



Witness to War Crimes: Evidence from Misrata, Libya

August 2011

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Physicians for Human Rights (PHR) is an independent, non-profit organization that uses medical and scientific expertise to investigate human rights violations and advocate for justice, accountability, and the health and dignity of all people. We are supported by the expertise and passion of health professionals and concerned citizens alike.

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A man with a beard, wearing a dark jacket, stands outdoors holding a memorial sign. The sign features a portrait of a man in a suit and tie, with Arabic text above and below. The text on the sign includes "نحن لا نستسلم نتصبر او نموت" (We do not surrender, we persevere or we die), "الشهيد:" (The martyr:), "2011/4/16 تاريخ الاستشهاد:" (Date of martyrdom:), and "بمدينة مصراتة" (In the city of Misrata). The background shows a white car and some trees.

The Transitional National Council calls upon all States to bear their responsibilities towards the massacres perpetrated against the civilians, especially in the city of Misrata.

***Statement by TNC on U.N. Security Council Resolution 1973
22 March 2011***

Acknowledgments

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Acronyms

CAT	Convention Against Torture
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social, and Cultural Rights
ICRC	International Committee of the Red Cross
NATO	North Atlantic Treaty Organization
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
PHR	Physicians for Human Rights
TNC	Transitional National Council
UN	United Nations
UNDP	United Nations Development Program
USAID	United States Agency for International Development
WHO	World Health Organization

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LIBYAN ARAB JAMAHIRIYA



* National capital
 ○ Provincial capital
 ○ Town
 ✈ Major airport
 - - - International boundary
 - - - Provincial boundary
 = Expressway
 — Main road
 - - Secondary road

0 100 200 300 km
 0 100 200 mi



- 1 AN NUQĀT AL KHAMS
- 2 AZ ZĀWIYAH (AZZĀWIYA)
- 3 AL JIFARAH
- 4 TARĀBULUS (TRIPOLI)
- 5 AL MARQAB
- 6 BENGHAZI
- 7 AL MARJ
- 8 AL JABAL AL AKHDAR
- 9 DARNAH

The boundaries and names shown and the designations used on this map do not imply official endorsement or acceptance by the United Nations.

In August 2011, the 42-year-long rule of Colonel Muammar Qaddafi came to a *de facto* end as rebel forces led by the Transitional National Council and NATO air strikes overwhelmed remnant forces defending the Libyan dictator's compound in Tripoli. Libyans first took to the streets to protest Colonel Muammar Qaddafi's autocratic rule in February 2011. His response was quick and brutal: attack protesters and target civilians in a deliberate campaign to quash dissent across the country. As Qaddafi troops closed in on the eastern city of Benghazi and threatened to decimate the population in March, the Arab League called for international intervention. Despite NATO's subsequent air campaign to protect Libyan civilians, untold thousands have suffered unspeakable horrors at the hands of Qaddafi forces since the uprising began.

At the time of the release of this report the guns have not yet fallen silent and the whereabouts of Qaddafi and the circumstances of his family and supporters who were an integral part of his brutal regime remain unclear. Nevertheless, an intense debate is underway regarding Libya's future political vision and leadership.

It is critical that civilian authorities led by the TNC assert full control over Libya and establish the rule of law to prevent further bloodshed, vigilante justice, looting, and violence. The international community must assist the newly emerging civilian authorities in providing basic services to the Libyan people as Libya develops a constitutional framework and mechanisms and builds civil society and institutions.

Such a difficult process can best succeed if Libya confronts without revenge the legacy of severe human rights violations committed by Qaddafi's tyrannical regime. This effort must also examine reports of human rights violations committed by rebel forces and NATO. In the current absence of developed legal institutions, it is crucial that Libyan transitional authorities fully collaborate with the International Criminal Court (ICC), which has already issued arrest warrants for Qaddafi and others. The Libyan people must also develop a screening process that would keep human rights violators out of future positions of power. Prosecutions, vetting, and other necessary methods of accountability will guide the Libyan people as they choose how best to forge a secure and just social and political order in the aftermath of conflict.

This report documents some of the most severe human rights violations that must be addressed as a new civilian government emerges. Physicians for Human Rights (PHR) gathered evidence of war crimes in Misrata, western Libya in June 2011, shortly after rebel forces liberated the coastal city. PHR focused its investigation on Misrata because it sustained a lengthy two-month siege and its residents reportedly suffered some of the most egregious abuses. PHR investigators conducted in-depth interviews with 54 residents of Misrata and its surrounding villages and uncovered evidence of war crimes and crimes against humanity including murder, torture, rape, forced internment, and disappearance. PHR's report, *Witness to War Crimes*, details the experiences of those ordinary citizens and sheds light on Qaddafi's systematic assault on a besieged city. This report does not present evidence that either confirms or denies whether rebel and NATO forces may have committed war crimes.

Key findings of this report:

- Four eyewitnesses reported that Qaddafi troops forcibly detained 107 civilians and used them as human shields to guard military munitions from NATO attacks south of Misrata. One father told PHR how Qaddafi soldiers forced his two young children to sit on a military tank and threatened, "You'll stay here, and if NATO attacks us, you'll die too." Qaddafi military reportedly shielded weapons in civilian areas including markets, mosques, and schools.

- PHR inspected four medical facilities and interviewed 21 Libyan medical personnel. One volunteer ambulance driver detailed his own detention and torture, as well as witnessing the summary execution of a civilian. An orthopedic surgeon reported eight separate instances where ambulances marked with the emblematic Red Crescent were attacked while medics tried to reach injured combatants on the front line. Other health workers reported targeted attacks by Qaddafi troops against medical workers, facilities, and civilian patients.
- Four eyewitnesses reported that Qaddafi forces demolished a home for the elderly and abducted its 36 resident disabled, elderly, and homeless civilians. Their whereabouts remain unknown.
- Official military orders provided to PHR present strong evidence that Qaddafi ordered his troops to starve civilian residents in Misrata. In addition to pillaging food stores, government forces blocked civilians from receiving humanitarian aid.
- One witness reported that Qaddafi forces transformed an elementary school into a detention site where they reportedly raped women and girls as young as 14 years old. PHR also documented reports of honor killings that occurred in response to these rapes.
- A 25-year-old villager recounted how Qaddafi soldiers detained him and other unarmed villagers in a semi-truck trailer, deprived them of food and water, and tortured them for days.

Witness to War Crimes concludes with policy recommendations for the Libyan Transitional National Council, the International Criminal Court, and the US government.

Physicians for Human Rights also calls on the Obama Administration to support legislative efforts in the US Congress, including the Medical Neutrality Protection Act of 2011, introduced by Representatives Jim McDermott (D-WA) and Walter Jones (R-NC), so that the US may more effectively respond to violations of medical neutrality.

The rule of law must be the bedrock of a new and free Libya. As the Transitional National Council charts a new course for the country in a post-Qaddafi era, it must ensure that perpetrators are brought to justice and held to account for their abuses. Individual accountability for crimes under the rule of law is the best guarantee for preventing future human rights violations and ending a cycle of violence. The evidence of war crimes in this report is not merely for the historical record; it is for securing justice and accountability for all Libyans.

