

**Human Rights Council****Nineteenth session**

Agenda item 4

Human rights situation that require the Council's attention**Report of the International Commission of
Inquiry on Libya* ** ******Summary*

In its resolution S-15/1, the Human Rights Council established an 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 of Inquiry conducted its investigations applying the international legal regimes dictated by the situation. It concluded that international crimes, specifically crimes against humanity and war crimes, had been 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 also concluded that the anti-Qadhafi forces, the *thumar*, had committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report. It found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage. It found in particular that the *thumar* were targeting the Tawergha and other communities.

* Late submission.

** See also document A/HRC/19/CRP.1.

*** On 16 September 2011, pursuant to a request submitted by the National Transitional Council to the Protocol and Liaison Service of the United Nations, the previous official and short forms of the State (respectively, the Socialist People's Libyan Arab Jamahiriya and the Libyan Arab Jamahiriya) were replaced by the name "Libya".



The Commission concluded that the North Atlantic Treaty Organization (NATO) had 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. It was unable to draw conclusions in such instances on the basis of the information provided by NATO, and therefore 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 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 the *thumar* committing serious violations to account. 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 comply with the State’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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I. Introduction

1. On 25 February 2011, the Human Rights Council adopted resolution S-15/1 on the situation of human rights in the Libyan Arab Jamahiriya, in which the Council decided, *inter alia*, to dispatch an independent, international commission of inquiry.
2. On 15 March 2011, the President of the Human Rights Council established the Commission of Inquiry and appointed its three members: Asma Khader (Jordan), Philippe Kirsch (Canada), and 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 supported the Commission with a secretariat.
3. In its resolution S-15/1, the Human Rights Council requested the Commission to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, 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 referral of the events in Libya to the International Criminal Court by the Security Council, the Commission also considered the events in the light of international criminal law.
4. On 15 June 2011, the Commission submitted a report to the Human Rights Council (A/HRC/17/44), in which it set out its findings. In its resolution 17/17, the Council extended the mandate of the Commission in the light of the extensive and ongoing allegations of abuses, and requested it to present a second report to the Council at its nineteenth session.
5. In its previous report, the Commission 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 in the case of its first report, the Commission took a cautious approach when assessing the information gathered. It relied, where possible, on its own observations and first-hand accounts. It bore in mind the fact that it was not seeking evidence of a standard to support a criminal conviction, but rather making an assessment based on a “balance of probabilities” to determine whether a violation had occurred.
7. The Commission faced a number of significant challenges. 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 the Commission’s access to places and individuals.
8. Notwithstanding these constraints, the Commission was able to gather substantial evidence. The present report is strictly limited in length and allows only for a general summary of the findings on some of the most serious allegations investigated.¹
9. The Commission is grateful to the new Government of Libya, other States, United Nations agencies, the North Atlantic Treaty Organization (NATO) and other organizations who gave assistance to the commission. It is especially appreciative of the valuable information provided by victims and witnesses of violations

¹ A more comprehensive account of the findings of the Commission of Inquiry (A/HRC/19/CRP.1), including examples of significant evidence, is available on the website of the Human Rights Council.

II. Background

10. It is not possible to understand the current conditions in Libya without understanding the damage to the fabric of society caused by decades of corruption, serious human rights violations and sustained repression of any opposition.²

11. In the present report, the Commission focuses on alleged violations committed by all parties. Given the shift in power, a significant amount of the present report focuses on abuses by those who rose up against the Government of Muammar Qadhafi. While major abuses are still occurring, the difference between the past and the present is that those responsible for abuses now are not 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 demonstrated any 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 centralize detentions.

13. Some senior Government officials expressed their commitment to human rights. They 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 forces and the inability of the central authorities to enforce the rule of law. The Commission acknowledges these difficulties, and welcomes the Government's plans to disarm militias and to integrate fighters into the national army or the police force. A law on transitional justice and a law on amnesty were recently adopted.³ Delays in the administration of justice, however, increase the risk of individual victims or their family members taking the law into their own hands.

14. The Commission gathered information on the military forces and structures of the Qadhafi Government and the *thuwar*.⁴ In many instances, the Commission was able to assign responsibility to specific individuals. In most cases, the commission withheld the names of individuals believed to hold responsibility for violations, partly to prevent reprisals and partly to avoid prejudicing future fair trials. The Commission will, however, provide a list of such individuals to the United Nations High Commissioner for Human Rights.

