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ORAL UPDATE BY THE INTERNATIONAL COMMISSION OF INQUIRY ON LIBYA
TO THE HUMAN RIGHTS COUNCIL

Geneva, 19 September 2011

Madam President,

1. Procedural History

At its 15th Special Session on 25 February 2011, the Human Rights Council adopted resolution A/HRC/S-15/1, pursuant to which it established an independent commission of inquiry “to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures”. The President of the Council, as authorised by the resolution, appointed M. Cherif Bassiouni as chairperson of the Commission, and Asma Khader and Philippe Kirsch as the other two members.

The Commission presented its report (A/HRC/17/44) to the Council at its 17th session in June 2011. The Council welcomed the report of the Commission in its resolution A/HRC/17/L.3, decided to extend the mandate of the Commission and requested it to “continue its work, including through visits, and to provide an oral update to the Council at its eighteenth session, and a final written report at its nineteenth session”. Therefore, on behalf of the Commission, I am pleased to provide you today with an oral update on the human rights situation in the Libyan Arab Jamahiriya and the work of the Commission.

2. Changes on the ground

Since the Commission's report of June, fighting between forces loyal to Colonel Gaddafi and forces of the NTC continued without intermission. However, the situation in Libya has changed considerably since the Council's last session. Most parts of the country have now come under the control of the National Transitional Council (NTC). The towns of Bani Walid and Sirte, which are still in the hands of pro-Gaddafi loyalists, are under siege by the NTC. Media have reported intense fighting over the past two weeks around Bani Walid, and many residents fleeing the town.

The Commission indicated in its first report that it was able to visit some sites in Tripoli and Benghazi, though its access was limited due to the ongoing armed conflict. The Commission is hopeful that the changes on the ground in Libya will allow it greater access to victims, witnesses and sites of human rights violations due to an improvement of the security situation. The Commission, as indicated in its first report, received positive responses to its requests to the NTC for cooperation and information. The Commission is confident that it will continue to receive the full cooperation of the NTC, such as unfettered and confidential access to victim and witnesses, including persons detained by the NTC, and unfettered access to sites of human rights violations.

3. Allegations of violations

The Commission has been made aware of a number of alleged violations from different sources: basically, general allegations of violations of human rights and specific allegations of violations committed in the conduct of hostilities. It will look at those violations in the next phase of its investigations. I want to make it clear that this part of my statement is only aimed at mentioning allegations of violations, not assertions by the Commission which has not had a chance yet to make an independent assessment.

Arbitrary detentions, killings and disappearances

A number of allegations bear on arbitrary detentions, killings and disappearances. It has been alleged that forces loyal to Colonel Gaddafi arbitrarily arrested and detained hundreds of Libyans at checkpoints in and around Tripoli and in other localities. The whereabouts of many of those detained is unknown. Many detainees were allegedly held in unofficial detention facilities, some comprising of metal containers, and often in harsh conditions. At least 19 detainees are reported to have died of suffocation in metal containers during June 2011 in al-Khums.

The Commission has received reports of serious human rights violations in the fighting that ensued for control of Tripoli during August 2011. During their retreat from Tripoli, troops loyal to Colonel Gaddafi are alleged to have summarily executed detainees in two military camps, Khilit al-Ferjan and Qasr Ben Ghashir, and at the Bab al-Aziziya compound, the headquarters of Colonel Gaddafi. At least 45 detainees have allegedly been killed in a warehouse near Tripoli by the members of the 32nd Brigade, a military force run by Khamis, one of the sons of Colonel Gaddafi. Many of those killed were buried in mass graves without being identified, exacerbating the plight of families of those who have been subjected to enforced disappearances. The number of persons killed in the fighting for control of Tripoli is unclear and will be one of the issues for investigation by the Commission.

The Commission has also received reports of alleged extra-judicial killings by NTC forces on 25 August 2011 of fighters loyal to Gaddafi at a military encampment in central Tripoli. The allegations are that some of those killed had their hands bound behind their backs with plastic handcuffs. Five of the men were allegedly killed at a nearby field hospital while receiving treatment. This and other similar incidents require further investigations by the Commission.

On 28 July 2011, the military chief of the NTC, Abdel Fatah Younes, and two senior military aides were allegedly extra-judicially executed by a militia allied to the NTC. The NTC has launched an investigation into the killings.

