012en.html. International Legal Association Consortium, *Pre-Assessment Mission, Libya, 16 – 23 November 2011*, p. 19 - 20.

[458] Centres in Misrata (5), Tajoura (1), Al Zawiyah (3), Benghazi (1), Zintan (2), several in Tripoli including Mitiga, Maftouh, Ein Zara.

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number more who had been released.[459] The Commission and its forensic pathologist examined the wounds of a number of torture victims and reviewed medical files, including those of individuals tortured to death. The Commission also met with prison commanders, NGOs, and family members of victims. The Commission has concluded that torture was both widespread and systematically[460] perpetrated in Libya throughout conflict Phases II and III.

Applicable law

321. The prohibition against torture is one of the clearest and strongest norms in international law.[461] Torture during armed conflict is both a violation of international humanitarian law and a breach of international criminal law (see chap. I, sect. E). Torture must not be balanced against national security interests or even the protection of other human rights. No limitations are permitted on the prohibition of torture.[462] In addition, 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*.[463] Such conduct constitutes a war crime.

322. All persons detained in connection with an armed conflict must be treated humanely.[464] At the end of the armed conflict, persons deprived of their liberty enjoy the protection afforded under Articles 5 and 6 of Protocol II until their release.[465]

323. Torture can form part of a crime against humanity.[466] The "Elements of Crimes" of the ICC sets out the following elements for the crime of torture during armed conflict:

i. The perpetrator inflicted severe physical or mental pain or suffering upon one or more persons.

ii. The perpetrator inflicted the pain or suffering for such purposes as:

1. obtaining information or a confession;

2. punishment;

3. intimidation or coercion;

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[459] The number of released includes those detained both by the Qadhafi Government and the *thuwar*.

[460] As will be described below, Qadhafi security forces systematically tortured opponents of the then-government that it believed had information about the *thuwar*. They had a system for identifying and arresting not only those who perpetrated criminal acts, but also their family members and supporters who could divulge information. The accounts of those who suffered torture were largely consistent. The scale of the torture in various locations, but especially at the internal security and military intelligence services, indicates it did not occur randomly or upon the whim of a few interrogators. Concerning thuwar abuses, the consistently severe beating of former Qadhafi soldiers, security officials, and Tawerghans that were arrested was also systematic. The indicative patterns are set out in the text that follows.

[461] Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. GAOR, 3d Sess., Part I, at 71, U.N. Doc A/810 (1948) [hereinafter UDHR]. Article 5.

[462] Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/13/39/Add.5.

[463] Protocol II, Article 4, para. 2 (a) and "Common Article 3".

[464] Protocol II, Article 2 (2).

[465] Protocol II, Articles 5 and 6 set out basic guarantees such as human treatment; the ability to practice one's religion; access to food, water and hygiene; and communication with family, and fundamental fair trial guarantees for those facing prosecution.

[466] If committed as part of a widespread or systematic attack on a civilian population. Rome Statute article 8, paragraph 2 (c) (i), and article 7, paragraph 1 (f), of the Rome Statute.

4. or for any reason based on discrimination of any kind.

324. The definitions in the United Nations Convention Against Torture and other human rights instruments (which would apply at all times covered by this report) are substantially the same, reflecting the international consensus on torture's prohibition.[467]

325. The definition provides that "severe" pain must be inflicted.[468] International tribunals and human rights bodies have, to date, found the following acts constituted torture: kicking, beating, hitting, "*falaqa*," (beating on the soles of the feet), flogging, shaking violently, inflicting electric shocks, burning, subjecting the victim to "water treatment,"[469] extended hanging from hand and/or leg chains, and suffocation/asphyxiation.[470] Mental torture has been found where the perpetrator threatened the victim with death or simulates an execution, while having the means to carry it out.[471] These acts have been held to constitute torture irrespective of any subjectively experienced pain of the victim.

326. In its General Comment, the Committee Against Torture made clear that there is an obligation on all state authorities with respect to torture.[472] Any official who has reasonable grounds to believe that acts of torture or ill-treatment are being committed is obliged to prevent, investigate, prosecute and punish.[473] Otherwise, the State bears responsibility and its officials will be individually considered as complicit or otherwise responsible "for acquiescing in such impermissible acts."[474] Investigations should be conducted in accordance with the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[475]

327. The United Nations has developed a comprehensive set of standards to be enforced in places of detention.[476] The overriding principles, based in international humanitarian

[467] Article 1 of the UN Convention on Torture requires the involvement of a *public official*, although the International Covenant on Civil and Political Rights makes no such reference. Note as well that the definition of torture "does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions."

[468] The Commission notes that "Common Article Three" of the Geneva Conventions and Protocol II do not require a showing of severity.

[469] Covering the victim's face with a cloth and pouring water over it, or simply dunking the victims head in water, in order to provoke the sensation of drowning.

[470] See Muteba v. Zaire (124/82), Miango Muiyo v. Zaire (194/85) and Kanana v. Zaire (366/89). Grille Motta, No. 11/1977; Lopez Burgos, No. 52/1979; Sendic, No. 63/1979; Angel Estrella, No. 74/1980; Arzuaga Gilboa, No. 147/1983; Cariboni, No. 159/1983; Berberretche Acosta, No. 162/1983; Herrera Rubio v. Colombia, No. 161/1983; Lafuente Penarrieta et al. v. Bolivia, No. 176/1984. See also Nikolic, Furundzija, Akayesu, at the ICTY and ICTR, and various judgments of the ECtHR, for example Selouni v. France and Aydin v. Turkey.

[471] See Human Rights Committee, General Comment 20. Maritza Urrutia Case, Judgment of 27 November, 2003, Inter-Am. Ct. H.R., (Ser. C) No. 103 (2003). Par 78(c). International Humanitarian Law also contains prohibitions against threats of torture or other cruel treatment.

[472] General Comment 2 of the Committee Against Torture, paras 17-18

[473] *Ibid.*

[474] *Ibid.*

[475] GA Res 55/89 of 4 December 2000.

[476] Standard Minimum Rules for the Treatment of Prisoners, ECOSOC, July 1957 and May 1977 (Minimum Rules). See also Basic Principles for the Treatment of Prisoners, GA Res 45/111 December 1990 (Basic Principles). See also Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, GA Res 43/173, December 1988 (Protection Principles).

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law and international human rights law, are humane treatment and non-discrimination.[477] Particularly relevant here is Protection Principle 7 which requires that all maltreatment of detainees is investigated and punished.[478]

Factual findings

Qadhafi forces

328. The Commission met with 35 people who had personally suffered torture and ill-treatment at the hands of Qadhafi forces.[479] A number of other individuals the Commission met provided corroborating, second-hand accounts of torture. The Commission investigated several alleged cases of persons who died through torture, verified with medical records. One doctor in Tripoli estimated that he had seen 90 deaths that occurred as a result of torture by the Qadhafi forces during conflict.[480]

329. The methods of torture catalogued by the Commission included severe beatings, often with wooden or metal bars, whips, or wires or cables. Electric shocks were also prevalent among the accounts, both by taser-like tools[481] as well as by using stripped wires from an electrical cable plugged into a wall outlet. Victim accounts related electrocution on all parts of the body, including orifices and genitalia, and shocks delivered while the victim was forced to stand in water. Victims related how Qadhafi forces also beat them on the soles of the feet (*falaqa*), on the shins, back and head; burned them with cigarettes or lighters; threatened them with dogs; put toilet paper on their bodies and burned it,[482] suspended them over doors or hung them from bars;[483] urinated on them;[484] locked them in small spaces (such as shipping containers or refrigerated trucks); or held them in solitary confinement for extended periods. Mock executions and threats of death were also reported. The testimony provided to the Commission was provided in circumstances and with detail that engendered confidence in the reliability of the allegation. The Commission was able to independently verify many of these claims either by viewing the wounds and scars of the victims or through medical reports examined by

[477] Protection Principles, "All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person." There are numerous additional tenets applicable to the detention of individuals. For example the detention centre must maintain a registry (Minimum Rules 7), minors are to be separated from adults (except family), suspects are to be held separately from those convicted (Minimum Rules 85/Protection Principle 8), adequate accommodation is to be provided for sleeping in individual cells/rooms (Minimum Rules 9), access to appropriate facilities should be provided in order for detainees to maintain personal hygiene (Minimum Rules 15), regular meals of nutritional value should be provided (Minimum Rules 20), one hour of exercise, outdoors weather permitting (Minimum Rules 21), access to adequate medical services (Minimum Rules 22), contact with family and friends (Minimum Rules 37), provision of reading materials (Minimum Rules 40) and the ability to practice the chosen religion (Minimum Rules 41), and the continued detention of any individual must be subject to judicial or similar independent oversight (Protection Principle 4).

[478] *Ibid.*, Protection Principle 7.

[479] The figure includes those who suffered rape under conditions of state-sanctioned torture.

[480] Interview 0094. Deaths in custody are treated separately in the Unlawful Killings Section, chap. III sect. B.

[481] A taser is an electro-shock implement employed to subdue belligerent individuals, among other uses. It allows the user to aim an electrical current at a target who, when struck, experiences a disruption in the voluntary control of their muscles.

[482] Interview 0390.

[483] Interviewee 0288. A number of interviewees described being forced to squat and then being tied to a horizontal pole passed under their bent knees. Their wrists were tied to the pole and they were hung upside down. Interviewee 0288.

[484] Interview 0401.

the Commission's forensic pathologist. The Commission also visited several of the sites where the events allegedly occurred and found evidence consistent with these accounts.

330. Two primary patterns of torture by Qadhafi forces were identified by the Commission. Most cases of torture occurred in official or unofficial detention facilities (such as shipping containers or private company compounds) as Qadhafi's security apparatus sought information on the activities of those opposing the Government, or simply to punish people for supporting the opposition. Other instances of maltreatment occurred when the opportunity arose, for example during arrest or searches of houses of suspected *thuwar*. This second pattern usually began with hitting, kicking and blows from rifle butts. It occurred as well during arbitrary raids of entire neighbourhoods such as took place in Misrata when all male family members were arrested.[485] Some of the detainees, particularly in the east, were also captured at frontlines.

331. Upon arrest, the security forces would handcuff and blindfold the suspect. Beating usually began immediately upon arrest either with fists, kicking, or with rifle butts. The detainees would most often be driven to a preliminary detention location for interrogation.[486] Questions during interrogation were generally focused on information about the *thuwar* forces, plans, weapons, leadership, and funding. On various occasions a suspect could not be found and a family member was arrested instead, and then the questions were about the activities of the family and the whereabouts of other members.[487] After a few days at the initial location, where generally the most severe forms of torture occurred, the detainees were transferred to a jail. Often beatings accompanied their arrival.[488]

Tripoli

332. There were at least five locations in the Tripoli region where the Qadhafi forces detained and interrogated suspected *thuwar* and their supporters. Among them were prisons in Ein Zara, Abu Salim, Maftouh, Jdeida, as well as the locations of the former Internal Security Agency (*Jihaz Al-Amn Al-Dakhli*), External Security Agency (*Jihaz Al-Amn Al-Kharaji*), and Military Intelligence headquarters (*Jihaz Al-Amn Al-Askari* or *Istikhbarat*). The security agencies had detention facilities at their headquarters, but also within both Ein Zara and Abu Salim.[489] The Commission gathered convincing evidence that torture had taken place in these locations.

333. The Commission met with one former protestor who was arrested by Qadhafi forces on 9 March 2011.[490] He related how he was stopped at a checkpoint and loaded into

[485] See also, Amnesty International, *Battle for Libya*, p. 58. "Some victims were taken by al-Gadaffi forces from their homes, roads or other public places in regions controlled by the opposition during incursions by al-Gaddafi forces. In several instances documented by Amnesty International, al-Gaddafi forces abducted all males, including boys, found during house raids in cities that had declared their support of the '17 February Revolution.'"

[486] There were a number of such locations around Libya. The Commission recorded numerous instances where the headquarters and local branches of the Internal Security Agency, the External Security Agency and the Military Intelligence were used for initial interrogations. However, given that the detainees were normally blindfolded and may not have been previously familiar with these locations, it was not possible is every instance for the Commission to determine the location.

[487] Interviews 0057, 0119

[488] A number of detainees described being "welcomed" to their new detention facility with a severe beating by guards. Interviews 0269 and 0272. The maltreatment normally subsided after that, unless their interrogation continued at the new location.

[489] See Amnesty International, *The Battle for Libya, Killings Disappearances and torture*, September 2011, p. 14 and fn 5.

[490] Interview 0079.

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one of several trucks, along with some 120 other detainees. The entire group was taken to the Directorate of Military Intelligence in Tripoli where they stayed for one night. During this time, the detainees were blindfolded and were beaten intermittently with electric cables. The interviewee stated that he did not know who was beating him, as he was on the ground and the blows were coming from all directions. He said that the beatings lasted for about 20 minutes, and were repeated at intervals. He eventually lost consciousness and woke up when some liquid was poured on his face. The interviewee told the Commission that during the interrogation, he was asked about other *thuwar* and whether he had weapons. He said he was told to provide 15 names of government opponents. The following morning the group was transferred to the Abu Salim prison. Upon arrival, a "welcome party" greeted them with wooden sticks, belts and rubber hoses. The beatings lasted approximately 10 minutes.

Yarmouk

334. The Qadhafi Government also created unofficial detention centres. An agricultural warehouse in Yarmouk served as one such facility.[491] Inmates there reported severe beatings being meted out during interrogations together with electrical shocks from a cable in the wall. The Commission visited the site and found evidence corroborating the torture allegations. The Commission noted the presence of the cross bar on which one witness stated that detainees were suspended. It found ropes described by a survivor as a means for hanging and torturing detainees and wire manacles. The Commission also found bottles used by detainees in which to urinate as they were unable to use a latrine, and a rubber hose and interlaced electric cable that was used, according to a survivor, as a means of beating. The Commission also found hair littering the floor of the annex of the warehouse apparently from routine shaving of the detainees' heads. Separately, the Commission interviewed a survivor who showed scars on the back of his hand and on the inner surface of the victim's right leg, which he said were caused by the application of electrical wire connected to a wall outlet.

335. The site was the scene of a mass execution in August 2011 (see chap. III, sect. B).

1. (d) Al Khums

336. A further example is the use of shipping containers in a commercial compound in Al Khums. The Commission met with a man who had been arrested from his apartment in Al Khums in May 2011 by Qadhafi's security forces.[492] The interviewee said he was taken to a detention centre not far from his home in the premises of a private company. He told the Commission how he was taken into one of the offices and made to squat on the floor, while blindfolded. His wrists were tied in front of him and he was severely beaten, for example by being clubbed with open palms on both sides of his head. The beating lasted about 45 minutes.

337. He was then taken to a shipping container in the yard of the premises and locked inside with seven others. It was completely dark, save for a small number of air holes that had been shot into the sides and roof of the container. He stayed there three days, after which an officer came in and grabbed him by his beard and threw him to the floor. Other soldiers pulled him out of the container and put him in a separate room in the building, alone, for another three days. Early in the morning of the fourth day, he was taken to yet another room, again blindfolded, and then beaten with a thick cable on his arms and other parts of the body. He was asked if he had incited people to go to anti-Qadhafi demonstrations. Another detainee was brought in and they were interrogated together.

[491] Interviews 0059, 0074, 0109, 0177.
[492] Interview 0288.

Both were severely beaten for over an hour. Their clothes were removed down to their underwear. An officer told younger soldiers to bring electric wires. The witness said he saw from under his blindfold that the officer had a stick in his hand, which made a crackling noise. This electric baton was used to electrocute him all over his body. The officer reportedly only stopped because one of his colleagues in the room nearby complained that he could not sleep because of the interviewee's screams.

338. The interviewee also described a form of torture "like a chicken roasting." He told the Commission how he was made to sit on the floor with his knees up and his tied wrists held in front of his knees. An iron bar was then passed between his knees and his arms. He was lifted by two soldiers and the ends of the bars were suspended between two objects. While in this position he was beaten.

339. When the beating stopped, the interviewee stated that he was in such pain that he could not walk. He was dragged back to the container by two soldiers. As the officer was afraid that the interviewee might die, he brought a fellow detainee who was a doctor to treat him. The soldiers brought an intravenous (IV) drip, which the doctor administered. As they were not allowed to use a latrine, when the bag of the IV drip was empty, the detainees put the tube out of one of the bullet holes in the side of the container and then urinated in the bottle so that the urine would go outside. Because of the lack of latrine facilities, the interviewee said he prevented himself from defecating and suffered constipation.

340. The Commission was able to verify the substance of this account in four different ways. First, the Commission visited the site and saw the room where the interrogations allegedly took place. The Commission found the iron bar from which the detainee said he had been suspended and saw how it had been hung between some scaffolding and the window in the room. The Commission found an empty IV bottle with tube attached inside the container, as described. Secondly, an examination of the interviewee by the Commission's forensic pathologist revealed multiple scars healing in patterned, linear "tram-track" bruises consistent with whipping with cables. On the psychological level, the interviewee exhibited deep psychological distress, becoming tearful when recounting the torture he suffered. He also exhibited other signs of Post-Traumatic Stress disorder (PTSD). Thirdly, the interviewee provided the Commission with some of the names of his interrogators. The Commission was able to track down one of those alleged to have been present at the scene, now in a detention centre himself, who confirmed his role in beating the detainees. Finally, the Commission interviewed other witnesses formerly detained in the containers and the conditions, the nature, scope and duration of the maltreatment described were consistent with the above account.[493]

1. *(e) Nafusa Mountains*

341. The Commission viewed video footage reportedly from the cellphone of a captured or killed Qadhafi soldier.[494] The clip shows the Qadhafi forces maltreating an injured *thuwar* who was specifically identified by a *thuwar* commander in Nalut. The injured appears to have two broken legs and seems to be falling in and out of consciousness. The Qadhafi forces are shown interrogating the man, trying to get him to divulge information about *thuwar* operations. One soldier is heard to say, "kill him", while another says, "no, let's first get what information he has." Another soldier starts to give the *thuwar* some water, but he is rebuffed by the interrogator who says clearly, "put nafta (vehicle fuel) in his mouth." The clip ends there and a second clip shows the same

[493] Some accounts differ as to the duration of the beatings and the implements used. Four different detainees reported being suspended during the beatings.
[494] Interview 0319.

thuwar being tossed into the back of a military truck where his dead colleague already lay. While the footage was provided by *thuwar* commanders, the Commission has no reason to doubt its authenticity.

1. (Sexual violence as torture

342. Rape and other types of sexual violence were reportedly inflicted upon inmates in detention by the Qadhafi forces. The Commission interviewed several former detainees, both males and females, who described sexual acts perpetrated against them as a means to extract information, to humiliate them, or (apparently) to punish them for the acts of the victim's family members.[495]

343. The Commission met a young man who had participated in anti-government demonstrations in Tajoura, a Tripoli suburb, in early March 2011.[496] He related that the Popular Guard (*Al-Haras Al-Sha'abi*) attacked the demonstrators using sticks and tears gas and arrested the interviewee along with nine others. The interviewee told the Commission how Qadhafi forces blindfolded them and transported each in a separate car to Abu Salim prison. His captors reportedly put him in an interrogation room and they started to beat him. A short time later, two older men entered the room. They tied his hands and legs, laid him down, insulting him and then they raped him. Afterwards they burned his genitals using a cigarette lighter and beat him further. They then began interrogating him. At midnight they transferred him to Ein Zara prison. The next morning he said he could not move due to his physical and psychological condition. He was admitted to the hospital in Mitiga prison where they gave him medical treatment for his burns. He was returned to his cell and remained in Ein Zara prison until the *thuwar* liberated Tripoli in August 2011, releasing the prisoners.

344. The Commission gathered testimony from eight other former detainees held in Abu Salim prison by Qadhafi forces, two of whom alleged sexual violence.[497] Three detainees alleged sexual violence while being held in Ein Zara prison.[498] Other allegations of sexual violence apparently took place during the interrogations in the offices of the local security agencies, military bases, unofficial camps and in other locations that the victims could not recognize. The incidents included penetration with various objects, electrical shocks on or inside the genitalia,[499] The victims recounted how the violence was used if they refused to answer questions or gave the "wrong" answer. The Commission has set out the reports of rape and other forms of sexual violence in additional detail in the Sexual Violence section of this report (see chap. III, sect. F).

1. (g) Conditions of detention

345. The Commission was unable to make an inspection of detention centres during the early part of the second phase of its work. However, in interviewing detainees held during that period, the Commission recorded accounts that, if verified, would amount to breaches of the minimum standards set out above.

346. As mentioned, detainees interviewed by the Commission were held in shipping containers and warehouses in deplorable conditions. Massive overcrowding, poor ventilitation, inadequate or non-existent hygiene facilities, intermittent provision of food and insufficient water were the norm.

[495] Interviews 0116, 0118, 0119, 0161, 0180.
[496] Interview 0116.
[497] Interviews 0161, 0180.
[498] Interviews 0110, 0120, 0098.
[499] Ten incidents of electrical shocks delivered to genitalia were recorded by the Commission, of which seven were perpetrated against men and three against women.

347. As another example, one detainee told the Commission that after spending several nights in what was a shipping container in Abu Salim, he and his co-detainees were transferred to Ein Zara prison with their eyes covered and their hands tied behind their backs.[500] The interviewee related how, upon arrival, he was put in small room (2 x 2 meters) with two other detainees, but with no bed. They slept on the floor and had one meal per day which was a piece of bread and cheese. The door of the room did not open for three months. There was a small window at the top of the door and the guards allegedly threw the food in from it. There was a water pipe for the toilet inside the room and detainees had to drink from it.

Thuwar

348. In its first report the Commission found that number of persons experienced torture and other forms of ill-treatment at the hands of the *thuwar* in Benghazi.[501] In its missions to Libya in the second phase of its work, the Commission visited more than 20 detention facilities. The centres fell into three broad categories: 'official' centres operated under the aegis of the interim Government; 'unofficial' ones whose existence is acknowledged at the local level by individual *thuwar* brigades, local councils - including security committees or military councils[502]; and finally, a number of "unacknowledged" detention sites. It was not possible for the Commission to visit the latter and the statistics, evidence and analysis herein are not reflective of them. Nevertheless in meetings with authorities, the Commission expressed its concern about the safety of any detainees being held in unmonitored facilities outside the framework of the law.[503]

349. The Commission interviewed 84 current and several other more former detainees of the official and the unofficial facilities in Misrata (Dafniya, Sakit, Wehda, and Amn Al-Jaysh al-Watani), Tripoli (Ein Zara, Jdeida, Mitiga, Njila, Maftouh), Al Zawiyah (Judayem, Al-Sila, Nissa), Tajoura (Hufra), Zintan (Manara and Local), and Benghazi (Rahaba). In addition to Libyans of various ethnic and tribal backgrounds, among the detained interviewees were Chadians, Mauritanians, Serbians, and Sudanese. In many of the detention site visits, the Commission encountered compelling evidence of torture and ill-treatment.

i. Tripoli

350. The fall of Tripoli in late August 2011 saw the surrender of the Qadhafi forces on a large scale. The *thuwar* subjected a significant number of them to serious maltreatment, including torture.[504] Kicks and blows with fists and with rifle butts were dealt out upon

[500] Interview 0401.
[501] A/HRC/17/44, paras. 117-118.
[502] At the time of writing, most detention centres in use in Libya are "unofficial" in that they are operating outside the framework of the interim Government. The Commission is aware that a temporary decree was issued by the Ministry of Interior (Decree number 388, 28 December 2011) purporting to provide a legal basis for continued detention by local security committees. The responsible ministries are making progress in bringing all places of detention under their supervision. In January 2012 only four sites were under interim government control: Maftouh, Judayem, Jdeida and Ein Zara. By the time this report was finalized, some 8 out of 60 known sites had returned to interim Government control.
[503] The ICRC has reportedly visited some 8,500 detainees in over 60 sites. *Operational Update No 12/01,* 16 February 2012, available from www.icrc.org.
[504] The Commission recorded 90 different cases of torture and maltreatment perpetrated against individuals that the *thuwar* believed to have worked in, fought for, or be otherwise loyal to the Qadhafi government. The majority of these cases are (former) members of the various security institutions and Tawerghans. Based on credible accounts, the Commission estimates that the majority

their arrest. Detainees were generally held in a temporary facility before being transferred to a prison or to another location. Lower and middle ranks tended to receive the brunt of the maltreatment. Although many higher ranking members of the former Qadhafi Government were also mistreated, they appeared not to suffer at the same level.[505]

351. The Commission interviewed a young soldier who had been recruited into the 32nd (Khamis) Brigade just before the fall of Tripoli. He described how most of his group surrendered when Tripoli fell.[506] The interviewee said that, upon arrest, the *thuwar* checked the cartridges in the magazines of the weapons to determine who had fired shots against them. Those who had missing rounds in their weapons were severely beaten. As this interviewee had not fired a round he was not beaten at first. However, later he was bundled into a pick-up truck and allegedly severely beaten. He said that the group was taken to a makeshift prison in a school in Marawna district in Tajoura, kept there for eight days and subjected to sporadic beatings.[507]

352. The Commission met a former police officer that had served with Qadhafi's riot police (*al-Da'm al-Amni*) in Tripoli.[508] He was arrested by Misrata *thuwar* in October 2011, handcuffed and taken to former business premises in Tripoli. Upon arrival, they tied his hands to his feet, in a sitting position, and he was hung upside down suspended between two walls on a wooden stick beneath his knees. He was left in that position until early the next morning. In the meantime, various *thuwar* came and hit him with electrical cables all over his body. They poured water on him. He recalls being tortured on eight different occasions during his detention. On the fourth day he recounted having been electrocuted on his feet. Another time he was beaten on the soles of the feet. In one session, the *thuwar* made other detainees count aloud the number of times the interviewee was hit with a cable. He reportedly lost consciousness and could not walk for two days. He remembers that about seven different *thuwar* tortured him.

353. The same detainee told the Commission that he was kept in a metal container with five other detainees, four of whom were tortured frequently. The cell itself was approximately two square meters, allowing just over a square meter for every two people. Detainees reportedly relieved themselves inside the container as they were not allowed outside. He stated that he was released without charge after 25 days.

354. The Commission saw visible marks indicating torture on this detainee two weeks after it was alleged to have occurred. Scars on his wrists from handcuffs, swollen fingers and lower arms, and scars on the legs, back and shoulders were all evident and were consistent with his assertions. There appeared no purpose to the beatings other than punishment, as the detainee did not report that he was asked any questions. The Commission met dozens of other current and former detainees with similar accounts, not only in Tripoli and environs, but in Misrata, Al Zawiyah, Zintan and Zowara.[509]

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of all arrested persons suffered serious maltreatment in violation of Libya's international legal obligations.

[505] Interviews 0143, 0331 and 0344 were high ranking officials in the Qadhafi Government and none of them reported maltreatment.

[506] Interview 0422.

[507] *Ibid.*

[508] Interview 0142.

[509] Interviews 0414, 0408, 0354, 0347, 0340, 0338, 0331, 0334, 0329, 0325, 0315, 0302, 0307, 0174, 0254, 0277, 0212, 0181.

355. The Commission received information that as recently as 20 January 2012, a Libyan diplomat who had served as ambassador to France died in detention in Zintan, allegedly due to maltreatment.[510]

i. Misrata

356. The Commission noted the high number of allegations of maltreatment attributable to *thuwar* from Misrata. The Commission met with detainees in five separate facilities there.[511] Those imprisoned therein came from various locations around Libya and were generally accused of having had some role in the fighting, the siege, or the destruction of the city. A significant portion of the detainees were Tawerghans.[512] Médecins Sans Frontières (MSF) decided to suspend its medical services in Misrata's prisons for allegedly being expected to "repeatedly treat the same patients between torture sessions."[513]

357. The Commission met with a former Qadhafi soldier.[514] He told the Commission that he had deserted from the Brigade when he learned he would be sent to Misrata but was arrested by Qadhafi's Military Police and served 20 days in prison. Later, he was sent to guard a detention centre in Tripoli. He was captured by the *thuwar* when Tripoli fell. He told the Commission that he was beaten daily using sticks and iron bars. He described how his captors drove nails into his foot and the detainee believed they had broken his left arm. He was also reportedly subjected to electric shocks. He stated that the beatings ultimately left him unconscious. The Commission's forensic pathologist examined the interviewee and took photographs. He confirmed that the detainee's left foot had marks consistent with healing after pointed objects (such as nails) were driven into them between the bones of the toes. The Commission's forensic pathologist observed other injuries consistent with the account of beating.[515]

i. Forced confessions

358. The Commission noted another pattern of torture inflicted on former Qadhafi soldiers. During its investigation of sexual violence, the Commission met with five detainees suspected of rape, some of which had reportedly confessed to the crime (see chap. III, sect. F).[516] Each of those who reportedly confessed to rape also alleged to the Commission that they had been tortured, and most of these suspects bore visible markings lending credibility to their claim. Each one stated to the Commission that he had not

[510] See Human Rights Watch, Press Release, 3 February 2012. Available from: http://www.hrw.org/node/104964. Dr. Omar Brebesh was apparently arrested on 19 January 2012. Human Rights Watch reported that the preliminary autopsy stated the cause of death as being multiple bodily injuries and fractured ribs and described photos of Brebesh's body which revealed injuries consistent with a death by beating. The organization also reported that Libyan judicial police had a suspect who had admitted to the killing.

[511] Dafniya, National Army Security Prison, Military Police Prison, Al Wehda and the Supreme Security Committee Headquarters.

[512] The Commission interviewed 40 Tawerghans who suffered torture or maltreatment. This figure includes meetings with family members of Tawerghan men killed in custody and a number of enforced disappearances.

[513] Available from: http://www.doctorswithoutborders.org.

[514] Interview 0287.

[515] *Ibid.* While the Commission's forensic pathologist confirmed that there had been beating of the detainee, the medical examination did not indicate that his arm had in fact been broken, was merely badly bruised.

[516] Interviews 0207, 0212, 0343, 0347, 0354. The location of the detainees has been withheld to lessen the risk of attack.

perpetrated rape, but had confessed to doing so after he could no longer withstand the beatings.[517]

359. The Commission interviewed a detainee who fought with the Revolutionary Guard. He told the Commission that when Tripoli fell in August 2011, soldiers allegedly from the *Souk al-Juma'a* Brigade found and arrested him. He described how he was beaten severely upon arrest and taken to another location. After a few weeks he was told that he would be charged with murder and rape. He said interrogators burned him. The Commission viewed festering wounds from what appeared to be cigarette burns on his arms. The Commission was also able to see scars on the upper part of his body and on his arms which were consistent with his testimony. He stated that two ribs had been broken during the torture sessions and that he had been forced to sign a statement confessing to have raped two girls. The interrogations allegedly continued even around the time of the Commission's visit. He informed the Commission that he did not kill or rape anyone. He has apparently had no contact with his family. He appeared to need treatment for the broken ribs as the Commission observed that the detainee was obviously in pain. The Commission raised the matter of the detainee's medical condition with the authorities.

360. The Commission noted that a number of detainees were allegedly made to sign and/or thumbprint their confession.[518] As noted above, it is impermissible under international human rights law to use as evidence a confession extracted through torture.[519]

i. Treatment of Tawerghans

361. The Commission is seriously concerned about a pattern of mistreatment, including incidents of severe torture, committed against Tawerghans – particularly Tawerghan men on arrest and while in detention – by *thuwar*. It is the Misrata *thuwar* that are most regularly identified as perpetrators. The Commission notes that of the Tawerghans taken to detention centres, most were held in various locations in Misrata (see chap. III, sect. E).

362. In the course of its investigations, the Commission interviewed some 50 Tawerghan witnesses. Of these, 40 had experienced some form of mistreatment – ranging from being made to crawl on all fours and bark like a dog, to severe beatings, electric shocks and mock executions. Several reported deaths in custody of Tawerghans.[520]

363. Multiple interviewees stated they had witnessed the beatings and/or torture of other Tawerghan men, either on arrest or inside detention centres.[521] Several family members of Tawerghan men who reportedly died in detention having been tortured also spoke to the Commission.[522] The Commission viewed medical records and death certificates confirming the allegations of death in custody.[523] The most serious incident reported to the Commission involved the torture and maiming of two men allegedly by *thuwar* from Misrata who shot them in a remote location apparently believing they would bleed to death.[524]

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[517] Interviews 0343, 0212, 0115, 0207.
[518] Interview 0334.
[519] ICCPR Art 14(2)(g).
[520] Interviews 0006, 0050, 0197.
[521] Interviews 0004, 0049, 0196, 0241, 0247.
[522] Interviews 0198, 0200, 0248.
[523] The death certificate indicated he had died the day after his arrest. The initial autopsy report – a copy of which is in the Commission's possession – described evidence of beatings, while the cause of death was recorded as "nervous shock to the system."
[524] Interview 0005. See chap III, sect. E.

364. As with other instances of torture recorded here, the majority of Tawerghan victims were beaten on arrest. The ill-treatment consisted of being hit with hands, wooden sticks, metal sticks, rifle butts and being kicked.[525] In some cases beatings continued until the men were brought to their places of detention.[526] In instances where female relatives attempted to prevent the arrest, they too said they were beaten.[527]

365. Most of those interviewed by the Commission had been detained in Misrata. A few of the men were held in locations in unacknowledged centres, such as houses or offices in Tripoli, Al Khums and elsewhere, in most cases before being taken on to Misrata.[528] It should be noted that the places of detention differed widely. In the majority of cases, arrested Tawerghan men were taken to unofficial detention centres, notably those located in the Al Wahda and Ras Altoba schools in Misrata. In a few cases, Tawerghan men were taken to Tripoli, Al Khums and Misrata and detained there.

366. Those detained experienced beatings of varying intensities. Interviewees generally reported beatings on arrival.[529] The Commission interviewed two Tawerghan detainees who reportedly had confessed to committing rapes in Misrata during the conflict.[530] Both said they had been beaten in order to elicit confessions of rape. In one case, the man was beaten with a whip; the Commission noted scars on his wrists and shoulders.[531] In another interview, the man had been detained in Tripoli before being brought to Misrata. While detained in Tripoli, he had been stripped naked, beaten with a whip and kicked in the genitals. He was beaten again while in Misrata. Both stated their confessions were false. In a third interview, a Tawerghan man told the Commission that he had been beaten while in Al Zawiyah as part of an unsuccessful attempt to elicit a confession that he had committed rape in Misrata during the conflict.[532] He indicated that he had been beaten with metal and wooden bars and whips on several occasions.[533] On the last occasion, he stated, the beating was administered by 15 *thuwar* and that it had left him unconscious.[534] He was moved to Misrata where he was also beaten during interrogations, the most recent beating was of his legs and feet which reportedly took place 15 days before the Commission's interview. The Commission observed marks on both of his legs and on his face. Another interviewee indicated that there were other Tawerghan men in the detention centre who had confessed to rape as a result of beatings but that they were "too severely injured" to be interviewed.[535]

367. One interviewee was held along with nine others in a clinic in Al Khums where he said he was beaten all over his body with cables, rubber hoses, whips and wooden sticks. He was reportedly told that if he was killed, no one would be held to account.[536] Shortly after his release he was again arrested in Tripoli by a group of *thuwar*, who went under the name of "Shuhada Tajoura Misrata." He said they took him to a house in Tripoli

[525] Interviews 0006, 0045, 0049, 0056, 0196, 0199, 0229, 0234, 0241, 0243, 0244, 0270, 0354.
[526] Interview 0045, for example, the interviewee stated he was beaten with wooden sticks while he was taken from Tawergha to Misrata.
[527] Interviews 0199, 0230, 0241.
[528] Interviews 0050, 0088, 0197, 201, 0340, 0354.
[529] Interviews 0340, 343, 340 354.
[530] See chapter III, sect. E, for further detail on the issue of allegations of rape in Misrata.
[531] Interview 0343.
[532] Interview 0354.
[533] Interview 0354.
[534] Interview 0354.
[535] Interview 0340.
[536] Interview 0050.

where he and 35-40 other Tawerghan men were held, beaten and made to make animal noises and to say that Misratans were their masters.[537]

368. One interviewee detailed the arrest and beating of some nine Tawerghan men in Shawarif.[538] He informed the Commission that his brother, a former soldier in the Libyan army, was particularly targeted and received electric shocks as well as being beaten with sticks and belts. His brother was returned to the cell unconscious before being taken to Misrata. The family was informed that the brother died in custody but they are too frightened to investigate further.

369. The most serious incident of torture of a Tawerghan detainee that the Commission recorded occurred when the victim and his brother were arrested in Tripoli in late October 2011 by 6-7 armed men. Like most, they were taken to Misrata where they were held in an isolated location.[539] The interviewee was hung upside down and beaten on his feet with cables.[540] His brother was hung by the wrist and hit on his stomach with chains.[541] They were held for 17 days in a place with no light and no access to a bathroom.[542] They were fed irregularly. Over a course of three days, his brother was beaten on his feet so badly that he was unable to walk.[543] The Commission recorded the still visible trauma to the interviewee's feet when it interviewed him in January 2012. Both men were threatened with a meat cleaver and were subjected to mock executions with guns fired close to them.[544]

i. Vigilantism

370. The Commission noted that family members of *thuwar* killed or injured during the conflict - or even victims themselves - have been given access to detainees and have been allowed to confront and even beat them.[545] This practice does not appear to have subsided despite the time passed since hostilities closed.

371. A report received by the Commission described a victim who had been raped in detention by Qadhafi forces in Benghazi. Upon his release the young man fought for the *thuwar* for several months. Near the end of the hostilities, the man learned that the interrogator who had raped him had subsequently been injured in the fighting and was in a hospital in a neighbouring city. The young rape victim went to the hospital and killed the perpetrator. The authorities apparently arrested him, but released him shortly thereafter saying he would be prosecuted "once the judicial system is up and running again."[546]

372. Another detainee suffered at the hands of an alleged former victim.[547] In Ein Zara prison the Commission met a young man of Chadian decent, but who had lived in Libya his entire life. He stated that he was not involved in the fighting on either side but the *thuwar* arrested him along with an older brother in November 2011. They had no arrest or search warrant. He admitted to stealing a phone and 1500 dinars from a neighbour's vacant house, but the *thuwar* accused him of murder.