² See A/HRC/19/CRP.1.

³ Ibid., chap. V.

⁴ See *ibid.*, chap. II for a better understanding of the conflict and to identify the specific units involved in violations.

III. Findings

A. Excessive use of force⁵

1. Introduction

15. In its first report, the Commission of Inquiry concluded that Qadhafi forces had used excessive force against demonstrators in February 2011. It subsequently conducted more than 60 interviews in its investigation of 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, consistent, in some cases, 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 given by 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 did not support this contention.

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

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 gave 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, on 20 and 21 February 2011, more than 200 bodies were brought to morgues. Protesters were denied access to medical care, while others did not seek medical treatment owing to a (well-founded) fear of being detained. The Commission also received reports of protesters being shot outside mosques after Friday prayers throughout February and March 2011. Qadhafi forces reportedly seized ambulances for use in 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 had shot at and beaten protesters in the central square. The Commission was further informed that Qadhafi forces removed the injured from hospitals and detained men at checkpoints.

3. Conclusion

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

⁵ Ibid., chap. III, sect. A.

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

B. Unlawful killings⁶

1. Introduction

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

2. Qadhafi forces

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

25. In Al Qalaa, a number of detainees were tortured at a boy scouts camp used by Qadhafi forces as a military base and detention centre. Following the retreat of Qadhafi forces in July 2011, footage reportedly taken with a soldier's telephone 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 back. Three other bodies were lying nearby. The Commission interviewed witnesses who had participated in the exhumation and identification of bodies, as well as with former detainees at the camp who had been released prior to the executions. The Commission also visited the site. Rifle cartridge cases remained at the scene, together with some skeletal remains.

26. An informal detention centre was established in a warehouse adjacent to the base of the 32nd Brigade in Yarmouk, Tripoli. According to testimony received, torture and ill-treatment of detainees were routine practices 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 packed tightly, 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 and two of the guards, who admitted direct or indirect involvement. The testimony was broadly consistent and corroborative. The Commission's forensic pathologist identified skeletal remains inside the warehouse. Other forensic evidence remaining at the site was considerable and closely supported the testimony. 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 referred to 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. A total of 21 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 had helped gather 15 bodies, all men in civilian clothes and all handcuffed. The Commission interviewed two witnesses who had reportedly seen three medical personnel taken from an ambulance and shot. The

⁶ See *ibid.*, chap. III, sect. B.

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

29. The Commission found that other mass executions had occurred in Bani Walid, and a significant number of individual killings had been committed elsewhere.

3. *Thuwar*

30. In its first report, the Commission found that a number of Chadian nationals had been 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 had been killed by a mob: one beaten to death, the other hanged from a bridge.⁷

31. The Commission received reports of executions by the *thuwar*. Around 22 and 23 February 2011, in a village between Al Bayda and Darnah, more than a dozen Qadhafi soldiers were reportedly shot in the back of the head by the *thuwar*. The reports were corroborated by mobile telephone footage. Scores of Qadhafi soldiers and alleged loyalists (estimates ranging from 65 to 78) were executed by the *thuwar* in October 2011 at the Mahari Hotel in Sirte. 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 the *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 the Qadhafi security apparatus or Tawerghans, a community targeted by the Misrata *thuwar*.⁸ Bodies were abandoned in hospitals with visible signs of torture. The Commission's forensic pathologist concluded that the injuries were consistent with torture.

4. Death 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 at capture, and subsequently died in *thuwar* custody.

33. With regard to the death of Muammar Qadhafi, the Commission was not given access to the autopsy report despite the numerous requests addressed to the authorities. The Commission was provided with photographs of the body of Muammar Qadhafi and reviewed by its forensic pathologist, who was unable to determine the cause of death conclusively from the photographs provided. While the Commission received eyewitness testimony from persons with Muammar Qadhafi at the time of capture, it was not able to obtain a first-hand account of the circumstances of his death, and received inconsistent accounts from secondary sources. Consequently, the Commission was unable to confirm that the death of Muammar Qadhafi constituted a case of an unlawful killing, and considers that further investigation is required.