Methods and Limitations

This report's findings are based on a field investigation Physicians for Human Rights conducted in Libya (5-12 June 2011) and six months of desk research and analysis (February-August 2011). The PHR team comprised Mr. Richard Sollom, an experienced human rights investigator in situations of armed conflict, and Dr. Katherine Close, PHR board member and board-certified internist.

The team conducted 54 semi-structured interviews with Libyans who reported human rights violations and with other eyewitnesses to possible war crimes. These key informants (interviewees) included front-line medical personnel, civilians, and emergent civil society leaders. To select these information-rich cases, field researchers conducted purposeful sampling to garner both cases that highlighted individual human rights violations (intensity sampling) as well as cases that described cross-cutting themes (heterogeneity sampling).

To strengthen the qualitative research design, field investigators further employed chain (or snowball) sampling to locate corroborating witnesses, who were interviewed independently from the original source, for probative evidence. Other forms of corroboration utilized in this study included:

1. visual verification of actual locations of reported human rights violations;
2. evaluation of medical records;
3. review of photographic and video evidence; and
4. corroboration of data with concurrent events reported in the media.

Qualitative inquiry domains centered on select human rights violations that may constitute war crimes (murder, torture, rape, disappearance, indiscriminate attacks on civilians) as well as violations of medical neutrality (attacks on medical workers, facilities, and transport). Interviewees were deemed credible (and data from their testimony included in this report) if they purported to witness the event, gave a consistent account of events following repeated probes, and if they reported events that coincided with dates and times of known events.

To ensure consistency, investigators followed a semi-structured interview format with probes detailing the *who*, *what*, *why*, *when*, *where*, and *how* a reported human rights violation took place. To allow for unanticipated issues to arise, investigators combined semi-structured questions with open-ended interviewing. Interviews were conducted in English or with Arabic interpreters and were held in private settings, often in the witnesses' homes. In-depth interviews lasted between 60 and 120 minutes. PHR investigators obtained verbal, informed consent from each participant following a detailed explanation of PHR, the purpose of the investigation, and the potential benefits and risks of participation. All interviews were made anonymous by removing identifying information from the interview record.

By its nature this study is subject to limitations in duration, scope, and access.

The field investigation was relatively short in duration as the research team's travel was limited to the port city of Misrata accessible only via cargo ship. As security concerns prevented investigators from traveling within Qaddafi-controlled areas, this study does not contain firsthand accounts of alleged human rights violations by rebel forces. Moreover, the scope of the investigation also does not permit a full analysis of all reported violations throughout the rest of the country. This investigative study should be construed as a **snapshot in time**, partial rather than complete accounts or prevalence reports of human rights violations. Notwithstanding these limitations, the study produced sufficient firm data on which to make informed recommendations.

Background

The Socialist People's Libyan Arab Jamahiriya,¹ commonly referred to as Libya, is a North African country with a population of 6.6 million people, including approximately 166,510 non-nationals.² Libya is an autocratic state that Colonel Muammar Qaddafi³ led since he came to power in a coup d'état more than 40 years ago.⁴ Qaddafi relied on a network of tribal leaders and family members to maintain control of the country.⁵

Libya has no formal constitution, with governance based instead on the Declaration on the Establishment of the Authority of the People.⁶ Several documents provide the legal and ideological foundations for government action, including the Constitutional Proclamation,⁷ Great Green Charter,⁸ Promotion of Freedom Act No. 20,⁹ and a Penal Code.¹⁰

Qaddafi acted as commander-in-chief of all military forces,¹¹ including the elite Revolutionary Guard Corps.¹² The Secretary of Libya's General People's Committee served as Libya's official head of government.¹³

- 1 The term "Jamahiriya" means "state of the masses," signifying a governmental system with no political parties or any form of elected representation. U.S. Department of State, *Background Note: Libya*, <http://www.state.gov/r/pa/ei/bgn/5425.htm> (last visited 8 Jun. 2011). See also Muammar Qaddafi, *The Green Book* (1975), available at <http://oestrem.com/thingstwicewp-content/uploads/2011/02/Qaddafi-green-book.pdf>.
- 2 CIA World Factbook, *Libya*, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html> (last visited 7 Jun. 2011).
- 3 *Id.*
- 4 Union of Islamic World Students Rohama.org, *Libya*, <http://www.rohama.org/en/pages/content.php?id=54> (last visited 12 Aug. 2011).
- 5 Talk of the Nation, *Qaddafi's Rule Shaken by Anti-Government Protests*, NPR, 21 Feb. 2011, <http://www.npr.org/2011/02/21/133941172/Qaddafis-Rule-Shaken-By-Anti-Government-Protests>; Peter Apps, *Analysis: Libya's tribal politics key to Qaddafi's fate*, Reuters, 22 Feb. 2011, <http://uk.reuters.com/article/2011/02/22/us-libya-tribes-idUKTRE71L3I020110222>.
- 6 CIA World Factbook, *Libya*, *supra* note 2.
- 7 Libya's fourth periodic report to the Human Rights Committee verified the authority of the Great Green Charter (Green Document on Human Rights), the Constitutional Proclamation, and Act No. 20. See Libyan Arab Jamahiriya, *Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Fourth periodic reports of States parties due in 2002* (5 Dec. 2006), http://www.icj.org/IMG/Lybia_report.pdf.
- 8 The Green Charter states: "The members of Jamahiriyan society are committed to the bases laid out by this Charter. They shall not permit that it be violated and they shall refrain from committing any act conflicting with the principles and rights that it guarantees..." The Great Green Charter of Human Rights of the Jamahiriyan Era, principle 26, 12 Jun. 1988, available at <http://www.unhcr.org/refworld/pdfid/3dda540f4.pdf>.
- 9 "The rulings of this law are fundamental. It is prohibited to issue anything which is incompatible with this. All legislations which are incompatible with this law are to be modified." Law No. 20 of 1991: Endorsement of Freedom, art. 35 (Libya), available at <http://www.unhcr.org/refworld/pdfid/3dda542d4.pdf>.
- 10 Law No. 20 verifies the authority of the Penal Code. "Criminal actions are to be punished in accordance with the rulings of this law and as stipulated by penal law and their complementary laws, as well as those issued in accordance with the Great Green Charter for human rights in the era of Jamahiriya." *Id.*, at art. 37.
- 11 The Libyan armed forces comprise an army, navy, air force, and Air Defense Command, as well as a 40,000-person paramilitary force called The People's Militia. The Compulsory Military Service Statute of 1978 authorized males aged 17 through 35 to be drafted for four years of service in either the navy or air force, or three years of service in the army. Since 1984, all Libyans have undergone mandatory military training upon coming of age. Library of Congress—Federal Research Division, *Country Profile: Libya*, (2005), available at <http://lcweb2.loc.gov/frd/cs/profiles/Libya.pdf> There are currently 76,000 active members of Libya's armed forces. *Factbox - Libya's military: what does Gaddafi have?*, Reuters, 6 Mar. 2011, <http://uk.reuters.com/article/2011/03/06/uk-libya-military-idUKTRE7251J820110306>. Members of the Libyan Army may be identified by insignias that vary by rank and include green arrows, golden stars, birds and crossed swords. The lowest rank, Private First Class, includes a single downward pointing green arrow, while the highest rank, Lieutenant General, includes a golden bird, star, and crossed swords. The International Encyclopedia of Uniform Insignia Around the World, *Rank Insignia—Army Land Forces: Libyan Army*, http://www.uniforminsignia.org/?option=com_insigniasearch&Itemid=53&result=1056 (last updated 2 Aug. 2010).
- 12 The Revolutionary Guard Corps, or Jamahiriya Guard, is an elite paramilitary force protecting Qaddafi and his regime. Special security forces are primarily comprised of Qaddafi's family members and allied tribes. Because of their personal connections to the Libyan leader, Qaddafi's special security forces are more powerful than other divisions of the armed forces. International Crisis Group, *Popular Protest in North Africa and the Middle East (V): Making Sense of Libya, Middle East/North Africa Report No107* (2011), <http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/North%20Africa/107%20-%20Popular%20Protest%20in%20North%20Africa%20and%20the%20Middle%20East%20V%20-%20Making%20Sense%20of%20Libya.pdf>.
- 13 CIA World Factbook, *Libya*, *supra* note 2.