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[537] Interview 0050.
[538] Interview 0197.
[539] Interview 0233.
[540] Ibid.
[541] Ibid.
[542] Ibid.
[543] Ibid.
[544] Ibid.
[545] Interview 0262.
[546] Interview 0474.
[547] Interview 0262.

373. The man was allegedly taken to the local military council. As soon as he arrived he was hung by his handcuffed hands onto a door and beaten with rubber hoses by *thuwar*. He was later made to sit on the ground and lift his feet up. He was then beaten on the soles of the feet for some 20 minutes. He said he was unable to walk for some time afterwards. Later, a man who did not work with the local military council, but who came from outside, woke the interviewee up at about 3am, took him outside, made him sit on a bench, and handcuffed one of his hands to its side. He allegedly began hitting him on his head with the back of a rifle and insulting him. Reportedly, he said to the detainee: "I know you, you abducted me. I will teach you a lesson. I will now kill you." The perpetrator then made him kneel, and he put a revolver in his mouth and pulled the trigger. The gun was not loaded. He also beat him on the soles of his feet with a belt. Later, he tied the belt around the detainee's neck and made him crawl on the ground while barking. He then handcuffed him back to the bench, and beat him further. The interviewee fell over with the bench, and the torturer poured cold water over him. The incident lasted about 45 minutes until the interviewee finally admitted to killing and participating in fighting.

374. The Commission learned of another case where *thuwar* stabbed to death a former Qadhafi soldier in late October while he was convalescing in Al Zawiyah hospital.[548]

375. The current authorities acknowledged to the Commission the grave situation with respect to torture in unofficial detention facilities. In a meeting with the Minister of Interior, it was stated that "torture takes place particularly at the moment of arrest and during interrogation; especially at the hands of the brigades."[549] The Minister explained this as a reaction to the crimes committed by the Qadhafi Government - noting rape in particular - and that the pent up anger made it difficult to convince the *thuwar* brigades to respect the rights of detainees.[550]

376. In a meeting with the Commission in February 2012, the Minister of Justice echoed this view, noting that "some mistakes have been made, but that Libya is still in the process of evolving from a revolution to a state." The Minister told the Commission that the interim Government takes reports about torture seriously and that the new Libyan state does not accept violations. He stated that if a detainee complains about torture, an investigation will be opened into the case.[551] The Commission is not aware of any case which has yet been opened, however. All Government officials the Commission spoke with stated their commitment to the rule of law, equal treatment, and human rights. The Commission is aware that the interim Government, specifically the Minister of Justice, has recently issued instructions to those entities operating detention facilities, insisting that torture and maltreatment stop.[552]

i. Conditions of detention

[548] Interview 0032.
[549] Interview 0358.
[550] Ibid.
[551] In response to a later question on what mechanisms detainees had available for filing complaints in centres controlled by thuwar, he responded that the Ministry of Justice is not responsible for *thuwar* violations. The Minister also said he did not know of any *thuwar* having been investigated or prosecuted, referring the Commission to the General Prosecutor. Commission meeting with the Minister of Justice, 2 February 2012.
[552] The Commission also notes that SMS messages that have apparently gone out stating that bad practices of detention and torture hurt the revolution and contradict the revolution's objectives of justice. One such SMS received by a Commission investigator in Tripoli in late January 2012 ended with a call to *thuwar* to hand over prisons and detainees to the Ministry of Justice so that fair trials can be held.

377. The Commission noted a small number of allegations of overcrowding which was explained in part with reference to the number of facilities had been destroyed during the conflict.[553] Most detainees appeared to have their own bed or mattress, or at least access to one. Some facilities appeared unable to provide sufficient heating.[554] Most appeared to have exercise facilities although it was unclear whether the detainees were permitted to use them and for how long. There were a small number of minors detained together with the adult population.[555] Solitary confinement for extended periods was being employed in several sites, and it appeared to be used as punishment for the detainee's alleged crimes during the conflict.[556] Other complaints related to quantity of food, water and fresh air. The Commission could not adequately assess the medical services. Visits by family members remain problematic in several sites and it appeared to the Commission – a fact confirmed by the authorities – that none of the detainees had access to lawyers.[557]

Conclusions

378. The Commission has confirmed its previous finding that torture and other forms of cruel, inhuman or degrading treatment were committed by the Qadhafi Government in violation of Libya's obligations under international human rights and humanitarian law. Severe pain was inflicted upon persons held in detention (including incommunicado detention) and persons perceived to be supporting the *thuwar.* The Commission determined that the torture was inflicted to punish, humiliate or to extract information from the victims. These instances of torture occurred both prior to the outbreak of the armed conflict, (breaching international human rights law) and subsequently during the armed conflict (violating the Geneva Conventions, customary international law, and international human rights law). The Commission found that Qadhafi forces perpetrated torture on a widespread basis. It found further that torture was systematically inflicted upon suspected *thuwar* and their supporters. Members of the security apparatus, in particular the Internal Security Agency and Military Intelligence were found to be primarily responsible.

379. The Commission has found that the *thuwar* committed during the conflict - and continue to commit at the time of this report - torture and maltreatment of individuals and communities that they believe to have been Qadhafi loyalists and those suspected of crimes. Beatings, amounting to torture *per se*, were perpetrated against detainees in official, and unofficial detention centres in violation of Protocol II's requirement to treat humanely all those deprived of their liberty in the course of an armed conflict and international human rights law, particularly the Convention Against Torture. The Commission has concluded that the occurrence of torture by *thuwar* was widespread, having taken place in most of the 17 detention centres visited by the Commission. It found as well that the *thuwar* systematically tortured those they arrested, with severe beatings, particularly upon arrest or arrival at the facilities and targeting foremost members of the Tawerghan community and members of the security forces.

380. The Commission welcomes the statements issued by the interim Government condemning torture and maltreatment and its stated commitment to investigate and punish

[553] Commission meeting with Fawzi Abdel'al, Minister of Interior, 29 January 2012.
[554] Interview 0418.
[555] Interviews 0275, 0394.
[556] Interview 0334. The detainee, a senior officer on the Misrata front, told the Commission he was held in solitary confinement for 65 days. The Commission was able to view the squalid conditions where the solitary detainees were held in that particular centre.
[557] The Libyan justice system foresees legal representation only upon the filing of a charge. No detainees met by the Commission had been formally charged.

anyone involved in such treatment, equally before the law and irrespective of their role in the conflict. The Commission welcomes in particular the efforts related to bringing informal detention facilities under the control of a central authority.

381. Nevertheless, the Commission considers that the maltreatment that has occurred and continues to occur is sufficiently grave as to warrant an investigation targeting not only direct perpetrators, but also those who exercise effective control over such individuals.

382. The Commission understands that no *thuwar* have been charged or prosecuted for crimes related to the maltreatment and death of detainees; and it is unclear whether investigations have been opened by the General Prosecutor even though families of victims have lodged complaints. Also, it is unclear that any vetting system has been put in place to ensure that *thuwar* or former Government members who defected are not given positions in the police or the army where they can repeat violations.

Targeted Communities

1. Introduction

383. The Commission has received reports of abuses against particular groups occurring in Libya between 15 February 2011 and 9 February 2012. In the course of its investigations, it interviewed 111 witnesses in this regard and conducted on-site visits to Misrata, Tawergha, Al Khums, Tripoli, Abu Kammesh, Tiji, Awaniya and other towns in the Nafusa Mountains in western Libya. The Commission has also reviewed UNOSAT satellite imagery as well as numerous relevant reports of non-government organisations, video clips, and media reports.

Applicable Law

384. Applicable law relating to the underlying offences of unlawful killings (see chap. III, sect. B); arbitrary detentions and enforced disappearances (see chap. III, sect. C); torture and other forms of ill-treatment (see chap. III, sect. D); and pillage (see chap. III, sect. L) are set out in the relevant sections in this report.

385. Persecution, a crime against humanity, is defined by the Rome Statute of the International Criminal Court as "the intentional and severe deprivation of fundamental rights contrary to international law by means of the identity of the group or collectivity".[558] For persecution to have occurred, perpetrators must commit a crime

[558] Rome Statute, Article 7(2). In the International Criminal Court's 'Elements of the Crimes', the elements of persecution are further specified:

1. The perpetrator severely deprived, contrary to international law, one or more persons of fundamental rights.
2. The perpetrator targeted such person or persons by reason of the identity of a group or collectivity or targeted the group or collectivity as such.
3. Such targeting was based on political, racial, national, ethnic, cultural religious, gender (as defined in article 7, paragraph 3 of the Statute), or other grounds that are universally recognised as impermissible under international law.
4. The conduct was committed in connection with any act referred to in article 7, paragraph 1 of the Statute or any crime within the jurisdiction of the Court.
5. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
6. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

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against humanity or war crime[559] with discriminatory intent: the victim(s) must be targeted on the basis of identity. This identity may be discernible from objective criteria but may also exist solely in the mind of the perpetrator(s).[560]

386. Forcible transfer, a crime against humanity, is defined by the Rome Statute as "forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law".[561] The term "forcibly" is not restricted to physical force, but may include threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power against such person or persons or another person, or by taking advantage of a coercive environment.[562]

387. The Rome Statute also defines "pillaging" as a war crime.[563] Further, under international human rights law, the right to property is recognised under the African Charter on Human and People's Rights, Article 14 of which reads, "the right to property shall be guaranteed. It may only be encroached upon in the interest of public need or in the general interest of the community and in accordance with the provisions of appropriate laws."

388. Under the Fourth Geneva Convention, collective punishments are a war crime. Article 33 states, "no protected person may be punished for an offense he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited".

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[559] D. Robinson, 'The Elements of Crimes Against Humanity, Persecution' in R. Lee (ed.) The International Criminal Court: Elements of Crimes and Rules of Procedure and Evidence (Transnational Publishers 2001) at p. 95.

[560] M Boot and C Hall, Crimes Against Humanity, Persecution in Triffterer (ed.) Commentary on the Rome Statute of the International Criminal Court – Observers' Notes, Article by Article(Hart Publishers 2008) at pp. 217-218.

[561] Article 7(1)(d), Rome Statute. In the International Criminal Court's 'Elements of the Crimes', the elements of forcible transfer are further specified, as follows:

> 1. The perpetrator deported or forcibly12 transferred, without grounds permitted under international law, one or more persons to another State or location, by expulsion or other coercive acts.
> 2. Such person or persons were lawfully present in the area from which they were so deported or transferred.
> 3. The perpetrator was aware of the factual circumstances that established the lawfulness of such presence.
> 4. The conduct was committed as part of a widespread or systematic attack directed against a civilian population.
> 5. The perpetrator knew that the conduct was part of or intended the conduct to be part of a widespread or systematic attack directed against a civilian population.

[562] Prosecutor v. Milomir Stakić, Case No. IT-97-24-T, Appeals Chamber, Judgement, 22 March 2006, para. 281.

[563] Article 8(2)(e)(v), Rome Statute. In the International Criminal Court's 'Elements of the Crimes', the elements are further specified, as follows:

> 1. The perpetrator appropriated certain property.
> 2. The perpetrator intended to deprive the owner of the property and to appropriate it for private or personal use.
> 3. The appropriation was without the consent of the owner.
> 4. The conduct took place in the context of and was associated with an armed conflict not of an international character.
> 5. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

Factual Findings

a. Qadhafi forces

389. As described by the Commission in its first and the present Report, the Qadhafi Government targeted people for arrest, torture and killing based on their opposition to the Government. However, the Commission has not found evidence that one particular group, within the *thuwar* and their supporters, was targeted more than others. While some towns were historically oppressed by the Government, there is no indication they were treated during the conflict in a worse way as a consequence of this previous discrimination.

i. ***Thuwar***

ii. Targeting of the Tawerghan community by the Misrata *thuwar*

390. Tawergha lies 38 kilometres south-east of Misrata along the road to Sirte. It falls under the administrative jurisdiction of Misrata. The relationship between the people of Tawergha and Misrata deteriorated during the conflict. The Commission is aware of diverging opinions regarding the relationship between the two communities prior to the conflict. Some have suggested that the two communities co-existed harmoniously,[564] while others have stated that underlying tensions over land ownership and racism have always bubbled under the surface.[565]

391. As Libya's third largest city, Misrata was the country's business capital and prior to the conflict the base for many national companies. In contrast, Tawergha was relatively less well-off with lower levels of literacy. Misrata's residents are predominantly Arab while Tawerghans are black descendants of slaves. In meetings with the local authorities, Misratans have consistently informed the Commission that the issue of race was not a significant one in the Misrata-Tawerghan relationship. The Commission notes, however, indications of racism in individual interactions between some Misratan *thuwar* and Tawerghans, as detailed below.

392. Misrata was the scene of some of the conflict's fiercest fighting. Shelling of the city was particularly relentless between mid-March and mid-May 2011, resumed in June and continued sporadically until early-August 2011 when the *thuwar* finally took full control.

393. A number of Tawerghan soldiers, already part of the Libyan army, formed part of Qadhafi forces attacking Misrata. Some are also believed to have joined as volunteers.[566] By mid-May 2011, under the combined assault of the *thuwar* and NATO, Qadhafi forces began to retreat towards various rear positions, one of which was Tawergha.[567] By early August 2011, a section of the Qadhafi forces were shelling Misrata from positions inside Tawergha.[568] The Commission has received reports that Qadhafi forces established checkpoints around Tawergha and would not allow civilians to leave.[569]

[564] Interview 0357.
[565] Interview 0044.
[566] Interview 0043.
[567] Interviews 0043, 0285.
[568] The Qadhafi forces shelling from within a civilian area of Tawergha is a breach of their obligation to the principle of distinction and obligation to take all feasible precautions to protect the civilian population, a violation of international law. See Chapter I, Section E and Chapter III, Section G for a more detailed analysis.
[569] Interviews 0003, 0043.

394. Having taken control of Misrata, the *thuwar* advanced, shelling Tawergha from 10 to 12 August 2011. Grad rockets and S5 rockets, both of which cannot be guided towards specific point targets in the way used by the *thuwar*, were fired into the town.[570] The Commission has received consistent reports of civilians being killed and injured when rockets hit their houses.[571]

395. The *thuwar* entered the town on 12 August 2011 and took control of it by 14 August 2011. Most Tawerghans fled the town between 10 and 12 August 2011, some in cars, others walking.[572] Media reports from the time observed that many fled leaving behind their possessions including clothes, passports and family photographs.[573] While Tawergha was being shelled, *thuwar* from Misrata remained on the outskirts of the town. The Commission has received multiple reports of Misrata *thuwar* shooting at Tawerghans as they left the town, with some fatalities.[574] The Commission also received a report of *thuwar* from Misrata firing at an ambulance evacuating the wounded and the dead from Tawergha on 11 August 2011.[575]

396. Some civilians remained within the town, either because they were trapped by the fighting, were not physically strong enough to flee or because they wished to protect their property from looting. In interviews conducted by the Commission, Tawerghans who had remained inside Tawergha stated that they were either arrested and and taken to Misrata, or were beaten (or threatened with violence) and made to leave.[576]

397. Tawergha, a town with an estimated population of 30,000, was emptied of its inhabitants and remains empty today. The largest group of Tawerghans moved south and took refuge in Al Jufrah district. As detailed below, attacks by *thuwar* coming from Misrata caused many of them to relocate to the relative safety of Benghazi. Another group of Tawerghans fled to Tripoli and Al Khums, usually stopping for a few days in Al Hisha, a town 65 kilometres from Tawergha. Tawerghans living in various internally displaced peoples' camps across Libya have expressed a desire to return.[577]

398. In the days following 13-14 August 2011, the Misratan *thuwar* undertook house-to-house searches of the town. The Commission has received reports that adult male Tawerghans were beaten by *thuwar* and taken to unofficial detention centres in Misrata (see chap. III, sect. D).[578] In one instance, the Commission interviewed a Tawerghan man who reported he had been beaten with metal sticks and had his legs trodden on and who could no longer walk properly as a result.[579] The Commission has no reports of women being detained. In one interview, however, a Tawerghan woman stated that the Misratan

[570] See chap. III, sect G. A video clip of the Misrata brigades attack on Tawergha, uploaded on to YouTube by "FreeMisurata.com" shows the firing of 122mm Grad rockets into Tawergha (at 2.46) as well as the firing of S5 rockets from the back of a modified pick-up truck (4.47). Available from www.youtube.com+watch?v=FZjJvDw2q5c&feature=related.

[571] Interviews 0003, 0043, 0044, 0046, 0053. As an illustration, in Interview 0046, a resident detailed how, on 11 August 2011, a rocket struck his house killing his wife, daughter, son, grandson, nephew and son-in law.

[572] Interviews 0005, 0046, 0048, 0052, 0053, 0197, 0199, 0229, 0248, 0250, 0270.

[573] The Telegraph (UK) *Gaddafi's ghost town after the loyalists retreat*, 11 September 2011; New York Times, *Accused of Fight for Qaddafi, a Libyan Town's Residents Face Reprisals*, 23 September 2011; BBC News Magazine, *'Cleansed' Libyan town spills its terrible secrets*, 12 December 2011.

[574] Interviews 0003, 0046, 0248, 0270.

[575] Interview 0046.

[576] Interviews 0056, 0229, 0247, 0251, 0461.

[577] Interviews, 0048, 0043, 0241, 0242, 0244, 0285.

[578] Interview 0045.

[579] Interview 0056.

thuwar made her crawl on all fours and bark while they insulted her and said that Tawerghans were "dogs" who did not deserve to live".[580]

399. The local authorities in Misrata as well as the Libyan national authorities have expressed the view that the Tawerghans left of their own accord "perhaps out of fear, due to the crimes they committed."[581] Based on more than 50 interviews with Tawerghans, the Commission does not consider this to be the full picture.[582]

400. In the months after Tawergha was emptied of its population, houses and public buildings continue to be looted, shot at, and burnt by the Misratan *thuwar*. According to an analysis of UNOSAT satellite imagery, 49 structures were destroyed or damaged in Tawergha between 12 June 2011 and 20 August 2011, including multiple buildings that were destroyed and showing indications of fire.[583] Between 20 August 2011 and 24 November 2011, while the town was empty, an additional 27 buildings were destroyed or damaged, all likely residential and commercial structures. On 24 November 2011 imagery, a relatively large smoke plume from a fire is visible in central Tawergha.

401. The Commission visited the roads bordering Tawergha on 21 January 2012 and found that all the roads into the town had been blocked by mounds of sand. There were bulldozer tracks leading to each mound. Investigators observed houses being set alight in the town and the sounds of active shooting. They were informed by members of the Misrata *thuwar* that buildings in the town were being used for target practice. The Commission observed that each building appeared to have been struck by multiple weapons. In some cases, buildings appeared to have been deliberately bulldozed. The Commission observed that, while some buildings were totally destroyed, all were uninhabitable with many now structurally unsound.

402. The Commission notes that the Independent Civil Society Fact-Finding Mission was in Tawergha on 21 November 2011 and stated in its report that "a number of apartment buildings and houses in separate compounds throughout the town began to burn. It was apparent that these fires were intentional, and there was a strong smell of petrol in the air".[584] According to Human Rights Watch, its investigators were present in Tawergha from 3 to 5 October 2011 and witnessed "militias and individuals from Misrata set 12 houses aflame".[585] Human Rights Watch investigators also were said to have observed "trucks full of furniture and carpets, apparently looted from homes" being driven out of Tawergha.[586]

403. The Commission observed that the word "Tawergha" had been scratched off road and other signs. In some cases, the words "New Misrata" has been written over them.[587]

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[580] Interview 0251.

[581] Interview 0330. Meeting with the National Council for Civil Liberties and Human Rights, 3 December 2011; Meeting with Minister of Interior, 29 January 2012.

[582] Similar findings were reached by the Independent Civil Society Fact-Finding Mission to Libya. See Report of the Independent Civil Society Fact-Finding Mission to Libya, January 2012, paras. 172-173.

[583] UNOSAT Analysis of damage and destruction occurring in the town of Tawergha, Libya, 11 December 2011, produced at the request of the Commission.

[584] Report of the Independent Civil Society Fact-Finding Mission to Libya, January 2012, para. 178. Note that the Independent Civil Society Fact-Finding Mission said that it was unable to identify those who started the fires.

[585] Human Rights Watch, *Libya: Tawergha Residents Terrorised by Militias*, 30 October 2011.

[586] *Ibid.*

[587] Photographs of the relevant road signs are in the Commission's possession. See also AllAfrica.com, *Libya: Rocky Road Ahead for the Tawerghan Minority,* 13 December 2011. A video clip of the Misrata brigades attack on Tawergha uploaded on to YouTube by "FreeMisurata.com"

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Public buildings such as the school and hospital had been vandalised and the word "slave" appears as graffiti throughout the town. This is consistent with the observations made in a Wall Street Journal article, dated 21 June 2011, where its reporter noted that "on the road between Misrata and Tawergha, slogans like "the brigade for purging slaves, black skin" have supplanted pro-Gadhafi scrawl".[588] Similar graffiti was noted by several other newspapers.[589]

404. While many Misratans believe that Tawerghans received preferential treatment under the Qadhafi Government, this has been rejected by a number of Tawerghans interviewed by the Commission.[590] Several officials and residents of Misrata informed the Commission that Tawerghans relied heavily on Misrata in terms of employment, procurement of basic necessities, and higher education.[591] A dominant narrative that has appeared in both the Commission's interviews and in media reports, is that the Misrata *thuwar*'s targeting of the Tawerghans was founded on a belief that Tawerghans supported the Qadhafi forces during the attacks on Misrata and that their men were responsible for the rape of Misratan women during the conflict.[592] As noted in section on sexual violence (Chap. III, sect. F), the Commission recognizes the unique difficulties of confirming incidents of sexual violence in Libya. The Commission, however, received no substantiated information indicating that individual Tawerghans or organised groups of Tawerghan men raped women in Misrata or elsewhere.[593]

Al Hisha

405. Many of the Tawerghans stopped briefly in Al Hisha before heading either west towards Tripoli or south to the various towns in the Al Jufrah district. A few families settled there. According to interviews conducted by the Commission, some brigades from the Misrata *thuwar* arrived on the outskirts of Al Hisha on 13 August 2011and began to shell the town.[594] Many Tawerghans fled before the *thuwar* entered the town. It was reported to the Commission that those who remained in Al Hisha were attacked periodically by Misrata *thuwar*. On or about 20 September 2011, Misrata *thuwar* entered Al Hisha and arrested nine Tawerghan men who were then taken to Misrata.[595] No grounds were given for their arrest or detention.

Tripoli

406. Most Tawerghans who fled to Tripoli arrived there between 14 and 17 August 2011. The majority settled into a camp for internally displaced people, sometimes referred to as 'Salahadeen camp' in Tripoli. Some rented houses or lived with relatives in Tripoli.

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shows the spray-painting over of the word "Tawergha" on a road sign and the replacing it with "Misrata"; see www.youtube.com+watch?v=FZjJvDw2q5c&feature=related at 4:26.

[588] Wall Street Journal, 21 June 2011, Available from: http://online.wsj.com/article/SB10001424053111903532804576564861187966284.html .

[589] *Gaddafi's ghost town after the loyalists retreat*, The Telegraph (UK), 11 September 2011; *Accused of Fight for Qaddafi, a Libyan Town's Residents Face Reprisals*, New York Times, 23 September 2011; '*Cleansed' Libyan town spills its terrible secrets*, BBC News Magazine, 12 December 2011.

[590] Interviews 0044, 0242, 0251.

[591] Interview 0357.

[592] Meetings with the National Council for Fundamental Freedoms and Human Rights, 3 December 2011 and 1 February 2012; Meeting with the Misrata local council, 25 January 2011. See also Interviews 0330, 0372.

[593] The Commission interviewed two Tawerghans, who, having confessed to rape, refuted their confessions and said that they confessed only as a result of torture. See chap. III, sec. D.

[594] Interviews 0005, 0248, 0250.

[595] Interviews 0195.

407. Multiple interviews conducted by the Commission indicate that after the fall of Tripoli in late August, armed *thuwar* from Misrata entered Salahadeen camp where they arrested 85 Tawerghan men and removed them from the camp.[596] According to testimonies received, where female relatives of the men tried to prevent the arrests, they were beaten;[597] those who were left behind were told to leave the camp immediately.[598] Two of those interviewed identified the *thuwar* responsible as being from the Badr brigade.[599] No information was provided to the families of those arrested about the basis for the men's arrest nor were they told the location to which the men were taken.

408. The Commission received multiple reports that, in the months which followed Tripoli's fall, there were arrests of Tawerghans in private residences, at checkpoints in the streets of Tripoli, and during further attacks on Salahadeen camp.

409. Shortly after the fall of Tripoli, two Tawerghan men reportedly went out of the Salahadeen camp to run errands and were arrested by one of brigades of Misrata *thuwar* in Tripoli.[600] According to the Commission's interview with a family member, their whereabouts are still unknown. In another interview, the Commission heard that in late August, a Tawerghan man was arrested by a group of armed men from his house in the Souq Al Juma'a area of Tripoli and was taken to Al Hufra prison, an unofficial detention centre.[601] He was reportedly held there, without charge, for 56 days during which time he was beaten with electrical cables and wooden sticks.

410. In late August 2011, armed fighters from a brigade of the Misratan *thuwar* reportedly entered the house of a Tawerghan family in the Tajoura area of Tripoli where they arrested 27 males, including two minors.[602] According to the testimony received, the males were beaten and the families were told "you are black, you are nothing" and "you do not belong to this country, go back to Niger where you belong". The Commission was informed that the two minors were later released with bruising and swelling apparent on their bodies. It was indicated to the Commission that the family was not informed of the reasons for arrest nor where the men were taken but the family has learned from other Tawerghans who have been released from detention that the men are being held in Misrata.

411. The Commission received two separate reports of arrests and beatings occurring at a checkpoint in Ghout-al-Ruman where Tawerghan men were removed from vehicles and arrested.[603] In one interview, a man who was detained at the checkpoint in October 2011 and then released, his third arrest and detention since August 2011, said he and some 35-40 others were arrested at the checkpoint by the "*Shuhuda Tajoura* Misrata brigade" and taken to a house in Tajoura where they were held for between 8 and 20 days.[604] While there, the interviewee told the Commission, the men were beaten and made to make animal noises and to say that the people of Misrata were their masters.

412. In early September 2011, a Tawerghan man was reportedly arrested in his house in Tripoli by a Misrata brigade and taken to an unoffocial detention centre at Matiga airport where he saw other Tawerghan men who been tortured, with cigarette burns on their faces

[596] Interviews 0003, 0044, 0049, 0230.
[597] Interview 0044.
[598] Interviews 0043, 0049.
[599] Interviews 0003, 0230.
[600] Interview 0003.
[601] Interview 0250.
[602] Interview 0244.
[603] Interviews 0002, 0050.
[604] Interview 0050.

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and marks on their backs and arms.[605] According to an interview conducted by the Commission, two cars carrying a Tawerghan family were stopped in Tripoli in mid-September 2011 and the two men in the cars were told to get out by armed men who identified themselves from the *Saadoun Sahili* brigade from Misrata.[606] The armed men reportedly assured the families that the men would be interrogated for a few hours and released. According to the information received, the men never returned; recently one has been able to contact a family member to say they are in detention in Misrata.

413. In mid-September 2011, a Tawerghan man was reportedly arrested in his house in Tripoli by armed men in cars with "Badr brigade" painted on the side. The interviewee indicated that no reason was given for the man's arrest and that his family still do not know his whereabouts.[607] In a separate incident, armed men entered the house of a Tawerghan family in mid-September 2011 and arrested six men who lived in the house.[608] According to testimony received, the men's female relatives who tried to prevent the arrests were beaten before the men were taken away to an unknown location. The interviewee indicated that the family then searched hospitals in Tripoli and made a report to the Commission of Missing Persons in Tripoli. Reportedly, the family later received a call from one of the men saying he was being held in Misrata and that the group had been arrested by the *Al Burquaan* brigade, but they do not know what happened to the other five men. A number of Tawerghan men held in the Al Wahda school, an unofficial detention centre in Misrata,[609] had been arrested from the same area in Tripoli by the *Al Burquaan* brigade.[610]

414. The Commission has conducted multiple interviews which indicated that on 10 and/or 11 September 2011, there were a number of distinct attacks on Tawerghans in Tripoli. The Misratan *thuwar* re-entered Salahadeen camp and arrested between 40-50 Tawerghan men.[611] The men were reportedly beaten during the arrest in view of their families and the women were told to leave the camp.[612] According to testimonies received, the *thuwar* presented no arrest warrants and the families were not told of the reasons for the arrest nor where their male relatives were being taken. The Commission was informed that some of the men reached their relatives by telephone and informed them that they are being held in Misrata. One man who was arrested with his cousin at the camp in early September 2011, told the Commission that his cousin was shot in the leg and they were both beaten while being taken to Al Hufra prison in Tripoli where they were beaten with rifle butts on arrival.[613]

415. Following the 10/11 September 2011 attack on the Salahadeen camp, Benghazi *thuwar* moved the Tawerghans to another camp in the former Naval Academy in Janzour, where they are protecting them. Tawerghans have told the Commission that they will not go out into Tripoli for fear of being arrested by Misratan *thuwar*. According to information received, *thuwar* from Benghazi were escorting groups of Tawerghans who need to leave the camp, for example, to withdraw money from local banks in Tripoli, in order to protect them from arrest by Misrata *thuwar.*[614]

[605] Interview 0004.
[606] Interview 0052.
[607] Interview 0001.
[608] Interview 0230.
[609] This detention centre has since been transferred to the control of the Ministry of Justice.
[610] Interview 0001.
[611] Interviews 0049, 0053, 0222, 0229, 0241, 0242, 0243.
[612] Interview 0053.
[613] Interview 0270.
[614] Interviews 0001, 0044.

416. According to interviews conducted, several Tawerghans were stopped while in cars on the streets of Tripoli on 11 and 12 September 2011. One man was reportedly stopped in the Abu Salim area by armed men and taken to a building in Tariq Al-Shat area where he witnessed other Tawerghan men being beaten with cables and given electric shocks before he was transferred to a detention centre in Misrata.[615] On approximately the same date, a Tawerghan man was reportedly stopped by armed men while driving his mother-in-law and other relatives to their house in the Ein Zara area of Tripoli.[616] The armed men detained the man and kept the car, forcing the women to find their own way home. When the women arrived at their house, armed men allegedly entered and arrested the mothers's two other sons, one of whom was a 12 year old boy. Her older son was beaten in front of her and both males were detained in an unknown location for four days.

417. In October 2011, a Tawerghan man and his brother were reportedly taken from their house in the Abu Salim area of Tripoli by uniformed armed men who took them to Misrata where they were held in a shipping container for 17 days where they were badly tortured (see chap. III, sect. D).[617]

418. A Tawerghan man told the Commission how he was arrested in Tripoli by *thuwar* of the "Misrata 17 February brigade" in mid-December 2011, taken to a house and beaten. He was released the next day but his money was taken by the *thuwar*. He informed the Commission that he was too frightened to go to a hospital for fear of being detained for a fourth time and was treated by Médicins Sans Frontières before moving to an IDP camp.[618]

419. Most recently, the Commission noted that on 6 February 2012 there was an attack on a Janzour Naval Academy, home to over 2,000 Tawerghan IDPs, in Tripoli. According to multiple interviews of survivors conducted by the Commission, armed men arrived in 25 vehicles, including pick-up trucks with mounted anti-aircraft guns, their weapons outmatching those of the guards protecting the camp.[619] According to eyewitness accounts, the *thuwar* included brigades from Misrata (*Shuhada* Misrata and *Soukour* Misrata). The Commission was also informed that at least one of the vehicles had a "National Army" plate, suggesting that Ministry of Defence personnel were involved.[620] A minibus had also been brought into the compound prompting fears that arrests were imminent.[621]

420. Eyewitnesses and relatives of those killed told the Commission that the *thuwar* did not provide any reasons for the raids and began to search houses and fired at random. Two Tawerghans, an old man and a woman, were killed.[622] Following these shooting deaths, Tawerghans from the camp began to march towards Palm City, where the United

[615] Interview 0088.
[616] Interview 0196.
[617] Interview 0223.
[618] Interview 0234. The Commission observes this fear appears to be well-founded. Amnesty International has indicated that its investigators were present at a hospital in Tripoli when a Tawerghan patient was taken away by armed men and its investigators were told that at least two other Tawerghan men had vanished after being taken for questioning from Tripoli hospitals. *Gaddafi's ghost town after the loyalists retreat,* The Daily Telegraph (UK), 11 September 2011.
[619] Interviews 0467, 0468, 0469.
[620] Interviews 0467, 0468.
[621] Interview 0469. As detailed in this Section, there have been several mass arrests of Tawerghans by Misrata *thuwar* at IDP camps in Tripoli following 20 August 2011.
[622] Interviews 0467, 0469.

Nations is based, to petition the United Nations to protect the Tawerghans.[623] Some of the Tawerghans were armed with sticks and knives.

421. During this march the Tawerghans came under fire, allegedly from *thuwar* from Misrata and from Janzour, resulting in the deaths of a further five people, including two boys and a girl, all minors. According to eye-witnesses there was no warning issued before the shooting started. The two boys were reportedly shot on the beach, where they had fled to avoid shooting on the main road.[624] The family of one of the adult males who died of his injuries tried to get him to a hospital but was reportedly told by a member of the Misrata *thuwar* that "he and all Tawerghans deserve to die".[625] An unknown number of people were injured.

422. Approximately 100 Tawerghans - men, women and children - on the protest sought shelter in a nearby medical clinic and were prevented from leaving by the Misrata *thuwar* for several hours. Four men were arrested and taken away; their whereabouts remain unknown.[626] Several Tawerghans were beaten by the *thuwar*. Others had their phones taken. Those held at the clinic were insulted by the *thuwar,* who called them "slaves".

Al Khums

423. According to interviews conducted by the Commissions, it appears that a small number of Tawerghan families moved from Tripoli to Al Khums due to the attacks on Tawerghans by Misratan *thuwar*.[627]

424. By mid-September 2011, *thuwar* from Misrata entered Al Khums. In one instance, the Commission was informed that the armed men identified themselves as being from the Misratan *thuwar* and arrested five men and took them away. No reasons were given for the arrest and the families were not informed of where they were taken. Those that were eventually released informed the families of those still detained that the men were being held in Misrata by the *Shuhada* brigade.[628]

425. The Commission was also informed that one group of Tawerghans was searched by Misratan *thuwar* in mid-September and given one week to leave the town. A week later, the same armed men reportedly returned and arrested a young man who was beaten in front of his family.[629] According to the testimony received, when the young man's mother and sister tried to prevent the arrest, they were hit with rifle butts. No reasons were given for the arrest. During this incident, the *thuwar* fighters from Misrata were reportedly shouting, "we will kill you, you slaves".[630] According to the interviewee, the family was given no information as to where their son was taken; two months later the son managed to call them and say he was being held in Misrata.

426. In a separate incident, also in late September 2011, a group of armed men is said to have entered the house of a Tawerghan family and arrested two men, telling them "you blacks, you animals. Forget about Tawergha, it is now the new Misrata".[631] The men were

[623] *Ibid.*
[624] Interviews 0467, 0468, 0469.
[625] Interview 0467.
[626] Interview 0469.
[627] Interviews 0048, 0050.
[628] *Ibid.* Interview 0050 also details a separate incident in mid-September 2011 when a group of men from Misrata came to Al Khums and arrested all the Tawerghan men that they could find.
[629] Interview 0199.
[630] *Ibid.*
[631] Interview 0050.

reportedly taken to a medical clinic in Al Khums where 10 others, both Tawerghans and other Libyans, were detained. The person interviewed by the Commission was held for 5 days and was severely beaten with rubber hoses, whips, cables and wooden sticks. Scars were still visible two months later. The interviewee noted that the detainees of Arab descent were also beaten, but not to the extent of the Tawerghans.[632]

Sirte

427. The Commission has recorded attacks on Tawerghans based in Sirte in late September and early October 2011.

428. In mid-September 2011, armed men from the *Qariat al-Mujahda thuwar* from Misrata reportedly entered a farm in Sirte where a number of Tawerghan families were staying. According to the interview conducted by the Commission, eight men were arrested with no reasons given for their arrest and the families were not informed of where the men were taken.[633]

429. By early October 2011, *thuwar* from different parts of the country were battling Qadhafi forces in and around Sirte. The Commission has received a report of 17 captured Tawerghan Qadhafi fighters being executed by Misrata *thuwar* (see chap. III, sect. B).[634]

430. The Commission received the testimonies of four Tawerghan men who had reportedly been arrested, detained and severely tortured while in Sirte (see chap. III, sect. E). A fifth man who had been with them who reportedly died as a result of torture. The men were rearrested in late December 2011 by the Misrata *thuwar*, which had "1973 brigade" painted on the side of the vehicle.[635] In the course of their detention, in various locations over the course of two weeks, the men were reportedly stripped, kicked in the back, hit with baseball bats, beaten with wooden sticks and electric cables, and handcuffed at the ankles and wrists for days.[636] They told the Commission that during "interrogations" they were beaten, had hot wax poured in their ears and were told to confess to committing rape in Misrata.[637] The Commission was told that one man had diesel poured on to his back which was then set alight; the same man was held in shackles for 12 days.[638] Another man was reportedly taken away and never seen again.[639] According to the interviewees, they were eventually released through the intervention of *thuwar* from Benghazi who took them to a hospital in Sirte and then on to Benghazi.