34. With regard to the death of Mutassim Qadhafi, the Commission reviewed video footage showing him alive and in the custody of *thuwar* post-capture, but was unable to obtain any account of the circumstances of his death. Consequently, the Commission was

⁷ For individual cases of the killing of members of communities perceived by the *thuwar* to be Qadhafi loyalists, see A/HRC/19/CRP.1, chap. IV.

⁸ See *ibid.*, chap. III, sect. E.

unable to confirm that the death of Mutassim Qadhafi constituted a case of an unlawful killing, and considers that further investigation is required.

5. Conclusions

35. The Commission found that Qadhafi forces executed and tortured to death large numbers of prisoners in detention centres. The executions tended to be performed immediately prior to a retreat. During the armed conflict, such conduct 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. The *thuwar* executed and tortured to death perceived Qadhafi loyalists and suspected mercenaries. These were either hors de combat fighters or members of the civilian population. During the armed conflict, such conduct amounts to the war crime of murder. Once the conflict ended, it constituted a case of arbitrary deprivation of life.

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

C. Arbitrary detention and enforced disappearances⁹

1. Introduction

38. In its first report, the Commission concluded that Qadhafi forces had arbitrarily detained a significant number of people and subjected others to enforced disappearance; while it received, however, very little information on violations by the armed opposition.¹⁰ During the second phase of its work, the Commission met with 197 people, who referred to such violations by parties to the conflict; 158 of the said persons were either direct victims or their immediate family members.

2. Qadhafi forces

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

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

3. *Thuwar*

41. *Thuwar* involvement in cases of arbitrary arrest and enforced disappearance was found to have increased considerably since the first report of the Commission. When they overran cities, the *thuwar* arrested en masse former soldiers, police officers, suspected mercenaries and others they saw as Qadhafi loyalists. The arrests continued well into

⁹ See *ibid.*, chap. III, sect. C.

¹⁰ A/HRC/17/44, para. 110.

January 2012. The detainees were initially held outside the domestic legal framework, often in unacknowledged places of detention. A large number of them were tortured.

4. Conclusions

42. The Commission concluded that Qadhafi forces arbitrarily detained persons it suspected were supporting the *thuwar*. While many detainees may have been fighters, the Commission found that family members and peaceful demonstrators had also been detained. Detainees were not afforded the requisite legal protections, in violation of the State's domestic and international human rights obligations.

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

D. Torture and other forms of ill-treatment¹¹

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 the *thuwar*. It visited more than 20 places of detention, both official and unofficial, under the control of the former Government and the *thuwar*. The Commission interviewed 150 detainees, victims and perpetrators. Its investigators examined the wounds of torture victims and reviewed medical files. The Commission also met with relatives of victims, prison commanders and non-governmental organizations. It established that torture had been 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 had been tortured by Qadhafi forces. The torture methods catalogued included severe beating, including on the soles of the feet (*falaqa*), electric shocks to the genitalia, burning, threatening detainees with dogs, suspension over doors, hanging from bars, and detention 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 sites.

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

47. Torture was also found to have been rampant in unofficial detention centres, including in Yarmouk and Al Khums. The Commission interviewed former detainees of such facilities, who reported cases of severe beatings and the use of electric shocks.

¹¹ See A/HRC/19/CRP.1, chap. III, sect. D.

Conditions of detention, including the lack of toilet facilities and severe overcrowding, constitute ill-treatment of detainees.

48. Rape and other types of sexual violence were also used in detention. The Commission interviewed several male and female former detainees, who described cases of rape and other forms of sexual assault.

3. *Thuwar*

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

50. At the end of the reporting period, most detained Qadhafi soldiers and alleged loyalists were still being held in unofficial centres outside the legal framework.

51. The Commission noted that detainees were especially vulnerable to torture upon their 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, which was used in particular against Tawerghans by Misratan *thuwar*, who accuse them of committing rape and other crimes in Misrata. Detainees told the Commission that they confessed to serious crimes, including rape (which they denied committing), when they could no longer endure the torture.

4. Conclusions

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

53. The Commission also found that Qadhafi forces and the *thuwar* used torture and ill-treatment. Such acts constitute a violation of international human rights law and, when committed during armed conflict, constitute war crimes.