Overview of the conflict in Libya

As unrest spread across the Middle East in early 2011, Libyan citizens began protesting Muammar Qaddafi's regime. Activists organized around 17 February 2011, a date known in Libya as the Day of Anger, though conflict erupted on 16 February in eastern Libya.¹⁴

Reports that Qaddafi troops used snipers, machine guns and mortar rounds against protesters¹⁵ led the international community to accuse Qaddafi of employing excessive force.¹⁶ In a speech delivered to the Libyan people on 21 February, Qaddafi's son Saif threatened civil war if anti-government protests continued.¹⁷

On 5 March, rebel leaders formed an interim government in Benghazi named the Transitional National Council. The Council defined itself as a transitional body intended to encourage the shift to a democratic state.¹⁸ In late July, rebel military chief Abdul Fattah Younis died under suspicious circumstances, suggesting deep internal divisions among rebel leaders.¹⁹

Condemning Qaddafi's excessive use of force during the conflict, the Arab League called on the United Nations (UN) to impose a no-fly zone over Libya on 12 March.²⁰ The UN authorized a no-fly zone on 17 March,²¹ and NATO began attacking Qaddafi's soldiers en route to Benghazi.²²

Beginning in mid-March, Misrata faced heavy shelling and sniper fire from Qaddafi's troops for two months²³ until rebel forces successfully pushed Qaddafi troops to the periphery of the city.²⁴ More than 1,000 people reportedly died in the assault on Misrata.²⁵

Qaddafi faced increasing pressure from the international community to end the violence that had spread throughout Libya. Several international bodies attempted and failed to broker peace deals between Qaddafi and the TNC, including the African Union²⁶ and United Nations.²⁷ Qaddafi's government demanded that NATO cease its attacks and allow Qaddafi to remain in Libya, but no agreements were made.²⁸ After the UN Security Council referred the situation in Libya to the International Criminal Court (ICC), the ICC's Office of the Prosecutor conducted an investigation into crimes in Libya since 15 February 2011. On the basis of this investigation, the

14 *Clashes Erupt as Libya braces for "Day of Anger"*, AFP, 16 Feb. 2011, <http://www.google.com/hostednews/afp/article/ALeqM5joXWpcbCKxS02oZgTYVdweZPBTA?docId=CNG.603a9efadd0bcd2842eeb2db6ed43c73.101>.

15 *Blood in the streets*, The Economist, 10 Feb. 2011, http://www.economist.com/blogs/newsbook/2011/02/protests_libya.

16 *U.N. Security Council comes down on Gadhafi as opposition takes shape*, CNN World, 26 Feb. 2011, http://articles.cnn.com/2011-02-26/world/libya.protests_1_moammar-gadhafi-moammar-gadhafi-quryna?_s=PM:WORLD.

17 *Libyan Leader's Son Proposed Major Reforms—Unless Unrest Continues*, CNN, 21 Feb. 2011, <http://www.cnn.com/2011/WORLD/africa/02/20/libya.protests/>.

18 National Transitional Council, Q & A, <http://www.ntclibya.com/InnerPage.aspx?SSID=15&ParentID=11&LangID=1> (last visited 10 Jun. 2011).

19 David D. Kirkpatrick, *Death of Rebel Leader Stirs Fear of Tribal Conflict*, N.Y. Times, 28 Jul. 2011, <http://www.nytimes.com/2011/07/29/world/africa/29libya.html?pagewanted=all>.

20 *Security Council authorizes "all necessary measures" to protect civilians in Libya*, U.N. News Centre, 17 Mar. 2011, <http://www.un.org/apps/news/story.asp?NewsID=37808>.

21 *Id.*

22 Dan Murphy, *How French jets Saved Libya's Rebels at the Last Minute*, Christian Science Monitor, 20 Mar. 2011, <http://www.csmonitor.com/World/Middle-East/2011/0320/How-French-jets-saved-Libya-s-rebels-at-the-last-minute>.

23 *Libyan rebels claim Misrata*, CBC News, 15 May 2011, <http://www.cbc.ca/news/world/story/2011/05/15/misrata-rebels.html?ref=rss>.

24 *Id.*

25 Xan Rice, *Libya: 'If people in Misrata put down their guns, Gaddafi will kill all of us*, The Guardian, 23 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/24/libya-misrata-gaddafi-uprising-rebels/>.

26 Chris McGreal, *Libyan revolutionary council rejects African Union's peace initiative*, The Guardian, 11 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/11/libyan-rebels-reject-peace-initiative>.

27 Rania El Gamal, *WRAPUP 1—U.N. envoy to meet Libya rebels over peace plan*, Reuters, 25 Jul. 2011, <http://www.reuters.com/article/2011/07/25/libya-idUSLDE7600R220110725>.

28 Missy Ryan, *WRAPUP 2—Libya tells UN envoy bombs must stop before talks*, Reuters, 26 Jul. 2011, <http://www.reuters.com/article/2011/07/26/libya-idUSL6E71Q0J020110726>.

Chief Prosecutor applied for arrest warrants for Qaddafi, Qaddafi's son, and Qaddafi's intelligence chief.²⁹ On 27 June 2011, the Court issued arrest warrants for these individuals, citing evidence of murder and persecution of civilians.³⁰

Summary of the conflict in Misrata

A port city on the Mediterranean Sea,³¹ Misrata is Libya's third largest city with a pre-conflict population of 517,000.³² Eyewitnesses in Misrata reported to PHR investigators that conflict between protesters and local security forces erupted in the city on 19 February 2011.³³ On 20 February, elite Qaddafi military occupied the city.³⁴ Hundreds of protestors-turned-rebels were injured in clashes with the military, but rebels pushed Qaddafi forces to the outskirts of the city a few days later.³⁵

At the beginning of March, Qaddafi forces placed Misrata under an embargo, cutting the city off from land and sea.³⁶ Armed with tanks and artillery, they launched an organized siege to retake Misrata.³⁷ By mid-March, Qaddafi troops had reached Tripoli Street, the main commercial boulevard in downtown Misrata.³⁸ Qaddafi military began showering the city with heavy artillery, hitting civilians uninvolved in the conflict, including children.³⁹

As Qaddafi forces cut off electricity in areas of Misrata, kidnapped residents, and shot at civilians from rooftops,⁴⁰ the UN reiterated calls for a ceasefire.⁴¹ Within one week, Qaddafi forces had closed in on Misrata's main hospital.⁴² Once there, they prevented injured residents from seeking treatment, placing snipers on the hospital roof and blocking the entrance with tanks.⁴³

By April, Qaddafi forces had taken control of Misrata's port,⁴⁴ the city's primary means by which to receive foreign aid and food.⁴⁵ Qaddafi troops attacked residential areas along the port with

29 ICC issues Gaddafi arrest warrant, Al Jazeera, 27 Jun. 2011, <http://english.aljazeera.net/news/africa/2011/06/20116278148166670.html>.