431. The Commission reviewed the medical reports of the four men as well as photographs which detailed the extensive physical trauma that they had evidently undergone. Two of the men had multiple infected wounds. The man who had been shackled was no longer able to stand. The other two men had broken bones in their hands and for one, a loss of feeling in one of his feet was attributed to having been handcuffed at the ankle. Injuries were still visible. The Commission has been unable to verify what happened to the fifth man.

Zlitan

[632] *Ibid.*
[633] Interview 0053.
[634] Interview 0195.
[635] Interview 0460.
[636] Interview 0460.
[637] *Ibid.*
[638] *Ibid.*
[639] *Ibid.*

432. The Commission has received a report that a Tawerghan, a captured Qadhafi fighter, was held for five days at an unofficial detention centre in Zlitan where he was severely beaten with wood sticks and rubber cables.[640] After five days he was reportedly transferred to a detention centre in Misrata.

Towns in Al Jufrah

433. As many of 15,000 Tawerghans, half of the town's population, fled into the southern district of Al Jufrah through Sawfajjin.[641] Many of them settled briefly in Hun, Al Jufra's district capital before proceeding on to Benghazi where local *thuwar* were providing them with protection from attacks.

434. According to interviews conducted by the Commission, two Tawerghan men were arrested on the outskirts of Wadaan in Al Jufrah by *thuwar* forces. The two reportedly had their hands tied behind their backs and were placed in the rear of a pick-up truck. In the course of an argument, one of the men was thrown out from the truck and shot three times while on the ground.[642] He died from the wounds. According to the same interviewee, the surviving man was taken to a warehouse in Wadaan where other detainees, some of them Tawerghan, were held. The Commission heard that the man was beaten while being transported to the warehouse and also while he was held at the warehouse. He was reportedly released after six days without knowing the reasons for his arrest, and without being charged or being brought before an official body.

435. The Commission received information about an attack against Tawerghans taking place in late October 2011 in the town of Shawarif involving the arrest of 48 Tawerghan families.[643] Reportedly, all 48 families, including women and children were detained by the Misratan al-Istiqlal brigade in the former Social Security building in Shawarif. All were eventually released with the exception of nine men. According to a testimony received, one of the nine men - a former soldier who had participated in the Qadhafi forces attack on Misrata - was beaten with sticks and subjected to electric shocks until he became unconscious.[644] The man was reportedly then taken to Misrata. According to the individual interviewed, the man's whereabouts were unclear though the family heard that he died in custody.[645]

436. Another of the nine arrested men was also taken to Misrata. Following an investigation by his family, it was discovered the man had died and his body had been taken to the Sabi'a hospital.[646] According to the official autopsy report, a copy of which has been retained by the Commission, the man died as a result of a skull fracture.

437. In Alut on or about 18 August 2011, two Tawerghan men were moving southwards when they were reportedly stopped on a roadside in Alut by six armed men in a pick-up truck with the names of one of the Misrata brigades painted on the side.[647] According to information received by the Commission, the two men were beaten, with one having his nose broken after being kicked in the face. The two men were reportedly

[640] Interview 0201.
[641] Human Rights Watch, *Libya: Militias Terrorizing Residents of 'Loyalist' Town*, 30 October 2011, available from: http://www.unhcr.org/refworld/docid/4eb2562d2.html. Due to time and security constraints, the Commission was not able to conduct investigations in Al Jufrah and in some locations in Sawfajjin.
[642] Interview 0006.
[643] Interview 0197.
[644] *Ibid.*
[645] Interview 0198.
[646] *Ibid.*
[647] Interview 0005.

threatened with death with an anti-aircraft gun being aimed at them before being eventually placed in front of a tree and shot.[648] Severely wounded, the *thuwar* allegedly left them there to die. One of the men, who had a flesh wound, managed to flee. While the other, who had a serious gunshot injury to his right leg, managed to survive for several days eating leaves and drinking water from irrigation pipes, before he was found by Tawerghans who came in search of his body.

438. The IDP camps in Al Jufrah district are now being protected by the Benghazi *thuwar*. There have been confrontations between the Benghazi and Misratan forces as the Misratan forces are prevented from entering the camp. One officer from Benghazi told Human Rights Watch that members of the Misratan brigades fired at his feet. He told the investigators that the Misratan brigades now "mainly…. looking for stray Tawerghans in the street…. They're on a hunt".[649]

Benghazi and eastern Libya

439. A significant number of Tawerghans are now in IDP camps in Benghazi.[650] Due to continuing attacks on Tawerghans in IDP camps in Al Jufrah district by Misrata *thuwar*, *thuwar* from Benghazi had escorted the Tawerghan community there to Al Halis and Sidi Faraj camps in Benghazi and were providing protection to those camps.[651]

440. According to the Tawerghan council in Benghazi, there are estimated an estimated 12,000 Tawerghans displaced to Benghazi and another 4,000 Tawerghans displaced to Ajdabiya, Al Bayda, Tobruq and Sabah in eastern Libya.[652] The Commission has not been able to verify these figures.

441. The Tawerghan council in Benghazi informed the Commission that *thuwar* from Misrata had tried to attack the IDP camps in Benghazi and in Ajdabiya on several occasions but had been pushed back by Benghazi's February 17 and *Al Jazeera thuwar*, respectively. The council suggested that much of the Tawerghan community's money is in banks in Misrata which they are unable to access.

Misrata

442. Following the fall of Tawergha and the subsequent displacement of the Tawergha community, the majority of the Tawerghans who were arrested in different towns in Libya were transported to and detained in Misrata.[653] According to interviews conducted by the Commission, they were held in unofficial detention centres such as the Al Wahda school,[654] the Ras Altoba secondary school[655] and a post office.[656] In one instance, Tawerghan men were held in a shipping container.[657]

443. The Commission has documented multiple incidents of Tawerghans held in detention in Misrata being subjected to incidents of torture and other cruel, inhuman and degrading treatment or punishment. While most of the Tawerghans experienced physical violence, the extent of the violence appears to have varied, depending on the individuals detaining them (see chap. III, sect. D).

[648] *Ibid.*
[649] Human Rights Watch, *Libya: Tawergha Residents Terrorised by Militias*, 30 October 2011.
[650] Interview 0465.
[651] *Ibid.*
[652] Interview with the Tawerghan council in Benghazi, 25 January 2012.
[653] As detailed, for example, in Interviews 0001, 0045, 0049, 0050, 0088, 0233.
[654] Interviews 001, 049, 0088.
[655] Interview 0045.
[656] *Ibid.*
[657] Interview 0233.

444. A Tawerghan man and his brother were arrested in Tripoli in late October 2011, without a warrant, and taken to Misrata where they were held in a shipping container. Reportedly, both men were tortured: on one day, the man was hung upside down and beaten, including having his feet beaten with electric cables. The Commission heard that his brother was hung by the wrist and beaten with chains. His brother was reportedly beaten on his feet every day for a three day period and for a time could not stand up, having to crawl to move. According to testimony received, they spent 17 days in a container with no light, were not given access to a bathroom and were only being given food occasionally. The guards reportedly informed the man that they had killed his brother and that they were going to kill him and then fired their weapons to his side. The two were eventually released. The injuries to the man's brother's feet were still visible two months later.[658]

445. Another interviewee witnessed the death of a 30 year old Tawerghan school teacher detained in a post office in Misrata.[659] The interviewee, who had been arrested in Tripoli in mid-August 2011, indicated that the man had been brought in in early September, bleeding from the head. Guards reportedly denied requests for medical attention and he died the following day. [660] Another interviewee who had been arrested in Al Khums and taken to a detention centre in Misrata indicated to the Commission that he witnessed the deaths of two Tawerghans detained with him.[661] During visits to detention centres in Misrata, the Commission interviewed several Tawerghan detainees who informed that they were beaten regularly, often unprovoked.[662]

446. The Commission also notes the 22 interviews of Tawerghans detained in Misrata completed by Human Rights Watch, many of which describe Tawerghan detainees having their bones broken, being beaten around the head, suffering electric shocks, being beaten with a variety of objects including whips, rifle butts, metal bars, wooden sticks, rubber hoses and electrical cables. One man "displayed fresh gashes on his face and arms, and blood was visible inside his mouth. During the interview, the man lost consciousness for about one minute".[663]

Public statements made by the Misrata thuwar

447. The Commission notes that the Misratan *thuwar* have been open about their treatment of the Tawerghans. In one interview with the Commission, a *thuwar* said he thought that Tawerghans deserved "to be wiped off the face of the planet".[664]

448. Speaking to the Sunday Telegraph, an officer in charge of *thuwar* in Tawergha said, "we gave them thirty days to leave…We said if they didn't go, they would be conquered and imprisoned. Every single one of them has left, and we will never allow them to come back".[665] The same officer continued, "[t]he military council will decide what will happen to the buildings, But over our dead bodies will the Tawerghas return", with another commander stating to the reporter, "Tawergha no longer exists."[666]

Statements made by NTC and Libyan government officials

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[658] *Ibid.*
[659] Interview 0045.
[660] *Ibid.*
[661] Interview 0050.
[662] Interviews 0338, 0354.
[663] *Ibid.*
[664] Interview 0209.
[665] *Gaddafi's ghost town after the loyalists retreat,* The Sunday Telegraph (UK), 11 September 2011.
[666] *Ibid.*

449. Mamoud Jibril, then the NTC Prime Minister, in a speech at a public meeting in the Misrata town hall, was quoted as saying "Regarding Tawergha, my own viewpoint is that nobody has the right to interfere in this matter except the people of Misrata."[667]

450. In meetings with the First Deputy to the Prime Minister and the Adviser to the Prime Minister in January 2012, it was indicated to the Commission that the Libyan government was trying to resolve the "Tawergha problem" but had not yet been successful.[668] The impasse was attributed, by those interviewed, to the crimes of rape they believed had solely been committed by Tawerghan men. Those interviewed appeared not to be aware that, according to the Commission's investigations, confessions of rape from detained Tawerghan men had been elicited through use of torture (see chap. III, sect E).

451. In its meeting with the Libyan Minister of the Interior, the Commission was informed the issue of Tawergha had "historical, cultural and political dimensions" and that most Tawerghans participated in the Qadhafi forces attack on Misrata.[669] The Minister stated that the Tawergha forces committed rapes and killings in Misrata and indicated that while Libyans would forgive "blood crimes" they will never forgive "honour crimes". The Minister indicated that "no force on earth can return people of Tawergha to their town under the current circumstances", and suggested that the Libyan state resettle them elsewhere in Libya with proper educational, health care and other facilities.[670]

Targeting of the Mashashiya by Zintan *thuwar*

452. The Mashashiya were, traditionally, nomadic shepherds from southern Libya. In the early 1970s, the Qadhafi Government reportedly relocated the Mashashiya to towns and villages to the south-east of the Nafusa Mountains in western Libya. This reportedly created tensions between the Mashashiya and other communities including the Zintan, the Khaleifa and the Kikla, members of which are of Arab and Amazigh descent, and who believe that land was effectively taken from them.[671]

453. During the conflict, the Amazigh communities in the Nafusa Mountains and the Arab communities in Zintan were united in their belief that the Mashashiya uniformly supported the Qadhafi government. *Thuwar* from the Nafusa Mountains claim that Mashashiya towns, such as Oumer, Zawiyat-al-Bajoul and Awaniya, were used as bases from which Qadhafi forces shelled Zintan and surrounding villages.[672] It is also alleged that the Mashashiya reneged on an agreement, made with the various tribes, that they would remain neutral during the conflict but instead allowed the Qadhafi forces to base in their towns.[673] It remains unclear to the Commission, however, whether the Mashashiya consented to Qadhafi forces' presence.

454. *Thuwar* from Zintan reportedly entered *Zawiyat-al-Bajoul* in May 2011 and Awaniya in July 2011.[674] It appears that many of the families living there had fled to Tripoli or Shgeiga, when fighting intensified and in anticipation of attacks. Those interviewed by the Commission stated that men in the towns were killed or detained. Mashashiya community leaders provided the Commission with lists of 20 killed, 13

[667] Wall Street Journal, 13 September 2011.
[668] Meeting with members of the Libyan cabinet, January 2012.
[669] Meeting with the Minister of the Interior, January 2012.
[670] *Ibid.*
[671] *Settling Old Scores: Tribal Rivalries Complicate Libyan War*, Der Spiegel Online, 26 July 2011.
[672] Interview 0259. See also *Settling Old Scores: Tribal Rivalries Complicate Libyan War,* Der Spiegel Online, 26 July 2011.
[673] *Ibid.*
[674] Interview 0278.

injured or beaten and the names of 26 people who allegedly remain in detention in Zintan.[675] The Commission is, however, unable to confirm the circumstances of all the deaths, but is aware of an 82 year old man shot by Zintan *thuwar* at home in Zawiyat al-Bajoul (see chap. III, sect. B).[676] Further, the Commission has received other reports of Mashashiyans being extra-judicially executed by members of the Zintan *thuwar*.[677]

455. The Commission was able to confirm reports that some Mashashiya detainees have been tortured by Zintan *thuwar*.[678] One Mashashiyan, a former member of the Qadhafi forces, was arrested and taken to a detention centre in Zintan. There, according to his testimony to the Commission he was beaten by hand, plastic hoses, metal bars and wooden sticks all over his body and head. [679] At some point he was suspended by his tied hands to the door. He lost consciousness from the beatings. He was beaten four times and had his face hit against a glass window. The Commission observed that the man still had visible scars on his forehead several months after the beating. The same interviewee indicated he knew of other Mashashiyans who had been tortured while held in the detention centre in Zintan.

456. Both Zawiyat-al-Bajoul and Awaniya were looted, with public and private properties ransacked and burnt.[680] The Commission notes a newspaper's description of Awaniya in July 2011. "The shops lining the highway in Awaniya were looted and are now littered with garbage. In some stores, even the shelves are missing. In the town itself, houses stand empty and ransacked, and some have been burned down. Other towns look similar. New houses are still burning days after the rebels took over, and trucks are removing anything that was overlooked during the initial looting: sacks of wheat as well as food and sheep. A piece of graffiti on the wall of an empty supermarket in Awaniya berates the 'Mashashiya traitors'".[681]

457. Mashashiyans who have attempted to return to their homes, either to collect belongings or in an attempt to return permanently, have reportedly been beaten and/or denied passage at checkpoints manned by *thuwar* of Zintan.[682]

458. In December 2011, *thuwar* of Zintan entered Shgeiga, a Mashashiya town, saying they were there to remove remaining pro-Qadhafi elements. They reportedly shelled the town leading to civilian casualties with confrontations continuing until the NTC stepped in two weeks later.[683]

459. The Commission attempted to enter Awaniya in mid-January 2012. This provoked an angry reaction from a passing member of the Zintan Military Council and a refusal by the Military Council to allow entry based on an ostensible threat from Qadhafi supporters still remaining in the town.

460. In late January 2012, the Commission again attempted to visit Oumer, Zawiyat-al-Bajoul and Awaniya to view the physical state of the towns. The Commission was prevented from driving through the town by a representative of the Zintan brigade on the

[675] *Ibid.*
[676] Interview 0328.
[677] Interview 0298.
[678] *Ibid.*
[679] *Ibid.*
[680] Human Rights Watch, *Libya Opposition forces should protect civilians and hospitals*, 13 July 2011, http://www.hrw.org/news/2011/07/13/libya-opposition-forces-should-protect-civilians-and-hospitals
[681] *Settling Old Scores: Tribal Rivalries Complicate Libyan War*, Der Spiegel Online, 26 July 2011.
[682] Interview 0328.
[683] Interview 0278.

grounds of continuing danger from Qadhafi supporters. Following discussions with the *thuwar* and officials on both occasions, it is the view of the Commission that the threat of alleged attack by Qadhafi supporters was not a credible reason for refusal. Nonetheless, damaged or burned stores and other structures could be seen from the main road in Awaniya. Graffiti was written on the town signs, including "Mashashiya - Qadhafi's dogs".

461. Reconciliation attempts have, so far, been unsuccessful. According to testimony collected by the Commission, the common understanding of the mountain tribes that fought together to oust the Qadhafi government is that the Mashashiya cannot return unless they can prove that they own the land that they used to live on.[684] The requirement that the Mashashiya prove ownership of their land appears to be linked to the historical context in which the Mashashiya came to live in western Libya.

Targeting of residents of Tiji by the Nalut *thuwar*

462. The main population of the Nafusa Mountains is comprised of Amazigh people. Tiji and Badr, on the other hand, are two towns largely populated by Arabs and perceived as loyalist by the *thuwar*. Qadhafi forces were based **at** a military area inside Tiji from 25 March 2011 to 15 August 2011 and the town was used as a base from which to attack other mountain towns, then under opposition control.

463. *Thuwar* from Nalut took control of Tiji on 15 August 2011 as Qadhafi forces retreated. According to testimonies received, many town residents appear to have fled before the forces from Nalut entered. The Commission has received reports of looting and vandalising of houses and public buildings in Tiji at this time.[685] Men found still within the town were reportedly beaten.[686] Badr had also fallen to *thuwar* from Tripoli on 16 August 2011. The following day, *thuwar* from Nalut reportedly entered Badr and demanded that its remaining residents leave.[687] It has been alleged that the Nalut forces killed three brothers who had remained in the town.[688]

464. On 1 October 2011, approximately 300 armed fighters from the Nalut *thuwar* returned to Tiji. The alleged trigger for this was the shooting and killing of a married couple passing in a car at a checkpoint by a sister of the three brothers reportedly killed in Badr on 17 August 2011.[689]

465. Reportedly, the attack began with the Nalut *thuwar* shelling Tiji with Grad rockets and mortars.[690] The shelling led to at least 4 civilian casualties. In one incident a shell struck a house, killing two women and injuring three other people in the house including a nine year old boy.[691]

466. Adult men appear to have been arrested, without a warrant or any reasons provided and taken to the Criminal Investigations building in Nalut. Their families were not informed of the place of detention.[692] One interviewee told the Commission that he was detained with four of his male relatives at a checkpoint manned by Nalut *thuwar* as they

[684] Interview 0259. See also Der Spiegel Online, *Settling Old Scores: Tribal Rivalries Complicate Libyan War*, 26 July 2011.
[685] Interviews 0171, 0173.
[686] Interview 0173.
[687] Interview 0320.
[688] Interview 0320.
[689] Interview 0320.
[690] Interviews 0169, 0223, 0224, 0226, 0232, 0305, 0320.
[691] Interview 0223.
[692] Interviews 0171, 0172, 0226.

attempted to enter Tiji.[693] In a "Summary of Memorandum of events of Tiji and Badr (Area of Si'an)" compiled by the Tiji Local Council and delivered to various NTC representatives, the Council has listed 41 men detained on 1 October 2011.[694]

467. The Commission has received reports of men from Tiji being beaten with rifle butts and kicked while in detention there.[695] During the beatings, members of the Nalut *thuwar* allegedly said that those from Tiji were not from the mountains and the land they were on was not theirs to keep.[696] According to the testimony received, the Nalut *thuwar* beat him about the face and told the five men that they were "Arab dogs" and that "this is not your land".[697] One interviewee told the Commission that was beaten with electric batons while being told that he and his community should leave Tiji.[698] Interventions by the NTC and *thuwar* from Al Zawiyah and Zintan eventually led to the release of those detained.

468. According to the Tiji local council, the Nalut forces, on entering Tiji, looted and destroyed public buildings and private homes.[699] This included the destruction of schools and the hospital. Some buildings had "death to Tiji", "Tiji rats" and "Lions of Nalut" written on them.[700] According to information received, the petrol station was looted, its pumps were broken and it was set aflame.[701] Parts of it appear to have been knocked over by an armoured personnel carrier.[702] Another interviewee informed the Commission that the resulting fire spread to and destroyed neighbouring buildings.[703] In a visit to Tiji on 19 January 2012, the Commission observed evidence of burning matching the account.

469. In the agricultural land around Um-Al-Far, Nalut forces reportedly destroyed crops including 150 olive trees, a water well and a water wheel and barns and store houses.[704] The Nalut *thuwar* also were said to have looted or destroyed a number of privately owned cars.[705] In a complaint to the NTC, made by the Tiji local council, the council has listed 323 people as having their cars stolen or destroyed.[706]

470. The Commission met with a representative of the Nalut military council who stated that the people of Tiji, "even the women", fought with Qadhafi forces and had been given orders to "exterminate" Nalut and take over their lands.[707] A copy of a list of 624 people from Tiji who had allegedly volunteered to fight with Qadhafi forces in July 2011

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[693] Interview 0172.
[694] "Summary of Memorandum of events of Tigi and Badr (Area of Si'an) on 1 October 2011" compiled by the Tigi local council and sent to the NTC. (Copy in Commission's possession)
[695] Interviews 0171, 0172,0224, 0226.
[696] Interviews 0171, 0172.
[697] Interview 0172.
[698] Interview 0224.
[699] "Summary of Memorandum of events of Tigi and Badr (Area of Si'an) on 1 October 2011" compiled by the Tigi local council and sent to the NTC lists 500 buildings burnt down and over 2000 buildings looted.
[700] Examples of this graffiti were photographed by the Commission during its investigations in Tigi in December 2011.
[701] Interview 0172.
[702] Interview 0320. The Commission noted tracks consistent with an armoured personnel carrier when it visited Tigi on 19 January 2012.
[703] Interview 0232.
[704] *Ibid.*
[705] Interviews 0224, 0231, 0232, 0305, 0320.
[706] "Summary of Memorandum of events of Tigi and Badr (Area of Si'an) on 1 October 2011" compiled by the Tigi local council and sent to the NTC. (Copy in Commission's possession)
[707] Interview with representative of the Nalut military council, 19 January 2012.

was given to the Commission.[708] The representative also indicated that the problems between the people of Tiji, Badr and other nearby towns and the people of Nalut pre-dated the conflict and arose from that fact that the residents of these towns were not "indigenous" to the region, but had been relocated by the Qadhafi government on lands "that actually belong to Nalut".[709]

Targeting of residents of Abu Kammesh by the Zowara *thuwar*

471. The Commission has received multiple reports that between 26 and 28 August 2011, armed *thuwar* from Zowara entered the town of Abu Kammesh in western Libya and began to do house-to-house searches.[710] One interviewee stated that, on 28 August 2011, he received a telephone call from a work colleague who was an Amazigh from Zowara who told him "you're an Arab living on Amazigh land, we're going to kick you all out".[711]

472. According to testimony received, one young man was killed and another seriously injured after being shot by armed men in Abu Kammesh on 26 August.[712] The family were reportedly informed of the death by the Zowara military council who provided a photograph of the deceased, having already buried the body.[713] The Commission heard from another interviewee who stated that, on 26 August, he had been arrested by armed men from Zowara at a checkpoint leading to Abu Kammesh and was taken to school in Zowara where he was held for 12 days.[714] Reportedly, he was beaten while detained there.

473. The majority of those interviewed left Abu Kammesh for other nearby towns, principally Zolton.[715] Several of those interviewed stated plainly that those who left were Arab families for whom life had been "unbearable".[716] One interviewee noted that "those with connections with the previous Government were particularly targeted for reprisals, but all Arabs feel insecure there".[717]

474. The Commission heard consistent reports that when the families returned to Abu Kammesh, they found their houses looted with many of their possessions destroyed.[718] According to one testimony, a member of the family returned to their house and saw that five apartments in his building had been looted, with televisions, airconditioners and furniture gone.[719] The same interviewee stated that the beds had been urinated upon. Another interviewee told the Commission that when she returned to her house to pack her personal possessions, two men in civilian dress from Zowara entered the house and told her "we will live in this house, it is good that you are taking your things".[720] One man

[708] *Ibid.* The list of 624 civilian volunteers for the Second Infantry Brigade in Tigi is dated 7 July, 2011 and signed by [031], The Commission has not confirmed its authenticity.
[709] Interview with representative of the Nalut military council, 19 January 2012.
[710] Interviews 0322, 0323, 0324, 0325, 0436.
[711] Interview 0436.
[712] Interview 0440.
[713] *Ibid.*
[714] Interview 0326.
[715] Interviews 0322, 0323, 0324, 0325, 0436, 0322, the interviewee stated that 100 Arab families from Abu Kammesh fled, leaving behind the Amazigh families and a few Arab families who no place to which they were able to flee.
[716] Interviews 0322, 0323, 0324, 0326.
[717] Interview 0322.
[718] Interviews 0322, 0323, 0324, 0325, 0436.
[719] Interview 0325, January 2012. Another interview, Interview 0324, stated that men from Zuwara had urinated and poured oil on the floor of houses in Abu Kammesh.
[720] Interview 0323.

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stated that members of Zowara *thuwar* were occupying his house and would not allow him to retrieve his belongings.[721]

475. The Commission has heard multiple reports of Arabs from Abu Kammesh being fired from their jobs.[722] One interviewee told the Commission that he has not been able to report to work as the Zowara *thuwar* are guarding the company.[723] Reportedly appeals to the police in Zowara and the Zowara military council have not been fruitful.[724]

476. The Commission met with members of the Zowara Military Council on 23 January 2012. Council members that, during the conflict, Zowara had been surrounded by Qadhafi forces fighting from predominantly Arab towns. They said that there are still armed loyalists in these towns and that the areas need to be cleared before they can be declared fully "liberated".[725] Members of Zowara military council also stated that people from the areas surrounding Zowara were not "indigenous", that they were Arabs who had always discriminated against the Amazigh community.[726]

Targeting Misratans perceived as not having supported the Misrata *thuwar*

477. The Commission received information that a number of people from Misrata itself were subject to a refusal to allow them to return to their homes after the conflict. These were people who had left the town prior to the fighting and seem to have been considered insufficiently committed to the revolution as a consequence.

478. According to multiple interviews conducted by the Commission, families who left Misrata during the conflict returned to find their houses occupied and their belongings given over to those now occupying the houses.[727] Another interviewee told the Commission that the person living in her house told her "you are traitors. You didn't defend Misrata. You have no rights".[728] Attempts to appeal to the local council have reportedly been in vain. In one interview, a woman reported that she had been told by the local Misratan authorities that she would not be able to return to her house as "Misrata houses are revolutionary houses".[729] Another interviewee stated to the Commission that the local council told her "you better go to Al Khums, we don't want you here. You have nothing here".[730]

479. The Commission has also heard from two separate interviewees that the children of these families are not being allowed to return to their schools in Misrata.[731] Interviewees have also reported being fired from their workplaces.[732]

i. Targeting of sub-Saharan migrant workers

480. In its first report, the Commission detailed violations committed against migrant workers.[733] All of those interviewed were from sub-Saharan African countries. It is clear

[721] Interview 0440.
[722] Interviews 0326, 0436, 0440.
[723] Interview 0436.
[724] *Ibid.*
[725] Interview with the Zuwara Military Council, 23 January 2012.
[726] *Ibid.*
[727] Interviews 0483, 0484, 0485, 0486.
[728] Interviews 0484, 0486.
[729] Interview 0483.
[730] Interview 0485.
[731] Interviews 0485, 0487.
[732] Interview 0487.
[733] A/HRC/17/44, Section IV.I. This is also the conclusion of Amnesty International: Amnesty International, "Detention Abuses Staining the New Libya", October 2011, p. 8. During its interviews

that from the beginning of the uprising in February 2011, dark-skinned migrant workers were targeted – including being killed. The much cited cause of this has been the assumption that any dark-skinned foreigner was a mercenary in the Qadhafi forces. The evidence, however, suggests the attacks were fuelled by pre-existing discriminatory attitudes in Libya.

481. The Commission continues to receive reports of sub-Saharan Africans, some long-term residents of Libya, being arbitrarily arrested and beaten in detention.[734]

482. In or around October 2011, a Sudanese man, a long-term resident in Libya, was reportedly arrested, without the benefit of a warrant, by one of the Tripoli *thuwar*, the *Dagshi* brigade.[735] He was taken to the brigade's military camp where he was held for 3 days and beaten after which he was then transferred to one of the official detention centres in Tripoli where he remains.[736] As of the Commission's visit, he had not been interrogated, had not seen a prosecutor and no charges had been laid.

483. In November 2011, a Chadian man, also a long time Libyan resident, was reportedly arrested in Tripoli, without a warrant, and taken to the Ghirarat Military Council building by the *thuwar*.[737] According to testimony received, he was hung from a door and beaten with rubber hoses before being made to sit on the ground and beaten on the soles of his feet. The same source told the Commission that on the man's third and final day there, a man from outside the building came in and subjected him to a mock execution – pulling the trigger of an unloaded gun that was in the interviewee's mouth - before beating him on his feet and forcing him to crawl on the ground barking.[738] The man was reportedly then transferred to Ein Zara, an official detention centre, where he was again beaten. In the interview with the Commission, the man displayed severe scarring on his back and his head and had difficulty walking.[739]

Conclusions

484. The contexts in which the various attacks detailed in this Section take place are complex. Those alleged to be responsible believe those being attacked either fought with Qadhafi forces or uniformly supported the Qadhafi forces and, in some cases, that they committed crimes against their own population or were the recipients of preferential treatment by the Qadhafi government. The Commission also notes, however, frequent comments reflecting the belief that those being attacked are in some way not "indigenous" to the region or to Libya as whole.

Targetting of Tawerghans by the Misrata *thuwar*

485. The Commission finds that the Misrata *thuwar* targeted the Tawerghan community in a widespread and systematic manner.

with Libyan officials, Amnesty International was told that approximately half of the 1300 detainees were foreign nationals, including people from Chad, Mali, Niger, Nigeria and Sudan.

[734] Interviews 0261, 0378. According to Amnesty International, both sub-Saharan Africans and black Libyans were particularly vulnerable to arbitrary arrest and detention.

[735] Interview 0261.

[736] *Ibid.*

[737] *Ibid.*

[738] *Ibid.*

[739] The Commission notes the Amnesty International release *Libya: Deaths of detainees amid widespread torture*, 26 January 2012, in which the organisation indicated "Foreign nationals, mostly sub-Saharan Africans, also continue to be randomly detained, including in connection with their irregular legal status, and some are tortured."

486. As detailed above, the Commission finds that Misrata *thuwar* have extra-judicially executed, otherwise unlawfully killed and tortured to death Tawerghans during Phase II and III of events in Libya. The Commission found that Misrata *thuwar* have arbitrarily arrested Tawerghans in locations across Libya, including but not limited to Tawergha, Al Khums, Tripoli and Sirte; that, in the majority of cases, they have transported them to Misrata, where most are held in various detention centres; that some of these arrests have been accompanied by extortion and looting. The Commission found that Misrata *thuwar* tortured Tawerghan men on multiple occasions and subjected them to cruel, inhuman or degrading treatment.

487. The Commission finds that, in respect of Tawergha itself, the Misrata *thuwar* have looted and destroyed properties during the period of time that hostilities were ongoing. It also found that the continuing destruction of Tawergha in the post-conflict period has been done with the intent of making Tawergha uninhabitable and so preventing the return of displaced Tawerghans.

488. The instances of cruel treatment and pillaging which occurred during the hostilities constitute a war crime.[740] Where they have continued since, they violate international human rights law. The torture and killing committed against the Tawerghans by the Misrata *thuwar*, and other Misratans, would each individually, given the widespread and systematic manner in which they have occurred here, be capable of constituting a crime against humanity and the facts indicate crimes against humanity have taken place.

Targeting of other communities by the *thuwar*

489. In respect of the targeting of the Mashashiya, the Commission found that Zintan *thuwar* have unlawfully killed and arbitrarily arrested and tortured members of the Mashashiyan community. They have destroyed property, and demonstrated an unwillingness to allow members of that community to return to their homes.

490. In respect of the targeting of the residents of Tiji, the Commission found that Nalut *thuwar* have committed unlawful killings and torture, as well as looting and destruction of property. They have launched an indiscriminate attack on Tiji, which was populated by civilians at the time.

491. In respect of the targeting of the Arab residents of Abu Kammesh, the Commission finds that Zowara *thuwar* have committed unlawful killings and torture, as well as looting and destruction of property.

492. In respect of the targeting of Misratans who left Misrata during the conflict, the Commission found that they have been arbitrarily deprived of their property.

493. The Commission found that, throughout the conflict, sub-Saharan Africans have been arbitrarily arrested, beaten and in some cases killed by various *thuwar,* largely in the belief that they were mercenaries contracted by Qadhafi forces. The Commission observes however that in many instances those attacked were long-term residents of Libya, and none were in fact mercenaries.

494. In these cases, while there were clear indications that the communities were targeted and the consequences for individuals were severe, the Commission did not find the necessary evidence to indicate that the attacks against these communities were as widespread or as systematic as is the case with the Misrata *thuwar* and Tawergha. However, insofar as these acts took place with a nexus to the armed conflict they

[740] Rome Statute, article 8(2)(c)(i)-3 and 8(2)(e)(v).

constitute war crimes; where they have occurred since the armed conflict ceased, they constitute a violation of international human rights law.

495. The Commission understands the current difficulties faced by the Libyan Government in resolving the above situations. Nevertheless, the Commission considers, in the light of the egregious continuing violations being perpetrated against the Tawerghan and other targeted communities now scattered across Libya, the Libyan Government must take steps to end the culture of impunity that characterises the attacks.

Sexual Violence

1. Introduction

496. In its first report the Commission recorded a number of rape allegations.[741] Due to restrictions on movement in the first phase of the Commission, it was able to speak with only one direct victim of rape despite the substantial number of allegations circulating amongst interlocutors and in the media.[742] In the second phase of the Commission's work, more than 50 interviews were conducted with male and female victims and witnesses in relation to rape or sexual violence, primarily in Tripoli, Benghazi, Misrata, Al Zawiyah, Zowara, and the Nafusa Mountains. Of the victims interviewed, seven reported being abducted and assaulted or assaulted in their homes, and 14 were victims of sexual violence in detention centres. Another 30 interviews were conducted with doctors, psychologists, lawyers and individuals who had direct contact with victims or perpetrators. Five interviews were conducted with alleged perpetrators themselves. The allegations received by the Commission were levelled primarily against Qadhafi forces or loyalists, with a small number of incidents implicating *thuwar* forces.

497. The Commission recognized the difficulties in collecting evidence in cases of sexual violence in Libya, due to cultural, social, and religious beliefs surrounding marriage and sexuality. This includes a victim's understandable reluctance to disclose information due to the trauma, shame and stigma linked to sexual assault. Libyan law and its application discriminate against female victims. Young women who have been raped or considered to have brought dishonour to the family can be imprisoned in "social rehabilitation facilities."[743] The fact that Libyan criminal law punishes sexual relations outside a lawful marriage by flogging,[744] as well as by imprisonment for adultery or pregnancy outside marriage,[745] increases the reluctance of victims to report rape. According to Libyan legislation, if a man rapes a women, he is expected to marry his victim to "save her honour."[746] The entire honour of the family is tarnished if a girl or unmarried woman loses her virginity outside of marriage. Some female victims of rape have been ostracized, divorced, disowned, forced to flee the country, have committed suicide, and some have allegedly been killed by their relatives because of the shame and

[741] A/HRC/17/44 (para. 202).
[742] Iman al-Obeidi, whose allegations of gang-rape by Government forces were well-publicized. See A/HRC/17/44 (paras. 204-206).
[743] Human Rights Watch, "A Threat to Society: The Arbitrary Detention of Women and Girls for Social Rehabilitation," February 2006; Interview 0265.
[744] Article 2 of Law No. 70 of 1973 provides for thepenalty of 100 lashes for adultery which is defined as sexual intercourse between a man and a women who are not bound to each other by marriage (art. 1 of Law No. 70 of 1973).
[745] Interview 0257. Amnesty International Report-Libya, 2010.
[746] Interview 0337. Refworld, "Women's Rights in the Middle East and North Africa-Libya", 14 October 2005.

dishonour that rape brings to the family and even the tribe.[747] The silence surrounding rape existed before the conflict as well. In several conservative areas of Libya, female victims have been pressured or threatened by their community to remain silent about rape, as it is considered shameful for the community not to have been able to protect its own women.[748]

498. It was not only difficult to find victims who were willing to be interviewed, but it was also difficult to find reliable statistics of victims of sexual violence. Local sources who have assisted victims give varying figures.[749]

499. The Commission recognized that many organizations, individuals and media have spoken with victims about the allegations of sexual violence in Libya during the conflict. During its investigations, the Commission obtained information from local and international NGOs and the report includes this information. Some of those victims who did speak out suffered further trauma and shame from their communities when their stories became public.[750] Fear of reprisals coupled with a lack of widespread social services, psychological and general support for victims has also contributed to victims' reluctance to report about sexual violence. The Commission was acutely aware of the potential for retraumatizing victims through additional interviews.

1. Applicable law

500. 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 prohibits "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 as well as potentially constituting a crime against humanity if it is part of a widespread or systematic attack on civilians.[751] The elements of the crime of rape in non-international armed conflicts in the Rome Statute are as follows:

a. *The perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.*

b. *The invasion was committed by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or another person, or by taking advantage of a coercive environment, or the invasion was committed against a person incapable of giving genuine consent.*

c. *The conduct took place in the context of and was associated with an armed conflict not of an international character.*

[747] Physicians for Human Rights Report, *Witness to War Crimes: Evidence from Misrata, Libya*, August 2011; Interview 0118, 0119, 0145, 0337, 0470.
[748] Interviews 0119, 0356, 0209.
[749] Interview 0356.
[750] Interview 0119. Al-Jazeera, "Rape of Iman Al-Obaidi," 3 April 2011.
[751] The Rome Statute, article 8 (2)(e)(vi)-1, article. 7(1) (g).

d. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.