E. Targeted communities¹²

1. Introduction

54. The Commission 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 on the basis of their opposition to the Government, the Commission did not find evidence that one particular group had been targeted more than others. While some towns were historically

¹² See *ibid.*, chap. III, sect. E.

oppressed by the Government, there was no indication that 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. When the *thuwar* captured Tawergha the, most Tawerghans left, fearing reprisals. When Tripoli fell to the *thuwar*, brigades from Misrata entered a Tawergha camp for displaced persons in the city and arrested and beat 85 Tawerghan men. In September 2011, they arrested between 40 and 50 more. According to eyewitnesses, as recently as 6 February 2012 Misratan *thuwar* attacked the displaced persons camp in Tripoli and killed five Tawerghans, including an elderly man, a woman and three minors.

57. The Commission received multiple reports that, in the months that followed the capture of Tripoli, there were cases of arbitrary arrest of Tawerghans by Misratan *thuwar* on the streets of Tripoli. The whereabouts of these arrested persons often remain unknown. Those who have been released report being beaten. The Commission documented multiple incidents of Tawerghans held in detention in Misrata being subjected to torture. The Commission 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 continued 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 name “Tawergha” had been scratched off road signs, and that the words “New Misrata” had been written on them. The Commission notes that the Misratan *thuwar* were open about their views of the Tawerghans. One fighter told the Commission that he thought that the 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 with reference to “slaves”, “blacks” and “animals”. Some were told that they could never return.

5. Targeting of other communities

60. The *thuwar* from Zintan targeted Mashashiya towns perceived as loyalist. The Commission was able to confirm reports that Mashashiya detainees were tortured, towns looted and property burned. Mashashiyans who attempted to return to their homes were reportedly beaten. In December 2011, Zintani *thuwar* reportedly shelled a town where Mashashiya internally displaced persons had sought refuge. Although the Military Council twice refused to allow the Commission to enter one of the towns, 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. The *thuwar* subsequently shelled Tiji in October 2011 with Grad rockets, killing at least three young women. According to testimony received, Nalut *thuwar* had detained a number of adult men, whom they called “Arab dogs” and told them that “this is not your land”. The Commission observed that evidence of burning could still be seen in the town.

62. The Commission received reports of beatings and looting in Abu Kammesh by Zowara *thuwar*. One interviewee stated that a work colleague had 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 members of the *thuwar*.

6. Conclusions

63. The Misrata *thuwar* killed, arbitrarily arrested and tortured Tawerghans across Libya. Tawergha was destroyed to render it uninhabitable. The murder, torture, cruel treatment and pillaging witnessed during the hostilities constitute a war crime. Where they have continued since, they violate international human rights law. The torture and killing by Misratan *thuwar* could, given their widespread and systematic manner, constitute a crime against humanity; indeed, the facts indicate that crimes against humanity took place.

64. The Commission found that the Zintani *thuwar* killed, arbitrarily arrested and tortured members of the Mashashiyan community; that the Nalut *thuwar* committed unlawful killings and torture in Tiji, as well as looting and destroying property; and that Zowara *thuwar* 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 evidence necessary to indicate that the attacks against these communities were as widespread or systematic as is the case of 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 end of the armed conflict, they constitute a violation of international human rights law.

F. Sexual violence¹³

1. Introduction

65. The Commission is aware of numerous media accounts of rape in Libya, and endeavoured to investigate the allegations. It 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 people accused of committing rape, and also reviewed relevant reports of non-governmental organizations 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*, while others were assaulted for no known reason. Of those targeted, rape appeared to be used as a means to punish, terrorize and intimidate those who supported the revolution.

67. Another pattern was identified, of sexual violence and torture of males and females in detention centres who were *thuwar* members or supportive of them, to extract information, humiliate and punish. Victims were arrested and normally taken to a location for interrogation and torture. The allegations reported to the Commission included cases of vaginal rape, sodomy and penetration with an instrument, as well as electrocution and burning of the genitals. The majority of the allegations came from men detained in Abu Salim and several men and women detained in Ein Zara.

¹³ See *ibid.*, chap. III, sect. F.

68. The Commission interviewed five people accused of raping men and women during the conflict. While these people did provide some specific details, the Commission believes that there is a strong possibility that the confessions were made under torture and were therefore not reliable. The Commission received one credible interview from a local organization that detailed five different rapes over five nights committed in Misrata by the interviewee and his colleagues.