30 Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Qaddafi, Saif Al-Islam Qaddafi and Abdullah Al-Senussi, International Criminal Court, ICC-01/11 (27 Jun. 2011).

31 U.N. Office for the Coordination of Humanitarian Affairs (OCHA), *Humanitarian Overview—Misrata*, 14 Apr. 2011, http://ochanet.unocha.org/p/Documents/OCHA_Misrata_Factsheet_14_April_2011.pdf.

32 United Nations Inter-Agency Mission, *Misrata: 10 to 14 July 2011*, 4 (2011), <http://libya.humanitarianresponse.info/LinkClick.aspx?fileticket=2B2saiYK-to%3d&tabid=40&mid=831>.

33 Interview with key informant no. 28 in Kerzaz, Libya (9 Jun. 2011).

34 Phone interview with key informant no. 58 (27 Jul. 2011).

35 Xan Rice, *Libyan Rebels Pay a Heavy Price for Resisting Gaddafi in Misrata*, The Guardian, 21 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/21/libyan-rebels-heavy-price-misrata>; *Clampdown in Libyan Capital as Protests Close in*, AP, 23 Feb. 2011, <http://nhjournal.com/2011/02/23/clampdown-in-libyan-capital-as-protests-close-in/>.

36 Interview with key informant no. 28 in Kerzaz, Libya (9 Jun. 2011); Document provided to PHR by Hikma Hospital on 24 Jul. 2011.

37 Peter Beaumont, *Libya Rebels and Government Sources Locked in Battle for Bin Jawad*, The Guardian, 6 Mar. 2011, <http://www.guardian.co.uk/world/2011/mar/06/libya-rebels-government-battle-bin-jawad>.

38 *Photojournalists in Libya Injured, Killed*, The Atlantic, 2 Apr. 2011, <http://www.theatlantic.com/infocus/2011/04/photojournalists-in-libya-injured-killed/100051/>.

39 Tarek Amara and Mariam Karouny, *Gaddafi Forces Shell West Libya's Misrata, 25 Dead*, Reuters, 18 Mar. 2011, <http://uk.reuters.com/article/2011/03/18/us-libya-misrata-bombard-idUKTRE72H4L520110318>.

40 Hamid Ould Ahmed, *Gaddafi Forces Squeeze Rebel-Held Misrata: Residents*, Reuters, 19 Mar. 2011, <http://af.reuters.com/article/topNews/idAFJ0E7210D520110319>.

41 U.N. Security Council, *Security Council Approve 'No-Fly Zone' Over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions*, U.N. Press Release SC/10200 (17 Mar. 2011), <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm>.

42 *Libyan Rebels Form 'Interim Government'*, Al Jazeera, 22 Mar. 2011, <http://english.aljazeera.net/news/africa/2011/03/2011322193944862310.html>.

43 *Id.*

44 *Libyan Opposition Sets Conditions for Cease-Fire*, AP, 1 Apr. 2011, available at <http://www.deseretnews.com/article/700123453/Libyan-opposition-sets-conditions-for-cess-fire.html>.

45 *Libya: Gaddafi Forces Keep up Assault on Rebel Cities*, BBC, 24 Mar. 2011, <http://www.bbc.co.uk/news/world-africa-12845178>.

mortars and tanks, and shelled Misrata's city center.⁴⁶ The humanitarian situation in Misrata deteriorated as medical equipment, food, and water became scarce.⁴⁷ Fighting continued and, by late April, the streets of Misrata were split evenly between rebel and Qaddafi control.⁴⁸

In May, rebels gained full control of Misrata's airport and Qaddafi forces retreated from the city.⁴⁹ Families who had fled the violence began to return, and the city slowly began to rebuild itself. By the end of May, electricity was restored to parts of the city.⁵⁰ Qaddafi forces continued sporadically shelling residential areas of Misrata with long-range missiles, and in late July, Qaddafi called on supporters to retake the strategic port city.⁵¹ In mid-August, as opposition forces gained ground in Qaddafi-held Tripoli, soldiers and reinforcements departed for Tripoli from Misrata's port.⁵²

Although early UN intervention led to an historic opportunity for the International Criminal Court to investigate allegations of war crimes, the ICC has yet to conduct a field investigation inside Libya (as of September 2011). The purpose of PHR's investigation was to fill this gap and provide evidence of cases of possible war crimes, including violations of medical neutrality.

Introduction to Medical Neutrality

Doctors have an ethical responsibility to prevent illness and care for the wounded and sick without regard to politics, race, or religion.⁵³ These ethics date back at least 2,300 years and include Islamic tradition.⁵⁴ Governments have the obligation to protect physicians' impartiality as they objectively heal the sick and treat the injured.

When countries engage in war or experience civil unrest, the independence of doctors and other medical personnel is too often impeded. The laws of war protect the sick and wounded in time

46 Adam Tanner, Souhail Karam, *Six Killed in Libyan Town Shelling: Rebel*, Reuters, 25 Mar. 2011, <http://www.reuters.com/article/2011/03/25/us-libya-misrata-fighting-idUSTRE72063720110325>.

47 UPDATE 4-Rebels Repel Gaddafi Assault on Misrata's East, Reuters, 8 Apr. 2011, <http://af.reuters.com/article/libyaNews/idAFLDE7370TA20110408?pageNumber=2&virtualBrandChannel=0>; Xan Rice, *Misrata rebel leader pleads for help to topple Gaddafi*, The Guardian, 29 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/29/misrata-rebel-leader-pleads-help>.

48 Michael Georgy, *Misrata Fighting Kills Nine, Including Journalist Hetherington*, Reuters, 20 Apr. 2011, <http://www.reuters.com/article/2011/04/20/us-libya-misrata-idUSTRE73J1NE20110420>.

49 Interview with key informant no. 28 in Kerzaz, Libya (9 Jun. 2011).

50 Interview with key informant no. 28 in Kerzaz, Libya (9 Jun. 2011).

51 Ruth Sherlock and Damien McElroy, *Nato lacks firepower to ensure collapse of Gaddafi regime, experts claim*, The Telegraph, 24 Jun. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8597107/Nato-lacks-firepower-to-ensure-collapse-of-Gaddafi-regime-experts-claim.html>; William Booth, *In war-torn Libya, no pause for Ramadan*, Washington Post, 1 Aug. 2011, http://www.washingtonpost.com/world/middle-east/in-war-torn-libya-no-pause-for-ramadan/2011/08/01/gIQA82pNoI_story.html.

52 Kareem Fahim and Mark Mazzetti, *Rebels' Assault on Tripoli Began With Careful Work Inside*, New York Times, 22 Aug. 2011, <http://www.nytimes.com/2011/08/23/world/africa/23reconstruct.html?hp>.