In recent weeks, reports have emerged of the mass arrest of black Africans who are suspected of being pro-Gaddafi mercenaries. It has been reported that large numbers of migrant workers from Chad, Mali, Niger, Nigeria and Sudan have allegedly been arbitrarily arrested by security forces of the NTC in Tripoli. There are also allegations that dark-skinned Libyans have also been arbitrarily arrested and detained. Detainees are reportedly being held in detention centres throughout the city including at the prisons at Ain Zara, Tajoura and the Mitiga Airbase, as well as temporary detention facilities including at the National Oil Institute, the Bab al-Bahr football club and local schools. Many migrant workers have fled their homes for fear of arrest and detention. There have also been reports of arbitrary detention and ill-treatment of black Africans in Az-Zawiya. While the prosecutor's office in some localities have begun to assume control over these detainees, many have not been brought before a judge to review the legality of their detention.

A UN humanitarian assessment mission in July to towns and villages in the Nafusa mountains found widespread displacement of the population as a result of the fighting and destruction of property in the town of Wazin. UNICEF expressed concerns about the humanitarian situation facing children in the area, in particular health, access to clean water, protection and education.

Allegations relating to the conduct of hostilities

In June 2011, forces loyal to Colonel Gaddafi allegedly fired rockets at Misrata, some containing ball bearings, into residential areas. Several civilians were killed, including a 14 year old boy. The use of rockets, which are indiscriminate weapons, in areas populated by civilians may amount to a war crime.

Gaddafi forces allegedly fired a Scud ballistic missile from Sirte towards Brega on 15 August 2011, and subsequently allegedly fired four Scud missiles from Sirte towards Misrata on 23 August 2011. While reports suggest that the missiles did not cause damage, their use against cities that had both a civilian population and armed combatants indicates a failure to direct hostilities only to legitimate military objectives. In its first report, the Commission indicated that the issue of indiscriminate attacks against civilians by pro-Gaddafi forces warrants further investigation.

The Commission received reports that pro-Gaddafi troops allegedly indiscriminately attacked hospitals in Misrata during May 2011 with tanks and artillery, attacked ambulances carrying injured combatants and targeted health workers who treated injured combatants.

Troops loyal to Colonel Gaddafi and NTC forces alike have besieged towns and cities such as Misrata, Tripoli, Sirte and Bani Walid, reportedly cutting off essential supplies of water, food, electricity and fuel, at the cost of considerable hardships for the civilian populations. The water supply to Tripoli is said to have only been restored on 6 September 2011. After negotiations, the UN was able to establish humanitarian corridors for the delivery of assistance to the populations of towns such as Misrata. The Commission will have to establish whether the besieging of towns and cities targeted civilians in contravention of international humanitarian law.

NATO's use of force

In its first report, the Commission indicated that it had received reports stating that NATO military action involved indiscriminate attacks on civilians. The Commission concluded then that it was not in a position to assess the veracity of the information it had received, and that it had “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”.

Since its first report to the Council, the Commission has received three further communications from the Gaddafi regime alleging that civilians have been killed during NATO strikes on Tripoli, which it alleged amounted to an indiscriminate attack on civilians. The Commission will have to consider these allegations during the next phase of its investigations. NATO has been in contact with the Commission about those allegations. It has indicated that its targeting procedures and use of weaponry have been carefully designed and applied so as to avoid civilian casualties. It is concerned about such allegations and has looked into each of those cases. It expects that the evolution of the situation on the ground may make on-site investigations easier, with the NTC now in control of most of the locations in question and the prospect of professional and unbiased observers on-the-ground. Finally, NATO has indicated it is prepared to cooperate fully with the Commission

Accountability

The Commission is concerned about reports it has received regarding the destruction and loss of official records and documents, which were left unattended when pro-Gaddafi forces fled Tripoli. Several media agencies have reported having unhindered access to prisoner records in Abu Salim prison and documents in the offices of Libyan security agencies. Non-

governmental organizations reported that their investigators have also found documents and records in abandoned offices. The loss or destruction of crucial documents and records could have an impact on the efforts of the Commission to establish the truth about human rights violations and on the work of any future mechanisms in Libya for justice and accountability. The Commission calls on the NTC to take immediate and urgent steps to take control of and protect official documents, electronic records and other information to ensure that those responsible for human rights violations are held accountable.