3. *Thuwar*

69. The Commission received limited evidence of cases of rape and sexual violence committed by the *thuwar*. It interviewed two victims, known to be Qadhafi loyalists, who had been sexually tortured by *thuwar* members 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 its sheer political sensitivity all 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. It established that sexual torture was used as a means to extract information from and to humiliate detainees. It did not find evidence to substantiate claims of a widespread or a systematic attack, or any overall policy of sexual violence to be used against the civilian population. The information received was, however, sufficient to justify further investigation to ascertain the extent of sexual violence.

G. Attacks on civilians, civilian objects, protected persons and objects¹⁴

1. Introduction

71. In its first report, the Commission indicated that, with regard to attacks on civilians, civilian objects, protected persons and objects, it did not have access to full information allowing it to definitively evaluate allegations of violations of international humanitarian law.¹⁵ As part of its continuing investigations, the Commission subsequently conducted more than 75 interviews on this issue and inspected the 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. It found that Qadhafi forces had 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. Misrata endured some of the most protracted fighting during the conflict. The city was under siege for more than three months, from March to May 2011, when Qadhafi forces retreated from its centre. 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 the 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 several attempts were made, some of them successful, to mine the Misrata port. The

¹⁴ See *ibid.*, chap. III, sect. G.

¹⁵ A/HRC/17/44, para. 170.

Commission found remains of Chinese-manufactured Type-84 rocket-dispensed scatterable anti-tank mines and transport rockets at the port.

74. When 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 (high-explosive anti-tank (HEAT) tank rounds and high-explosive squash head (HESH) tank rounds), mortars (various from 60 to 120mm), rockets (122mm Grad-entry holes were found with the rear of the rockets still protruding from ground), rocket-propelled grenades 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 from 18 April until 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 members of the *thumar* were subject to killing, arbitrary arrest or detention accompanied by torture, ill-treatment and harassment. Ambulances were reportedly shot at by Qadhafi forces several times during the course of the conflict and were used to transport armed soldiers. Hospitals were shelled, medical supplies restricted, and wounded demonstrators and members of the *thumar* 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, had been inappropriately used for military purposes by the *thumar*, and could therefore be considered lawful targets.

3. *Thumar*

79. The Commission found that the *thumar* also used inherently indiscriminate weapons in their military offensives against cities perceived as loyalist. Of particular concern was their conduct in Sirte. The Commission found that almost every building exhibited some form of damage. The most common damage and weapon debris observed was from Grad rockets, and heavy machine-gun fire from 14.5mm and 23mm weapons. The structural integrity of dozens of buildings was compromised (with many collapsed walls and roofs) and therefore uninhabitable. Numerous buildings exhibited impact from shells consistent with fire from 106mm recoilless rifles and 107mm rocket artillery, using both high-explosive anti-tank and squash head rounds. Although some of the buildings were probably used by the Qadhafi forces and were therefore legitimate targets for attack, damage was so widespread that it was clearly indiscriminate in nature.

4. Conclusions

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

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

82. A similar principle applied to the attack by the *thumar* 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 Organization¹⁶

1. Introduction

83. On 17 March 2011, the Security Council adopted resolution 1973 (2011), in which it authorized “all necessary measures” to “protect civilians and civilian populated areas under threat of attack in the Libyan Arab Jamahiriya”, while excluding a “foreign occupation force”. On 19 March, military forces from France, the United Kingdom of Great Britain and Northern Ireland and the United States of America began attacks. On 31 March, NATO assumed command of all offensive operations.

2. Findings

84. NATO aircraft flew a total of 17,939 armed sorties in Libya, employing exclusively precision guided munitions. NATO representatives informed the Commission that it had a standard of “zero expectation” of death or injury to civilians, and that no targets had been struck if there was any reason to believe that civilians would be injured or killed. The Commission was furthermore informed that the majority of munitions employed had delayed fusing to minimize collateral effects, and that NATO had also employed the minimum-sized munitions necessary to achieve the objective. NATO also warned the population by means of leaflets and radio broadcasts.