501. The Security Council has urged parties of 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".

502. Sexual violence can meet the definition of torture and has been presented as such.[752]

1. Factual findings

503. The Commission identified two primary patterns of sexual violence. Sexual violence was committed mainly against women by Qadhafi forces or loyalists. The victims were either assaulted in their homes or abducted, blindfolded, and assaulted elsewhere. These acts involved multiple armed men who verbally insulted, beat, and violently raped the victims. Most were specifically targeted because of their allegiance to the *thuwar* or perceived allegiance, while others were assaulted for no known or apparent reason. The majority of victims were called "rats" or "dogs" by perpetrators from the Qadhafi forces. Of those specifically targeted for being part of the *thuwar*, rape appeared to be used as a means to punish, terrorize, or send a message to the victim and to others who supported the revolution.

504. Sexual violence was also used by Qadhafi forces in the detention centres upon males and females who supported the opposition. It was used as a means to extract information during an interrogation, as well as to humiliate, dehumanize, and punish. The methods of sexual violence and torture consisted of acts of: vaginal rape, sodomy, penetration by bottles, sticks or ammunition, electrocution of genitals by live wires, and burning of genitals and breasts by cigarettes.

505. Qadhafi forces predominantly committed acts of sexual violence upon the detainees, however, there are two allegations of the thuwar committing acts of sexual violence upon detainees.

i. Qadhafi forces

506. The Commission conducted seven interviews with victims and has considered four statements taken by other groups. Based on their specific allegations, at least three victims appear to have been purposefully chosen to serve as an example to others and raped for their known pro-*thuwar* activity or that of their family.[753]

507. The Commission met with a ten year old boy who had accompanied his father to a revolutionary demonstration in February 2011.[754] The boy told the Commission that he was approached near his house by two young men who recognized him, and forced him at knifepoint to walk to a deserted area. One man sodomized him before the boy was able to scream and escape. He was called a "rat" by the men and told he was "being punished for being a rat. People from the East are dogs…you do not love Qadhafi and the only thing you deserve is death." The boy was told that they would do the same to his sister. The father was arrested later the same month, detained, and reportedly tortured in the prison.

[752] See generally *Prosecutor v Kunarec*, ICTY, February 2001.
[753] Interviews 0097, 0118, 0119.
[754] Interview 0097.

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508. A young woman told the Commission that she had been abducted by Qadhafi forces who stormed into her home. Armed men blindfolded her and drove her to an unknown building where she was repeatedly raped and sodomized on a mattress on the floor by four men over three days.[755] They penetrated her with sticks and 14.5mm cartridges. The men accused her of supporting the *thuwar* and accused her father of participating in demonstrations. Before raping her, the men said, "we will teach the rats a lesson." One of the men recorded some of the sexual acts on his cell phone. Afterwards, she was dumped on a road where she was picked up and brought to a hospital. In the hospital she said she was visited by Qadhafi forces who coerced her to say that she had been raped by the *thuwar* instead. She said she was electrocuted on her genitals, burned with cigarettes, and beaten while in the hospital. They told her she was suffering for her parents' support of the revolution. The victim has fled the country and has told the Commission she is too afraid to return because the perpetrators still live in her area.

509. The Commission met with another woman who was a *thuwar* activist who had distributed anti-Qadhafi brochures during the conflict.[756] She said she was followed one day while in her car and stopped by three Qadhafi soldiers with guns. She was blindfolded and driven to an office in an unknown location where she was beaten with sticks and hit over the head with the butt of an AK-47. They removed her clothes and three men repeatedly raped her for two to three hours. She said she was kept in the office for three days while being questioned about her political activity. She was released back onto a street, and she subsequently fled the country.

510. Another four allegations took place when the victims were travelling alone, and were raped by Qadhafi forces.[757] While in several cases the women were referred to as "rats" by the perpetrators, these appear to be crimes of opportunity and the victims not specifically targeted for their political association.

511. The Commission spoke with one woman who said she was abducted stepping outside her home by two Qadhafi soldiers who accused her of being "a rat trying to escape."[758] She said she felt vulnerable being home alone and had stepped out to visit a relative when she was confronted by the soldiers. They blindfolded her and drove her to an unknown place where she was drugged, beaten, and repeatedly raped by four men over three days. The woman was eventually released on a deserted street in her underwear. She said she soon contracted a sexually transmitted disease and became pregnant due to the rapes.

512. Another woman said she was videotaping Qadhafi soldiers looting on the street when she was spotted by the soldiers at her window.[759] Three of the men with guns immediately broke into her home, beat her, and all three raped her, two at the same time. After the rapes, the woman said her husband would not speak to her. Her brother-in-law told her, "either you commit suicide, we will kill you and make it look like suicide, or an accident will happen…" She and her husband have since left Libya.

513. In another apparent opportunistic case, a woman told the Commission she was abducted by four armed military men while walking to the supermarket one morning and driven to an unfinished house where two other men waited.[760] She was raped by all six men and then released. There is no evidence to suggest why they assaulted her, and she

[755] Interview 0119.
[756] Interview 0118.
[757] Interviews 0145, 0187, 0257, 0384.
[758] Interview 0145.
[759] Interview 0470.
[760] Interview 0187.

believed they had been drinking or using drugs. She has never told her family about the attack.

514. The Commission met with a number of local doctors who have treated women for injuries, sexually transmitted diseases, pregnancy, and terminations. In Al Zawiyah, one doctor said she has been able to confirm 29 cases of rape based on medical examinations.[761] The Commission met with one doctor in Misrata who has treated several victims of rape and has set up a helpline for victims to call in and receive help.[762] She estimates there were about 200 cases of rape in Misrata alone, including women and men in detention, based on those she has treated and who called the helpline. Most of the doctors the Commission spoke with said patients did not admit to being raped, but due to their demeanor and the nature of the injuries, they believed that they had been. The Commission has heard from numerous sources that most victims would seek treatment outside of Libya or privately in order to remain anonymous.

515. The Commission also met with an organization which has developed a programme to marry victims of rape with volunteer men, as well as to marry men disabled from the conflict with volunteer women.[763] The organization has registered 50 women to be married in Tripoli, Al Zawiyah and Misrata.

516. The Commission interviewed five perpetrators accused of raping men or women during the conflict. These were perpetrators who were already detained and accused by *thuwar* of rape. Three had supposedly confessed to raping men and women. One young man stated he had been ordered to rape three young women by his commander.[764] Another man was charged with sodomizing three young men.[765] While these men provided some specific details, the Commission believes that there is a strong possibility that the confessions were made only after being tortured in detention and are therefore unreliable.[766] The Commission has received other reports of torture inside *thuwar* detention centres (see chap. III, sect. D). The Commission received one interview of a perpetrator conducted by a local organization which detailed five different rapes over five nights committed by him and other military officers. The perpetrator described in detail how members of his unit, including the commanding officer, entered homes in the middle of the night using a ruse, and raped all the girls and women, with the family present, in the house. While the detail is compelling, the same caveat to coerced confessions applies as above.

517. The Commission met with a group from Misrata who spoke about armed soldiers and volunteers from the Khamis Brigade entering houses at night and taking men, women, and children away.[767] Although none would give details, they said they knew of women and girls who were raped, either in their homes or taken elsewhere and raped, especially in the towns of Tomina, Dafniya and Karamin.

518. In March 2011, Al Jazeera reported a story about Viagra and condoms being found on dead Qadhafi soldiers.[768] Subsequently, many stories circulated that Viagra had been used as a means to encourage rape. The National Institute of Searching for Missing Persons in Misrata and Ajdabiya, who photographed and documented the bodies of dead

[761] Interview 0470.
[762] Interview 0252.
[763] Interview 0374.
[764] Interview 0347.
[765] Interview 0340.
[766] Interview 0355.
[767] Interview 0290.
[768] Al Jazeera TV, *Viagra and Condoms with Soldiers in Ajdabiya*, 27 March, 2011.

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Qadhafi soldiers, had not found Viagra on their bodies or belongings. One witness who searched and identified over two hundred bodies stated he had not found any Viagra or condoms on any dead Qadhafi soldiers.[769]

519. As for the reports of condoms found on bodies of dead soldiers, there has been one doctor who confirmed he found between 10-15 condoms on soldiers in Misrata.[770] Otherwise, no victims or perpetrators stated that a condom had been used during any rapes.

520. In May 2011, media reports stated that Qadhafi soldiers made video recordings of rapes on their mobile phones.[771] These were reported to be found on their bodies after combat. One of the victims stated to the Commission that when she was being raped, a soldier recorded it on his mobile phone.[772] The Commission tried to obtain copies of these videos, but were reportedly told almost none had been saved in order to protect the victims. One of the alleged perpetrators himself told the Commission that he witnessed one of his soldiers recording a rape on his mobile phone.[773] The Commission was only able to obtain one video of a rape from a mobile phone which is one that had already been posted on the internet and broadcast by a media organisation.[774] It is not possible to authenticate this video since no date or location or identity of the perpetrators or the source can be identified. Another three video clips were viewed by the Commission, but were not allowed to be copied.[775] The videos were reportedly from a cell phone that a member of the Internal Security Agency (*Jihaz Al-Amn Al-Dakhli*) had found on a dead Qadhafi soldier. One of the video clips depicted a girl being raped by a man, with other men's voices and laughter heard in the background. The victim's face was seen, but not that of the perpetrators. The men can be heard saying, "Shut up you rat, this is the reward you get for being a rat." The girl tried to cover her face, and a man said, "Let us see your face. If you tell anyone what has happened, we will show this video and tell the world you are a bitch." Another clip showed a man's testicles being squeezed with wire and the man is heard screaming. The witness refused to give the Commission a copy of the video clips because he said he would be severely disciplined if he did so. The third video clip was of a similar nature.

i. Allegations of a widespread or systematic policy of rape

521. Reports of the threat and fear of rape by Qadhafi forces were frequently raised by interviewees. Libyan interviewees in Tunisia, for instance, noted that they had received phone calls from their relatives in Al Zawiyah and Zowara reporting collective rape of residents by Qadhafi forces and "alleged mercenaries" as well as some unidentified armed men. The Commission listened to a reportedly intercepted phone conversation between [024] and [074] in Zowara where [024] says, "There should be five men to every house in Zowara." This has been interpreted by many Libyans to mean that soldiers were encouraged to rape in Zowara.[776] The Commisison was not able to authenticate it.

[769] Interview 0477.
[770] Interview 0356.
[771] Andrew Harding, *Libya: forced to rape in Misrata*, BBC News, 23 May 2011. Available from: www.bbc.co.uk/news/world-africa-13502715.
[772] Interview 0119.
[773] Interview 0355.
[774] Sara Sidner, "Libyan rebels say captured cell phone videos show rape, torture", CNN World, June 16, 2011.
[775] Interview 0154.
[776] There is a lawsuit brought against [024] by two Libyan attorneys on behalf of women raped in Zuwara. World Affairs Journal, "A step closer to Justice for Libya's Rape Victims."

522. These reports of rapes and widespread fear of rape had the consequence, if not purpose, of terrorizing a community and forcing many to flee their homes with their children.

523. In Misrata today, many people believe that the Tawerghans who supported Qadhafi's forces during the conflict were responsible for rapes in Misrata. This unsubstantiated allegation has been used as one of the main justifications for driving the Tawerghans out of the area (see chap. III, sect. E).

524. One of the major issues that the Commission faced was the wide discrepancy between the numbers of allegations of sexual violence, in particular rapes, reported by some local sources in Libya compared to the number of documented cases found by the Commission, and other organizations. The Commission recognizes that there is under reporting of rape due to the factors already mentioned, and that there is sufficient evidence to justify further investigation to establish if sexual violence was widespread or systematically carried out or ordered.

i. Allegations of sexual violence committed in detention centres

525. There were 15 allegations of sexual violence inside detention centres committed by Qadhafi forces and two committed by the *thuwar*. Twelve victims were male and five were female. Of the 17 total allegations of sexual violence in detention cases: 7 men were sexually tortured in Abu Salim; 3 women and 2 men were sexually tortured in Ein Zara; and the other allegations of sexual violence apparently took place during the interrogations in the offices of local security agencies, military bases, unofficial camps and in other locations that the victim could not recognize.

526. Ten allegations involved rape, sodomy or penetration with a stick or bottle or weapon. Other acts often involved electrocution of the genitals[777] and burning genitals with cigarettes or lighters.[778] Beatings and other forms of torture often accompanied these acts (see chap III, sect D). All the victims described sexual acts perpetrated against them as a means to extract information, to humiliate, or to punish them for revolutionary acts or the acts of the victim's family members.[779]

527. The Commission met with one woman who had been arrested in June 2011 near her university.[780] She said she was blindfolded and driven to a small house where she was interrogated for eight days about her education, family and friends, and was accused of being anti-Qadhafi. She was transferred to Ein Zara prison where 80 other anti-Qadhafi women were held. She was stripped naked as were the other women. She said the women were regularly raped and she said she had been raped twenty-four times over two months. She was also electrocuted on her genitals and burned by cigarettes. She was released to return to her family, but she told the Commission she would never live a normal life again with her husband and children. The Commission was unable to find other victims of the 80 to corroborate this account.

528. The Commission met with a man who had been feeding information to *thuwar* during the revolution.[781] He said he was arrested in February 2011 and taken to a detention centre in Tripoli. He was asked about the *thuwar* and where weapons were

[777] Ten incidents of electrical shocks delivered to genitalia were recorded by the Commission of which seven were perpetrated against men and three against women.
[778] Interviews 0116, 0120, 0180. 0476.
[779] Interviews 0116, 0119, 0161, 0180 fit this pattern. The Commission heard second hand accounts of many more.
[780] Interview 0120.
[781] Interview 0385.

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stored. When he told them he didn't have any information, a group of men started to beat him all over his body with heavy sticks. They pulled his trousers off and two of the men sodomized him. They told him if he didn't give them the information they were looking for they would kill him and bury his body with "the other rats."

529. The Commission met with a doctor who told the Commission he had been active in the revolution and was arrested in late March 2011 and taken to a prison.[782] He spent four months in prison and said he was routinely raped and routinely penetrated with a stick. He said many of the men in prison had been raped and sustained anal injuries and infections which he helped to treat. He told the Commission that he has suffered serious mental health issues since being sexually tortured in detention.

530. The Commission met with a man who had been arrested by Qadhafi's External Security Agency (*Jihaz Al-Amn Al-Kharaji*) in Tripoli in June 2011.[783] He had been smuggling arms to the *thuwar*. For five days he was tortured. He was suspended from a beam by his wrists; forced to stand in a bucket of water while his genitals were electrocuted with live wires; and beaten with a rubber hose. The guards attempted to force him to rape a female prisoner, but he refused and was then sodomized by six men as punishment. He said he continued to be sexually tortured until Tripoli was liberated in August. He said he has since suffered severe psychological trauma from the torture.

531. The Commission met with one witness who said he discovered a villa (an unofficial detention centre) with men, women and children found detained in the basement.[784] In this basement, he said they discovered a room with iron bars, rubber hoses, electric wires and cables, and blood. Cells lined a corridor where people were detained without toilets or mattresses. One cell contained six naked women and another cell contained 16-18 boys. The witness told the Commission he heard that the women had been sexually abused. According to the witness, 260 people had been detained in this villa, some for years. The Commission tried repeatedly to visit the site but was unable due to security and logistical constraints.

532. The Commission also spoke with a former guard at a detention centre[785] who is now detained by the *thuwar* and accused of murder, torture and rape. The former guard said that he had never raped any of the male detainees himself, although he had been ordered to. Many of the detainees interviewed told the commission that they had witnessed or otherwise knew of other detainees being raped or sexually tortured within the centres.[786] One detainee in Abu Salim stated he thought "rape was rampant in prisons."[787]

533. The Commission found consistent statements of victims and other witnesses who corroborated that both men and women were being raped and sexually tortured in certain detention centres. The Commission suspects that there was a great deal of under reporting due to the shame surrounding the issue. Several men spoke about "feeling less of a man" or "no longer being a man" after the rapes and torture. Although the Commission could not establish a policy of such treatment in the prisons, the information gathered suggests that it was used as a method to obtain information from *thuwar*. There is no evidence that such acts were ever prevented, investigated or punished.

[782] Interview 0101.
[783] Interview 0057.
[784] Interview 0058.
[785] Interview 0402.
[786] Interviews 0101, 0120, 0180, 0363, 0390.
[787] Interview 0101.

i. *Thuwar*

534. The Commission has interviewed two victims who said they had been sexually tortured by *thuwar* in detention centres.[788] One was a member of the Revolutionary Guard, arrested on suspicion of murder.[789] She said that during interrogation sessions she was electrocuted on her legs and breasts. She was released after 9 days due to lack of evidence. In the other case, a woman who volunteered with the Popular Guards was arrested in her home by the *thuwar* and told "you killed us, now we will kill you". She was taken to the former Internal Security Agency where she said she was held for a month. She said that she was hung from a door, electrocuted and a knife was stuck into her vagina. She told the Commission that she was threatened with rape by a guard, but it never happened.[790] She also said she witnessed a man who was another member of the former Qadhafi forces being tortured and penetrated with a plastic water bottle in his cell.

Conclusions

535. The prevailing culture of silence, the lack of reliable statistics, the evident use of torture to extract confessions, and the political sensitivity of the issue combine to make sexual violence the most difficult one for the Commission to investigate and on which to formulate conclusions. Nevertheless, the Commission determined that sexual violence undoubtedly occurred in Libya and played a significant role in provoking terror in various communities. The Commission has witnessed that the victims of sexual violence have suffered greatly due to the physical and psychological consequences of the violence, compounded by shame and isolation.

536. The Commission did not find documented evidence to substantiate claims of widespread sexual violence or a systematic attack or overall policy against a civilian population such as to amount to crimes against humanity. The Commission recognizes that there is under reporting of rape due to the factors already mentioned, and that there is sufficient information received to justify further investigation to ascertain the extent of sexual violence in Libya.

537. The Commission can make no findings regarding the extent of sexual torture in the detention centres committed by the *thuwar.*

Attacks on Civilians, Civilian Objects, Protected Persons and Objects

1. Introduction

538. In its first report, the Commission indicated that in relation to attacks on civilians, civilian objects, protected persons and objects, it has "not had access to full information allowing it to definitively evaluate allegations of these violations of international humanitarian law".[791] In the second phase of its work, the Commission conducted over 75 interviews looking at this issue and inspected destruction in towns across Libya.

Applicable Law

539. International humanitarian law prohibits the intentional targeting of civilians[792] and indiscriminate attacks, in both international and non-international armed conflicts.[793]

[788] Interviews 0254, 0265.
[789] Interview 0254.
[790] Interview 0265.
[791] A/HRC/17/44, para. 180.
[792] See Protocol II Article 13(1): "The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." See also Protocol II Article 13(2):

Parties to a conflict have an obligation to distinguish at all times between the civilian population and fighters and others taking part in hostilities and to direct attacks only against military objectives.[794] Referred to as the "principle of distinction", the International Court of Justice in its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, recognised this principle as "intransgressible" in customary international law.

540. Deliberate attacks on civilians and civilian objects are prohibited under intenational criminal law.[795] 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.[796] 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.[797]

541. Customary international humanitarian law establishes that all "parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks."[798] Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.[799] Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.[800]

542. Attacking, destroying, removing or otherwise rendering useless objects which are indispensable to the survival of the civilian population is prohibited.[801] Sieges must still allow for vital foodstuffs and other essential supplies to be delivered to the civilian population.[802]

543. Medical personnel as well as hospitals, medical units and transport must be respected and protected in all circumstances.[803] Medical personnel, units and transport lose their protection if they are being used, outside their humanitarian function, to commit acts harmful to the enemy.[804]

"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.

[793] *Customary International Humanitarian Law*, p. 37, Rule 11.

[794] Article 48 of Protocol I, applicable in both international and non-international armed conflict, expresses the principle in the following terms: "In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives."

[795] Rome Statute, Art. 8(2)(e)(i)(v).

[796] *Customary International Humanitarian Law,* p. 3, Rule 1 and p. 25, Rule 7.

[797] *Customary International Humanitarian Law*, p 46, Rule 14.

[798] *Customary International Humanitarian Law* p. 68, Rule 22.

[799] *Customary International Humanitarian Law p.* 71, Rule 23.

[800] *Customary International Humanitarian Law* p. 74, Rule 24.

[801] Protocol II, Article 14.

[802] While sieges to achieve a military objective are permitted, sieges that cause starvation are not (see Article 14, Protocol II). The passage of foodstuffs and other essential supplies must be permitted: see *Customary International Humanitarian Law*, p 186, Rule 53 and p.193 Rule 55.

[803] See Protocol II, Articles 9(1) and 11(1). See also *Customary International Humanitarian Law*, p. 79, Rule 25 and p. 86, Rule 26.

[804] Protocol II, Article 11(2).

544. International humanitarian law also incorporates specific protections for persons or objects. It is prohibited to commit an act of hostility directed against places of worship which constitute the cultural or spiritual heritage of peoples.[805]

545. The Rome Statute sets out a number of war crimes which correspond to breaches of international humanitarian law guarantees. These include the crime of intentionally attacking civilians,[806] and intentionally attacking civilian buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals and places where the sick and wounded are collected.[807] Particular types 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 (see chap. I, sect. E).

1. Factual Findings

1. Deliberate and indiscriminate attacks on civilians and civilian objects

b. Qadhafi forces

i. Attack on Misrata

546. Misrata endured some of the most protracted fighting during the conflict. Following anti-government protests in late February 2011 which culminated with the *thuwar* taking control of the city, Qadhafi forces launched a military assault in mid-March. The attack put Misrata under a siege accompanied by heavy shelling for more than three months - until Qadhafi forces retreated from the centre of town. Shelling of the city continued sporadically until August 2011 from positions outside the city. Misrata remained surrounded by Qadhafi forces save for the sea, while the city's port was mined on at least one occasion. At all times when it was under attack, Misrata's population remained predominantly civilian and suffered heavy civilian casualties.

547. During visits to Misrata in December 2011 and January 2012, the Commission examined the extensive damage in the city including on Tripoli and Benghazi streets, sites of the fiercest fighting. Visible damage to buildings and other structures was also observed in other neighbourhoods in the city including but not limited to Zawiyat al-Mahjoub, the Sahili Road, and Dafniya.

548. The Commission's military expert noted that the damage to buildings was consistent with the use of small arms (7.62x39mm and other), heavy machine guns (12.7mm and 14.5mm), anti-aircraft canons (23mm), tube and rocket artillery, large calibre weapons (HEAT - "high-explosive anti-tank" tank rounds and HESH - "high explosive squash head" tank rounds), mortars (various from 60-120mm), rockets (122mm Grad entry holes were found with the rear of the rockets still protruding from the ground), rocket propelled grenades (RPG) and recoilless rifles. The Commission saw evidence that weapons considered prohibited by many nations, including landmines and cluster munitions, were used by Qadhafi forces in Misrata (see chap. III, sect. I).[808]

549. Senior Qadhafi military officers interviewed by the Commission confirmed that there were several attempts, some of them successful, to mine the Misrata port which was being used to evacuate the war-wounded and to bring humanitarian supplies, as well as weapons. According to one high-ranking member of the Qadhafi armed forces, his troops sailed from Zlitan, Al Khums and Sirte using small inflatable boats to lay mines in the

[805] Protocol II, Article 16.
[806] Article 8(2)(e)(i) Rome Statute.
[807] Article 8(2)(e)(iv) Rome Statute.
[808] Interview 0189.

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Misrata harbour.[809] During the Commission's visit to Misrata, it found clear evidence of Chinese Type 84 scatterable mines in the port including remnants of parachutes and delivery vehicles. The Commisiosn also found surface damage consistent with use of these mines. Numerous buildings had been struck by Grad rockets used to carry the mines and there were signs of mine explosions around the port. Grad rocket tails also extended from impact craters and had clearly buried themselves in cement. Anti-personnel mines were also used in Misrata by the Qadhafi forces but had been removed by deminers by the time the Commission arrived.[810]

550. According to witnesses, 11 Qadhafi brigades took part in the attack on Misrata including the 32nd (Khamis) Brigade. Regular army units also participated in the fighting.[811] On 16 March 2011, Qadhafi forces entered the centre of the city together with a large number of tanks.[812] Qadhafi forces also positioned themselves in neighbourhoods on the edges of Misrata.[813] From these bases, as well as from cities surrounding Misrata, Qadhafi forces carried out attacks against the opposition-held city. Detained Qadhafi soldiers and senior officers interviewed by the Commission confirmed these accounts.[814]

551. UNOSAT conducted an analysis of satellite imagery for Misrata to determine levels of damage, visible signs of combat and military activity, and road blocks and other barriers to transit. The Commission reviewed imagery from 10 April 2011 and 18 November 2010 for this analysis. The results indicated 152 debris areas, 60 areas of visible scorching, 31 buildings destroyed or severely damaged, five visible impact craters, 990 roadblocks, barriers and security checkpoints,[815] five military vehicles, and 36 concentrations of light trucks.

552. The Commission's senior military adviser conducted a site survey of damage to the city on 10 December 2011. He observed extensive weapons damage to all buildings along Tripoli Street, the main axis of fighting. The most common damage and weapon debris observed was consistent with tank rounds, 106mm recoilless rifles and 107mm rocket artillery using both HEAT and HESH rounds. Damage from heavy machine-gun fire of various calibre was clear on nearly every building on Tripoli Street. There were also clear signs of cluster munition use including debris and strike patterns from submunitions. Some of these attacks appear to have been aimed at *thuwar* positions in civilian buildings. For example, some attacks were aimed at *thuwar* fighters firing from civilian buildings down into the streets. Some of these munitions caused effects beyond their intended targets, with tank shells, for example, penetrating a building and travelling through into neighbouring areas before exploding. Grad rockets, which are only capable of being aimed in a general direction,[816] were also used in attacks. Strikes from RPGs were also evident. Fire damage was not extensive. Damage throughout the rest of the city was spotty and less extensive with some areas exhibiting no damage.

553. There was also damage to buildings along the axis of attack outside the city, though not as extensive as found along Tripoli Street. The Commission found one mosque struck by a Grad rocket.

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[809] Interview 0194.
[810] Interview 0286.
[811] Interview 0334.
[812] Interview 0182.
[813] Interview 0390.
[814] Interviews 0387, 0439.
[815] This figure includes a large number of temporary barriers erected at intervals throughout the city
[816] Grad rockets are area-effect weapons meaning they are targeted against a geographic position and not a point target.

554. Unlike the civilian populations in other areas of Libya affected by the fighting, for instance the Nafusa Mountains and Ajdabiya, civilians were trapped inside Misrata as Qadhafi forces laid siege, preventing basic necessities from reaching the city.[817] The population survived by relying on existing stocks as well as humanitarian aid reaching it by sea from Malta and Benghazi. The electricity, water supply and communications were repeatedly disrupted throughout the conflict. Only a few places, such as public hospitals, had essential supplies using generators.

555. During the attacks, Misrata's migrant population also suffered. A migrant worker from Sudan told the Commission that he was trapped inside his house for 30 days due to heavy fighting.[818] He eventually escaped to Tunisia, but human rights organizations have reported that migrant workers were killed and injured during rocket attacks on the port while awaiting evacuation at the Misrata harbour.[819]

i. Attack on Al Zawiyah

556. Following protests in the central square in Al Zawiyah, Qadhafi forces under the 32nd (Khamis) Brigade coming from Sibrata entered the city on or around 23 February, 2011.[820] Twenty to thirty military vehicles carrying 200 armed soldiers reportedly made their way to the central square, shooting as they entered. In multiple interviews, the Commission heard how seven youths died on this initial incursion (see chap. III, sect A).[821] Immediately after, some of those protesting attacked a military camp between Al Zawiyah and Bir-al-Ghanem and armed themselves.[822] It appears that Qadhafi forces withdrew to the outskirts of Al Zawiyah while the now armed *thuwar* took control of the central square.

557. Those interviewed by the Commission, including a former senior security official in Al Zawiyah, stated that, from the outskirts, Qadhafi forces fired Grad rockets and mortars into the town. Another former senior security official in Al Zawiyah told the Commission he was not aware of any effort to allow for the evacuation of civilians. Of the Grad rockets, he told the Commission, "of course they are indiscriminate, they don't differentiate."[823]

558. In early March 2011, Qadhafi forces began to move into Al Zawiyah. According to testimony received, Qadhafi forces using tanks, vehicle-mounted anti-aircraft guns and 14.mm heavy machine guns were fired towards the square, reportedly injuring both *thuwar* and civilians.[824] Witnesses told the Commission that predominantly unarmed demonstrators were fired upon by Qadhafi forces with machine guns and rocket-propelled grenades.[825] A mid-level officer in the Qadhafi forces confirmed that Qadhafi forces used tanks, RPGs and 14.5 mm anti-aircraft guns in its attacks on Al Zawiyah.[826]

559. The Commission received reports that on 3 March 2011, two unarmed civilians, a father and son, were shot by Qadhafi forces while walking near the square.[827] On the same day another man was reportedly shot while entering the square in an ambulance to

[817] Interview 0320.
[818] Interview 0164.
[819] See Amnesty International, *Misratah. Under siege and under fire*, May 2011, p-22-23
[820] Interviews 0147, 0184.
[821] Interviews 0184, 0203, 0205, 0210.
[822] Interview 0184.
[823] Interviews 0087, 0100.
[824] Interviews 0075, 0184, 0203, 0204, 0210, 0377.
[825] Interview 0464.
[826] Interview 0218.
[827] Interview 0203.

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evacuate some of the wounded. The Commission also received multiple reports of four women, all civilian, being shot by Qadhafi forces in early March 2011.[828]

560. By 9 March 2011, Qadhafi forces had pushed their way into the central square, scattering the *thuwar.* According to testimony received, the last scene of fighting in the square itself was the mosque.[829] When the *thuwar* were losing ground in the square, witnesses told the Commission that the *thuwar* retreated into the mosque and fired on Qadhafi forces from within the mosque, drawing fire from the outside. The Commission, in multiple interviews, heard that the *thuwar* had been also using the mosque as a field hospital and a place to store weapons.[830] There were few non-combatants in the mosque. Shortly after Qadhafi forces took control of the town, they razed the mosque to the ground.[831]

561. According to a witness whose place of work bordered the central square, the *thuwar* moved into buildings surrounding the square where they shot at Qadhafi forces in the square from the upper stories.[832] Qadhafi forces stationed between seven and eight tanks in the central square and reportedly fired them into surrounding buildings.[833] The Commission saw dozens of impacts from tank rounds in buildings surrounding the square. The Qadhafi forces fired tank rounds and 14.5mm heavy machine guns into the buildings.[834] The Commission was unable to confirm whether civilians were in the buildings at the time.

562. As *thuwar* launched an offensive against Qadhafi forces on 13 August 2011, the latter retaliated using Grad rockets, leading to civilian casualties and damage to residential areas.[835] A doctor who returned to work at the hospital described to the Commission the damage by mortar and tank fire that he found.[836]

i. Attack on the towns of the Nafusa Mountains

563. While the demonstrations began in the east of the country in February 2011, they quickly spread to towns in the west. In response, the Qadhafi forces moved forces towards Zintan, Nalut and Yafran in the Nafusa Mountains and stationed them in the towns in between. Qadhafi forces began to enforce a siege against these towns, preventing food and fuel entering. At the end of March 2011 and into April, the Qadhafi forces began shelling the towns, using a mixture of 106mm shells, tank rounds and Grad rockets.

564. Nalut occupies a strategic location near the main border crossing with Tunisia. Demonstrations there began in February 2011, and armed resistance began to be organised in the middle of March 2011. Qadhafi forces, initially led by [047], moved to counter the *thuwar,*[837] and from mid-March 2011, the supplies entering the city were disrupted.[838] By mid-April 2011, Qadhafi forces, under a new commander [058] and

[828] Interviews 0147, 0184, 0203, 0205, 0210.
[829] Interviews 0075, 0147, 0184, 0359, 0377.
[830] Interviews 0184, 0377.
[831] Interview 0147, 0377. The Commission confirmed the date of destruction through UNOSAT imagery as occurring between 8-14 March 2011. The Commission also visited the site.
[832] Interviews 0075, 0184.
[833] Interview 0075.
[834] Interview 0075.
[835] Shabab Libya, *Qadhafi forces launch counterattacks as Libyan rebels advance towards Tripoli*, 19 August 2011 http://www.shabablibya.org/news/gadhafi%E2%80%99s-forces-launch-counterattack-as-libyan-rebels-advance-toward-tripoli
[836] Interview 0341.
[837] Interviews 0143, 0319, 0336, 0415.
[838] Interviews 0127, 0136.

mainly composed of volunteers, occupied the towns below Nalut, including al-Ghezaya. From that point, Nalut was firmly under siege.[839] Rockets and artillery were fired from Al Ghezaya towards Nalut.[840] By virtue of Nalut's position high in the mountains, and the relative firing positions below in Al Ghezaya, much of the ordnance fired by Qadhafi forces in fact flew over Nalut and landed elsewhere, but there was some damage to private property.[841] The Commission was told that by this stage the civilian population had been evacuated from Nalut, leaving only *thuwar* forces who dispersed in the outskirts of the town. Although this dispersal was a deliberate move by the *thuwar* to avoid giving the Qadhafi forces an excuse to attack civilian areas, the Commission noted that the *thuwar* headquarters for Nalut was situated next to the mosque inside the town.[842]

565. The Commission viewed enlarged maps that were reportedly captured by *thuwar* in late July 2011 after being left behind by retreating Qadhafi forces in Al Ghezaya. The maps contain pictorial drawings and pin notations that clearly show the location of the school, fuel station, sports stadium and hospital in Nalut. It also shows a location identified as 'accommodation for the rats'. There are coloured lines drawn between these locations and the positions from where artillery and rockets were launched by the Qadhafi forces. The maps also show the locations of the offices of the Qadhafi security and intelligence services, and an army ammunition depot. In interviews with the Commission, the *thuwar* interpreted these maps as showing the trajectory required for attacks on the school, hospital and other civilian objects. While this is possible, it is also possible that the Qadhafi forces were simply using the civilian objects as a reference point, particularly as *thuwar* headquarters and legitimate military objectives such as an arms depot were in proximity to the civilian objects. Shelling continued until 28 July 2011 when Qadhafi forces moved back from their firing positions in Al Ghezaya.[843]

566. In Al Ghezaya itself, considerable destruction and some civilian casualties were reported to the Commission as having occurred during its occupation by Qadhafi forces. Units mentioned as having been stationed in Al Ghezaya included a legion of the Popular Guard led by [053].[844]

567. Civilians in Takut further down the mountain left for Tunisia before the fighting. While there were no civilian casualties, there was reportedly widespread destruction of property in the town, some of which was from Grad rockets and shells aimed at *thuwar* positions in Um al-Far, but which apparently overshot and landed on Takut. There were no armed *thuwar* in Takut.[845]

i. **Zintan**

568. The Qadhafi forces moved towards Zintan in early March 2011, positioning their forces, including Grad rockets, to the north and the south where they could be supplied from an arms depot. The *thuwar* maintained control of the western approaches.[846] Qadhafi forces from the 9th Regiment *(Fawj)* a regular army unit, commanded by [069][847], and a brigade commanded by [059], tried to surround the town to prevent help arriving from the

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[839] Interviews 0143, 0319, 0336, 0415.
[840] Interviews 0127, 0131, 0132, 0410.
[841] The Commission viewed the sites of damage in Nalut. Much of it has now been repaired.
[842] Interview 0319.
[843] Interviews 0208, 0319.
[844] Interviews 0208, 0295, 0319.
[845] Interview 0319. A witness dismissed the suggestion, saying that, being at the foot of the mountain, it would have been strategically wrong to have taken military positions there
[846] Interview 0349.
[847] Interviews 0336, 0349.

east. Qadhafi forces began shelling with anti-aircraft weapons and Grad rockets.[848] The Commission visited a mosque on the outside of the town and viewed damage reportedly sustained when the mosque was struck by rocket fire from Qadhafi forces. While not a military position per se, witnesses said the mosque was nevertheless broadcasting 'encouragement' to the *thuwar* over its loudspeaker.[849] The shelling continued throughout April 2011 and into May 2011, with particularly heavy shelling towards the end of the month.[850] The Commission was told that although fighters were positioned on the perimeter of the city, the elders of the town used the al-Faraj mosque as a headquarters for planning military operations. The *thuwar* military committee was reportedly based in the Mohammed al-Imam school.[851]

569. The Commission observed that a number of rockets landed in the hospital compound or close to it. On 28 April 2011, for example, three Grad rockets caused damage to some of the cars and ambulances parked outside. Shrapnel damage occurred in neighbouring buildings. There were no deaths or injuries at the hospital from these strikes. While the Commission received no information to suggest that *thuwar* were based at the hospital, one witness confirmed that *thuwar* did not use the hospital. There were 55 reported civilian casualties from shelling, including women and children. The Commission viewed a number of hospital records confirming the casualties at various locations within the city. The cause of death listed was "Grad rocket shrapnel."[852]

i. Yafran

570. Under the command of [059] Qadhafi forces surrounded Yafran in March 2011 and the town fell to them on or around 18 April 2011. As Qadhafi forces entered, the *thuwar* retreated to positions above the town. While there had been some shelling of the town centre, most shelling by Qadhafi forces was directed at *thuwar* positions where they had sheltered in civilian houses on the hills behind the town. Significant damage to these buildings was caused by a mixture of tank rounds, 106mm shells and Grad rockets, in addition to heavy machine guns and 14.5mm anti-aircraft weapons. Not all of the fire hit *thuwar* positions. Some landed in areas of the town where the *thuwar* were reportedly not present.

571. The town was recaptured by *thuwar* in the first week of June 2011. The Commission received reports that retreating Qadhafi forces had poisoned the water system.[853] This belief appeared to be based on the fact that chemical containers were found in the vicinity of the wells. The Commission examined the materials found at the site; some were empty canisters of insecticide, others were nerve agent antidote. As the water had been drained, it was not possible to determine whether it had been contaminated, although a Human Rights Watch representative told the Commission that they had tested it at the time and found no issues.