Accountability for past human rights violations was at the core of the recommendations presented in our first report (see A/HRC/17/44), where we called for exhaustive, impartial and public investigations into all allegations of international human rights law and international humanitarian law violations with a view to prosecutions, the provision of adequate reparations to victims and their families, and taking all appropriate measures to prevent the recurrence of such violations through institutional reform. On 7 June 2011, the International Criminal Court (ICC) issued three warrants of arrest respectively for Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi for crimes against humanity (murder and persecution) allegedly committed across Libya. On 28 June, the ICC Prosecutor stated that his office will continue investigating new crimes regarding the situation in Libya since 15 February 2011. While the ICC is a mechanism of accountability for individual criminal responsibility, the Commission is required to consider and recommend other accountability measures in accordance with its mandate.

4. Lack of field visits so far

The Commission has been unable to undertake any field visits to Libya since its first report to the Council due to the ongoing conflict, and various and complex security, budgetary, and operational concerns, including access.

The Commission was keen to follow up in the field at an early stage as it was concerned that evidence might be altered or lost if too much time elapsed and it wanted to more fully investigate allegations it received, regarding for example the use of mercenaries and child soldiers, sexual violence and violations against migrant workers which it needed to further investigate, but also with respect to new reported events.

Starting in June, the Chair of the Commission, Professor Bassiouni, exchanged sustained correspondence with the High Commissioner for Human Rights and her Office to seek support for the Commission to continue its work and undertake field visits without delay. As the staff of its Secretariat that had been available for its first mission was later disbanded and knowing it would take time to set up another permanent team, requiring application of regular recruitment rules, the Chair of the Commission requested a transitional team in order to execute a mission to Tripoli, Benghazi and Misratah towards the end of July. He also recommended an extensive field mission at the end of September or the beginning of October.

The High Commissioner gave her immediate agreement to the rapid deployment of some staff members in July. However, the mission was not allowed in mid-July for security reasons and was postponed to the end of July, on the eve of Ramadan. While considerable work was done within the office of the High Commissioner in order to set up a new team and determine proper timing for field trips by an advance team and later by the Commission, at the end of July, the Commission was advised that there was realistically no possibility to dispatch an advance team before September 2011 due to various and complex security, budgetary, and operational concerns, including access.

The Commission was disappointed by these delays and expresses the hope that such obstacles can be avoided for the rest of its mandate.

5. Administrative Progress

Since then, the Office of the High Commissioner for Human Rights has recruited the Coordinator of the Secretariat, which will be assisting the Commission to fulfill its mandate under the Council's resolution. Additionally, a military expert and an administrative assistant have also been recruited. Agreement has been reached with UN Women for the secondment for five months of a gender adviser to assist the Commission in the investigation of sexual violence. Recruitment of other staff of the Secretariat is continuing.

OHCHR security personnel are engaged in an ongoing security assessment, with the assistance and support of the UN Department of Safety and Security, and have been providing regular security assessments to the Commission's Secretariat. Furthermore, arrangements are in progress to ensure adequate logistical support for the Commission during its missions to Libya.

6. Future Plans

It is difficult for the Commission to plan precisely with so many remaining uncertainties, particular from a security perspective. However, in the next phase of its investigations, the Commission intends to focus on alleged violations of human rights in western Libya, in Tripoli and in surrounding towns and villages, including Misrata and Az-Zawiyah. The Commission also intends to visit sites in towns and villages in the Nafusa mountains, which witnessed intensive fighting. An advance team of investigators will be dispatched to Tripoli during September 2011. Provisionally, the Commission is planning field visits to Tripoli and

western Libya during December 2011 and January 2012. The investigations in this region will focus primarily on arbitrary detention, disappearances and killings, including of black Africans and dark-skinned Libyans, the use of mercenaries and child soldiers and sexual violence. The Commission will also consider the impact of the conflict on the enjoyment of economic and social rights including access to education, healthcare, food and water.

Although the Commission has already undertaken a field visit to Benghazi during the first phase of its investigations, it plans to dispatch a team of investigators to the region during October 2011 to continue its investigations into allegations of sexual violence, and to visit sites in nearby towns of Ajdabiya and Brega, which were not accessible during the earlier visit.

In accordance with the investigations methodology it has already established, the Commission will obtain first-hand testimonies from victims, witness and perpetrators. The Commission will also meet with NTC officials and other authorities and receive information from non-governmental organizations and the media. It will also seek information from UN Member States, UN agencies and departments and regional organizations. During its field visits, the Commission intends to visit sites of human rights violations, places where detainees are being held or have been held, hospitals, prisons and other places where it may be able to gather information to assess the nature of the violations and verify allegations. The Commission will take all reasonable measures to meet victims, witnesses and others in confidential settings, to prevent such persons suffering any harm or reprisals.

This concludes my update. I wish a fruitful continuation of your discussions.

Thank you.