85. The Commission took into account the claims made by the Qadhafi Government with regard to civilian casualties, but subsequent testimony from former regime members and others, as well as its own interviews at the sites, confirmed that the Government had 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 taking them to the site of a NATO airstrike.

86. Despite the precautions taken by NATO as described above, the Commission noted incidents of civilian deaths and of damage to civilian infrastructure. Of the 20 NATO airstrikes investigated, the Commission documented five airstrikes where a total of 60 civilians had been killed and 55 injured. The Commission also investigated two NATO airstrikes that 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 was witnessed on 8 August 2011 in the town of Majer, where the Commission found that NATO bombs had killed 34 civilians and injured 38. After the initial airstrike killed 16 people, a group of rescuers arrived and was 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

¹⁶ See A/HRC/19/CRP.1, chap. III, sect. H.

Commission saw no physical evidence thereof during its site visits. Witnesses also denied that the sites had had military utility. NATO informed 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.

3. Conclusions

89. The Commission found that NATO did not deliberately target civilians in Libya. For the few targets struck within population centres, NATO took extensive precautions to ensure that civilians were not killed. There was, however, a small number of strikes where the information provided by NATO did not allow the Commission to draw a conclusion on the rationale for or the circumstances of the attacks. The Commission was unable to conclude, barring additional explanation, whether these strikes were consistent with the objective of NATO to avoid civilian casualties entirely, or whether NATO had taken all necessary precautions to that effect. The characterization by NATO of four of five targets where the Commission found civilian casualties as “command and control nodes” or “troop staging areas” was not reflected in evidence at the scene and nor by witness testimony. The Commission was unable to determine, owing to a lack of information, whether these strikes were based on incorrect or outdated intelligence and, therefore, whether they were consistent with the NATO objective of taking all precautions necessary to avoid civilian casualties entirely.

I. Prohibited weapons¹⁷

90. The Commission examined the use of weapons prohibited by treaty and customary international law. It is aware that not all weapons discussed in the present report 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. It 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 had a low metal content, complicating detection and removal, further endangering civilians. There was some limited use of landmines by individual members of the *thuwar*. There was no evidence of the use of chemical weapons, phosphorous or dum-dum bullets by any party to the conflict.

J. Mercenaries¹⁸

91. The Commission established that an organized group of Sudanese fighters were brought in by the Qadhafi Government specifically to fight the *thuwar*. It did not find 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 International Convention against the Recruitment, Use, financing and Training of Mercenaries or under the Convention for the Elimination of Mercenarism in Africa. 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.

¹⁷ See *ibid.*, chap. III, sect. I.

¹⁸ See *ibid.*, chap. III, sect. J.

K. Child soldiers¹⁹

92. The Commission found evidence to suggest that the Qadhafi Government recruited and used children under the age of 18 in its armed forces, in breach of the State'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 the *thuwar* as a result of their participation in combat. They were held together with adults in contravention of the Convention on the Rights of the Child. The Commission was also concerned to receive reports of children involved in fighting alongside the *thuwar* or in providing logistical support at frontlines, but determines that further investigation is needed.

L. Pillaging²⁰

93. The Commission received reports of theft on a small scale perpetrated by Qadhafi forces during the conflict. It established that members of the *thuwar* and other groups of armed men were responsible for widespread pillaging and destruction of public and private property across the country during phases II and III of the conflict. The 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 even distant ones). Such violations were mostly committed after cities fell under the control of the *thuwar* or during the arrest 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 members of the *thuwar* who had appropriated their homes and other belongings. Evidence of pillage by the *thuwar* was found in – but was not limited to – Abu Kammesh, Al Zawiyah, Awaniya, Bani Walid, Garabulli, Tawergha, Tiji, Tripoli and Sirte.

94. The Commission is concerned that no full, impartial or independent investigations appear to have been conducted 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 had done the same thing to the opposition and that “now it is their turn”.

IV. Accountability²¹

A. Introduction

95. The mandate given to the Commission includes a requirement to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible were held accountable”. The Commission therefore strove to identify individuals who might have been responsible for violations and crimes either directly or through command responsibility. It decided not to include the names of these individuals, apart from senior figures who are publicly known, in the present report.

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

¹⁹ See *ibid.*, chap. III, sect. K.

²⁰ See *ibid.*, chap. III, sect. L.

²¹ See *ibid.*, chap. IV.