53 "I will not permit considerations of age, disease or disability, creed, ethnic origin, gender, nationality, political affiliation, race, sexual orientation, social standing or any other factor to intervene between my duty and my patient." WMA Declaration of Geneva, Sep. 1948, <http://www.wma.net/en/30publications/10policies/g1/index.html>.

54 A physician who takes the Hippocratic Oath pledges: "I will apply ... measures for the benefit of the sick according to my ability and judgment; I will keep them from harm and injustice." Robert M. Veatch, *A Theory of Medical Ethics* 22 (1977). In the ninth century, Ishaq ibn Ali al-Ruhawi wrote the *Practical Ethics of the Physician*. In the thirteenth century, Ibn abi Usaybia wrote the Arabic version of the Hippocratic Oath entitled, *Lives of Physicians*, which states: "In all my treatment I will strive so far as lies in my power for the benefit of the patients." Ibn abi Usayb`ia, *The Text of the Covenant Laid Down by Hippocrates*, *Lives of Physicians* (1269), available at <http://www1.umn.edu/phrm/oaths/oath4.html>.

of armed conflict, and oblige doctors to provide them neutral and ethical care.⁵⁵ A physician's ethical responsibility during time of peace is identical to that during time of war.⁵⁶

*Medical neutrality*⁵⁷ requires (1) the protection of medical personnel, patients, facilities, and transport from attack or interference; (2) unhindered access to medical care and treatment; (3) the humane treatment of all civilians; and (4) nondiscriminatory treatment of the sick and injured.⁵⁸

The principle of medical neutrality represents international medical ethics and is written into the Geneva Conventions, which set the standard for international humanitarian law, or the laws of war. Elements of medical neutrality have been recognized by the International Committee of the Red Cross as binding customary international humanitarian law.⁵⁹ Along with international humanitarian law, which applies in situations of armed conflict, such as the current situation in Libya, principles of medical neutrality are reinforced in various human rights treaties, which Libya has ratified and has a duty to uphold. International human rights law applies during times of conflict and times of peace, unlike international humanitarian law, which only applies during armed conflict.⁶⁰

Major international human rights instruments, such as the International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social, and Cultural Rights, (ICESCR), and the Convention Against Torture (CAT), all of which Libya has ratified,⁶¹ provide a concrete foundation upon which the norms of medical neutrality stand.

The ICCPR, for example, forbids arbitrary arrest and detention⁶² and describes very limited situations in which derogation from this principle is allowed.⁶³ The arbitrary arrest and detention of medical personnel violates this international treaty.

The ICESCR codifies the right to health and explicitly calls on governments to provide access to medical care in a non-discriminatory manner for those in need.⁶⁴ Acts including the willful

55 Protocol Additional to the Geneva Conventions of 12 Aug. 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II) arts. 10.1-10.4, 8 Jun. 1977, 1125 U.N.T.S. 610. Libya acceded to Geneva Conventions I, II, III, and IV of 1949 on 22 May 1956, and acceded to Additional Protocols I and II to the Geneva Conventions on 7 Jun. 1978. For a full list of Libya's ratifications of international human rights treaties, see Rule of Law in Armed Conflicts Project, *Libya: International Treaties Adherence*, http://www.adh-geneva.ch/RULAC/international_treaties.php?id_state=128 (last visited 11 Jul. 2011).

56 "Medical ethics in time of armed conflict is identical to medical ethics in time of peace." WMA Regulations in Times of Armed Conflict, art. 8, adopted Oct. 1956 (last amended May 2006), <http://www.wma.net/en/30publications/10policies/a20/index.html>.

57 In a groundbreaking investigation that helped define "medical neutrality," PHR's 1989 medical investigation in El Salvador reported on allegations of the assault, arrest, intimidation, and execution of healthcare workers. PHR has published 27 pieces on medical neutrality from years 1988-Present, reporting on over 14 countries: Panama (1988); Chile (1988); El Salvador (1990); Kuwait (1991); Somalia (1992, 1997); Thailand (1992, 2010); India (1993); Yugoslavia (1996); Russia (2002); Iraq (2003); United States (2003-2007); Sri Lanka (2009); Saudi Arabia (2010); Bahrain (2011); and the MENA region (2011).

58 George J. Annas and H. Jack Geiger, *War and Human Rights*, in *War and Public Health* 37 (Levy and Sidel ed., 2000).

59 Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Volume I: Rules 79-104 (2009), available at <http://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

60 See ICRC, International Review of the Red Cross: Customary Law 195-6 (Mar. 2005) (detailing the applicability of international human rights law), <http://www.mineaction.org/downloads/Emine%20Policy%20Pages/Geneva%20Conventions/ICRC%20Study%20on%20Customary%20Law.pdf>.

61 Libya acceded to the ICCPR in 1970, the ICESCR in 1970, and the CAT in 1989. Rule of Law in Armed Conflicts Project, *supra* note 55.

62 International Covenant on Civil and Political Rights art. 9, 16 Dec. 1966, 999 U.N.T.S. 171, (acceded 15 May 1970) (hereinafter ICCPR).

63 *Id.*, at art. 4.

64 International Covenant on Economic, Social and Cultural Rights arts. 2(2), 12(2)(d), 16 Dec. 1966, 993 U.N.T.S. 3 (acceded 15 May 1970) (hereinafter ICESCR).

blocking of medical care or the arbitrary arrest of caregivers may violate these treaties, which are binding on states party, including Libya.

Additionally, the CAT forbids governments from engaging in torture and acts of cruel, inhuman, and degrading treatment.⁶⁵ This prohibition on government action relates to all potential victims, including individuals in need of medical care. Subjecting patients or those in need of medical services to torture or cruel, inhuman, and degrading treatment stands in clear violation of the CAT.

In addition to violating well-founded international human rights law, attacks on medical professionals interfere with their ethical obligations to provide unbiased care to those in need. The World Medical Association's International Code of Medical Ethics and Medical Ethics Manual describe the duties of physicians, which include administering emergency care and adhering to principles of non-discrimination.⁶⁶ Governments must not infringe upon the duties of medical professionals and must not target or punish those who seek to uphold these internationally recognized principles.

Evidence that Qaddafi Forces Committed War Crimes

PHR investigators uncovered abuses against unarmed civilians in residential areas of Misrata and its surroundings that may constitute war crimes. These abuses include torture, beating, summary execution, and enforced disappearance. PHR also documented violations of medical neutrality, including attacks on medical workers, facilities, supplies, transport, and patients. These attacks may also constitute war crimes. Finally, PHR documented credible allegations of rape.

PHR investigators spent four days in several rural towns outside Misrata, speaking with newly returned families who had been displaced by Qaddafi military attacks, and documenting attacks on civilians and the physical destruction of homes, mosques, and schools. PHR investigators conducted 13 in-depth interviews with individuals from the towns of Kerzaz and Tomina⁶⁷ who were eyewitnesses to acts of destruction, pillaging, and targeting of civilians by Qaddafi forces, which invaded the area on 16 March 2011.

Torture and summary execution

PHR investigators documented the arbitrary detention,⁶⁸ torture,⁶⁹ and summary execution⁷⁰ of civilians in Misrata. Two eyewitnesses from villages outside Misrata recounted to PHR investigators how Qaddafi soldiers abducted, tortured, and/or murdered unarmed residents. One

65 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 10 Dec. 1984, 1465 U.N.T.S. 85 (acceded 16 May 1989) [hereinafter CAT].