572. Prior to 18 April 2011, when Yafran fell to Qadhafi forces, it had been surrounded for several weeks. During this time very little in the way of supplies reached Yafran. The residents had laid in supplies in anticipation both of a siege and also of IDPs coming from other areas. Water tanks were positioned under houses. There was bombardment by Qadhafi forces before the occupation in April and it resumed after the liberation, as Qadhafi forces retreated. There were reportedly 200-250 *thuwar* in Yafran, although not

[848] Interview 0106.
[849] Interview 0349.
[850] Reuters, 27 May 2011.
[851] Interview 0349.
[852] Interviews 0297, 0413, 0420.
[853] Interview 0168.

all were participating in the hostilities.[854] The Commission observed fire damage to a mosque on the hills above the town reportedly the result of Qadhafi forces firing tracer rounds through the windows. The Commission also observed heavy damage to the secondary school. Members of the *thuwar* at the time told the Commission that they used the upper floor of the school as an observation point at night and that this attracted fire from the Qadhafi forces stationed opposite. The Commission was provided with a list of 312 houses shelled. No civilians died during the bombardment as most families had evacuated. The shelling finally ceased once Qadhafi forces retreated to Bir-al-Ghanem in July, by which time Yafran was out of range.[855]

573. The Commission observed considerable damage in the three towns visited, but particularly in Yafran. The damage was consistent with sustained bombardment over a period of weeks by a mixture of Grad rockets, tank fire and artillery. The rockets were unguided, and thus - when used in a built-up area amongst civilian houses and other buildings - would be difficult to aim only at military targets. As most of the civilian population had largely evacuated, the significant majority left behind in Nalut and Yafran were *thuwar*.

574. Many of the civilian houses destroyed in Yafran were used by the *thuwar* as refuge from the shelling. *Thuwar* positions and legitimate military targets in Nalut were side by side. Mosques and schools in Zintan and Yafran were used by *thuwar* for observation or support purposes which can be considered to be military in character. As such, the Commission could not consider them as purely civilian objects. Much of the fire appeared to be indiscriminate, however, the Commission could not determine without further investigation whether schools, hospitals and mosques and other civilian objects were hit deliberately. Such attacks, for example, on a school in Yafran and a mosque on the outskirts of Zintan, were made after these buildings could be said to have taken on a military character by encouraging or supporting combat operations by *thuwar*. As such their targeting would not necessarily violate international law.

Thuwar

i. Attack on Sirte

575. The final battles in Libya, which took place in Sirte, Muammar Qadhafi's hometown and last stronghold, were among the fiercest in the country. When the Commission visited the city in January 2012, it noted severe damage to public buildings, the university, homes and other structures, particularly in central Sirte and in Area 2, where Qadhafi and his remaining forces were positioned during the last stages of combat.

576. *Thuwar* from Misrata and Benghazi participated in the attack on Sirte. While the city was encircled from mid-September 2011 by *thuwar*, the fiercest battles took place in the first three weeks of October as the fighting reached the city centre. Both sides used indiscriminate fire, endangering civilians who fled en masse. Some remained trapped inside the city – reportedly fearing abuse by *thuwar* and choosing to remain with Qadhafi forces. Other civilians reportedly stayed as they had no means to flee without petrol or because they wanted to protect their homes from theft and looting. The humanitarian situation became increasingly desperate, with severe shortages of basic necessities and medical supplies, as well as lack of electricity and water.[856]

[854] Interview 0316.
[855] *Ibid.*
[856] ICRC, *Libya: Situation desperate in Sirte Hospital*, 11 October 2011. Available from: http://www.icrc.org/eng/resources/documents/news-release/2011/libya-news-2011-10-11.htm.

577. *Thuwar* forces used Grad rockets, artillery shells and RPGs, as well as small and medium calibre weapons in their assault on Sirte.[857] They launched barrages of Grad rockets hitting residential areas like Area 1, Hay al-Dollar, and Montaza. Residents told the Commission that the area was hit by projectiles in mid-September 2011.[858] Civilian casualties were reported by local residents and independent observers.[859] The Commission visited houses in the neighbourhood of Montaza, examining damage and shrapnel, consistent with the use of Grad rockets. Family members interviewed by the Commission stated that a female relative was injured by shrapnel, and her infant daughter was killed, when her home in Hay al-Dollar was hit by Grad rockets in late September 2011.[860]

578. UNOSAT analysis of high-resolution satellite imagery for the city of Sirte and its immediate vicinity was conducted using multiple satellite images acquired on various dates between 16 September and 22 October 2011. Imagery indicates little damage was visible in Sirte on 16 September 2011. Significant amounts of destroyed or damaged buildings, debris, scorching, flooding, and other signs of combat are visible by 22 October 2011. Damage observed includes debris, collapsed buildings, numerous flooded areas, and the aftermath of airstrikes on civilian homes and on vehicles near a traffic circle. On-the-ground photographs indicate that a large portion of the damage inflicted on buildings in Sirte occurred to facades and interiors, and thus would not be visible to satellite imagery. Therefore, the damage assessment conducted by UNOSAT should be viewed as a proxy indicator for damage to buildings.

579. The Commission's senior military adviser conducted a site survey of damage to the city on 21 January 2012. Damage throughout the city was the most extensive observed in any location in Libya other than in Tawergha. Nearly every building exhibited damage. The most common damage and weapon debris observed was from Grad rockets that seemed to have fallen in every part of the city, combined with heavy machine-gun fire from 14.5mm and 23mm guns. Dozens of buildings appeared to be uninhabitable due to severe structural damage collapsed walls and roofs. Numerous buildings exhibited impacts from shells consistent with 106mm recoilless rifles and 107mm rocket artillery using both HEAT rounds and HESH rounds. Strikes from RPGs were also evident throughout the city. Fire damage was extensive in some areas.

580. Although some of the buildings were doubtless used by the Qadhafi forces and were therefore lawful targets for attacks by *thuwar*, damage was so widespread that the shelling appeared indiscriminate. Interviewees traveling with *thuwar* during the attack on Sirte in late October 2011 told of night-long Grad rocket barrages fired indiscriminately, without the aid of spotters or other attempts to aim fire at military objects.[861] Mortar use was similarly widespread. The Commission found buildings damaged and destroyed deep within the city - not just along main roads and the axis of fighting.

i. Attack on Tiji

581. Approximately 300 armed fighters from the Nalut *thuwar* entered Tiji on 1 October 2011. Reportedly, the attack began with the Nalut *thuwar* shelling Tiji with Grad

[857] BBC, *Civilian fears in final Sirte fight*, 1 October 2011. Available from http://www.bbc.co.uk/news/world-africa-15155599. Times of Malta, *Civilians flee horror of the battle for Sirte*, 4 October 2011. Available from 1http://www.timesofmalta.com/articles/view/20111002/world/civilians-flee-fighting-in-sirte.387419; AFP.
[858] Interview 0351.
[859] Interviews 0465, 0351.
[860] Interview 0351.
[861] Interview 0465.

rockets, which cannot be guided towards specific point targets, and mortars.[862] The shelling led to at least four civilian casualties (see chap. III, sect. G). [863]

i. Attacks on Tawergha

582. *Thuwar* from Misrata began shelling the town of Tawergha on or about 10 August 2011. Grad rockets were fired indiscriminately into the town. The Commission received consistent reports of civilians being killed and injured when rockets hit their houses.[864] One resident detailed how, on 11 August, a rocket struck his house killing his wife, daughter, son, grandson, nephew and son-in law (see chap. III, sect. E).[865]

i. b) Attacks on Protected Medical Personnel, Transport and Facilities

ii. Qadhafi forces

iii. Occupation of Yafran hospital

583. According to multiple interviews conducted by the Commission, Qadhafi forces entered Yafran on or around 18 April 2011, during which they occupied the Yafran hospital.[866] They remained there until early June 2011. Two staff members independently confirmed to the Commission that the group that initially took over the hospital was a unit of the Popular Guard (*Al-Haras Al-Shaabi*), mainly composed of volunteers.[867]

584. According to the more senior staff member, the commander of the Popular Guard [018] set up his headquarters in one of the hospital's offices and his men proceeded to search the hospital, causing damage.[868] Two interviewees detailed that during the search, the Popular Guard came across an Egyptian construction worker who was in intensive care with a gunshot wound. They beat him, believing him to be involved with the *thuwar*.[869] The Popular Guard also parked 10-15 pick-up trucks with weapons mounted on them inside the hospital grounds.[870] One interviewee noted that various groups of Popular Guard were entering and searching the hospital at will.[871] One group used a shipping container already on the grounds of the hospital as a make-shift detention centre.[872]

585. At the end of April 2011, soldiers from the regular army arrived in armoured vehicles and took control of the hospital from the Popular Guard. The soldiers reportedly used the hospital grounds as a base to fire on suspected *thuwar* positions.[873] The soldiers were under the command of [022] and then [032] with the commander of the area being [061]. According to the same interviewee, the soldiers were more disciplined than the Popular Guard, but there was some harassment of two female nurses from Ukraine and Bangladesh.[874]

i. Attacks on hospitals, medical staff and ambulances

[862] Interviews 0223, 220, 0224, 0231, 0232.
[863] Interview 0223.
[864] Interviews 0003, 0043, 0044, 0046, 0053.
[865] Interview 0046.
[866] Interviews 0465, 0291, 0294, 0316, 0321.
[867] Interviews 0291, 0321.
[868] Interview 0321.
[869] Interviews 0291, 0321.
[870] Interviews 0291, 0321.
[871] Interview 0321.
[872] *Ibid.*
[873] Interviews 0291, 0321.
[874] Interview 0321.

586. The Commission received numerous allegations that medical personnel were subject to killings, arbitrary arrests and detentions accompanied with torture, ill-treatment and harassment. Ambulances were reportedly shot at by Qadhafi forces several times during the course of the conflict. They were also allegedly misused to transport armed soldiers. The Commission received reports that hospitals were shelled; medical supplies restricted; and wounded demonstrators and *thuwar* denied medical treatment.

587. The Commission interviewed a number of former detainees and family members who confirmed the executions of doctors by Qadhafi forces in separate occurrences. In August 2011, as Tripoli fell, a group of doctors was selected from the detainees in the second warehouse in Khilit al-Ferjan (Yarmouk) (see chap. III, sect B). Together with a group of senior military officers, the doctors were executed. A family member of one of the doctors informed the Commission that the deceased had been arrested at the medical centre where he worked.[875] His family did not know where he was until they were called to collect his body.

588. The Commission was told by a witness of three medical staff in an ambulance who were executed in front of a shop in Gargur when Tripoli fell (see chap. III, sect B).

589. In March 2011 an ambulance driver in Misrata was reportedly shot dead by a sniper (believed to be from the Qadhafi forces) when he was called to evacuate two wounded people. The Commission received reports of other doctors and nurses being killed, as well as the driver of an ambulance in Rayanna being fired upon.[876]

590. The Commission received and verified numerous reports of medical personnel being subjected to arrest, detention, harassment and intimidation by Qadhafi forces in the course of providing medical assistance to the wounded. This included reports of 18 medical personnel arrested by Qadhafi forces in Tripoli.[877]

591. The Commission interviewed a doctor detained in the containers at Al Khums (see chap. III, sect B). He had been treating wounded *thuwar* in Al Zawiyah. He reported that he was severely tortured while detained. Most of those detained with him died.[878]

592. The Commission interviewed a female nurse, reportedly detained for opposing the Qadhafi Government.[879] She reported being subjected to torture and sexual harassment. Another nurse interviewed said he was arrested inside the hospital at Yafran and taken to the boy scouts' base near Al Qalaa.[880] He was blindfolded, beaten, and electrocuted. One of his captors said "I have a nurse with me who helped the rats." The Commission has also received information on doctors arrested in Al Zawiyah after the Qadhafi forces regained control of the town.[881] Both were were transferred to Abu Salim prison. The Commission has received multiple reports of armed Qadhafi forces who entered Al Zawiyah hospital to arrest any patient with gunshot wounds, assuming them to be *thuwar*, as well as the doctors treating them.[882] A doctor told the Commission that he went into hiding after Qadhafi brigades came in search of him. He informed the Commission of at least three doctors who were arrested. One was arrested inside Al Zawiyah hospital and was later shown on state television where he was declared "a criminal"; another was also

[875] Interview 0228.
[876] Interview 0383.
[877] Interview 0377.
[878] Interview 0314.
[879] Interview 0098.
[880] Interview 0291.
[881] Interview 0361.
[882] Interview 0361.

arrested in Al Zawiyah hospital and placed in detention until the fall of Tripoli; while the third was arrested in a medical clinic and then detained in Tripoli.[883] The Commission also heard from another doctor who went to work in a *thuwar* makeshift hospital after he was warned that Qadhafi forces had come looking for him.[884]

593. The Director of a hospital was also reportedly detained near Bab Al Aziziya in Tripoli, blindfolded, beaten and transferred to Abu Salim prison.[885]

594. The Commission interviewed a paramedic who was in an ambulance in Benghazi on 17 February 2011 when Qadhafi forces shot at it, injuring the driver.[886] Other witnesses interviewed were inside ambulances fired on in Ajdabiya on 21 March 2011 and in Bani Jawad.[887]

595. In Zintan, the Commission interviewed two witnesses who were shot at while in an ambulance heading towards Al Qawalish. The first was a nurse who was injured in the shooting.[888] The second witness was in an ambulance when bullets fired by Qadhafi forces hit the ambulance.[889] The driver had to turn back to Zintan. After doing so, another bullet hit the ambulance from the rear.[890] The Commission received reports on similar incidents in Zintan. At the end of April, for example, an ambulance going to evacuate wounded persons was reportedly shot at by 14.5mm anti-aircraft gun. One of the medical staff on board was killed.[891]

596. The Commission also received several eyewitness reports of Qadhafi forces firing on ambulances in Al Zawiyah.[892] On 5 March 2011, a doctor was on board an ambulance going to the hospital in Al Zawiyah which was hit by two bullets on the driver's side. During the same period, a journalist was travelling in an ambulance in Al Zawiyah which also came under fire.[893]

597. Witnesses interviewed by the Commission reported seeing ambulances dropping off or carrying armed personnel or equipment, which were not for medical purposes. The Commission received two reports of Qadhafi forces using two ambulances to transport their fighters into the square in Al Zawiyah and that these forces fired on the *thuwar* from within the ambulances.[894] At the end of April 2011, members of Qadhafi forces belonging to the Revolutionary Guard came to the Tripoli Medical Centre in Souq Al-Jumaa and seized four ambulances. A witness said he saw an ambulance dropping off armed men in military uniform in the same area. Another reported two ambulances carrying five to seven soldiers in military uniform on board on 20 February 2011 in Tripoli.[895]

598. In addition to the occupation of Yafran hospital stated above, the Commission received reports of Qadhafi forces surrounding the hospital in Tajoura, Tripoli at the end

[883] Interview 0361.
[884] Interview 0377.
[885] Interview 0363.
[886] Interview 0021.
[887] Interviews 0060, 0078.
[888] Interview 0297.
[889] Interview 0413.
[890] The Commission has seen the ambulance and taken photographs.
[891] Interview 0413.
[892] Interviews 0203, 0361, 0464.
[893] Interviews 0281, 0361, 0464.
[894] Interviews 0147, 0184.
[895] Interviews 0281, 0341, 0427.

of February, 2011 and restricting the provision of medical assistance. Doctors reportedly started working in their homes to help the wounded.[896]

i. Conclusion

599. The Qadhafi forces launched massive and sustained bombardments, particularly on Misrata, but on many other towns and cities in Libya during the conflict. In the course of this, many civilian lives were lost and civilian buildings destroyed. The civilian population in some of these towns had been evacuated. Some of the civilian buildings were being used at least in part by *thuwar* for military purposes. The Commission considered the use of Grad rockets to be indiscriminate in populated areas because they are incapable of being directed at a specific military target within those populated areas.

600. The use of of unguided rockets and mortars against residential areas in this manner violated international law. An attack must distinguish between military and civilian targets. While the *thuwar* were using individual houses for shelter, rendering them lawful targets, the scale of the shelling and the damage caused to residential buildings by the use of these unguided weapons was disproportionate to the military gain and breached the principle of distinction. The use of cluster munitions and mines in such areas also failed to discriminate between fighters and civilians.

601. The same principles apply to the *thuwar*'s attack on Sirte. The scale of the destruction there and the nature of the weaponry employed demonstrated that the attacks in Sirte were indiscriminate.

602. The Commission found that those attacks on doctors, ambulances and hospitals that were deliberate constituted war crimes. Additionally, Qadhafi forces killed, tortured and arbitrarily arrested medical personnel. They attacked ambulances and medical facilities, and used those medical facilities in furtherance of military objectives in violation international humanitarian law.

NATO

1. Introduction

603. On 17 March 2011, the United Nations Security Council adopted resolution 1973 (2011) which authorized "all necessary measures" to "protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya" short of a "foreign occupying force."[897] On 19 March 2011, military forces from France (Operation Harmattan), the United Kingdom (Operation Ellemy), and the United States (Operation Odyssey Dawn) began attacks inside Libya.[898] On 24 March 2011, NATO assumed control of operations within the no fly zone, though individual NATO member states had control of the airstrikes by their own forces. On 31 March 2011, NATO assumed command of all offensive operations conducted by 18 states from NATO and the Middle East under the name Operation Unified Protector.[899]

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[896] Interview 0098.

[897] http://www.un.org/News/Press/docs/2011/sc10200.doc.htm

[898] At least 110 Tomahawk cruise missiles were reportedly fired by naval forces of the UK and US as well as an unknown number of aerial munitions before NATO assumed command. http://articles.cnn.com/2011-03-19/world/libya.civil.war_1_misrata-missiles-fighter-jets?_s=PM:WORLD

[899] http://www.nato.int/cps/en/natolive/topics_71652.htm Operation Unified Protector was undertaken by the states of Belgium, Bulgaria, Canada, Denmark, France, Greece, Italy, Jordan, Netherlands, Norway, Qatar, Romania, Spain, Sweden, Turkey, United Arab Emirates, United

604. Between 31 March 2011 and 31 October 2011, NATO aircraft flew a total of 17,939 armed sorties in Libya: 17,314 using fixed-wing aircraft, 375 by helicopter, and 250 by unmanned aerial vehicles (UAVs) or drones. Airstrikes were of two types, deliberate (planned in advance) and dynamic (opportunistic strikes on targets that present themselves during the course of a mission).

605. NATO's aerial campaign in Libya was the first in history where a party to the conflict employed precision guided munitions exclusively. NATO employed 7,642 air-to-surface weapons, all of which were precision-guided: 3,644 laser-guided, 2,844 GPS-guided, 1,150 precision-guided direct-fire weapons (such as Hellfire missiles), and four miscellaneous precision-guided munitions.[900] NATO told the Commission approximately 470 naval rounds were fired.[901] NATO did not provide a number of ship-launched Tomahawk missiles fired. NATO also said no cluster munitions or passive attack cluster munitions were used.[902] NATO told the Commission that it had a standard of "zero expectation" of death or injury to civilians. NATO told the Commission that no targets were struck if there was any reason to believe civilians would be injured or killed by a strike.[903] NATO also told the Commission that the majority of munitions employed used delayed fusing to minimize collateral effects and that it also employed the minimum-sized munitions necessary to achieve the objective.[904] The delayed fusing allows an aerial bomb to penetrate through the roof and explode inside or underground, collapsing the buildings upon themselves. When this happens, the blast and fragmentation damage is contained, thus minimizing collateral damage and the potential to harm civilians.

606. NATO told the Commission that it also provided effective warning to the population throughout the conflict, including "location-specific warnings…in order to advise them to avoid areas likely to be struck."[905] NATO provided the Commission with copies of leaflets NATO had distributed throughout Libya during the conflict. The leaflets directed civilians to avoid combat areas, to tune to a specific radio station for information, and told civilians NATO was conducting operations to protect civilians. The Commission also received copies of photographs of leaflets found in Libya.

607. During the second phase of the Commission's work, the Commission's military expert, a former head of high-value targeting with a NATO member state government, investigated a total of 20 NATO airstrikes in Libya. This included a visual inspection of each site; detailed crater analysis; analysis of ejecta (material thrown out by the blast); and, where available, examination of the remnants of the munition itself. The Commission also looked for military signatures, in other words evidence that the site had been used for a military purpose. This might include, for example, the remains of weapons stored there, or military equipment such as communications aerials. The Commission also conducted 34 interviews with victims and witnesses. There were four sites with reported instances of civilian casualties that were not investigated by the

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Kingdom, United States of America. It is not within the Commission's mandate to assess the manner in which the Security Council Resolution to enforce the no-fly zone and to protect civilians was implemented.

[900] Laser-guided bombs are guided to their targets by a laser aimed by the pilot; GPS-guided bombs are guided by satellite based on geographical coordinates; direct-fire weapons are guided by the pilot after they are released.

[901] NATO letter to the Commission, 15 February 2011.

[902] NATO letter to the Commission, 15 February 2011.

[903] NATO letter to the Commission, 23 January 2012.

[904] NATO letter to the Commission, 23 January 2012.

[905] NATO letter to the Commission, 23 January 2012 and email, 21 February 2012.

Commission due to time and security constraints.[906] The Commission benefited from assistance from UNOSAT who provided satellite imagery to assist the Commission in determining if sites had clear military utility. Satellite imagery was not available for all dates. The Commission accepts that there may have been military utility before or after the images examined by the Commission. In those circumstances, the Commission requested clarification from NATO. Much of the evidence gathered by the Commission in relation to NATO strikes is of a technical nature and necessitates detailed explanation.

608. The vast majority of NATO airstrikes did not result in civilian casualties or collateral damage to civilian objects, even where there was a significant potential for civilian harm.

609. For example, from 24-25 May 2011 NATO aircraft struck the Bab-al-Aziziyah facility, a large military compound and barracks in central Tripoli used by Qadhafi as a residence and headquarters. Numerous multi-story buildings used by Qadhafi's security forces were destroyed. The collapsed buildings show damage consistent with 2000lb bombs using delayed fuses: some of the buildings show clear entry holes extending through multiple floors, indicating an aerial bomb with a delayed fuse had exploded inside or underground, collapsing the buildings upon themselves and thus minimizing collateral damage. Several of the security buildings destroyed were less than 300 meters from civilian apartment buildings, close enough to be at risk of collateral damage from the strikes. While civilian apartment buildings were well within the collateral damage radius of the attack, not even the glass on these apartment buildings was broken. Weapons appeared to impact at angles pointing away from civilian housing to ensure flying debris did not impact them. Finally, many strikes were at night. This meant fewer civilians would be on the street and reduced the likelihood of civilian casualties.[907]

610. A number of NATO airstrikes, however, were the subject of allegations of civilian casualties, which the Commission investigated. Allegations of civilian casualties during the conflict came from the then Libyan government, which it alleged amounted to an indiscriminate attack on civilians, or media reports. Others were reported by witnesses during the Commission's field missions. Some of these claims were backed up by evidence subsequently gathered by the Commission. The Commission also investigated a number of sites to establish that NATO's claims on accuracy and use of precision-guided munitions were in fact accurate.

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[906] The New York Times, 16 December 2011. The New York Times reported that on 25 September 2011 a NATO airstrike in Sirte on the home of a senior military officer killed seven civilians and wounded four. The New York Times also reported that on 16 September 2011 a NATO airstrike in Sirte killed at least one civilian and wounded two. The reason for the attack is unclear. The Commission is unable to determine whether this was a legal military target. The New York Times reported that on 6 August a NATO airstrike in Tripoli hit an SA-2 anti-aircraft missile storage facility next to a residential area. While no civilians were killed the secondary explosions damaged and destroyed homes and businesses in the area and injured three civilians. The New York Times reported that on March 29 a NATO airstrike on an ammunition depot in Mizdah led to bombs being ejected from the site and landing up to three miles away, hitting a hospital and residential area and wounding two people.

[907] Protocol I, Article 52, defines a legitimate military target as one "which by [its] nature, location, purpose, or use makes an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage."

611. The Commission documented five airstrikes leading to a total of 60 civilians killed and 55 injured.[908] The Commission also investigated two NATO airstrikes which damaged civilian infrastructure and where no military target could be identified.

612. Specific incidents will be dealt with below.

Applicable Law

613. The legal regime applicable to NATO's actions in Libya are based upon principles of international humanitarian law set out elsewhere in this report (see chap. I, sect. E). Principles of distinction, proportionality, precautions, humanity and military necessity can be found in multiple legal sources, including the Hague and Geneva Conventions. They form part of customary international law.

614. Attacks must distinguish between civilian and military persons and objects, with only the latter targeted. International law requires the one directing an attack to "take all feasible precautions" to ensure that the objective of the strike is indeed a legal one, and that the damage to civilians and civilian objects is minimized. The obligation extends for the duration of the attack, requiring that it be cancelled or suspended if it becomes apparent that the target is not a military target or that its status has changed.

615. Under the rule requiring *proportionality* in attack, a party is required to forego any offensive where the incidental damage expected "is excessive in relation to the concrete and direct military advantage anticipated."[909] Thus, where the military advantage is outweighed by the damage or death to civilians and/or civilian objects, the attack is forbidden. This rule applies despite the recognition that incidental injury to civilians - so-called "collateral damage" - may occur even when an attack is lawful. Collateral damage does not in itself render an attack unlawful according to the laws of war; rather, the damage is to be weighed in proportion to the significance of the military advantage that would be achieved in a successful attack.

616. As with "disproportionate attacks," a failure to take all feasible precautions does not *per se* mean that those killed during a strike were unlawfully killed. However, the killing of a protected person that could have been avoided if the attacker had undertaken all feasible precautions, is an unlawful killing.

Factual Findings

i. Libyan Government claims

617. During the first visit of the Commission to Tripoli in April 2011, the Commission met with a Government health official who stated that 64 civilians had been killed by NATO bombardments. The Commission also received written reports from the Libyan authorities stating that strikes had resulted in the death of 500 civilians and 2,000 injured and 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 was claimed that NATO airstrikes had resulted in the closure of 3,204 schools, leaving 437,787 students without access to education.[910] The authorities did not provide any evidence of this at the time and the Commission was not in a position

[908] There was one additional incident where civilians were reportedly killed but further information suggests those killed were armed combatants. There were an additional eight civilian deaths and 11 injuries reported in four incidents which the Commission could not confirm.

[909] See ICRC Customary IHL Rule 14; Rome Statute of the International Criminal Court, Article 8(2)(b)(iv).

[910] A/HRC/17/44para 222.

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to assess the veracity of the information received.[911] As stated in its first report, the Commission had not seen evidence either to suggest that civilian areas had been intentionally targeted by NATO forces, nor that it had engaged in indiscriminate attacks on civilians.

618. The Commission took account of subsequent claims by the Government in regard to civilian casualties, but testimony from former Government members and others, as well as its own interviews at the sites, confirmed to the Commission that the Government deliberately misstated the extent of civilian casualties.[912] In some cases the Commission found the Libyan government claimed civilian casualties in airstrikes in areas where there had been no attacks at all. In one case, the Commission received a credible report of Libyan forces removing the bodies of children from a hospital morgue and took them to the site of a NATO airstrike.[913]

Cases

i. Majer

619. The single largest case of civilian casualties from a NATO airstrike took place in the town of Majer in the area of Al Huwayjat on 8 August 2011. On August 9 2011, Libyan state media claimed 85 civilians had been killed.[914]

620. The Commission found that at approximately11:30pm six buildings were struck. Four of the buildings were unoccupied. However, five women and seven children were killed in one building. Moments later, four men were killed in a second building. Neighbours and family members from the area, some who were attending evening Ramadan prayers at the local mosque, arrived at the site to evacuate wounded. After the rescuers arrived and had removed the four bodies from the second residential dwelling, another bomb struck, killing 18 rescuers. Victims estimated the time between initial strikes and the final restrike that killed rescuers as between 10 and 15 minutes. It is not clear whether the second strike was a restrike (a strike made shortly after the first in order to target military forces moving in) or simply a second strike to hit targets missed in the first.

621. The Commission conducted a site survey on 4 December 2011. It was able to identify bomb fragments from multiple GBU-12 Paveway II laser-guided bombs, as well as the guidance section for at least one GBU-12. There was no sign of the type of weapon debris or military signatures in the ejecta which might suggest the buildings were weapons storage facilities, communications hubs, or had any military function. The buildings struck appeared to have been residential dwellings. The Commission examined the remains of the vehicles driven by the rescuers and confirmed they were civilian-type vehicles with no provision for weapon mounts. The Commission conducted interviews of witnesses and survivors of the attack and reviewed hospital records of those killed and wounded in the strike. The Commission documented a total of 34 civilians killed and 38 wounded.[915]

622. Bomb remnants show that the guidance system on at least one of the bombs used in this attack was more than five years past its warranty date (October 2005). NATO told the Commission, “The fact alone that an expiration date has been passed does not mean that a weapon is no longer reliable, and the period of time during which a guidance

[911] A/HRC/17/44para 223.
[912] See, for example, interview 143 (December 2011).
[913] Interview 143, December 2011.
[914] Available from http://af.reuters.com/article/libyaNews/idAFLDE7780OO20110809
[915] Interviews 0068 and 0070.

system or munition is considered appropriate for use is thus a matter for individual Nations rather than for NATO itself."[916] GBU-12 bombs are guided to the target by the pilot using a targeting pod with an infra-red camera and laser designator.[917] This means the pilot or pilots of the aircraft dropping the bombs in this strike would have had to observe the target throughout the attack. Whatever the legitimacy of the initial strikes, the Commission has seen no evidence to suggest that the rescuers were in military vehicles or were otherwise participating in hostilities. Nor has it seen any other evidence to suggest that the pilot might have had reason to positively identify the people as military targets.

623. According to NATO the buildings were "functioning as a troop staging area"[918] and were "being used as a staging area for Government forces actively engaged in attacks on civilians and civilian-populated areas."[919] When it examined the site, the Commission found no evidence of the buildings being used by the Qadhafi forces. Given that a troop-staging area would involve the presence of troops and almost certainly significant vehicle activity, the Commission asked UNOSAT[920] to perform imagery analysis of the target area to see whether there were signs of such activity visible around the target at the time of the strike. Analysis of high-resolution GeoEye-1 satellite imagery was performed for 6 August 2011 (two days before the strike) and again for 9 August 2011 (the day after). Analysis of the imagery shows several concentrations of approximately 120 light trucks (but not identifiable military vehicles) in the area less than a kilometre from the targets on 6 and 9 August, but no activity at the site itself.

624. These observations are consistent with testimonies of witnesses interviewed by the Commission. Among those was one of the rescuers who came from the mosque after the attack, and removed the dead bodies of his aunt and her three children from one of the buildings. He told the Commission that both the houses and the rescuers were civilian.[921]

625. The Commission found no evidence on the ground, or through satellite imagery analysis, that the site had a military purpose. On the basis of the information received by the Commission, it seems clear that those killed were all civilians. NATO's response to the Commission did not provide an adequate explanation of the military value of the target, nor an explanation of the second strike. On the basis of the information provided, the Commission is unable to make a determination as to the military rationale for the initial attack and subsequent decision to launch the second strike (or 'restrike') at Majer.

i. Souq al-Juma

626. Three homes were destroyed during the targeting of what NATO described as a "military missile site," in Souq al-Juma in Tripoli, at approximately 1.30am on 20 June 2011.

627. On 2 December 2011, the Commission visited the site. From fragments of the bomb collected by family members, the Commission's military adviser was able to identify that one 500lb bomb had hit the site. According to NATO the bomb used was laser-guided which would mean the GBU-12 was the most likely weapon used.[922] There was no sign of weapon debris or military signatures in the ejecta which might have

[916] NATO letter to Commission, 23 January 2012.
[917] See for example the AN/AQQ-33 Sniper Advanced Targeting Pod.
[918] NATO letter to Commission, 23 January 2012.
[919] NATO letter to Commission, 15 February 2012.
[920] UNOSAT is a United Nations agency which provides satellite imagery and analysis to UN agencies.
[921] Interview 0068.
[922] NATO letter to Commission, 23 January 2012.

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confirmed the site had a military significance. The Commission conducted interviews of witnesses and survivors of the attack and reviewed hospital records of those killed and wounded in the strike as well as police reports filed after the strike. This evidence shows 5 civilians were killed and 8 were injured.[923] Of the five deaths two were children; at least ten families were made homeless by the strike and were forced to relocate.[924] The house in question was located about one kilometer south of the Umm Aitiwah Airfield. UNOSAT analysis of high-resolution satellite imagery for the target was done using multiple satellite images from the WorldView-1, WorldView-2, and QuickBird satellites. No obvious signs of military activity before the strike were observed in the satellite imagery on 10 June 2011, nor was anything visible after the strike which might suggest the houses had a military utility.

628. NATO first stated the houses were not the target of the attack and they may have been hit due to a weapon malfunction.[925] Later, in a letter to the Commission, NATO said the intended target was the Tarabalus SA-2 Support Facility. However, NATO stated the weapon impact was not observed and NATO was unable to determine where it landed, though they acknowledge it was possible the errant bomb caused the casualties.[926]

i. Zlitan

629. On 4 August 2011 at approximately 6:30am the home of a 39 year old teacher was struck by a NATO airstrike. The man's wife, son and daughter were all killed by the blast. His mother and son were wounded. The family home is adjacent to a military facility. Locals could not identify what it was specifically. Neighbours indicated there were rumours senior Qadhafi leaders such as Abdullah al-Senussi were using the facility during the conflict.

630. According to NATO, the home was identified as a Government senior commander's command and control node directing forces in the Zlitan area.[927] NATO said the claim made by the Libyan government at the time of attack in relation to civilian casualties was "highly unlikely."[928]

631. On 4 December 2011, the Commission senior military advisor conducted a site survey. Damage to the home is consistent with a strike by a 500lb precision-guided munition, either a GBU-12 or GBU-38. There was no sign of weapon debris or military signatures in the ejecta at the house. The Commission examined the remains of the buildings, looking for signs of command and control nodes such as communications equipment, military grade cabling, military-grade satellite and other communication dishes, and fragments or pieces of such equipment destroyed in the bombing. There were none evident. The satellite dish on the house had been a commercial television one. There was nothing to suggest a connection between the house and the adjacent Libyan military facility. The home was separate from the military facility and had no physical access to it. UNOSAT Analysis of high-resolution satellite imagery for the target was done using multiple satellite images. Pre-strike atellite imagery on 3 August 2011, the day before the attack, showed no obvious signs of military activity before the strike.

632. The Commission conducted interviews of witnesses and survivors of the attack. The owner of the house said he was sure the attack was a mistake but that no one had

[923] Interview 0038. The Commission has a copy of the death certificates.
[924] Interviews 0037 and 0038.
[925] Available from http://www.nato.int/cps/en/natolive/opinions_75652.htm
[926] NATO letter to Commission, 23 January 2012. An SA-2 is a surface-to air missile system.
[927] NATO letter to Commission, 23 January 2012.
[928] NATO letter to Commission, 23 January 2012.

come to speak to him to explain why his family was killed.[929] The evidence suggests NATO hit the wrong building, that those killed were civilians and the building served no military function.

i. Bani Walid

633. On 29 August 2011, at 3.30am two residential buildings in Bani Walid were struck by at least two bombs killing five civilians and injuring one: a man, his wife, son, and two daughters were killed. His daughter was dug from the rubble and survived, though she reportedly suffered brain damage.

634. According to NATO the site "was a major command and control node…actively controlling Government forces which were attacking civilians in the area." On 22 January 2012, the Commission's site survey located a tail fin showing the homes were struck by GBU-12 laser guided bombs. It found no sign of weapon debris or military signatures in the ejecta at the house which might suggests a military base or storage facility, nor signs such as communications equipment that would suggest the building was a command and control node. The Commission interviewed a number of witnesses, including family members, all of whom indicated the houses were civilians in nature. The witnesses denied to the Commission that the buildings were ever used for military purposes.[930] UNOSAT satellite imagery of the compound for 22 May 2011, three months before the strike, showed hundreds of light trucks and possible light armoured vehicles in several areas of the city, but none closer than 125 meters northeast of the compound. There was no imagery available between 22 May 2011 and the date of the airstrike.

635. While further military activity may have occurred at the site subsequent to the images viewed, the Commission did not see evidence of any military purpose for hitting the buildings from its investigation on the ground. The location of vehicles in the area during a period of significant military activity does not indicate any relationship between those vehicles and this home. NATO provided no further explanation or military link to this home other than to identify it as a command and control node.

Surman

636. A compound housing the residence of Major General El-Khawaidi el-Hamedi and his family was bombed by NATO on the night of 20-21 June 2011. Libyan state Media claimed 19 civilians were killed.[931]

637. On 24 January 2012 the Commission's senior military advisor visited the site. Inside the perimeter the Commission found two large mansions destroyed by aerial bombs consistent with 2000lb earth penetrators, likely to have been BLU-109 based upon the entry holes. The bombs detonated deep within the structures destroying them. A third building struck by a penetrator had partially collapsed. The use of BLU-109s kept the ejecta contained and spared possible collateral damage to the mosque and nearby school which were less than 200m from the buildings struck which were within the range for collateral damage from a 2000lb bomb. A tennis court was also hit by two smaller bombs. Subsequent media reports showed that civilian-type vehicles had been parked on the tennis court at the time of the strike.[932] There was no sign of weapon debris or military signatures in the ejecta at the house; however according to witnesses interviewed by the

[929] Interview 0076.
[930] Interviews 0346, 0396.
[931] Available from http://ipsnews.net/news.asp?idnews=56175
[932] Available from http://www.youtube.com/watch?v=9gGrm_g5lRs Media report of site shows at least two civilian vehicles in the crater.