B. 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 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”.²²

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

99. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment requires 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.

C. 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. The existing Criminal Code does not adequately define international crimes. It provides for a 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 has no retroactive 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 received information on attacks, including cases of unlawful killing, torture and arbitrary arrest by the *thuwar* of members of the former Government and those perceived to be among its supporters. The Commission is not aware of any member of the *thuwar* having been 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 from 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 that the case has appropriately been transferred to a civilian court.

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

108. The National Transitional Council recently adopted a law on transitional justice, which created a national fact-finding and reconciliation commission charged with

²² International Covenant on Civil and Political Rights, art. 2, subparas. 3 (a) and (b).

investigating incidents of human rights violations committed over the past 42 years. The law also established a victims' compensation fund.

109. A law on amnesty was also recently adopted by the National Transitional Council. The law examined by the Commission allows amnesty for perpetrators of crimes on certain conditions. The crimes of murder, causing serious injury, rape, torture and abduction are excluded from amnesty. The draft law, however, provides that reconciliation between the perpetrator and the victim would lead to the dismissal of criminal charges or the penalty imposed. The granting of an amnesty does not preclude the right of victims to restitution and compensation.

D. Conclusions

110. The Commission gathered information linking individuals to human rights violations or crimes, and will hand over a list thereon to the United Nations 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 members of the *thumar* 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 the *thumar*.

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. The State'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 could lead to a cycle of reprisals.

114. The Commission notes the steps taken to address some of the above-mentioned issues, including the creation of a national council for civil liberties and human rights and the adoption of a law on transitional justice. It is, however, 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 the State's obligations under international law.

V. Assessment and findings

A. 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 given that the Qadhafi Government was no longer in power. As in the case of the first report, however, the quality of the evidence and information obtained by the Commission varied in accuracy and reliability. The Commission maintained the cautious approach it adopted for its first report, while recalling that its evidentiary standard was less than that required for criminal proceedings.

117. Robust efforts were made to corroborate the 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 into account information from media sources and non-governmental organizations, the Commission relied primarily on evidence gathered from its own interviews and observations. Alongside the substantial additional evidence of the violations committed by Qadhafi forces that the Commission was able to gather for the present report, a significant amount of new information was also gathered relating to violations by the *thuwar*. The Commission was impartial and its mandate covered all violations, irrespective of the perpetrator.

B. Qadhafi forces

118. The Commission concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Qadhafi forces in Libya. It confirms its finding in its first report, namely that acts of murder, torture, enforced disappearance and certain acts of sexual violence were committed by Qadhafi forces within the context of a widespread or systematic attack against the civilian population, with knowledge of the attack. These acts constitute crimes against humanity.

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

C. *Thuwar*

120. The Commission has also concluded that war crimes and crimes against humanity were committed by the *thuwar* and that breaches of international human rights law continue to occur in a climate of impunity. It found evidence of acts of extrajudicial 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 any conclusion in relation to the death of Muammar and Mutassim Qadhafi, and recommends further investigation.

D. North Atlantic Treaty Organization

122. NATO conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. For the most part, they succeeded. In the case of 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.

E. 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, although its implementation of that commitment in practice has remained uneven. The interim Government will need

considerable support from the United Nations and the international community to achieve this goal.

124. The deterioration of the legislative framework and of judicial and national institutions generally during the Qadhafi era has resulted in a judiciary that lacks the independence to hold security institutions accountable. The interim Government is gradually restoring the judiciary by reopening courts and recalling judges, although there is still a shortage 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 of the national authorities, 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 found that the authorities are failing to hold members of the *thuwar* who have committed serious violations, including unlawful killings and arbitrary arrests, to account. 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 the State's obligations under international law with respect to accountability.