66 WMA International Code of Medical Ethics, *adopted* 1949 (last amended 2006), <http://www.wma.net/en/30publications/10policies/c8/index.html>.

67 Qaddafi forces attacked and took control of the town of Tomina, a rural farming community 20 kilometers south of Misrata, in mid-March 2011.

68 PHR defines arbitrary detention as "imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law." Rome Statute of the International Criminal Court, art. 7(1)(e), 17 Jul. 1998, 2187 U.N.T.S. 90.

69 The UN defines torture as, "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person...for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." CAT, *supra* note 65, at art. 1.1.

70 The UN defines a summary or arbitrary execution as "the killing of a person perpetrated by an agent of the State or any other person acting under government authority or with its complicity, tolerance, or acquiescence, but without any or due judicial process." *United Nations Training Manual on Human Rights Monitoring*, Professional Training Series No.7, 43-44 (2001).

volunteer ambulance driver detailed his own detention and torture, as well as his eyewitness account of one soldier executing a civilian:

Mohamed, a 40-year-old volunteer ambulance driver from Ajdabiya, survived the 17 March attack on his town by loyalist armed forces. After cutting off power to the town, Qaddafi's military launched Grad rockets into civilian settlements, causing families to flee in chaos. Children got lost in the crowds. Mohamed helped his brother, an emergency medic, transport wounded civilians trapped in the western edge of town and drive them to a hospital in eastern Ajdabiya where other civilians were fleeing for safety. An undetermined number of civilians were wounded or killed.

Mohamed related to PHR investigators that on the morning of 17 March, after transporting a critically injured civilian to the hospital, he came upon Qaddafi forces that forced him out of his vehicle, tied his hands behind his back with white plastic wrist ties, and threw him face first onto the road.⁷¹ For 30 minutes, a group of eight Libyan military wearing either green uniforms or beige fatigues took turns beating the volunteer medic. Two of the military pummeled his chest with the butt of their assault rifles. Another pounded the lateral side of his right upper leg and knee with a one-inch-diameter metal bar, from which a limp was still evident three months later. One Qaddafi soldier put a Zippo lighter to the medic's beard. After failing to light it on fire, he forced Mohamed to open his mouth and rammed the metal bar to the back of his throat causing severe pain and bleeding. The soldier yelled, "You want freedom? This is freedom you faggot!" Other military there cursed and spit on him while threatening to kill him.

These eight Qaddafi soldiers then threw Mohamed into the back of their Toyota truck. They drove several kilometers along a desert road outside Ajdabiya before stopping briefly at a check point manned by mercenaries. According to the eyewitness, these armed mercenaries (who had accents from Chad and Niger) stole Mohamed's money, keys, and phone. The soldiers then drove another five kilometers west of town, stopped at a military check point, and transferred Mohamed onto an empty semi-trailer truck. Throughout the day, while hearing Grad rockets and mortars explode nearby, Mohamed was joined by 22 other beaten and bloodied civilian detainees.

On that day, Mohamed witnessed the summary execution of one of these civilians. As a Qaddafi soldier in green military garb pushed a middle-aged man into the trailer where Mohamed was detained, the soldier yelled, "Get in you donkey!" The man replied, "I am Libyan like you. If I am a donkey, then so are you." According to Mohamed, the loyalist soldier quickly grabbed the civilian man by the back of his shirt collar, threw him on the ground, and shot him in the back of his head at close range with a Kalashnikov rifle.⁷²

Later, another Qaddafi soldier told Mohamed to get out and carry four wounded rebel combatants into the large trailer. Two of them had the backside of their pants covered in blood. They were in severe pain and told Mohamed that loyalist soldiers had bayoneted them in their buttocks and anus.

At around 7:00 p.m. on the night of 17 March, Qaddafi forces drove the large truck holding 26 prisoners to Sirte, where they arrived at around 2:00 a.m. the next morning. Mohamed was held incommunicado for three weeks at the military prison in Sirte (Qaddafi's home town). He was housed in a cramped windowless cell with 15 other men who took turns sitting and sleeping. Sanitary conditions were very poor. There was one working toilet and one water faucet for approximately 150 prisoners. Broth, bread, and a small amount of pasta were given to the prisoners twice daily.

Mohamed reported to PHR investigators that military guards swabbed his hands (apparently using Explosives Trace Detection equipment) to screen whether he had handled munitions. The negative ETD read implied he was not a rebel. Mohamed explained that detainees who had a positive ETD reading were then given a polygraph test. Some detainees were transferred to Tripoli, including an American-Libyan physician who had come to Libya to provide medical aid after residing in the United

71 Interview with key informant no. 50, in Ajdabiya, Libya (12 Jun. 2011).

72 Kalashnikov assault rifles, or AK-47s, are auto-loading automatic weapons that can fire more than 20 rounds at a time. AK-47s are shot from the shoulder and shoot accurately up to 400m. Manual of Forensic Emergency Medicine: A Guide for Clinicians 85 (Ralph Rivello ed., 2010); Mikhail Timofeevich Kalashnikov & Elena Joly, The Gun that Changed the World xiv (Patrick Rotman ed., 1st ed. 2006).

States for more than 30 years. Mohamed was released following three weeks in captivity. An elderly man offered to drive him back to his hometown, Ajdabiya, which was under the rebels' control at that time.

Another eyewitness and Kerzaz resident recounted how Qaddafi forces tortured him and his family, and left him with permanent injuries:

Mohamed, a 25-year-old civilian from Kerzaz, told PHR investigators that on 18 March, approximately 20 Qaddafi forces stormed his village.⁷³ Mohamed was with eight other unarmed male relatives ages 25-70 in the town center when Qaddafi troops arrived. Mohamed reported that two truckloads of military descended from their vehicles and began to attack the group of noncombatants. They handcuffed Mohamed with white plastic wrist ties behind his back and beat his head and face with the butts of their rifles and metal tubes. The soldiers loaded the nine bloodied and injured men onto their trucks and drove them to a nearby military base outside Misrata. The military detained them at this military base in a semi-truck trailer and, according to Mohamed, gave them very little food or water.

Mohamed reported that he and the others were tortured during two of the six days in which they were detained, while Qaddafi forces tried to extract information from them about rebel munitions. On the sixth night, Mohamed recounted how an elderly man who had been forced to cook for the military helped Mohamed and his family escape. Though three of the nine men, including Mohamed, escaped successfully, six were caught while trying to flee. Mohamed said that he had heard word that his six relatives were subsequently transferred to Tripoli, but he cannot verify their whereabouts.

A physical examination confirmed that Mohamed was left blind in his left eye and suffered a broken jaw, both consistent with his allegations of torture and beatings at the hands of Qaddafi military forces. He is unable to eat due to his broken jaw, and appeared underweight with bony protuberances and ribs visible. He exhibited hypervigilance and reported having flashbacks, nightmares, and intrusive thoughts—all of which are consistent with post-traumatic stress.