Commission the Libyan military came to the site after the strikes to remove bodies and may have also removed military equipment.

638. There was some evidence of military usage of the compound. There was an old post office across the street from the compound that was destroyed, the damage being consistent with a strike by multiple bombs. According to locals it was used by the General as a communications relay. This claim is supported by the presence of a large communications mast still standing adjacent to the post office. A large hall opposite a mosque inside the compound was not attacked, but the Commission found ammunition storage cases inside and locals told the Commission it had been used as a barracks and weapon storage facility by the Qadhafi forces.[933] NATO told the commission, "The weapons storage facility to which the Commission refers was known to NATO, but that target was not engaged on the basis of its proximity to a mosque and school."[934] According to witnesses, the entire area was off-limits to locals during the conflict and was heavily guarded by the military and police. UNOSAT imagery analysis showed military activity in the area on 27 May 2011, the last date imagery was available prior to the strike. The Comission determined there were 13 civilians killed in the attack.[935] The General was not killed.[936]

639. The Commission is unable to conclude, barring additional explanation, whether such a strike, albeit one within a military compound, is consistent with NATO's objective to avoid civilian casualties entirely, or whether NATO took all necessary precautions to that effect.

i. Bani Walid

640. The Commission investigated two further airstrikes against civilian objects where there were no civilian casualties but where the Commission could not identify any military necessity for the attacks. The Commission notes the nature of the conflict during the strikes on these facilities was fluid and it is possible Qadhafi forces used these facilities as lodging or for some other transient purpose that would not leave adequate evidence behind for the Commission to find or that locals did not witness.

641. On 9 September 2011, NATO bombed a large complex in Bani Walid with over 35 buildings identified as a medical school by locals. The Commission investigation found the destroyed buildings contained burned school desks, books, and medical equipment consistent with this facility being a medical school.[937] There were no military signatures in the craters or debris on the grounds. While there were some craters, not all buildings appeared to be destroyed by aerial bombs and the Commission found the remains of 68mm SNEB rockets at the site.[938]

642. UNOSAT analysis of high-resolution satellite imagery from 4, 5 and 8 September 2011, the day before the strike, showed no evident military activity. There was military activity observed from four months before the strike, on 22 May 2011, when at least 100-200 light trucks and possible light armoured vehicles were parked on the street directly to

[933] Interview 0352.
[934] NATO letter to Commission, 15 February 2011.
[935] Interview 352.
[936] Available from http://www.adnkronos.com/AKI/Arabic/Security/?id=3.1.2446123160 and http://www.boston.com/news/world/africa/articles/2011/06/21/libya_asserts_nato_strike_killed_15_including_children/
[937] According to locals the facility was a medical school. Interview 0348.
[938] The 68mm SNEB rocket is fired from a MATRA rocket pod mounted on aircraft used by NATO; however it is possible that the site was at some point struck by *thuwar* rocket fire as the *thuwar* jury-rigged MATRA rocket pods during the war.

the west of the complex, stretching north to south. About 20 light SUV trucks are visible inside the complex on that date as well, though it is not possible to tell if the SUVs have a military or civilian function. While this number of vehicles could indicate the general area was being used as a staging point for Qadhafi forces at that time and subsequently, the Commission saw nothing on the imagery or on the ground that would indicate the reason why the compound itself would have been struck four months after this. Local residents denied the compound had any military usage.[939]

643. According to NATO, "this facility was a confirmed military facility in a walled compound, and was being used at the time as a command and control facility." NATO did not provide further evidence to support the contention this was a command and control facility and the Commission found nothing on the ground to support NATO's statement.

644. On 10 October 2011, two buildings in Bani Walid housing a tile factory were destroyed. The Commission found remnants of the guidance system and bomb fragments for a GBU-12 laser guided bomb in a crater. The owner of the factory and other witnesses denied it was used for military purposes.[940] The buildings were filled with hundreds of broken floor tiles as well as six large tile-manufacturing machines that were destroyed in the attack. The Commission searched the site for evidence that it had been used by Qadhafi forces for military activity. There were no signs of secondary explosions in the factory buildings that would indicate ammunition or weapon storage, and none of the debris was military in nature. It did find a destroyed pickup truck outside the perimeter of the factory with a mount of the type used for a 23mm anti-aircraft cannon. The Commission could not determine when the vehicle had been placed there or whether it had been used by the Qadhafi forces. There were no other visible indications for why the factory may have been targeted.

645. UNOSAT analysis of multiple high-resolution satellite images throughout September 2011 and up to 5 October 2011, do not show military activity at the site.

646. According to NATO the site was "an industrial compound that had been taken over for military purposes and was being used at the time as a command and control node." Witnesses interviewed by the Commission denied this and the Commission found nothing besides the destroyed pickup truck to indicate any military presence at the factory. NATO provided no evidence to support the contention this was a command and control site.

i. Sirte

647. On 16 September 2011, in Sirte a dynamic airstrike destroyed two pickup trucks belonging to Qadhafi forces, killing 30 individuals gathered on the street. According to NATO, the military vehicles were firing into civilian areas and authorization was given to engage them when clear of the populated area. "The vehicles were not struck until they left the populated area where they had initially been observed, and had relocated to an area free of civilians and civilian structures." Although the vehicles were a legal target they were engaged on the edge of Sirte within 30 meters of civilian structures.

648. According to witnesses a second bomb struck after a group of rescuers arrived, reportedly killing another 28 civilians, including children. The Commission determined the weapons used were GBU-12 laser guided bombs based on bomb guidance fins recovered at the site. The Commission's investigation showed those killed were in fact

[939] Interview 0348.
[940] Interview 0342.

most likely armed civilian volunteers. The Commission was unable to come to a conclusion on the presence of non-combatants, as witness information was contradictory.

Conclusions

649. The Commission recognises the large numbers of sorties and the proportionally low number of civilian casualties in comparison to other campaigns figures show the campaign conducted by NATO was conducted with precision weapons and a demonstrated concern to avoid civilian casualties. The vast majority of airstrikes hit military targets outside of population centres and did not endanger civilians. For the few targets struck within population centres, NATO took extensive precautions to ensure civilians were not killed.[941]

650. A number of allegations against NATO investigated by the Commission were either exaggerated or a deliberate attempt at misinformation.

651. Nevertheless the Commission found there were civilian casualties resulting from NATO's operations.

652. The Commission interviewed numerous witnesses at each site. While some may have had reason to claim combatants were civilians or deny a site had a military usage, particularly if they wished to distance themselves from the Government, the Commission found the cumulation of testimonies credible and supported by hospital records, including showing the dead were women and children.

653. On at least one occasion, NATO used munitions which had exceeded their warranty date. While the age of the munitions may not have affected the accuracy of the weapon used in this instance, there are significant potential consequences of using weapons whose precision-guidance has deteriorated over time.

654. The Commission is unable to understand NATO's characterization of four of five targets where the Commission found civilian casualties as "command and control nodes" or "troop staging areas" without further explanation. All of these sites were visited by the Commission and none showed evidence of such activity. Without further evidence to substantiate NATO's claims, the Commission cannot determine whether NATO took all feasible precautions to protect civilians at these sites.

655. The Commission is unable to determine, for lack of sufficient information, whether these strikes were based on incorrect or outdated intelligence and, therefore, whether they were consistent with NATO's objective to take all necessary precautions to avoid civilian casualties entirely.

Prohibited weapons

Introduction

656. In its first report, the Commission noted allegations made about the use of weapons prohibited under international law.[942] The Commission examined the use of weapons that are prohibited by treaty and also those that might be subject to restrictions under customary international law. It examined this use irrespective of the party allegedly employing them. As is set out in the applicable law section that follows, the Commission is aware that not all weapons discussed herein are prohibited for all countries involved. The main concerns surrounded the potential deployment of large stocks of

[941] See NATO letter to the Commission, 23 January 2012, for an explanation of precautions taken.
[942] A/HRC/17/44, para. 174.

landmines, phosphorus munitions and chemical weapons in the then-government's arsenal.

Applicable law

657. International customary law and international treaty law are both applicable with respect to weapons used during the conflict in Libya. Libya itself has ratified certain conventions that regulate the use of weapons, but it 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 (Ottawa Convention), or to the Convention on Cluster Munitions, 2008. Most countries involved in the NATO-led action are parties to the Ottawa Convention[943]; half of the countries involved are party to the Convention on Cluster Munitions.[944]

658. The use of phosphorous weapons is regulated in Protocol III of the Convention on Conventional Weapons.[945] Libya has not ratified it, although all countries participating in the NATO-led action, with the exception of Turkey, have done so. The Protocol prohibits the use of incendiary weapons against civilian targets or military targets where there is a concentration of civilians in the vicinity.[946] Phosphorous devices may be otherwise employed, such as an obscurant.[947]

659. Customary law prohibits the use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering.[948] Under this provision, the use of bullets that expand or explode upon impact with the body,[949] for example, or poisons, chemical and biological weapons[950] and weapons that cause blindness are unlawful.[951] The duty to direct hostilities only to legitimate military objectives has given

[943] The NATO-led military action entitled "Operation Unified Protector" (OUP) was undertaken after the Security Council Issued Resolutions 1970 and 1973. There are 159 states party to the Ottawa Convention. All NATO Countries have ratified the Ottawa Convention, except the US and Poland – the latter of which is scheduled to ratify it in 2012. Of the three non-NATO countries participating, Qatar and Jordon have both ratified it while the UAE has not signed or ratified the convention. For those having ratified the Convention anti-personnel mines are prohibited *per se*.

[944] There are 68 states party to the Convention on Cluster Munitions. Non-members include Canada, Greece, Romania, Sweden, US, Jordan, Qatar, UAE and Turkey; Canada and Sweden have signed but not ratified the Convention. The Commission notes that by not signing up to the treaty these countries are not bound to its restrictions. Nevertheless all relevant countries will be bound by any applicable provisions of customary law with respect to weapons.

[945] Protocol III to 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 (1981)

[946] Protocol III, art. 2

[947] Protocol III, art. 1

[948] Study on Customary International Humanitarian Law, p. 237, Rule 70.

[949] Customary International Humanitarian Law, Rule 77, states that the use of bullets which expand or flatten easily in the body is prohibited in both international and non-international armed conflict. Expanding bullets were first declared as prohibited in International armed conflicts in the *Declaration of St. Petersburg* 1868, and subsequently in the 1899 *Hague Conventions*. In 2010, the Rome Statute was amended to include article 8, paragraph 2 (e) (xv), specifically prohibiting the use of "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".

[950] There is also treaty regulating chemical and biological weapons. See Biological Weapons Convention (1972) and Chemical Weapons Convention (1993), respectively.

[951] See rules 72-78, ICRC Study on Customary International Humanitarian Law, p. 251-272

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rise to another rule that prohibits the use of weapons which are by their nature indiscriminate.[952]

660. Some weapons fall under both treaty and customary law. For example, the use of landmines is prohibited, as noted above, for those countries party to the Ottawa Convention. Cluster munitions are similarly prohibited for state parties under the Cluster Munitions Convention. Non-signatories are not necessarily prohibited from using landmines or cluster munitions, however they must nevertheless conform to customary principles such as the ones that requires users of these weapons to take particular care to minimize their "indiscriminate effects."[953]

Factual findings

i. **Expanding bullets**

661. During the first phase of its work, the Commission interviewed doctors who gave accounts of wounds that they had treated that they believed were consistent with the use of "expanding" bullets or "dum-dums." [954] The interviewees made reference to bullets with a red band between the bullet and case or with red-painted tips. The Commission viewed photos of these bullets and re-interviewed the doctors together with the Commission's Senior Military Advisor.

662. The investigation concluded that the red band of these bullets is in fact more likely a wax seal protecting the powder from getting wet and does not signify the bullet is explosive.
Neither are red-tipped bullets explosive, but rather are tracer rounds which leave a visible red trail to guide the aim of the shooter. The Commission did not find evidence of the use of expanding or explosive bullets in Libya. The Commission believes initial reports on these types of bullets were due to a lack of knowledge amongst the population about different types of ammunition, as well as a possible lack of familiarity amongst local medical personnel with gunshot wounds.

i. **Cluster munitions**

663. Cluster munitions are weapons containing dozens to hundreds of small bombs called submunitions. Once fired, or dropped from the air, the main canister separates to allow these submunitions to scatter over a wide area. The submunitions are designed to explode on contact with an object. However, they usually leave a high number of duds that fail to explode. Because of the wide area they cover, and the fact that unexploded submunitions can kill and maim on contact, they are often labelled as indiscriminate[955] and are therefore prohibited by many nations. In the first phase of the Commission's work it was aware of reports of the use of cluster munitions by Qadhafi forces, however it recommended further investigation in order to verify the allegation.

664. The Commission also found widespread use of Spanish-manufactured MAT-120 cluster munitions in Misrata by the Qadhafi forces. These weapons have a dual anti-

[952] Relying on the *Nuclear Weapons* case, the Commission previously set out the justification for analysing prohibited weapons on the basis of this rule, rather than relying on a specific treaty. See A/HRC/17/44, para 172
[953] See rules 70, 71, and 81, ICRC Study on Customary International Humanitarian Law.
[954] A/HRC/17/44, para. 174.
[955] On 13 September 2011, Mr. Sergio Duarte, High Representative for Disarmament Affairs, on behalf of the UN Secretary General delivered a statement to the Second Meeting of States Parties to the Convention on Cluster Munitions. Therein he described cluster munitions as "unreliable, inaccurate and indiscriminate." Speech available at http://www.clusterconvention.org/files/2011/09/statement_un_duarte.pdf.

personnel/anti-tank capability. These unguided munitions are fired from 120mm mortars. Witnesses reported their use in April against civilian areas of Misrata, and the Commission found considerable evidence of use within the city and port. The Commission found numerous dud submunitions as well as 120mm cluster mortar cargo sections. According to Mines Advisory Group (MAG), a total of 82 MAT-120 have been found and cleared since the end of hostilities.[956] MAG estimated a dud rate of 9.5% for the MAT-120s used in Libya. MAG also found air-delivered PTAB 2.5M cluster submunitions in and around Ajdabiya. The Commission has evidence of at least 150 air missions flown by the Libyan Air Force.[957] NATO told the Commission that it did not use cluster munitions. [958] The PTAB 2.5M is not in the inventory of any NATO nation that flew air missions in Libya. As such, the Commission believes these would have been dropped by Libyan aircraft.

665. The New York Times reportedly found Dual Purpose improved Conventional Munitions (DPICM) cluster submunitions in Mizdah.[959] Some of the submunitions had apparently been used by the Libyan Army against the *thuwar* in combat. Some submunitions were reportedly released when NATO hit a Libyan army ammunition storage facility with an airstrike that ejected the stored Libyan cluster munitions. These cluster munitions reportedly injured numerous Libyan civilians, although an exact number has not been determined. [960] DPICM and their spent cargo rockets used by the Libyan Army were also found in the Nafusa Mountains near Jadu and Zintan.

i. **Mines**

666. In the first report the Commission noted reports of landmine use during the conflict. The Commission documented indiscriminate use of anti-personnel and anti-vehicle mines by the government forces during the conflict. Of concern is that the minefields were not properly recorded by Libyan forces and many of the mines used have low metal content complicating detection and removal after the conflict. The Commission saw mined areas in the Nafusa Mountains, as well as mines removed from areas around Misrata including Brazilian TAB-1 AP mines, Belgian M3 AT mines, and Chinese Type 72 AT mines. The Commission also notes reports of the use of Belgian NR413 stake mines and NR442 bounding mines, Yugoslav TMA-5 AT mines, and Czech PT-Ma-Ba-III AT mines. [961] Civilians were killed and injured by mines during the conflict. [962]

667. The Commission found remains of Chinese-manufactured Type-84 rocket-dispensed scatterable anti-tank mines and their rockets used at the port of Misrata. The use of these mines is particularly serious for two reasons: first, they are not guided and tend to scatter over a large area much like cluster munitions. They are therefore indiscriminate when employed in civilian areas. Second, they use a magnetic influence fuse set off by the proximity of metal, meaning a civilian passing by with a cell phone or other metal could set off the mine without touching it.

[956] Email from MAG to Commission dated 30 January 2012.
[957] Interview 0381.
[958] NATO letter to the Commission (15 February 2012).
[959] http://atwar.blogs.nytimes.com/2012/02/01/can-you-name-this-cluster-bomb/?scp=1&sq=dpicm&st=cse.
[960] Email from New York Times to Comission dated 10 February 2012.
[961] http://maic.jmu.edu/journal/15.3/notes/c_king/c_king.htm
[962] Interview 0391.

668. Based on its investigations the Commission believes that Qadhafi forces mined Misrata harbour to prevent the arrival of supplies.[963] They used rubber rafts to plant two types of naval mines in the port, magnetic mines and contact mines.

669. During the conflict the *thuwar* were filmed placing anti-vehicle mines in Ajdabiya.[964] However, once the NTC was informed of the use of mines they issued a written declaration not to use mines again and also ordered *thuwar* forces not to employ them further.[965]

670. MAG is clearing mines and other explosive remnants of war in Libya. Between May and December 2011 they cleared 43 anti-personnel mines and 38 anti-tank mines.

i. Use of phosphorous weapons

671. In its first report the Commission noted information it had received pertaining to the possible use of phosphorous weapons.[966] The Commission was not in a position to verify the accounts and recommended further investigation. The Commission has since identified the presence of numerous weapons containing phosphorous in Libya. These included 155mm artillery projectiles containing white phosphorous, as well as white phosphorous mortar bombs of various calibres. These weapons were found among ammunition in makeshift rebel "museums", as well as some remaining in looted Libyan army weapon storage facilities.

672. NATO told the Commission that its forces did not employ phosphorous munitions.[967]

673. White phosphorous leaves clear and unique physical evidence after use and the Commission did not find any evidence that these weapons were ever actually used in any of the numerous battlefields investigated. The Commission found no evidence that any of these weapons were employed at any of the battlefields investigated.

i. Conclusion

674. The Commission found that the Qadhafi government forces employed cluster munitions and landmines. There was no evidence that they employed phosphorous or dum-dum bullets. There was no evidence of use of chemical weapons or phosphorous by Qadhafi government forces.

675. NATO did not employ cluster munitions, landmines or phosphorous.

676. There was some limited use of landmines by the *thuwar*, but no evidence of cluster munitions or phosphorous by the *thuwar*.

Use of Mercenaries

1. Introduction

677. The Commission in its First Report found that foreign nationals took part in the conflict, particularly on the side of the Qadhafi forces, but indicated that further

[963] Interviews 194, 249, 331. Witnesses said the mines used were 600kg Yugoslavian contact mines. This is most likely the SAG-2b.
[964] http://www.bbc.co.uk/news/world-africa-13138102.
[965] http://www.hrw.org/news/2011/04/29/libya-rebels-pledge-not-use-landmines.
[966] A/HRC/17/44, para. 177. See also http://www.algeria-isp.com/actualites/politique-libye/201110-A6545/libye-les-avions-otan-bombardent-bani-walid-avec-des-bombes-phosphore-blanc-octobre-2011.html
[967] NATO letter to Commission, 23 January 2012.

investigation would be required to determine whether those armed individuals fell into the category of "mercenaries" within the provisions of international law.

678. The Commission notes that the issue of alleged use of mercenaries in the Libyan conflict has received significant focus: for instance, on 17 March 2011, the Security Council passed Resolution 1973 in which it deplored "the continuing use of mercenaries by the Libyan authorities".[968] At a press conference on 16 May 2011, the Office of the Prosecutor at the International Criminal Court indicated it had "direct evidence of Saif Al Islam organizing the recruitment of mercenaries."[969] The issue has also attracted widespread media attention.[970]

679. The Commission has received no reports alleging the use of mercenaries by the *thuwar*.

2. Applicable Law

680. The United Nation International Convention against the Recruitment, Use, Financing and Training of Mercenaries (United Nations Convention against Mercenaries), which Libya ratified in September 2000, defines a mercenary as any person who

i. is specially recruited locally or abroad in order to fight in an armed conflict;

ii. 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;

iii. is neither a national of a party to the conflict nor a resident of territory controlled by a party to the conflict;

iv. is not a member of the armed forces of a party to the conflict; and

v. 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.

681. Libya has also ratified the Organization of African Unity Convention for the Elimination of Mercenarism in Africa (OAU Convention on Mercenarism). The OAU Convention on Mercenariism has a narrower definition of a mercenary. It restricts it to a situation of armed conflict and defines the crime 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.

i. Factual Findings

682. In the course of its investigations, the Commission has received multiple reports of the use of foreign nationals on the part of the Qadhafi forces. It reviewed videos and photographs purporting to show mercenaries employed by the Government. It was evident that many interviewees used the terms "foreigners" and "mercenaries"

[968] Security Council resolution 1973 (2011).

[969] Statement of the ICC Prosecutor at the Press Conference on Libya, 16 May 2011.

[970] For instance, NPR, *Libya's Gadhafi Accused Of Using Foreign Mercenaries*, 23 February 2011; The Telegraph, *African Mercenaries in Libya nervously await their fate*, 27 February 2011; The Telegraph, *Libya: Belarus mercenary 'paid £1,900 a month to help Gaddafi forces'*, 6 April 2011; The Telegraph, *Libya: Col Gaddafi 'has spent £2.1m on mercenaries'*, 20 April 2011; The New York Times, *Libyan Oil Buys Allies for Qaddafi*, 15 March 2011; Time, *Gaddafi's Fleeing Mercenaries Describe the Collapse of the Regime*, 24 August 2011; The Guardian, *Gaddafi's Army of Mercenaries Face Backlash*, 2 September 2011.

interchangeably to describe persons with dark skin who had taken part either in the conflict, or in actions suppressing the demonstrations. Those interviewed usually identified "mercenaries" as coming from sub-Saharan Africa. A minority spoke about mercenaries from the Balkans. As noted in elsewhere in this report, sub-Saharan nationals in Libya were frequently presumed to be mercenaries and this led to their being the victims of attacks as well as arbitrary arrest and detention (see chap. III, sect. C and sect. E).

683. Through interviews with former high-level Government members, however, the Commission has determined that there is clear evidence of the deployment of at least one organised group of foreign fighters by Qadhafi forces.

684. The Commission has received reports that several hundred fighters from Sudan crossed into Libya between mid-June and mid-July 2011.[971] The fighters were supplied through a Sudanese opposition group, the Justice and Equality Movement, headed by late Ibrahim Khalil. The fighters were arranged, interviewees stated, at the request of [008], the Head of Military Intelligence in the Qadhafi Government.

685. The Commission is not in a position to confirm the terms under which fighters from Sudan may have been engaged. One interviewee indicated that the Sudanese fighters were paid the same salaries as Libyan soldiers due to concerns that to pay foreign fighters higher salaries would damage the morale of Libyan soldiers.[972] The Sudanese fighters were also said to have been offered Libyan citizenship. The same interviewee indicated, however, that the supply of the fighters was linked to a wider agreement that the Qadhafi Government would, if it had remained in power, support the Justice and Equality Movement in any future campaigns against the Sudanese government in Khartoum. According to the same interviewee, the Sudanese fighters were deployed on two fronts: Misrata and Yafren.

686. Additionally, three interviewees indicated that an indeterminate number of Tuareg men were recruited to fight alongside Qadhafi forces.[973] The Tuareg are a historically nomadic tribe that move between the borders of Libya, Algeria, Mali and Niger. The Tuaregs' territory has, since the early 19th century, been organised into seven major confederations which lie in the Saharan district. While some Tuareg remain stateless, many have taken on the citizenship of the country in which their confederation is based.

687. One interviewee indicated that a group of Tuareg fighters had been recruited from Aghat, the capital of the Ghat District in the Fezzan region of south western Libya.[974] Another interviewee indicated that Tuareg fighters had been recruited by the Qadhafi forces in Ubari, the capital of Wadi al Hayaa District, in the Fezzan region of south western Libya.[975] Consequently, the Commission considers that, on the basis of information it has received, the Tuareg fighters were either "a national of a party to the conflict" or "a resident of territory controlled by a party to the conflict" and therefore cannot be described as "mercenaries" within the provisions of international law.

688. The Commission has also interviewed a number of detainees purportedly nationals of neighbouring countries and it was determined that the men were Libyan nationals, born in Libya, but of Chadian descent.[976] The Commission also interviewed a Serbian

[971] Interviews 0100, 143, 0344, 0462. The number of fighters quoted ranged from 400 to 1500.
[972] Interview 0344.
[973] Interviews 0100, 0124, 0344.
[974] Interview 0100.
[975] Interview 0344.
[976] Interviews 0299, 0304.

national detained and under investigation, along with a number of others. No evidence has been presented to the Commission to suggest that these men are anything other than civilian contractors.[977] Senior Government figures confirmed that there were a number of men from Niger and Mali in the ranks of the Qadhafi forces, but they were considered by the Government to be Libyan.[978]

1. Conclusion

689. The Commission considers it established that fighters of foreign descent fought alongside Qadhafi forces during the conflict in Libya. It is unable to confirm however that these individuals or groups fall within the definition of a "mercenary" under the United Nations Convention against Mercenaries or under the OAU Convention on Mercenarism given the lack of information about the terms under and purpose for which they were contracted. In particular, the Commission has not found that foreign fighters were promised or paid material compensation substantially in excess of that promised or paid to local Qadhafi forces.

Child Soldiers

1. Introduction

690. The Commission in its first report received allegations concerning the use and recruitment of child soldiers by both Qadhafi forces and the *thuwar*, and indicated that further investigation was required.

691. In its interviews across Libya, and particular in detention centres, the Commission has sought to ascertain whether minors were recruited and/or used as part of fighting forces during the conflict. It has also reviewed extensive media and cell phone footage of purported child fighters.

2. Applicable Law

692. The Convention on the Rights of the Child (1989) generally defines a child as any person under the age of 18. Article 38 of the Convention draws its language from the Protocols to the Geneva Conventions, and consequently sets the lower age of 15 as the minimum for recruitment or participation in armed conflict.[979]

693. The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments. States may accept volunteers from the age of 16 but must deposit a binding declaration at the time of ratification or accession, setting out their minimum voluntary recruitment age and outlining certain safeguards for such recruitment. The Optional Protocol was adopted by the United Nations General Assembly on 25 May 2000 and entered into force on 12 February 2002.

[977] Interview 0301.
[978] Interview 0100.
[979] Article 38 states "States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities"(Paragraph 2); "States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest" (Paragraph 3).

694. Libya acceded to the Optional Protocol on 29 October 2004 and filed the following declaration:"...the required legal age for volunteering to serve in the armed forces of the Great Socialist People's Libyan Arab Jamahiriya, according to the national legislation thereof, is eighteen years."

695. The Protocols to the Geneva Conventions of 1949 (1977) set 15 as the minimum age for recruitment or use in armed conflict. This minimum standard applies to all parties, both governmental and non-governmental, in both international[980] and internal armed conflict.[981]

696. The African Charter on the Rights and Welfare of the Child, the only regional treaty which addresses the issue of child soldiers, defines a child as anyone below 18 years of age without exception. Article 22(2) states "States Parties to the present Charter shall take all necessary measures to ensure that no child shall take a direct part in hostilities and refrain in particular, from recruiting any child" (Article 22.2). It was adopted by the Organization of African Unity (now the African Union) and came into force in November 1999. It was ratified by Libya on 23 September 2000.

697. Under the ICC's Rome Statute, it is a war crime to use, conscript or enlist children "under the age of fifteen years into national armed forces or using them to participate actively in hostilities" (Article 8(2)(b)(xxvi)) and in the case of an internal armed conflict, "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities" (Article 8(2)(e)(vii)).

698. Active participation in hostilities does not solely denote children's direct participation in combat but encompasses activities linked to combat such as scouting, spying, sabotage, and the use of children as decoys, couriers, or at military checkpoints. Also prohibited is the use of children in "direct" support functions such as carrying supplies to the front line.

699. The Rome Statute stands in contrast to the other legal instruments set out above in that it regulates the conduct of all parties to the conflict. The Optional Protocol, Additional Protocols and the African Charter impose obligations only on the State parties which ratified or acceded to them.

700. The Commission further notes that international law requires that child detainees must be separated from adults, unless to do so would involve a violation of the right of families to be housed together. The requirement to incarcerate child and adult detainees separately is set forth in the International Covenant on Civil and Political Rights and in

[980] Article 77 of Protocol I, applicable to international armed conflicts, states: "The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces." In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years the Parties to the conflict shall endeavour to give priority to those who are oldest (Paragraph 2). If, in exceptional cases, despite the provisions of paragraph 2, children who have not attained the age of fifteen years take a direct part in hostilities and fall into the power of an adverse Party, they shall continue to benefit from the special protection accorded by this Article, whether or not they are prisoners of war (Paragraph 3).

[981] Article 4(3)(c) of the Protocol II, applicable to non-international armed conflicts, states: Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities

the Convention on the Rights of the Child. This requirement is also contained in many other instruments pertaining also to non-international armed conflicts.[982]

3. Factual Findings

i. Qadhafi forces

701. During visits to detention centres, the Commission interviewed four detainees, under the age of 18 at the time of arrest, who had been fighters with the Qadhafi forces.

702. The Commission interviewed three 17 year old detainees who had all been recruited to the Qadhafi forces under similar circumstances. Towards the end of the first week of August 2011, two of the minors responded to a series of advertisements aired on Libyan state television which promised money, an apartment and cars to those who came forward to fight with the 32nd brigade in Tripoli.[983] The third minor, who lived with his family in Sirte, heard about the advertisements from his friend, and went to a recruiting office in Sirte before being transported to Tripoli.[984]

703. Between 10 and 12 August 2011, less than a fortnight before the fall of Tripoli, all three arrived for training in a camp for the 32nd (Khamis) Brigade in Tripoli. It was named by one as the Yarmouk camp, which is consistent with that camp's location. The training, which lasted between 2-5 days, centred on the use and cleaning of an AK-47 and military march formations. One interviewee indicated that there were 400 other recruits being trained there at the time, an indeterminate number of whom were minors. After the training was completed, the new recruits were supplied with AK-47s and ammunition. On 19 August 2011, all three interviewed by the Commission were ordered on to buses and taken to Tajoura area of Tripoli and told to defend checkpoints there. Two of those interviewed were arrested by Misrata *thuwar* on 22 August 2011, having surrendered without a fight.[985] The third was part of a fight between the Qadhafi forces and the *thuwar* and then fled when the Qadhafi forces were defeated.[986] He later turned himself in to the Misrata *thuwar*.

704. The Commission also interviewed a fourth minor who had fought with the Qadhafi forces and who is currently being held in a detention centre in Misrata. In March 2011, he went to his local recruitment office after hearing that any student who joined would automatically pass his classes.[987] He received training at a nearby military base and was posted as a guard in a military camp. In August 2011, he was ordered to defend a checkpoint on the Jufra-Sirte road; in late September he and 14 other Qadhafi fighters surrendered to the Misrata *thuwar*.

705. The Commission received multiple anecdotal reports of people seeing minors present at checkpoints as part of the Qadhafi forces[988] but observes that none of those interviewed could say with any certainty the ages of the purported minors.

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[982] See, e.g., Standard Minimum Rules for the Treatment of Prisoners, Rule 8(d); Standard Minimum Rules for the Administration of Juvenile Justice, Rule 13.4; Rules for the Protection of Juveniles Deprived of their Liberty, Rule 29; Memorandum of Understanding on the Application of International Humanitarian Law between Croatia and the Socialist Federal Republic of Yugoslavia, § 4; Agreement on the Application of International Humanitarian Law between the Parties to the Conflict in Bosnia and Herzegovina, § 2.3; UN Secretary-General's Bulletin, Section 8(f).
[983] Interviews 268, 275.
[984] Interview 276.
[985] Interviews 0274, 0276.
[986] Interview 0268.
[987] Interview 0394.
[988] Interviews 0033, 0083, 0135, 0156, 0159.

706. The Commission notes the enticement being offered to young men and the lack of care shown by the Qadhafi forces in ascertaining the age of those responding to their call for recruits.

i. *Thuwar*

707. The Commission has received several reports of children fighting as part of the *thuwar* in the Nafusa Mountains. One interviewee showed the Commission a photograph of his 11 year old brother sitting on the back of a pick-up truck which had anti-aircraft guns mounted on it. The interviewee indicated that the same brother had been actively participating in fighting and that he had witnessed 14 and 15 year olds fighting with the *thuwar*.

708. In interviews conducted for the first Report, several former *thuwar*, wounded and in hospitals in Tunisia, informed the Commission that minors fought with the *thuwar* in the Nafusa Mountains[989] with one indicating that children between the ages of 15 and 18 were fighting as part of the *thuwar*. It is clear to the Commission that to fight with the *thuwar* was a source of pride both for fighters of any age and reportedly the parents of the younger fighters.[990]

Conclusion

709. The Commission finds that there is strong evidence suggesting that the Qadhafi forces recruited and used children under the age of 18, in breach of Libya's obligations under the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and under the African Charter on the Rights and Welfare of the Child.

710. As the *thuwar* are not a State party, they are not bound under the Optional Protocol, which sets 18 as the minimum age for direct participation in hostilities, for recruitment into armed groups, and for compulsory recruitment by governments. The Commission observes however that the conduct of *thuwar*, as a party to an armed conflict, is within the jurisdiction of the International Criminal Court which has made the "conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities" a war crime. The Commission is concerned about the reports of children forming part of the *thuwar* but considers that further investigation is needed before any finding can be made.

711. The Commission further observes that all four minors held as result of their being part of the Qadhafi forces are being held with adults. This is in breach of the Libyan government's obligations under the Convention on the Rights of the Child. The Commission urges the interim Government to take steps to ensure that minors are separated from adults, unless such a separation breaches the right of families to be housed together.

Pillaging

Introduction

712. The Commission received some reports of thefts of property by Qadhafi forces during the conflict. However, this was on a small scale. More significant allegations were made against *thuwar* and other groups of armed men being responsible for widespread

[989] Interviews 0140, 0141, 0297.
[990] Interviews 0141, 0297.

pillaging and destruction of public and private property across the country, particularly during Phase II of the conflict. Victims reportedly included entire communities perceived as Qadhafi loyalists and individuals seen as having provided support to Qadhafi forces during the conflict, as well as their relatives (sometimes distant ones). Such violations took place after cities fell under the control of *thuwar*; as well as during arrests of perceived loyalists at their homes. In some cases documented by the Commission, relatives of the alleged loyalists were driven out of their homes or prevented from returning by *thuwar* who had appropriated their homes and other belongings.

Applicable Law[991]

713. Under customary international humanitarian law, pillage is theft within the context of, and in connection with, an armed conflict. The prohibition of pillage is a long-standing rule of customary and treaty-based international law.[992]

714. Pillage is prohibited under Protocol II.[993] Under the Statute of the International Criminal Court, "pillaging a town or place, even when taken by assault," constitutes a war crime in non-international armed conflicts.[994] Pillage is also included as a war crime in the Statutes of the International Criminal Tribunals for the Former Yugoslavia and for Rwanda and of the Special Court for Sierra Leone.[995]

715. Pillage (or plunder) can be defined as "the forcible taking of private property by an invading or conquering army from the enemy's subjects".[996] The Elements of Crimes of the Statute of the International Criminal Court specifies that the appropriation must be done "for private or personal use".[997] As such, the prohibition of pillage is a specific application of the general principle of law prohibiting theft. This prohibition is to be found in national criminal legislation around the world. Pillage is generally punishable under military law or general penal law.[998]

Factual Findings

i. Qadhafi Forces

716. Foreign nationals were vulnerable to theft by Qadhafi forces, particularly when fleeing Libya. For instance, the Commission was informed of a Sudanese resident who witnessed large number of security checkpoints between Tripoli and Ras-Ajdir crossing point. He noted that the Qaddafi security forces carried out extensive searches of travellers and confiscated electronic products and other valuable items.[999] An Eritrean refugee interviewed by the Commission in April 2011 in a refugee camp at the borders said protests in Tripoli were followed by a confrontation which left many dead and injured. Armed groups loyal to Qadhafi were involved in looting as well as other crimes.

[991] This section primarily quotes the ICRC study of Customary International Humanitarian Law, Jean-Marie Henckaerts and Louise Doswald-Beck, Volume I, p.182-P185.
[992] Lieber Code, Article 44 ; Brussels Declaration, Article 18 and Article 39; Oxford Manual, Article 32
[993] Article 4(2)(g).
[994] Article 8(2)(xvi) and (e)(v).
[995] Article 3(e), ICTY Statute; Article 4 (f) ICTR Statute; Article 3(f) SCSL Statute.
[996] Black's Law Dictionary, Fifth Edition, West Publishing, St. Paul, Minnesota, 1979, p. 1033
[997] Elements of Crimes for the ICC, Pillage as a war crime (ICC Statute, Article 8(2)(b)(xvi) and (e)(v)).
[998] *Ibid* Note 1 at p.185.
[999] Interview 0159.

People were sporadically attacked and robbed. In checkpoints on the way to Tunisia Qadhafi forces were looting money and electronic goods from passengers.[1000]

717. A Nigerian national reported to the Commission that Qadhafi forces set-up many checkpoints between Tripoli and Ras-Adjir crossing point and conducted body and property check. They confiscated all electronic products including mobile phones, camera, telephone and memory sticks from passengers and also stole cash.

718. The Commission also received reports of theft by Qadhafi forces, seemingly against real or perceived opponents. For instance, the Commission interviewed a member of Qadhafi's armed forces who reported that his two nephews were summarily executed and their car was taken by Qadhafi forces on 5 March, 2011, when they objected to elements of these forces putting a sniper on the roof of their home.