VI. Recommendations

127. **The Commission calls upon the interim Government of Libya:**

(a) To investigate all violations of international human rights law and international humanitarian law set out in the present report, and to prosecute alleged perpetrators, irrespective of their location or affiliation, while affording them all their due rights under international law;

(b) To bring all remaining detainees under the control of the judicial police or the military police as soon as possible;

(c) To charge detainees being held in connection to the conflict for their involvement in specific criminal acts that constitute serious crimes, and to release those against whom there is no such evidence;

(d) To ensure that conditions of detention comply with applicable international law, including the proper treatment of detainees, access to lawyers and family, and the ability to lodge complaints of torture and ill-treatment;

(e) To end all torture or ill-treatment of detainees, and the use of unlawful interrogation methods;

(f) To secure all sites of alleged crimes identified by the Commission in the present report in order to prevent the destruction or loss of evidence;

(g) To ensure that all evidence obtained as a result of torture is excluded as evidence in criminal trials;

(h) To encourage all parties involved in the conflict to divulge any information that they have on missing persons, and to establish an independent

investigation into the fate of all missing persons, irrespective of the role of the missing person in the conflict;

(i) To take measures to stop and prevent further attacks against the Tawerghans and other targeted communities, to facilitate the return of displaced communities in satisfactory conditions, and to establish independent mechanisms to achieve reconciliation of these communities;

(j) To establish appropriate gender-sensitive psychological, medical, legal and social support services throughout the country, to recruit and train female investigators, and to encourage and support the establishment of civil society organizations to provide victims of sexual violence with support;

(k) To establish public awareness campaigns through the media in support of victims of sexual violence;

(l) To take urgent steps to establish an independent judiciary;

(m) To ensure that all accountability mechanisms operate in accordance with international fair trial standards, and to impose only penalties that conform to international standards;

(n) To apply the law equally, and to ensure that alleged violations are investigated and prosecuted where appropriate, irrespective of the identity of the perpetrators;

(o) To create an integrated and comprehensive plan for enhancing the legal system and the accountability capacity thereof;

(p) To ensure that any amnesty process conforms to the State's obligations under international law by holding all perpetrators of serious crimes to account;

(q) To take steps to ensure that persons alleged to have committed violations of human rights or international humanitarian law are excluded from positions in security, military police, prison and judicial institutions;

(r) To consider the rights of victims in all mechanisms of accountability in accordance with international norms and standards;

(s) To 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) To establish programmes for the training of all officials, including judicial, police, military and prison officials, in international human rights law, in particular specialized training for the handling of cases of sexual violence.

128. The Commission calls upon the National Transitional Council and the future Constituent Assembly:

(a) To ensure that the future Constitution of Libya incorporates international human rights law defined in the human rights treaties ratified by Libya;

(b) To undertake legislative reform to incorporate international crimes into the Criminal Code, and to repeal any statutory limitations applying to such crimes;

(c) To reform all laws to bring them into conformity with the State's obligations under international law.

129. The Commission calls upon the United Nations Support Mission in Libya:
- (a) To monitor the implementation of the recommendations made by the Commission in the present report;
 - (b) To provide the Government of Libya with technical assistance in meeting its international human rights law obligations, particularly those where shortcomings have been noted in the present report;
 - (c) To work with the interim Government on capacity-building programmes for courts, prisons, police, prosecutors and defence lawyers, and to coordinate the support of the international community for such programmes.
130. The Commission calls upon NATO:
- (a) To conduct investigations in Libya to determine the extent of civilian casualties, and to review the performance of their procedures during Operation Unified Protector;
 - (b) To apply its non-binding guidelines for payments in combat-related cases of civilian casualties or damage to civilian property (20 September 2010) to civilian losses in Libya resulting from Operation Unified Protector, preferably in cooperation with efforts of the National Transitional Council to make amends for civilian harm across the country.
131. The Commission calls upon the international community:
- (a) To take immediate steps to release the funds of the Government of Libya to enable it to implement the recommendations in the present report, and to allocate some of those funds specifically to the establishment of an independent judiciary and the training of judicial, police, prison and other officials;
 - (b) To provide Libyan authorities with support in developing their plan to enhance the legal system and in strengthening the capacity of judges, prosecutors, the judicial police, the national police, the military police and prison officials, in particular in the development of specialist investigative and prosecution skills;
 - (c) To assist the judicial authorities in securing all major crime sites identified in the present report in order to prevent the destruction or loss of evidence;
 - (d) To assist the Libyan authorities in securing the 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 made in the present report.
133. The Commission calls upon the Secretary-General to ensure that, in its assistance to the Government of Libya in implementing the above-mentioned recommendations, 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-mentioned 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-mentioned recommendations, in particular measures taken to ensure longer-term respect for human rights.
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