Another detainee, named Khria, reported to PHR investigators that for nearly three weeks she endured verbal harassment and degrading treatment by some of the Qaddafi forces, whom she said were not from Misrata.⁷⁴ She said the military constantly insulted the detainees and referred to them as “rats.” One military threatened Khria, “*You will all die!*”

Qaddafi troops executed blanket detentions, targeting entire regions and opposition groups as opposed to alleged criminals.⁷⁵ Many of those detained by Qaddafi forces were disappeared and their whereabouts remain unknown.⁷⁶

Other international organizations, such as the United Nations, have corroborated such allegations of torture by both Qaddafi government forces and opposition armed forces in Libya.⁷⁷ The UN Special Rapporteur on Torture has opened an investigation into allegations of torture by Qaddafi troops.⁷⁸ The Chief Prosecutor of the International Criminal Court, furthermore, has evidence that in Libya “the behavior is abduction, torture and disappearance. This is a tool to establish fear.”⁷⁹

⁷³ Interview with key informant no. 31 in Kerzaz, Libya (9 Jun. 2011).

⁷⁴ Interview with key informant no. 44 in Misrata, Libya (10 Jun. 2011).

⁷⁵ U.N. Human Rights Council, Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya, ¶ 120, U.N. Doc. A/HRC/17/44 (1 Jun. 2011), available at http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.44_AUV.pdf.

⁷⁶ *Id.*

⁷⁷ “The Commission concludes that torture and other forms of cruel, inhuman or degrading treatment was committed by both the Government and the opposition forces in violation of obligations under international human rights and humanitarian law.” *Id.*, at ¶ 129.

⁷⁸ See: UN investigator opens Libya torture probe, CBC News, 9 Mar. 2011, <http://www.cbc.ca/news/world/story/2011/03/09/libya-torture-030911.html>.

⁷⁹ Qaddafi First to Face ICC ‘Enforced Disappearance’ Charge, AFP, 8 Jun. 2011, <http://english.alarabiya.net/articles/2011/06/08/152439.html>.

Legal discussion

The above acts violate international human rights law, international humanitarian law, and Libyan domestic law. The International Convention on Civil and Political Rights, to which Libya is a party, states that every human being has a legally recognized inherent right to life,⁸⁰ and a right to be free from extrajudicial execution—a right which cannot be abrogated.⁸¹ Willfully killing a noncombatant who does not receive a proper trial and defense for any alleged crime constitutes a grave breach of international humanitarian law.⁸² Summary execution by Qaddafi's forces, as documented through PHR's investigation, violates Libya's international legal obligations. Murder by state authorities may amount to a crime against humanity or a war crime.⁸³ The arrest warrants from the International Criminal Court for three Libyan leaders include murder as one of the main charges.⁸⁴

In addition to being bound by the ICCPR, Libya is also a party to the Convention Against Torture, both of which guarantee every individual the right to be free from torture and all forms of cruel, inhuman or degrading treatment.⁸⁵ The prohibition of torture is a *jus cogens* norm of customary international law, and torture is one of the enumerated acts listed under the definition of crimes against humanity under the Rome Statute.⁸⁶ International humanitarian law also prevents armed forces from treating any unarmed person cruelly in a non-international conflict.⁸⁷

Prohibitions of torture and summary executions are codified in Libyan domestic law. Physically harming any accused or detained person violates the Libyan Constitutional Proclamation⁸⁸ and Libya's Great Green Charter of Human Rights,⁸⁹ and torturing a person accused of a crime violates the Libyan Penal Code.⁹⁰ Libyan Law No. 20 prohibits summary executions⁹¹ and guarantees citizens the right to a trial.⁹²

Rape⁹³ as a weapon of war and honor killings

PHR investigators conducted in-depth interviews with six Libyan civilians, including two obstetricians/gynecologists, who gave credible reports of military-sanctioned rape as well as of honor killings that occurred in response to these rapes. One 20-year resident of Tomina report-

80 ICCPR, *supra* note 62, at art 6(1).

81 *Id.*, at art. 4(2).

82 Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War art. 147, 12 Aug. 1949, 75 U.N.T.S. 287, [acceded 22 May 1956].

83 Rome Statute of the International Criminal Court, *supra* note 68, at arts. 7(1)(a)-8(2)(c)(i).

84 See further discussion *infra*, "Crimes Against Humanity", page 31 this document.

85 ICCPR, *supra* note 62, at art.7; CAT, *supra* note 65.

86 Rome Statute of the International Criminal Court, *supra* note 68, at art. 7.1(f).

87 Geneva Convention Protocol II, *supra* note 55, at art. 4(2)(a).

88 "The accused or imprisoned shall not be subjected to physical harm." Constitutional Proclamation [Libyan Arab Jamahiriya] 11 Dec. 1969, art. 31(c), available at <http://www.unhcr.org/refworld/docid/3ae6b5a24.html>.

89 "Jamahiriyan society prohibits any and all injuries, whether physical or moral, against the person of a prisoner." Great Green Charter of Human Rights, *supra* note 8, at art. 2.

90 See Amnesty International submission to the UN Universal Periodic Review (Nov.-Dec. 2010), http://www.hrw.org/en/node/11480/section/7#_ftn45.

91 "The accused is innocent until proven guilty by judicial sentence; however, it is permissible to undertake legal procedures against the accused as long as the accusation against him stands. It is prohibited to inflict any form of corporal or psychological punishment on the accused, or to treat him with severity or degradation, or in any manner which is damaging to his dignity as a human being." Law No. 20 of 1991, *supra* note 9, at art. 17.

92 "Every person has the right recourse to courts in accordance with the law. The court guarantees everything necessary including a lawyer." *Id.*, at art. 30.

93 PHR defines rape as invading the body of a person "resulting in penetration, however slight, of any part of the body of the victim or 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," and if "the invasion was committed by force, or by the threat of force or coercion". ICC Elements of Crimes, art. 8(2)(e)(vi), 2000, U.N. Doc. PCNICC/2000/1/Add.2.

ed to PHR that Qaddafi forces from Tawergha⁹⁴ transformed a Tomina elementary school into a detention site where they reportedly raped women and girls as young as 14 years old:

Mohamed remained in and around his village while his family fled to Misrata for safety.⁹⁵ He reported that as of mid-March he served as a rebel fighter. He wore a green armband to visibly identify himself as a Qaddafi supporter, which enabled him to fight regularly on the front line without being detained or captured.

Mohamed regularly passed Alwadi Alahdar elementary school on one of Tomina's rural roads en route to the front line. Mohamed reported that he heard the cries of women and girls on several occasions while passing the school. He reported seeing tanks and other military vehicles at this school in April 2011. On one occasion, in the quiet of the night, he heard drunken laughter through the open windows of the school building. He heard women cry out in pain and a man yell, "Shut up you dogs!"

Mohamed is convinced that Qaddafi troops forcibly detained these women and girls and gang raped them. He said he heard directly from five separate male heads of nearby households and close friends that some of their daughters and wives had been raped by Qaddafi forces.

One father confided in Mohamed that his three daughters aged 15, 17, and 18 had gone missing after Qaddafi troops arrived in Tomina. They returned to the family in late April and told their father that they had been raped in the Alwadi Alahdar elementary school for three consecutive days. In what is known as an "honor killing,"⁹⁶ Mohamed related to PHR investigators, this father slit each of his daughters' throats with a knife that day and killed them. Mohamed also noted that some in Tomina have stood up against this practice, including a well-known Sheik who has publicly advocated for raped women and girls to be seen as brave and bringing honor to their families.