719. A University teacher informed the Commission that since the "liberation" he has visited Sirte on four occasions, where he used to teach at the University. The campus, where his house was, has been damaged by fighting. His own house was looted and ransacked. He heard from neighbours and friends that his house was raided by Qadhafi forces in April 2011, after he appeared on TV from the Dhehiba refugee camp in Tunisia, condemning violations in the Nafusa Mountains.[1001]

i. *Thuwar*

ii. Al Zawiyah

720. Al Zawiyah residents, current and former detainees, and local activists informed the Commission that *thuwar* carried out attacks including pillaging and destruction of property against individuals perceived as loyal to the former Government.[1002] For instance, the Commission was told that on 8 September 2011 a group of approximately fifty *thuwar* from the "Committee of Arrest and Correction of Injustices" of the Al Zawiyah Military Council conducted house raids to arrest two senior Qadhafi military officials. After conducting the arrests the group took a computer and mobile phones belonging to the family members.[1003] In late August 2011, a group of five armed men entered the home of an openly loyalist medical professional. They allegedly stole money and jewellery. The house of relatives of the victim was also raided by a group of *thuwar* around 4 September 2011. The interviewee said that they searched the house for weapons, and took away money, gold jewellery, three mobile phones, two cameras, a laptop and other valuables.[1004] The wife of a member of the Qadhafi military complained to the Commission that even after her husband's detention, she was subjected to revenge attacks. *Thuwar* entered her home after the fall of Al Zawiyah sometime in September 2011 at approximately 2:30 am, stole her personal gold jewellery, her husband's clothes and money.[1005]

721. The Commission was informed that the house of a Qadhafi's loyalist was allegedly looted by *thuwar* while in the victim was in detention and the victim's children were forced to flee the city.[1006] After the family abandoned the house, a witness reported seeing *thuwar* entering the property on several occasions and leaving with personal items. In late September 2011, the house was set alight. When the Commission's investigators visited

[1000] Interview 0153
[1001] Interview 0259.
[1002] Interview 0032; Interview 0081; Interview 0085 .
[1003] Interview 0063.
[1004] Interview 0085.
[1005] *Ibid.*
[1006] Interview 0087.

the house in December 2011, they observed that the first floor was badly damaged by the fire, the house was emptied of belongings, and that graffiti "17 February" and "Martyrs' blood will not be lost", was written on the house. Others houses on the street had no graffiti.[1007]

i. Tripoli

722. In the immediate aftermath of the fall of Tripoli and its surrounding areas to the opposition in late August 2011 the Commission received reports that the homes of alleged loyalists were looted, ransacked and in some instances destroyed. A relative of a senior Qadhafi military officer told the Commission that his family's home was raided around 21 August 2011. Flammable matter was thrown inside, and the house was fired upon. Armed men – allegedly from *Kataeb Fashloum* and *Kataeb al-Qous* of Tripoli – stormed in to find three workers, from sub-Saharan Africa. They were reportedly beaten and their money and phones taken. Money, gold jewellery, mobiles, a computer, and guns had been taken. The family farm in Salahadeen was also raided and pillaged: 300 sheep and a camel were reportedly killed and belongings from inside the farm taken. Three family cars disappeared.[1008]

723. Following up on information it received regarding raids by *thuwar*, the Commission visited a number of homes of alleged Qadhafi loyalists. The Commission visited a house where allegedly in mid-November 2011 a group of *thuwar*, identifying themselves as the Free Misrata Brigade (*Misrata al-Hurra*) searched the house and took documents, clothes, watches, money, two laptops, a desktop, and six cars. The Commission investigators saw signs of cupboards and drawers forced open.[1009]

724. The Commission received reports in December 2011 that a group of armed men from the Zintan Brigade used the house of relatives of a Qadhafi Government official as their base for about a week. When the Commission visited the house in late December 2011, they saw signs of forced entry into doors and drawers; empty spaces on TV stands; and impact on inside walls from fired bullets. The family farm outside Tripoli was also pillaged by unidentified armed men, who emptied the house of all belongings and took electrical generators from the farm grounds. Another relative's home was also pillaged by armed men at the end of August 2011, who allegedly carried out everything, except the furniture, in front of the guard held at gunpoint.[1010] Another man told the Commission that a *thuwar* group searching for his brother in law, who worked for the Qadhafi Government, took three cars, 38,000 dinars and 300 USD, two playstations, two iPhones, and mobile phones from his house.[1011]

725. While conducting arrests, *thuwar* have been reported to steal cars. One incident involved a Tawerghan family stopped at a checkpoint on 12 September 2011 in Tripoli by thuwar from Misratah. The driver was arrested, and the car was taken.

726. In December 2011, a group of *thuwar* attacked a police station in Ben Ghashir, in retaliation against the police for confiscating a car that was allegedly taken by the *thuwar* from an alleged Qadhafi loyalist family. The police supposedly returned the car to its rightful owners.

727. A man arrested for volunteering for Qadhafi forces during the conflict told the Commission's investigators that his stores in the area of Gorgi were looted and burned in

[1007] Interviews 0081, 0032, 0156, 0204.
[1008] Interview 0055.
[1009] Interview 0072.
[1010] Interviews 0026, 0054.
[1011] Interviews 0082, 0114, 0175, 0179.

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September 2011, while other stores in the same street were left untouched. He explained to the Commission that he handed himself in to *thuwar* after witnessing the physical abuse of another alleged loyalist in his area. The victim was reportedly tied to a truck and dragged, while residents were encouraged to throw stones at him. [1012]

728. A number of Tripoli residents and local activists reported to the Commission's investigators that *thuwar* looted and destroyed property of suspected loyalists. For instance, a house of a known loyalist family on Jumhuriya street in central Tripoli was alleged to have been completely burned down, and graffiti, "rats, Qadhafi dogs", written on the outside fence, When female family members came back to recover some belongings, they were chased away. Another family from downtown Tripoli was allegedly forced out of their home in late August 2011 by armed *thuwar* and their house was burned down, after being emptied of belongings, because one of the sons joined the Qadhafi forces.[1013]

i. Qasr Al-Khiar

729. The Commission received reports that during the arrest of alleged loyalists by *thuwar* from Tajoura, the house was looted. The *thuwar* took some 22,000 dinars, TVs and gold jewellery.[1014]

i. Zowara, Zoltan, Riqdalin and Abu Kammesh

730. The Commission received reports of attacks by *thuwar* from Zowarah, against Arab residents of neighbouring towns, perceived by Zowarah *thuwar* as loyal to Qadhafi forces. Specifically attacks targeted the towns of Zolton, Jmel, Riqdalin and the industrial community of Abu Kammesh which started after the fall of Tripoli to *thuwar* in August 2011. The Commission met with a number of individuals and families who reported various violations by *thuwar* from Zowarah including wide scale pillaging.

731. Zolton was "liberated" on 27 August 2011. It was attacked by *thuwar* from Zowarah on 27-28 August 2011 and 1 December 2011. Out of approximately 120 Arab families living in Abu Kammesh, 85 fled to Zolton, and their homes were reportedly pillaged by attackers.[1015] The Zolton local council detailed 45 cases of forced entry into houses, 37 car hijackings and 52 miscellaneous violations of pillaging of properties and looting.[1016] The Commission has obtained copies of correspondence between the local Council and the NTC confirming these accounts, in addition to 121 police reports detailing the mentioned violations.

732. University employees from Abu Kammesh and Zolton have complained they could no longer work in Zowarah due to threats they receive from armed groups there. They cited two incidents of staff members losing their cars at gun point, and various harassment tactics at checkpoints and elsewhere. The signatories are all from Zolton and neighbouring towns.[1017]

733. One witness reported that an Amazigh colleague from Zowarah told him "you're an Arab living on Amazigh land; we're going to kick you all out". The man told him that they were taking over his house in Abu Kammesh. All his belongings were left in the

[1012] Interview 0129.
[1013] Interview 0117.
[1014] *Ibid.*
[1015] Interview 0239.
[1016] *Ibid.*
[1017] *Ibid.*

house. The Commission reviewed supporting documents including police reports filed by the victim.[1018]

734. Another resident of Abu Kammesh reported to the killing of his son in Abu Kammesh on August 2011, by *thuwar* from Zowarah. The son was ambushed and killed by an armed group who opened fire on the car without warning. The Commission obtained police and hospital reports. The car was stolen.[1019] After holding his son's funeral in Zolton, the father returned to Abu Kammesh where he found his house broken into and occupied by Zowarah *thuwar*. They allegedly refused to allow him to remove furniture from the house.[1020]

735. A university student was reportedly stopped at the main checkpoint entering Zowarah from the east. When the *thuwar* saw that he and his friend were from Zolton, two armed *thuwar* reportedly entered the car and ordered them to drive through a side road between Zowarah and Zolton, until they stopped in a deserted area. They were ordered out of the car and made to stand by the side of the road, with their hands above their heads. They believed that they were going to be executed. They escaped through nearby trees, and the two armed *thuwar* stole the car and drove it back to Zowarah.[1021]

736. The Commission interviewed numerous other witnesses who reported their homes broken into and their possessions either broken or stolen, particularly cars and cash. They had reported the loss to the authorities but without result.[1022]

737. The Commission saw a letter signed by NTC Chairman Mustafa Abdeljalil instructing that one man should be allowed access to his flat, which had been looted.[1023] The letter had no effect with the Zowarah local council according to the victim.

738. The Commission met with a family that was allegedly forcefully displaced from Abu Kammesh in August 2011. They said the husband was detained by *thuwar* Zowarah for a few weeks and the family then relocated to nearby Zolton. In November 2011, a group of armed men from Zowarah came to their house in Zolton at 7am, when they were sleeping. They fired inside the house - bullet holes were still visible upon the Commission's visit - pushed his wife aside when she tried to protect him, and arrested him and his 19 years old son. The family was informed by neighbours in Abu Kammesh that their house has been broken into and pillaged. They are too scared to check for themselves.[1024]

i. Tiji, Badr and Nalut

739. The Commission interviewed witnesses who reported that *thuwar* from Nalut attacked Tiji and Badr on 1st October 2011, pillaged them, burned properties, captured 41 of the town residents many of whom were tortured and ill-treated (see chap. III, sect. D).[1025] Some of the alleged pillaging was verified by the Commission during its visit to the area in January 2012.[1026] During the visit, the Commission observed that a number of public properties like hospital apartments, as well as private properties such as homes, pharmacies, stores and water tanks had been ransacked or destroyed.

[1018] Interview 0436.
[1019] Interview 0440.
[1020] *Ibid.*
[1021] Interview 0444.
[1022] Interviews 0323, 0324, 0449, 0453.
[1023] Interview 0325.
[1024] Interview 0326.
[1025] Interviews 0220, 0320.
[1026] Interview 0305.

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740. The Commission met with a Tiji resident who said his sister-in-law was killed and other family members were injured during shelling by the Naolut *thuwar* on 1 October 2011. After the shelling stopped, a group of armed men from Nalut *thuwar* reportedly entered the house, searched it for weapons, and stole 25,000 dinars, and his brother's car. Then *thuwar* poured petrol on a second car and set it alight, when the family did not hand over its keys.[1027]

741. Another Tiji resident said his house was looted on 15 August 2011. *Thuwar* from Nalut stole 45,000 dinars and took two cars.[1028]

742. The Commission interviewed a man who said that during the attack by Nalut forces on Tiji and Badr, he was forced to surrender the keys of two cars. The attackers reportedly threatened to rape the female members of the family if the cars were not given to them.[1029]

743. Another interviewee informed the Commission that almost all possessions in his house were stolen by *thuwar* from Nalut. He also said that Nalut forces demolished the water well, irrigation streams and the waterwheel on his farm, as well as around 150 olive trees, a large area of garden, vegetables and fruits. They also destroyed an empty barn and a farm house.[1030]

744. The Tiji local council told the Commission that 250 cars were stolen from Tiji by the Nalut *thuwar*.[1031]

i. Awaniya

745. The Commission documented violations including pillaging of property perpetrated by Zintan *thuwar* against members of the Mashashiya tribe, allegedly committed in retaliation for the latter's perceived support of Qadhafi forces during the conflict. On 7 May 2011, Zintan *thuwar* entered Zawiyat al-Baqul, some 5 kilometres from Awaniya, with 14mm and 23mm machine guns mounted on trucks. One family reported that *thuwar* from Zintan stole two cars, and tried to break into the house itself. The father tried to block the door, and a shot was fired through the wooden door, hitting his father in the skull. He died immediately. Other houses were reportedly burnt, shots were fired on the houses, and property looted. Their car was eventually set on fire.[1032]

746. Mashashiya families from Oumer, Zawiyat al-Bajoul and Awaniya claimed to the Commission that stores, schools, and other private and public properties were ransacked, looted and in some cases burned.[1033] Many residents said they were unable to return home to assess the damage and salvage their property due to the refusal of Zintan *thuwar* to allow anyone access to the area. In a meeting with the Commission, a member of the Zintan Military Council admitted that local residents are sent back when they visit the area to claim their belongings.[1034] According to Human Rights Watch which was able to visit the area in July 2011, homes were burned; public and private property looted and

[1027] Interview 0169.
[1028] Interview 0173.
[1029] Interview 0231.
[1030] Interview 0232.
[1031] Interview 0320.
[1032] Interview 0328.
[1033] Interview 0278.
[1034] Interview 0300.

destroyed; and personal belongings pillaged and loaded onto trucks to be transported to Zintan.[1035]

747. The Commission was not able to independently assess the extent of the pillaging as its investigators were prevented by the Zintan Military Council and other officials from driving inside Awaniya and other Mashashiya areas allegedly for security reasons. Nonetheless, damaged or burned stores and other structures could be seen from the main road in Awaniya. Graffiti was written on the town signs including "Mashashiya Qadhafi's dogs" and "Forbidden Military area".

i. Bani Walid

748. The Commission received reports of widespread looting of Bani Walid, a perceived loyalist area and one of the last Qadhafi strongholds, in the immediate aftermath of its fall to the *thuwar* in late October 2011. A member of the *thuwar* who participated in the "liberation" of the city confirmed this to the Commission, expressing his disappointment in the behaviour of his fellow fighters.[1036] The Commission also interviewed a resident from Bani Walid, who was arrested by a group of *thuwar* in September 2011 and is currently detained. He heard from his mother that their house was raided by *thuwar* – TV and desks broken, and valuables stolen. His mother escaped during the fighting, and returned later to find the house looted.[1037]

749. A foreign national currently in detention told the Commission that he was arrested from his home along with a group of Chadians on 16 October 2011 by *thuwar* from Rahibat in the Nafusa Mountains. They were armed and wearing military dress. They reportedly searched the house and took all money and valuables.[1038]

i. Sirte

750. A Sirte resident told the Commission that her sister, who fled had her car confiscated by the Misratah *thuwar*. She said her father's stores were looted and burned, and graffiti on the walls said: "if your mother didn't raise you well, Misrata will." Televisions, electronics and other valuables were stolen from inside the house.[1039]

751. A taxi driver interviewed by the Commission said that three soldiers whom he transported to Sirte in December 2011 had 5500 Dinars confiscated from them by the 1973 Brigade along with his taxi (see chap. III, sect E).[1040]

752. Other Sirte residents, who fled the town as fighting intensified, reported that upon return home they found their homes pillaged. This information was also confirmed by independent observers.[1041]

i. Tawergha

753. The Commission received numerous testimonies by Tawerghans regarding pillaging conducted by Misrata *thuwar* when attacking the town of Tawergha (see chap. III, sect E).[1042] Senior members of the National Council for Fundamental Freedoms and

[1035] Human Rights Watch, *Libya Opposition forces should protect civilians and hospitals*, 13 July 2011. Available from http://www.hrw.org/news/2011/07/13/libya-opposition-forces-should-protect-civilians-and-hospitals
[1036] Interview 0079.
[1037] Interview 0269.
[1038] Interview 0272.
[1039] Interview 0351.
[1040] Interview 0460.
[1041] Interviews 0124, 0179, 0259
[1042] Interviews 0044, 0229, 0234.

Human Rights said that that at first when *thuwar* entered Tawergha there was no widespread looting or pillaging or burning of Tawergha; but later admitted that these violations occurred.

i. Conclusion

754. The Commission established that members of Qadhafi forces engaged in small scale theft against individuals.

755. The Commission established that *thuwar* and other groups of armed men are responsible for widespread pillaging and destruction of public and private property across the country, particularly during Phase II of the conflict. Victims included perceived loyalist communities and individuals, as well as their relatives. A smaller number of reports indicate that appropriation of property continued during Phase III.

756. The Commission is concerned that no impartial and independent investigations appear to have been carried out into any of the serious violations stated in this chapter. At times, officials downplayed the gravity of the violation, noting that Qadhafi forces did the same thing to opposition, so "it is now their turn."

V. Accountability

1. Introduction

757. The mandate of the Commission includes, "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."

758. Accordingly, the Commission has, throughout its investigations, tried to identify individuals who may have been responsible for violations of international human rights law and international humanitarian law, and international crimes.

759. The Commission has also gathered information linking individuals to human rights violations or crimes, either directly or through command responsibility, that is, persons who knew of, or should have known of human rights violations or crimes, failed to take any action to prevent them, failed to investigate or failed to punish those responsible.

760. The Commission has decided not to include the names of these individuals in the report (apart from senior figures who are publicly known) and has replaced their names with numbers. This is to prevent risk of harm to those who are held in custody and to avoid jeopardising the fair trial rights of any persons who may be brought to trial in the future. The Commission will hand over the list of names in a sealed envelope to the United Nations High Commissioner for Human Rights for onward transmission to the appropriate international or national investigative or judicial mechanisms.

761. The Commission set out in its first report the information available at the time with respect to the various armed forces participating in the conflict.[1043] The second phase of the Commission's work has provided further information on those structures and their role in the events described (see chap. II, sect. C).

762. In referring in this report to security or military units, the Commission does not intend to infer that the entire unit was responsible for violations. The inclusion of the names of military or security force units in this report does not presuppose that the Commission has identified them as being responsible; it merely reflects that they are

[1043] A/HRC/17/44, paras 36-42.

subject to accountability, based on existing international norms that regulate or prohibit certain conduct.

763. The Commission notes that the concept of accountability incorporates various methods including criminal prosecutions, disciplinary measures, administrative procedures and victim compensation measures. Accountability should therefore not be interpreted in a narrow, restrictive way to refer only to criminal prosecutions.

764. The Commission, as part of its mandate, has also undertaken a brief review of specific institutional and legislative issues which will affect accountability in the longer term, taking into account current initiatives of the interim Government to address violations, including those committed during the conflict.

B. Applicable Law

765. International human rights law places an obligation on States "to ensure that any person whose rights or freedoms… are violated shall have an effective remedy" and "to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy".[1044] States are therefore required to establish appropriate judicial and administrative mechanisms to allow victims to seek remedy for violations, and the failure of a State to investigate allegations of violations could constitute a breach of its treaty obligations.[1045] This right cannot be suspended during public emergency.[1046]

766. The right to a remedy has been further elaborated in the United Nations Principles and Guidelines[1047], which affirm the obligations of States in respect of gross violations of international human rights law and serious violations of international humanitarian law as follows: the obligation to prevent violations, the obligation to investigate, prosecute and punish perpetrators, the obligation to provide effective access to justice to all persons alleging violations, and the obligation to afford full reparations to victims. The Principles and Guidelines explicitly require that

"in cases of gross violations of international human rights law and serious violations of international humanitarian law constituting crimes under international law, States have the duty to investigate and, if there is sufficient evidence, the duty to submit to prosecution the person allegedly responsible for the violations and, if found guilty, the duty to punish her or him".[1048]

767. In addition, when there is an investigation and prosecution, the due process and fair trial rights of the accused must be guaranteed. He or she should be presumed innocent until the court finds otherwise, have access to a legal representative, have a fair and public

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[1044] ICCPR, Article 2, para. 3.
[1045] Human Rights Committee (HRC) General Comment 31, para. 15.
[1046] HRC General Comment 29, para. 14. "This clause . . . constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation, under article 2, paragraph 3, of the Covenant to provide a remedy that is effective".
[1047] 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 (*Basic Principles and Guidelines*), Adopted and proclaimed by General Assembly resolution 60/147 of 16 December 2005.
[1048] Principle 4, *Basic Principles and Guidelines.*

hearing by an independent, impartial and competent court established by law, without undue delay. Fair trial standards cannot be suspended during emergency situations.[1049]

768. Under its obligations under the Convention against Torture, the Libyan authorities are required to investigate all allegations of torture and to prosecute all alleged perpetrators.[1050]

769. Corresponding requirements can be seen in international humanitarian law. A duty to prosecute crimes against humanity, war crimes and genocide constitutes a part of customary law, which can be seen in the preamble of the Rome Statute. Individuals are criminally responsible for war crimes whether or not they were obeying orders to commit the crime. Their commanders are also individually criminally responsible if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes have been committed, to punish the persons responsible. States have a customary obligation to investigate allegations of war crimes committed by the nationals or state forces, or on their territory, and prosecute the suspects. Elements of the right to a fair trial are guaranteed under international humanitarian law during armed conflict, either international or non-international. According to a customary rule identified by ICRC, no one may be convicted or sentenced without a fair trial affording all essential judicial guarantees.[1051]

C. Legal System and Institutional Capacity

770. The interim Government in Libya has inherited a legal system that does not specifically incorporate international crimes such as war crimes and crimes against humanity (see chap. II, sect. A). It also inherited a judicial system that lacked independence and did not enjoy the confidence of the people. However, recent efforts have been undertaken by the Libyan authorities to ensure accountability for violations during the Qadhafi era and during the recent conflict. Such efforts include the adoption of a law on transitional justice and the creation of a National Fact-Finding and Reconciliation Council, and the establishment of a National Council for Civil Liberties and Human Rights, which all contribute to accountability in the longer term.

D. National Legal Framework

771. Libya's existing Criminal Code does not adequately define crimes under international law such as genocide, crimes against humanity, war crimes, enforced disappearances and extrajudicial killings.[1052] Unless filled, this gap in the law may prevent the authorities from prosecuting those responsible for international crimes. The Commission is concerned that perpetrators will be prosecuted for crimes under the Libyan Criminal Code, (for example abduction instead of enforced disappearance), which will not adequately hold perpetrators accountable for very serious crimes and could result in them receiving inappropriately lenient punishment if they are found guilty.

[1049] HRC General Comment 29, para. 11: "States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of humanitarian law or peremptory norms of international law, for instance by taking hostages, by imposing collective punishments, through arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial, including the presumption of innocence."

[1050] Convention against Torture, Article 7.

[1051] Rule 100, available from http://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule100.

[1052] Amnesty International, *Pursuing al-Gaddafi : Legal questions answered*, 25 August 2011, available from http://www.amnesty.org/en/news-and-updates/libya-pursuing-al-gaddafi-%E2%80%93-legal-questions-answered-2011-08-25

772. Furthermore, the Criminal Code provides for statutory limitation of 10 years for crimes and three years for misdemeanours, after which there can be no prosecution.[1053] Although this provision was repealed by a law that came into effect on 21 February 1998, that law does not have retrospective effect.[1054] Therefore, all crimes and misdemeanours committed before the date on which the repealing law came into effect will be subject to statutory limitations. The Military Penal Code specifically precludes statutory limitations and expiry of punishment for offences under the Code.[1055]

773. Crimes under international law are not subject to statute of limitations or prescription. In addition, as a party to the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1968),[1056] Libya has undertaken not to apply any statute of limitations to war crimes and crimes against humanity irrespective when they were committed.

774. The Criminal Code also provides that criminal sentences expire after 20 years and in instances where the death penalty is imposed, it expires after 30 years.[1057] The Libyan criminal justice system allows for trials in absentia. In the event that a person is tried in absentia or manages to escape after being tried and convicted, any sentence imposed will expire after 20 years.

Equal implementation of the law

775. The Commission has received information of attacks by *thuwar* against those perceived to be supporters of the previous government in several towns including Abu Kammesh, Awaniya, Badr, Oumer, Shgeiga, Tawergha, Tiji, Tripoli and Zawiyat-al-Baqoul. Attacks have included unlawful killings, torture, arbitrary arrests and detention, assaults, pillage and destruction of property.

776. During meetings with the Commission, senior Government officials were unable to provide details of *thuwar* arrested or detained for such attacks or for other criminal acts, and the Commission is not aware of any *thuwar* arrested or detained for these crimes.

777. *Thuwar* are also evading accountability through the use of force. On 6 December 2011, *thuwar* reportedly entered the offices of the General Prosecutor in Tripoli and demanded that he sign a release order for a *thuwar* who was being held on a murder charge.[1058] The General Prosecutor managed to escape unharmed. In another incident, on 3 January 2012 Misrata *thuwar* allegedly fired on the Tripoli Council building in an attempt to release one of their men who was arrested for robbery.[1059]

778. The failure to hold thuwar accountable for infractions is symptomatic of a lack of equal implementation of the law. Furthermore, perceived Qadhafi loyalists, who are the targets of attacks by *thuwar*, are left without protection of the law, justice or redress. The authorities face considerable challenges in restoring confidence in the rule of law and in the judiciary. It is important that the authorities address similar criminal acts committed

[1053] Libyan Criminal Code, Article 107.
[1054] Law No. 11 of 1428 (1998).
[1055] Law No. 37 (1974), Article 39 and 40.
[1056] Libya acceded to the treaty on 16 May 1989.
[1057] Libyan Criminal Code, Article 120.
[1058] Interview 0379. Also see Al Jazeera English, *Libya to disarm Tripoli by end of the year*, 7 December 2011. Available from http://www.aljazeera.com/news/africa/2011/12/201112623505666411.html.
[1059] Aljazeera English, *Armed groups clash in central Tripoli*, 3 January 2012. Available from http://www.aljazeera.com/news/africa/2012/01/20121311171606584.html.

by different perpetrators on an equal footing, in order to restore confidence in the legal system and judiciary.

Capacity of the Judicial System

779. Libya had a judicial system that lacked independence and fairness (see chap. II, sect. A). The government had an undue influence on judges. Lawyers, judges, activists and other Libyans interlocutors told the Commission that while the judicial system was generally adequate for civil cases; it lacked any independence and credibility in political cases. In fact, exceptional courts and prosecutions were created to address political cases. The People's Court, and its replacement, the State Security Court, conducted closed-door trials of political opponents of the government and usually imposed harsh penalties. As the Qadhafi Government had complete control over the judiciary, the security forces were not accountable and acted with impunity.

780. It is therefore not surprising that the judicial system collapsed in the aftermath of the conflict. Considerable efforts will be required by the interim Government to rebuild the judicial system and restore confidence of the population in the judiciary.

781. The interim Government is making slow progress in re-establishing courts by repairing damaged buildings and recalling judges. The capacity of the entire judicial system to undertake investigations and prosecutions has to be taken into account, beyond the existence of court buildings and the availability of judges. The judicial system currently lacks investigators, forensics experts, judicial police and other trained staff. The absence of a functioning court system in most places prevents those whose rights are violated from holding perpetrators accountable. Those aggrieved about harm caused to them during the Qadhafi era or about attacks by the *thuwar* should be able to approach the courts for redress.

782. In response to the violations highlighted in the Commission's report, the interim Government will need to conduct investigations into (a) current violations, including torture, ill-treatment and deaths in custody of detainees; (b) violations committed during the armed conflict by all sides; and (c) Qadhafi-era violations committed by senior members of the former government. The Libyan authorities face considerable challenges in dealing with recent and past violations, as recognised by the Commission (see chap. II, sect A).

783. There are currently about 8,500 detainees in custody, held in more than 60 detention centres.[1060] The majority are being held for alleged involvement in crimes during the conflict, or for merely supporting the previous government. Even a well-resourced judicial system will find it daunting to process 8,500 detainees, let alone one that is trying to re-establish itself following months of armed conflict.

784. Those detained are also unable to challenge the legality of their detention before a judge or to hold accountable their jailers for violations, including torture and ill-treatment. While senior Government officials told the Commission that torture and ill-treatment is unacceptable, the Commission has little evidence that they are making any efforts to bring to justice those responsible for torture and ill-treatment of detainees.

Prosecutions

785. On 5 February 2012, criminal proceedings commenced in Benghazi against 41 Libyan men accused of crimes during the conflict last year. The accused were being

[1060] ICRC, *Libya: hardship and danger remain,* 16-02-2012 Operational Update No 12/01. Available from http://www.icrc.org/eng/resources/documents/update/2012/libya-update-2012-02-16.htm.

prosecuted under the Military Code before a military court that was presided over by two military judges and one civilian judge. The 41 defendants, who are currently in detention, have been charged with three offences: using excessive violence against the national force, using light and medium weapons against prison guards of Quefia prison on 28 July 2011, and committing crimes with the intention to vandalize property and kill people at random with the intention of undermining state security.

786. All the defendants have legal representation, and some of the 15 lawyers defending the accused have been appointed by the authorities. Defence lawyers succeeded in an application for the case to be transferred to the civilian courts. Defence lawyers complained to the court that their clients had been tortured and the presiding judge ordered that the defendants undergo medical examinations to obtain evidence of the alleged torture. The Commission has been informed that defence lawyers did not have access to their clients during the first two months of their detention, and subsequent visits by the lawyers have been limited to 20 minutes, making it difficult for them to consult with their clients.

787. The interim Government announced on 13 February 2012 that the criminal investigations against Saif-al-Islam Qadhafi will proceed, and that he will be transferred to a prison in Tripoli within two months to await his trial.[1061] Until now he has been held by *thuwar* in Zintan, without any access to a lawyer or to his family. He has also not been able to challenge the lawfulness of his detention before a court.

Establishment of National Council for Civil Liberties and Human Rights

788. On 28 December 2011, the NTC issued Law No. 5 of 2011 establishing the National Council for Civil Liberties and Human Rights (NCHR), and appointed the first 11 members of this body[1062], including four women for a period of 3 years.[1063] The law ensures the independence of the NCHR. The tasks of the NCHR include the development of a national human rights action plan, making proposals on human rights legislation, receiving complaints on violations of human rights, monitoring implementation of international human rights treaties and engaging in human rights education and public awareness.[1064] The NCHR has the authority to file cases in court regarding any law or decision that violates human rights.[1065]

789. As an independent body, the NHRC will play an important role in the protection and promotion of human rights, and more particularly in reviewing legislation for conformity with international human rights standards and in assisting victims of human rights violations to obtain redress, contributing to longer term accountability.

Transitional justice law

790. The NTC recently adopted the Transitional Justice Law, with the objectives, amongst others, of ensuring human rights violations are not repeated, ensuring justice, compensating victims and achieving reconciliation. The law has as its centrepiece the creation of a National Fact-finding and Reconciliation Commission (NFRC) to investigate incidents of human rights violations committed between 1 September 1969 and the end of the transitional period, and to investigate acts of aggression by groups and formations and the consequent crimes including murder, rape and confiscation of property.[1066] The NFRC

[1061] http://english.ruvr.ru/2012/02/13/65929999.html
[1062] Decision of the National Transitional Council No. 185 for the year 2011.
[1063] Law No. 5 of 2011, Article Two.
[1064] Law No. 5 of 2011, Article Three.
[1065] *Ibid.*
[1066] Article 4.

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is required to produce reports that include a factual statement based on evidence, identification of perpetrators, attempts by the Commission at reconciliation and recommendations to address the issue. Tasks of the NFRC include the search for and identification of missing persons, a task that also pertains to the Ministry for Assistance to Families of Martyrs and Missing Persons, and to make proposals on disarmament, demobilization and integration of *thuwar*.[1067]

791. The Board of the NFRC, which will be appointed by the NTC[1068], will have the authority to establish sub-committees in each local council.[1069] Anyone who has previously been affiliated to the Revolutionary Committees (*al-Lijan al-Tawriya*), Revolutionary Guard (*al-Haras al-Thawri*), internal or external security agencies or military intelligence is disqualified from membership of the sub-committees.[1070] The Commission and its Committees have the right to access any documents or evidence or to attend any hearings without any preconditions, and is required to hold its sessions in public, with private sessions being the exception in cases prejudicing public order or morality.

792. The law on transitional justice provides for moral and material compensation and establishes a victims' compensation fund, which shall act on behalf of victims to claim compensation. [1071]

Amnesty

793. A draft law on amnesty was recently adopted by the NTC. The draft of this law seen by the Commission states that amnesty shall be provided to perpetrators of crimes on condition that they return property or money derived from their crime or hand over weapons in their possession, and repent and seek the pardon of victims or their families.[1072]

794. The draft amnesty law excludes the following crimes from amnesty: murder, serious injuries, rape, torture and abduction.[1073] However, the draft law also states that in the event of reconciliation between the perpetrator and the victim or the victim's family, the criminal charges will be dismissed, or the penalty will be dismissed, if he or she has already been convicted.[1074]

795. The draft law states that the granting of amnesty shall not preclude the right of victims to restitution and compensation[1075], and establishes a chamber in every circuit court of appeal to monitor application of the law[1076]. It is important to ensure that the amnesty law is applied in a manner consistent with Libya's obligations under international law to provide an effective remedy to victims of human rights violations.

796. The Commission has obtained information that in some regions of Libya there are local efforts at reconciliation, including the establishment of local reconciliation committees. As far as the Commission is aware, these committees are acting outside the framework of any existing law.

[1067] *Ibid.*
[1068] Article 5.
[1069] Article 6.
[1070] Article 7.
[1071] Article 15.
[1072] Draft Amnesty Law, Article 1.
[1073] Article 2.
[1074] Article 3.
[1075] Article 3.
[1076] Article 4.

Conclusions

797. The Commission has gathered information linking individuals to human rights violations or crimes, either directly or through command responsibility, that is, persons who knew of or should have known of human rights violations or crimes, failed to take any action to prevent them, failed to investigate or failed to punish those responsible. The Commission will hand over the list of names in a sealed envelope to the United Nations High Commissioner for Human Rights for onward transmission to the appropriate international or national investigative or judicial mechanisms.

798. The Commission considers it imperative that appropriate mechanisms be established in order to ensure accountability for violations of human rights and crimes in the long term, in accordance with international fair trial standards and imposing only sentences that comply with international standards. In this connection, the Commission welcomes consistent statements by the Libyan authorities of their intention to establish a legal and judicial system that ensures accountability for violations during the Qadhafi era and during the recent events.

799. Currently, however, allegations of violations are not treated on an equal basis. Failure to apply criminal law to crimes committed by *thuwar* during and after the end of the conflict creates an environment of impunity and leaves the victims of *thuwar* violations without protection of the law, justice and redress. As regards the alleged torture and ill-treatment of detainees, the Commission is unaware of any investigations being instituted into these allegations. Those detained are also unable to challenge the legality of their detention before a judge or to hold their jailers accountable for violations, including torture and ill-treatment. The Commission welcomes the transfer of the trial of certain defendants accused of committing crimes during the previous government from a Military Court to a civilian court in Benghazi. However, the Commission is concerned at the lack of adequate time for defence counsel to consult with their clients.

800. Such problems are due to the general conditions in the country but also to systemic problems. The absence of a functioning court system allows for violations to go unpunished and for a cycle of attacks that could spiral out of control and result in further violations. The judicial system also lacks investigators, forensics experts, judicial police and other trained staff.

801. Libya's existing legislation does not adequately provide for the prosecution of international crimes including war crimes and crimes against humanity, which could result in perpetrators being prosecuted for lesser crimes or escaping justice altogether. In particular, the statute of limitations in the Libyan Criminal Code, unless repealed, will prevent the prosecution of serious crimes of the Qadhafi era, including the Abu Salim massacre of 28 and 29 June 1996.

802. The Commission notes that the Libyan authorities have begun to take steps to address some of those issues. The creation of a National Human Rights Council is a positive development, which could play an important role in the strengthening of accountability through legislative and institutional reform, and in assisting victims of human rights violations to seek redress.

803. The Commission also views the adoption of the Transitional Justice Law as a positive step. However, it is concerned at the lack of an independent and impartial process for the appointment of members of the National Fact-Finding and Reconciliation Commission The Commission also notes that, while the Transitional Justice Law disqualifies individuals who were previously affiliated with Qadhafi era military or security agencies from membership of sub-committees, the Law does not disqualify persons who have been responsible for human rights violations, a criteria that should be applied to all Government institutions to ensure a commitment to human rights.

804. The Commission considers it important that the Libyan authorities ensure that the reconciliation process under the amnesty law is applied in a manner that is consistent with Libya's obligations under international law.

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.

i. 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**

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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.

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

133. 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.

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

135. 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.

Annex II

Correspondance from NATO to the International Commission of Inquiry on Libya

LEGAL ADVISER
LE CONSEILLER JURIDIQUE

20 December 2011
OLA(2011)0145

Dear Judge Kirsch,

Thank you for your letter of 15 December, referencing Mr. Motala's letter of 11 November and asking when NATO might be in a position to respond to the questions posed in that letter. Your letter also enclosed several new questions.

NATO continues to work to gather information permitting an appropriate response to the questions in the 11 November letter. It is our hope and intent to be able to provide that response during January, as you have requested.

Allow me to note that many of the queries in the 11 November letter, and all or virtually all of those in the Annexure to your letter of 15 December, appear to involve issues of international humanitarian law. The mandate of the ICIL is to investigate alleged violations of international human rights law. In its Resolution 1970 (2011), the UN Security Council referred the Libya situation to the International Criminal Court (ICC); NATO has been in contact with the ICC in connection with the latter's investigation in response to the Security Council tasking. In light of the Security Council's formal request to the ICC, NATO anticipates addressing questions arising under international humanitarian law principally in that context.

Your 11 November letter requested a copy of an internal NATO "report of its investigations into allegations of NATO strikes amounting to indiscriminate attacks against civilians." I regret to inform you that we have been unable to confirm the existence of any such report. We would, of course, be prepared to renew our inquiries if you are able to provide us with further details that may assist us in determinating the existence of such a document.

Yours sincerely,

Peter Olson
Legal Adviser

Judge P. Kirsch, Q.C
Chair
International Commission of Inquiry on Libya
United Nations

coilibyasecretariat@ohchr.org

North Atlantic Treaty Organization - Organisation du Traité de l'Atlantique Nord
Boulevard Léopold III - B-1110 Bruxelles - Belgique
Tel. direct : +32 2 707 40 08 - Fax: +32 2 707 91 67 - Bureau/Office : OA 308 - E-mail : olson.peter@hq.nato.int

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LEGAL ADVISER
LE CONSEILLER JURIDIQUE

OLA(2012)006
23 January 2012

Dear Judge Kirsch,

This letter responds, on behalf of the North Atlantic Treaty Organization (NATO), to the Commission's letters of 11 November and 15 December, 2011. Those letters posed a series of questions regarding the conduct of Operation Unified Protector (OUP), the military operation in Libya led by NATO. As the Commission's queries are almost entirely confined to airstrikes conducted in accordance with the "protect civilians" mandate contained in operative paragraph 4 of United Nations Security Council Resolution (UNSCR) 1973 (2011) and focus in particular on questions relating to possible harm to civilians, unless otherwise noted the comments below relate to those aspects of the overall operation.

After expressing grave concern at the "escalation of violence, and the heavy civilian casualties" and considering that the "widespread and systematic attacks ... against the civilian population may amount to crimes against humanity," the Security Council determined that the situation in Libya constituted a threat to international peace and security. UNSCR 1973 consequently authorized a series of actions to address the situation in Libya associated with the violent suppression of protests against the regime led by Col. Muammar Gaddafi. Building on the Security Council's earlier Resolution 1970 (2011), UNSCR 1973 provided for strengthened enforcement of an arms embargo, expanded an assets freeze, banned flights of Libyan aircraft outside Libya and authorized UN member States, acting nationally or through regional organizations or arrangements, to take "all necessary measures" in order to implement a No Fly Zone and to "protect civilians and civilian populated areas under threat of attack" in Libya.

The 28 UN member States making up the North Atlantic Alliance authorized the planning and execution of OUP as a contribution to implementing their mandate under UNSCR 1973. OUP was accordingly an operation established by the members of the Alliance in implementation of their responsibilities as UN member States.

In the discussion below, "OUP" and "NATO" are for convenience often treated as co-terminous, but it should be understood that the two are not, strictly speaking, co-extensive. While all NATO Allies participated in the approval and overall direction of OUP, not all played active operational roles. In addition, several non-NATO

North Atlantic Treaty Organization - Organisation du Traité de l'Atlantique Nord
Boulevard Léopold III - B-1110 Bruxelles - Belgique
Tel. direct : +32 2 707 40 08 - Fax: +32 2 707 91 67 - Bureau/Office : OA 308 - E-mail : olson.peter@hq.nato.int

Nations joined and participated in OUP which became, as a result, a NATO-led operation. NATO's supreme decision-making authority, the North Atlantic Council, exercised overall direction of OUP. The execution of that direction was the responsibility of the military chain of command consisting of the Supreme Headquarters, Allied Powers in Europe (SHAPE); its subordinates were Joint Force Command Naples which delegated the execution to Combined Joint Task Force Command OUP (in Naples), which in turn operationally commanded OUP and consequently commanded the tactical air operations headquarters at Poggio Renatico and the tactical maritime operations at Maritime Command Naples headquarters. Non-NATO partners participated in almost all meetings of the NAC relating to OUP as well as at the operational headquarters.

We agree with the Commission that international humanitarian law is the *lex specialis* applicable to armed conflict; that body of law is intended to minimize harm to civilians. It does so in large part through principles of distinction, proportionality and military necessity designed to ensure that the risk to civilians is not excessive in relation to the military advantage anticipated. Strict compliance with these requirements was of obvious importance in a case such as OUP, where a core purpose of the Security Council's mandate authorizing use of "all necessary measures" – and thus the essential military objective – was itself to protect civilians and civilian areas from attack or threat of attack, in particular by their own government. NATO believes that its attentiveness during the course of OUP to a rigorous implementation of the rules of that body of law – and, indeed, to a standard exceeding what was required under international humanitarian law – contributed significantly to an extraordinarily low incidence of harm to civilians and civilian property.

The conduct of Operation Unified Protector was highly successful, both overall in protecting the civilian population of Libya and in implementation of an operational approach which minimized harm to civilians. Although no complex campaign can exclude that civilians suffer harm during its course, NATO deeply regrets any such harm that may have been caused by those strikes.

Many of the Commission's questions are best addressed by a general description of the targeting policy and practices followed by NATO during OUP. Application of that policy in particular cases is further treated in several of the subsequent discussions of individual incidents.

OUP Targeting Policy. OUP targets were all affirmatively selected to advance the operation's military objectives, which in turn derived ultimately from UNSCR 1973. Targets struck included military forces attacking or threatening to attack civilians or civilian-populated areas, as well as the command and control, logistics and other systems directly involved in directing, enabling or facilitating those attacks. Facilities and resources that did not provide a definite military advantage in achieving the military objectives were not targeted.

The OUP targeting policy was designed and implemented with the Security Council mandate to "protect civilians and civilian-populated areas under threat of attack" firmly at its core. The overriding objective throughout the campaign was to avoid any harm to civilians. Not one of the targets struck, involving over 7700 weapons, was approved for attack, or in fact attacked, if either those designating and approving the target or the pilot executing it had any evidence or other reason to believe that civilians would be injured or killed by a strike. As explicitly directed in the Operation Plan for OUP as approved by the North Atlantic Council, no civilians, and no specific individual, civilian or military, were ever intentionally targeted in that operation.

Rigorous procedures were in all cases followed for approving both "deliberate" (i.e., pre-planned) and "dynamic" strikes (i.e., strikes on targets that presented themselves during the course of a mission) to ensure that there was a "zero expectation" of death or injury to civilians.

In determining which targets should and could be struck, intelligence from all available sources (including signals intelligence, imagery and other sources) was obtained and analyzed to ensure its continued accuracy and to confirm that civilians were not inadvertently put at risk. In appropriate cases, as much as fifty hours of airborne video observation was conducted and analyzed before a strike was authorized. The potential for harm to civilians was carefully assessed with respect to each proposed target, including before authorizing "re-strikes" of targets following an unsuccessful or partially unsuccessful attack or when regime forces were observed re-using a previously struck facility.

Whether deliberate or dynamic, no target was struck that had not been extensively considered in light of all available intelligence, assessed in light of the targeting standards approved by the North Atlantic Council, reviewed by legal officers for compliance with the requirements of the law of armed conflict and specifically approved by the overall OUP commander or deputy commander or, in some cases of dynamic targeting, the general officer in command of the Combat Air Operations Centre. All deliberate strikes, and the great majority of dynamic attacks, were made on the basis of multiple intelligence sources. Some two-thirds of sites seriously assessed as possible targets were for one or another reason, notably including concerns over potential harm to civilians, removed from consideration during the course of these reviews.

Equally rigorous procedures were followed with respect to strike execution. Through leaflets and other means, general and location-specific warnings to the civilian population were repeatedly made in order to advise them to avoid areas likely to be struck. The day of the week, time of day or night (notably during Ramadan), on occasion even the direction of attack were all carefully considered to minimize any risk of civilian casualties. In most cases information was available permitting an analysis of the construction materials and design of buildings, and munitions were selected and fused so as to contain the blast within the structure to the maximum extent possible. The great majority of munitions used delayed fusing for this reason. In preparing for individual missions, planners consistently employed the minimum-sized munitions necessary to accomplish the military objective; on numerous occasions multiple munitions with lower blast radii, rather than fewer munitions or

even a single larger one, were employed to ensure that the blast and ejecta radius did not include civilian areas or other risk to civilians. All aerial munitions employed in OUP were precision-guided, and the type of precision guidance (e.g., GPS- or laser-guided) was selected to maximize accuracy in light of local conditions at the time. (A limited number of strikes involved use of direct-fire munitions, which are under the direct control of pilots and of comparable accuracy to precision-guided munitions.) In many cases special measures were taken to increase the ability of commanders and pilots to assess whether civilians were present up virtually to the moment of attack. For certain strikes near civilian areas, for example, essentially contemporaneous airborne video observation was required before a target was struck. With respect to deliberate naval fires, all salvoes were fired under positive control, with the fall of shot observed by spotters embarked in aircraft. Many attacks were called off, including some at the last minute, in order to avoid striking those whom NATO was mandated to protect.

Battle damage assessment following attacks was conducted when possible to determine damage and otherwise evaluate the effects of the strike. NATO had no ground observers in Libya, and had no ability during the campaign to assess the effects of its strikes from the ground. It did, however, employ its extensive air and intelligence, surveillance and reconnaissance assets of all kinds, as well as video footage and other evidence acquired during the attack and open source and media reporting, to assess those effects. Although weather and atmospheric conditions on occasion precluded doing so, additional assessment was carried out where possible in instances where there was a claim of civilian casualties.

Targeting and execution practices were further enhanced during the course of OUP with the goal of avoiding any civilian loss. In keeping with standard practice, NATO is reviewing the conduct of OUP in order to identify any ways in which its planning and execution can be further improved as a result of experience gained during the campaign.

As a result of all the precautions taken, NATO is convinced – and considers that the record of OUP amply demonstrates – that the targeting and strike methods employed in OUP were as well-designed and as successfully implemented to avoid civilian casualties as was humanly and technically possible.

Conduct of the campaign. The North Atlantic Council mandated OUP on 31 March 2011, and the operation terminated seven months later, on 31 October. During the course of the campaign a total of 25,944 air sorties were made, of which 25,011 were by fixed-wing aircraft, 424 by rotary-wing aircraft and 509 by unmanned aerial vehicles (UAVs) conducting intelligence, surveillance or reconnaissance (ISR) missions. All sorties were armed, either defensively or offensively, with the exception of air-to-air refuelling flights, and some UAV electronic warfare and ISR flights. Of the 17,939 sorties (approximately 70%) that were armed, 17,314 were by fixed-wing aircraft, 375 by rotary-wing aircraft and 250 by UAVs conducting ISR missions.

A total of 7642 air-to-surface weapons, including 3644 laser-guided bombs (e.g., GBU-12, GBU-24), 2844 GPS-guided munitions (e.g., GBU-31, GBU-38), 1150 precision-guided direct fire weapons (e.g., AGM-114 Hellfire and HOT missiles), as well as four miscellaneous precision-guided munitions, were employed during OUP. 6278 (82.2%) were 500-lb. or smaller in weight, 562 (7.4%) between 500 and 1000 lb., and 802 (10.5%) between 1000 and 2000 lb

The scale of the use of precision-guided munitions during this campaign is unprecedented; due to their increased precision, such weapons dramatically reduce the risk of collateral damage, both because they require greatly reduced explosive effect to achieve their purpose and because they are less likely to cause unintended damage by hitting the wrong location.

The minimum-sized weapon required to achieve the military objective and consistent with the "zero expectation of civilian casualties" targeting criterion was used on all occasions. The great majority of weapons were fitted with delayed fusing, thereby further minimizing risk to civilians who might have been in the vicinity of the target. We can confirm that no incendiary or obscuring (white phosphorus) munitions were used during OUP. Fewer than a hundred illuminating rounds were fired by NATO vessels as part of operations relating to coastal targets near Zlitan, Sirte, al Khums and Misrata. All such rounds are designed to initiate in the air and illuminate the ground under parachute from above; all are fused to burn to extinction before the parachute drifts to ground.

The munitions and guidance systems used by Nations in execution of actions during a NATO or NATO-led operation are provided by those Nations, and NATO does not have information on their expiration date. The fact alone that an expiration date has been passed does not mean that a weapon is no longer reliable, and the period of time during which a guidance system or munition is considered appropriate for use is thus a matter for individual Nations rather than for NATO itself. Multiple weapons systems checks, following national procedures, are standard when muniitions are loaded onto the aircraft.

The Commission has as a rule not requested information from NATO regarding weapons use by regime forces, but in response to its specific query, NATO is aware of three SCUDs that were launched by regime forces during the course of OUP – one targeting Misrata on 14 August, and two targeting Brega on 23 August. None of these launches was intercepted.

Individual incidents. The following discussions of the individual incidents or groups of events referred to by the Commission in its two letters must be read in conjunction with the general information on targeting and strike execution provided above. Please note that it is longstanding NATO policy not to provide information as to which Nation may have conducted any particular military action during a NATO operation.

Please note as well that in certain cases the description provided was of such a general character that it was difficult or impossible to identify the specific strikes or incidents to which the Commission referred. In those cases, we have looked at information on strikes taking place at the same time and in the same area in an effort to respond to the Commission's inquiries.

The first six incidents are referenced in the Commission's 11 November letter, and the final three (numbers 7 through 9 below) in its letter of 15 December.

1. 20 June (Surman). The compound included a number of command and control buildings as well as an ammunition storage facility. Between 20 and 30 satellite communication dishes were observed in the compound and on the buildings, along with a lattice tower aerial immediately across the street. The compound was at an isolated location outside Tripoli and was guarded by checkpoints, guards and patrol vehicles forming several rings of security around the facility. Although a school and mosque were located in close proximity to the target, aerial video surveillance identified no civilians in the area. The target was struck at night to minimize any possibility of casualties to transient civilians; for similar reasons the ammunition dump and other military objects located on the site were also not struck.

2. 30 July (Libyan State Television). Transmission dishes belonging to Libyan State Television were deliberately targeted and destroyed to prevent their continued use to incite regime supporters to violence against civilians. This transmission station was a key element in broadcasting such incitement by regime leaders. Although the target had earlier been rejected because the rhetoric broadcast over it did not at that time reach the threshold of incitement to violence, speeches made in early July reached a new level of intensity and focus. It should also be noted that the crimes against humanity (including murder and persecution) for which the International Criminal Court (ICC) had in late June indicted Col. Gaddafi and other senior regime members corresponded closely to the actions incited via the Libyan State Television transmission station.

The target was struck at night, on a particular heading, to minimize any chance of injury to civilians. The dishes were targeted precisely and with low-intensity weapons both to minimize the risk of collateral damage and to avoid broader disruption to the Libyan communications infrastructure. Battle damage assessment indicated that these precautions were fully successful in avoiding such injury or damage.

3. 1 May (Tripoli). This site was a key node for regime-associated forces in Tripoli, and served as an alternate command authority site for the Libyan leadership. The critical element of this facility was the command building. While several VIP buildings and satellite communication dishes were also located at this site, these were neither targeted nor struck. Destruction of the command building degraded the regime command authority's backup command and control capabilities and in turn its overall military effectiveness.

As noted above, civilians and specific individuals were at no point targeted during OUP. Full-motion video acquired by manned aircraft and UAVs at the time of the strike indicated that no civilians were in the target area. In addition, the strike was conducted at night to reduce the possibility that transient personnel would be in the target area. Multiple smaller munitions were utilized on a single building to minimize collateral damage to surrounding buildings within the installation.

4. 23 April. NATO did not target health or water facilities, including those at military sites, at any time during OUP. On 23 April, there were strikes at five separate deliberate targets including command and control and ammunition bunkers. No known health or water facilities were within the target or weapons effects areas, and post-strike battle damage assessment indicated no collateral damage. In addition, 14 dynamic targets (main battle tanks, missile and rocket launchers, tank carriers, other military vehicles and a military command post) were struck in the Misrata and central regions; assessment by the aircraft delivering the weapon immediately following these strikes gave no indication of collateral damage.

5. 9 May. No strikes took place in the Tripoli region on 9 May. A total of eight strikes took place in the Tripoli region on 8 and 10 May, including five on deliberate targets on known military installations including intelligence headquarters and communications facilities and a weapons storage and vehicle maintenance area, and three on dynamic targets, all positively identified as surface-to-air missile launchers. Battle damage assessment indicated no collateral damage.

6. 12-13 May (Brega). The Marsa El Brega Residence and Command Bunker Facility served as the primary C2 facility for forces fielded by the 32d Brigade in and around Brega. It was deliberately targeted and struck on 13 May. During engagement of the target, it was positively identified and four precision-guided munitions were dropped. The strike was highly effective, and decisively degraded command and control in the Brega area. Battle damage assessment indicated no collateral damage.

After this strike, an engineer who had been involved in design and construction of the command bunker facility publicly confirmed that it had been constructed for Col. Gaddafi and had been purpose-built for command and control functions.

7. El-Grarry residence (Mhalat El Fath). The Tarabulus SA-2 Support Facility was an active military storage and support site directly supporting regime forces in the region with military equipment as well as efforts to reconstitute air-defense capabilities throughout Libya. It was struck on three separate occasions, targeting at least ten separate buildings and bunkers. During the 19 June target engagement in question, the targeted structures were positively identified and two precision-guided weapons were dropped. The second of these two weapons appears to have malfunctioned due to laser guidance problems, its impact was not observed and NATO was not able to determine where it in fact landed.

After reviewing the case, it was concluded that it was possible that the errant weapon had caused such casualties. A public statement was made at the time by the OUP commander acknowledging this possibility and expressing regret for any casualties that may have resulted. This incident is under further assessment.

8. Mustafa Najl residence (Zlitan). This target had been identified as a regime senior commander's command and control node, located within a residential property four miles west of Zlitan. At no time were civilians intentionally targeted. The target building and buildings immediately adjacent to it were used exclusively by senior regime commanders as an active command and control facility directing forces in the Zlitan area. The structure was positively identified and one precision-guided weapon was dropped on 4 August. Review of intelligence confirms that the correct and intended building was struck, and assessment of the claimed civilian casualties at the time concluded that this was highly unlikely. This incident is under further assessment.

9. Majer. The four buildings addressed in the questions relating to Majer were deliberate targets, based on their functioning as a troop staging area. They were located within a farm compound in a rural area. On the basis of observation and other intelligence, it was assessed that no civilians were in the area, and none were observed at the time of the attack or of the subsequent re-strike of one of those buildings. If civilians had been identified, standard procedure was to abort the drop or, if noticed after time of release, to direct a laser-guided weapon away from the target area. This incident is under further assessment.

In the comments above, NATO has done its utmost to address the substantive points raised by the Commission with respect to NATO's conduct of OUP. As has been indicated in previous correspondence, some of the specific information sought by the Commission cannot be made public. Video footage in particular is the property of the individual Nations operating the video recording platforms and is classified in order to protect important information about platform capabilities. Where possible, however, information has been declassified in order to respond comprehensively to the Commission's questions.

Two other considerations, one relating to the scope of the Commission's inquiry and the second to the evidence supporting allegations of violation of international law, affect the character of our response. The Human Rights Council's Resolution S-15/1 mandated the Commission to look into "alleged violations of international human rights law." Although NATO has in this letter responded in detail to the Commission's request for information, it is for a variety of reasons not evident that many of the queries posed in the Commission's letters of 11 November and 15 December, including those relating to the law of armed conflict, fall within that mandate. NATO nonetheless trusts that its comments in this letter will address any concerns the Commission may have with respect to the lawfulness of NATO actions during OUP.

In several cases, the descriptions of the incidents referenced by the Commission appear to derive in whole or in part from allegations made by the former regime during the course of OUP. While we have discussed all incidents referenced

by the Commission, in light of the fact that regime statements were repeatedly shown to be incomplete, inaccurate, or based upon fabricated or non-existent evidence, we assume the Commission agrees that uncorroborated regime assertions, are not credible evidence as to the actual facts. We note in this context the Commission's comments, in its 1 June Report to the Human Rights Council, that on the occasion of its visit to Libya in late April 2011 the "the [former] Libyan Government did not provide the details or show concrete evidence of alleged incidents, such as civilian objects which had been destroyed (e.g. schools)" and that "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" (paragraphs 233 and 235).

Throughout OUP, and to the present day, NATO has given consideration to every allegation of harm to civilians of which it has been made aware, and in each such case reviews its actions with care in order to assess whether there is merit to the allegation. That review involves, as appropriate to the individual case, assessment of all NATO's records from selection of the target through any data it possesses gathered following the attack.

As noted above, NATO did not have a presence on the ground in Libya during OUP; following conclusion of the operation on 31 October, the Organization has no mandate that would allow it to establish such a presence. While NATO therefore does not itself have the ability to gather evidence onsite with respect to strikes conducted during OUP, it appreciates that the Libyan authorities, officials of NATO Allies and other states, international organizations and bodies including the Commission, journalists and others will gather such evidence. If as a result serious questions arise with respect to NATO's conduct or understanding of the effects of its strikes, NATO is fully prepared to evaluate those questions and any new evidence that may be adduced.

I trust that the above comments address the Commission's concerns with regard to NATO's actions during the course of Operation Unified Protector.

Yours sincerely,

Peter Olson
Legal Adviser

Judge P. Kirsch, Q.C.
Chair
International Commission of Inquiry on Libya
United Nations
coilibyasecretariat@ohchr.org

LEGAL ADVISER
LE CONSEILLER JURIDIQUE

OLA(2012)0014
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Dear Judge Kirsch,

Thank you for your letter of 3 February, 2012, which inquired about five additional sites struck during the course of NATO's Operation Unified Protector (OUP), and presented further questions relating to three sites discussed in our letter of 23 January. Your letter also commented on several other matters addressed below.

As we discussed when we spoke by telephone on 2 February, gathering and reviewing information of the sort requested in your letter requires considerable coordination. While we are replying to you more quickly than we were able to in response to your 15 December request, it was not possible to complete that work by the requested date of last Friday, 10 February.

Before turning to the specific incidents about which you inquired, I would like to address certain points of a more general character.

As you are aware, we retain concerns about some aspects of the Commission's application of its mandate from the Human Rights Council (HRC), which was given in the specific context of gross repression and manifest human rights violations committed by and against Libyans in the context of political protests in that country. That mandate is 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 to make recommendations "all with a view to ensuring that those individuals responsible are held accountable."

NATO is in no doubt that the former regime committed serious violations of international law during the course of the internal conflict in Libya which emerged from its repression. We are not, however, persuaded that examination of the conduct of parties to the Libyan internal conflict implies expansion of the Commission's work to include "investigation" of NATO's actions giving effect to the mandate contained in UN Security Council Resolution 1973.

North Atlantic Treaty Organization - Organisation du Traité de l'Atlantique Nord
Boulevard Léopold III - B-1110 Bruxelles - Belgique
Tel. direct : +32 2 707 40 08 - Fax: +32 2 707 91 67 - Bureau/Office : OA 308 - E-mail : olson.peter@hq.nato.int

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We understand that the Commission has been conducting a careful review of several incidents involving NATO about which it has had some concerns, and trust that the description of OUP policies and comments on specific incidents contained in our letter of 23 January have been of assistance to the Commission in that work. I was pleased the other evening to hear that, based on that review, the members of the Commission consider that NATO did not deliberately target civilians and did not commit war crimes in Libya. Such a view is of course fully consistent with our own firm belief as set forth in that letter which noted that not one of the targets struck was approved for attack, or was in fact attacked, if NATO had any evidence or other reason to believe that civilians would be injured or killed by a strike.

We would be concerned, however, if "NATO incidents" were included in the Commission's report as on a par with those which the Commission may ultimately conclude did violate law or constitute crimes. We note in this regard that the Commission's mandate is to discuss "the facts and circumstances of ... violations [of law] and ... crimes perpetrated."

We would accordingly request that, in the event the Commission elects to include a discussion of NATO actions in Libya, its report clearly state that NATO did not deliberately target civilians and did not commit war crimes in Libya.

We appreciate the preview of certain recommendations the Commission is considering including in its report, and we welcome the opportunity to offer comments on them.

As a general point, similar to the one just made, we doubt the appropriateness of including in the report recommendations relating to NATO. The Commission's mandate to make recommendations is made in the specific context of ensuring the accountability of those perpetrating crimes and violating international law – a category we believe it is clear does not include NATO.

With respect to the two specific recommendations anticipated in your 2 February letter, we would first recall the statement in NATO's letter of 23 January that OUP has been terminated and that NATO has no mandate to conduct any activities in Libya. As our letter acknowledged – and as since demonstrated by the Commission itself – a wide range of parties may and will gather information relating to strikes, and that information will in turn be given due consideration.

In addition, particularly as there have been very few claims for compensation associated with NATO actions during OUP, we see little rationale for a NATO-specific recommendation on compensation. There is no legal obligation to provide compensation for damage occurring in the course of lawfully-conducted military activities, nor is it the case that establishment of programs for compensation for such damage has become standard or expected practice. Any issues of compensation are accordingly questions of a political

character. It is in fact our understanding that the Libyan representative recently informed the Security Council that a commission is being formed to consider questions of civilian casualties and that his government plans to establish a mechanism to indemnify victims following its investigations. NATO has made clear to the government of Libya its desire and intent to be supportive of this process.

Allow me, finally, to address two possible misapprehensions with respect to NATO activities in Afghanistan. First, neither NATO nor ISAF has in fact established or conducts a compensation program in that country. Secondly, while there is important sharing of information between ISAF and UNAMA, the context of that information-sharing is highly specific – both ISAF and UNAMA have large and long-term presences on the ground, a major purpose of sharing information is to assure the physical security of UNAMA, and any sharing of information is done on the basis of specific operational requirements for such sharing and of institutional relationships and understandings that have been developed over the course of a decade of collaboration. There is no information-sharing agreement applicable to the Commission that would permit NATO to share classified information with it.

Individual incidents. The Commission has asked for comment on five new incidents, and asked further questions with respect to three addressed in our letter of 23 January. These are discussed below in the order found in the Commission's letter of 3 February. As before, the discussion of these individual incidents must be read in conjunction with the general information on targeting and strike execution provided in that letter. In short, however, not one of the targets struck was approved for attack, or was in fact attacked, if NATO had any evidence or other reason to believe that civilians would be injured or killed by a strike. Please note that a number of the incidents below are the subject of further assessment, which will take into account the further information provided by the Commission in its 3 February letter.

It should also be noted that most of the strikes referenced in the Commission's 3 February letter occurred in the later stages of the campaign, and in particular after the fall of Tripoli. The campaign at this stage was highly fluid and for tactical reasons the regime was using civilian rather than military structures in support of military action. The regime's conventional command and control in particular had been severely degraded and it relied increasingly on non-traditional/informal methods. Such methods did not involve the kind of dedicated structures, wiring, equipment and other infrastructure that would identify a command and control node as "military" in character.

1. 29 August (Bani Walid). This was a major command and control node which was reliant on non-traditional/informal methods to carry out that function. The site was actively controlling regime forces which were attacking civilians in the area. The full targeting procedure described in our 23 January letter was

applied in this case, including that no target was selected for attack, or in fact struck, if there was any reason to believe that civilian casualties would result.

2. 16 September (Sirte). This was a dynamic strike. OUP observed multiple military vehicles with substantial numbers of associated military personnel on the ground over an extended period. Those vehicles were engaging in continuing rocket fire against civilian areas, and authorization was granted to engage them once they were clear of civilians. The vehicles were not struck until they left the populated area where they had initially been observed, and had relocated to an area free of civilians and civilian structures. The two vehicles struck were sufficiently separated that a single precision-guided weapon of the type employed would have been insufficient to destroy them both.

3. Undated (Bani Walid). The only strike at this location took place on 9 September. Two SCUD missiles, which are vehicle-mounted, were stored at this building, which was not a permanent or purpose-built SCUD storage facility. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility. It is not known whether the SCUDs were destroyed in the attack.

4. 9 September (Bani Walid). The only strike on this location took place on 5 October. This facility was a confirmed military facility in a walled compound, and was being used at the time of the strike as a command and control facility. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility.

5. 10 October (Bani Walid). This was a building in an industrial compound that had been taken over for military purposes and was being used at the time as a command and control node. On the basis of its standard targeting methodology as previously described, it was concluded that no civilians were at this isolated facility.

6. 20 June (Surman). NATO's principal concern with this site was its functioning as a military command and control node, and it was that function that was struck. We remain confident of our information that this was a military site, that there was no evidence of a civilian presence and that all measures were taken to confirm that conclusion, and that the strike was executed in a manner designed to avoid any risk to transient civilians. The weapons storage facility to which the Commission refers was known to NATO, but that target was not engaged on the basis of its proximity to a mosque and school. NATO did not have access to contemporaneous ground observation from reliable neutral observers and cannot make a definitive statement with respect to the reports of civilian deaths.

7. 3 August (Zlitan). NATO information, as indicated in our earlier letter, is that this site was struck on 4, not 3, August. As stated previously, NATO identified this site as a senior regime commander's command and control node located within a residential property. As noted in other contexts as well, this target would not have been struck if NATO had any evidence or other reason to believe that a strike would injure or kill civilians.

8. 8-9 August (Majer). At the time of these strikes, these buildings had been identified as being used as a staging area for regime forces actively engaged in attacks on civilians and civilian-populated areas. It should be noted that at this point in the campaign regime forces, as well as the mercenaries augmenting those forces, often wore civilian clothing.

Naval and other ordnance. The Commission has also requested information on use of naval weapons. It should be noted that no naval weapons were used in any of the 14 incidents with respect to which the Commission has posed questions. During the course of OUP, approximately 470 naval rounds were fired. No cluster munitions, including CBU-107 or other passive attack cluster munitions, were used during OUP.

Leaflets and warnings to civilians. The Commission's military advisor has separately requested information on leaflets used to warn civilians of possible attacks. Copies of representative leaflets are being provided separately by electronic means. NATO used both physical leafleting and broadcast media to provide warnings, as well as to generally advise both regime forces and civilians on how to act to minimize risk, on literally hundreds of occasions throughout the campaign.

Please be assured that NATO appreciates and values the work of the Commission, and trusts that these comments will assist it in preparing its final report.

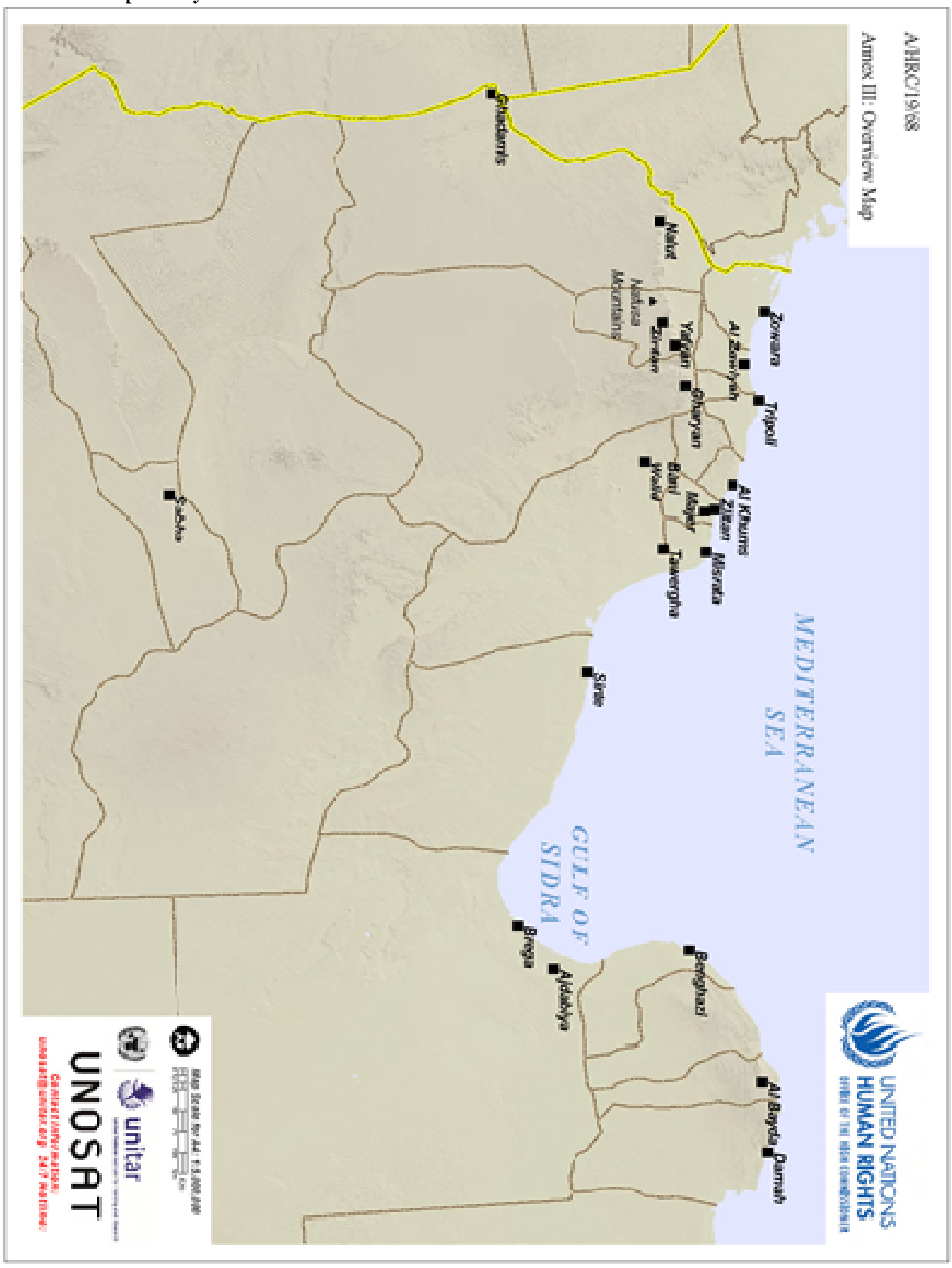
Yours sincerely,

Peter Olson
Legal Adviser

Judge P Kirsch, Q.C.
Chair
International Commission of Inquiry on Libya
United Nations
coilibyasecretariat@ohchr.org

Leaflets dropped in Libya by NATO sent by NATO to the International Commission of Inquiry on Libya

Annex III Map of Libya



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Annex IV

The UNOSAT Imagery Analysis is available at:

http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A_HRC_19_68_AnnexIV.pdf

Annex V

Glossary of weapons used in Libya

Aerial Bombs

Laser-Guided Bombs: NATO dropped 3644 laser-guided bombs during the conflict in Libya. The most common one documented by the Commission was the GBU-12 Paveway II 500lb bomb. NATO also informed the Commission it had also regularly used the GBU-24 Paveway III 2000lb bomb. These are precision-guided bombs directed to the target by a laser carried by the attacking aircraft. The pilot visually observes the target throughout the flight of the weapon, allowing them to alter the trajectory as necessary and ensure it hits the intended target.

GPS-Guided Bombs: NATO dropped 2844 GPS-guided bombs during the conflict in Libya. The most common bomb of this type documented by the Commission was the GBU-31 Joint Direct Attack Munition 2000lb bomb using the BLU-109 hardened penetration warhead. NATO also informed the Commission it had regularly used the GBU-38 Joint Direct Attack Munition 500lb bomb. GPS-guided bombs are directed to their targets using global positioning satellites and do not require the pilot to visually identify the target. The hardened warhead allows the munition to penetrate through concrete before exploding inside a structure.

Anti-tank weapons

RPG-7: The RPG-7 is an unguided, shoulder-fired rocket propelled grenade launcher with a 200m effective range. It has a variety of warheads, including anti-tank and anti-personnel.

M40 106mm recoilless rifle: The M40 fires a 106mm shell. The Commission found dozens of spent 106mm shells in Libya with HEAT (high-explosive anti-tank) and HESH (high-explosive squash head) warheads.

Assault Rifles

The most common weapons used by the Libyan Army and the *thuwar* were assault rifles, including the AK-47, FN-FAL, and the FN2000.

Machine guns

Vehicle-mounted heavy machine guns were ubiquitous during the war in Libya. The most common seen by the Commission were:

DShK 12.7x108mm machine gun: This was the most common heavy machine gun used by the Soviet Union during the Second World War, modernized in 1946, and common in Libya. It is a gas-operated heavy machine gun with a rate of fire of 600 rounds per minute and a 2000m effective range. The cartridge is 147.5mm in length.

KPV 14.5x114mm machine gun: This is a Soviet-designed heavy machinegun first entering service in 1949. It is a short-recoil operated heavy machine gun with a rate of fire of 600 rounds per minute and 3000m effective range. The cartridge is 155.8mm in length.

ZU-23 23mm Anti-aircraft cannon: This is a Soviet-designed anti-aircraft auto-cannon. It is a belt-fed auto-cannon with a rate of fire of 2000 rounds per minute and a 2.5km effective range.

Rockets

Type-63 multiple rocket launcher with 107mm rocket: This is a 12-tube rocket launcher manufactured by China and was one of the most common weapons used during the war in Libya by the *thuwar* and the Libyan army. It fires a 107mm rocket with a maximum range of 8km.

BM-21 Grad with 122mm M21 rocket: This is a Soviet-designed vehicle-mounted rocket launcher firing 40 122mm rockets. It is an 'area-effect' weapon which means it is not designed to hit specific targets but rather to hit a general area. It has a rate of fire of two rockets per second and a maximum range of 20km. Cargo rockets designed to carry mines have a range of 30km.

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SCUD-B: This is a tactical ballistic missile designed by the Soviet Union and entering service in 1964. The missile is 11.25m in length and requires a dedicated vehicle to transport and fire it. The Commission saw one MAZ-543 launcher with the rocket expended in Misrata. According to NATO there were three launched during the war, one targeting Misrata and two targeting Brega. NATO stated none of the launches were intercepted. The missile has a range of 300km and carries a 985kg warhead.

S-5: The S-5 is a 55mm unguided direct-fire air-to-surface rocket fired from pods carried by aircraft and helicopters. The Commission saw numerous S-5s carried by the *thuwar* on the back of pickup trucks on improvised mounts using UB-32 and UB-16 rocket launchers. The rockets have a 4km range and are 1.4m long and carry a 5kg warhead.

SNEB: The SNEB is a French 68mm unguided direct-fire air-to-surface rocket. The Commission saw numerous SNEBs carried by the *thuwar* on the back of pickup trucks on improvised mounts using MATRA rocket launchers. The range and length vary depending upon the warhead.