Another long-time Tomina resident and mother of three corroborated these "honor killings"⁹⁷ and estimated that Qaddafi forces had raped at least 50 women and girls from the small village of Tomina. She told PHR investigators that military wearing green uniforms "took men and women away and did bad things to them." One of her neighbors reported that while her husband was away fighting on the front line, she was alone with her 15-year-old daughter. A group of military in green uniforms forcibly moved in to her home and made her cook for them. They took her daughter into the front room of the house and repeatedly raped her for days. When rebel forces took control of Tomina on 12 May 2011, the daughter was found mute and nearly dead. The mother reported that she suffered recurrent nightmares, insomnia, and flashbacks. She exhibited pressured speech and hypervigilance while recounting these recent events.

One obstetrician/gynecologist told PHR investigators that Libyan women "won't go to the gynecologist," saying rape is a "difficult crime for female Libyan ladies."⁹⁸ Another key informant told PHR, "If Qaddafi destroys a building, it can be rebuilt. But when Qaddafi rapes a woman, the whole

94 Tawergha is a town located 39 km SE of Misrata. Due to its key location along a 19th-century slave trade route, the town is mostly comprised of black Libyans of a different tribal ethnicity than the majority of Misratans. Sam Dagher, *Libya City Torn by Tribal Feud*, *Wall Street Journal*, 21 Jun. 2011, <http://online.wsj.com/article/SB10001424052702304887904576395143328336026.html>.

95 Interview with key informant no. 35 in Kerzaz, Libya (10 Jun. 2011). Name changed to protect key informant's identity.

96 According to the World Health Organization (WHO), "If a woman is 'defiled' sexually—either through rape or by engaging voluntarily in sex outside marriage—she is thought to disgrace the family honour. In some societies, the only way to cleanse the family honour is by killing the 'offending' woman or girl...in some countries, there is frequently support for family members to do whatever is necessary—including murder—to alleviate the 'shame' associated with a rape or other sexual transgression." WHO, *World report on violence and health* 93, 160 (2002), http://www.who.int/violence_injury_prevention/violence/world_report/en/full_en.pdf.

97 Recent honor killings in Libya have also been documented by international news sources. "Libyan women and girls who become pregnant through rape risk being murdered by their own families in so-called 'honour killings'," according to Libyan aid workers." Pascale Harter, *Libya rape victims 'face honour killings'*, *BBC News*, 14 Jun. 2011, <http://www.bbc.co.uk/news/world-africa-13760895>.

98 Interview with key informant no. 42 in Zawia, Libya (10 Jun. 2011).

community is destroyed forever. He knows this, and so rape is his best weapon.”⁹⁹ “I’d prefer to die if that happened to my wife,” this key informant added.

These allegations of rape corroborate accounts of sexual violence that other international investigators have documented.¹⁰⁰ ICC chief prosecutor Luis Moreno-Ocampo is said to “have information to confirm that it was a policy in Libya to rape those who were against the Government,”¹⁰¹ while other UN investigators call allegations of mass rape into question due to a lack of forensic documentation.¹⁰² UN Special Representative of the Secretary-General Margot Wallström argues that the number of women publicly reporting rape by troops is deceptively low due to the harsh physical reprisal and cultural dishonor that Libyan women face upon reporting sexual assault.¹⁰³ A woman in Libya risks stoning, flogging, or worse if she reports being raped.¹⁰⁴

The UN documented accounts of rape by Qaddafi’s forces,¹⁰⁵ and received testimony from residents of Misrata that their primary reason for fleeing was to protect family members from rape.¹⁰⁶ ICC Chief Prosecutor Luis Moreno-Ocampo has speculated¹⁰⁷ that Qaddafi’s forces distributed Viagra-like substances¹⁰⁸ to facilitate erections, thus encouraging mass rape,¹⁰⁹ though others call this allegation into question.¹¹⁰ PHR investigators received no information to confirm or deny such reports.

99 Interview with key informant no. 41 in Misrata, Libya (10 Jun. 2011).

100 Al Jazeera reports incidences of rape in Misrata by Qaddafi forces acting under orders. Evan Hill, *Q&A: Rebel spokesman Abdelbaset Abumzirig*, Al Jazeera, 24 Apr. 2011. <http://english.aljazeera.net/news/africa/2011/04/20114240556575343.html>; See also *Hundreds of Women Report Rapes by Qaddafi Forces*, AP, 28 May 2011, <http://english.alarabiya.net/articles/2011/05/28/150901.html>

101 *Evidence Emerging of Use of Rape as Tool of War in Libya*, U.N. News Centre, 8 Jun. 2011, <http://www.un.org/apps/news/story.asp?NewsID=38664&Cr=libya&Cr1=>

102 U.N. investigator Cherif Bassiouni, leader of the U.N. rights inquiry into the situation in Libya, labeled Ocampo’s allegations of mass rape part of a “massive hysteria.” Swiss News, *UN Official, Investigator at Odds over Libya Mass Rape Claim*, AFP, 10 Jun. 2011, available at http://www.expatica.com/ch/news/swiss-news/un-official-investigator-at-odds-over-libya-mass-rape-claim_155646.html#.

103 U.N. Special Representative of the Secretary-General Margot Wallström highlights “consistent reports from people, from organizations, from UN entities and others on the ground...The problem is very few women will actually come forward to report that they have been raped because it carries serious risks for them personally.” Swiss News, *UN official, investigator at odds over Libya mass rape claim*, Expatica, 10 Jun. 2011, http://www.expatica.com/ch/news/swiss-news/un-official-investigator-at-odds-over-libya-mass-rape-claim_155646.html. See also Amber Peterman, Dara Kay Cohen, Tia Palermo, and Amelia Hoover Green, *Rape Reporting During War: Why the Numbers Don’t Mean What You Think They Do*, Foreign Affairs, 1 Aug. 2011, <http://www.foreignaffairs.com/print/67936?page=show>.

104 *U.N. Official, Investigator at Odds over Libya Mass Rape Claim*, AFP, 10 Jun. 2011, available at http://www.expatica.com/ch/news/swiss-news/un-official-investigator-at-odds-over-libya-mass-rape-claim_155646.html#.

105 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 214.

106 *Id.*, at ¶ 216.

107 *Gaddafi ordered mass rape as a weapon, International Criminal Court claims*, The Telegraph, 9 Jun. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8564999/Gaddafi-ordered-mass-rape-as-a-weapon-International-Criminal-Court-claims.html>.

108 Viagra is a brand name for the drug *sildenafil citrate*, used to treat erectile dysfunction in men. Sildenafil works by blocking the enzyme *phosphodiesterase-PDE5* and increasing blood flow to the penis during sexual stimulation, causing an erection. *Sildenafil* absorbs rapidly, and maximal plasma concentrations occur within one hour after use. Goldstein et al, *Oral Sildenafil in the Treatment of Erectile Dysfunction*, 338 *The New England Journal of Medicine*, 1397, 1397–1398, 14 May 1998, <http://www.nejm.org/doi/full/10.1056/NEJM199805143382001#t=articleBackground>. *Sildenafil citrate* is a white to off-white crystalline powder. The brand Viagra can be recognized as blue, film-coated rounded-diamond-shaped tablets equivalent to 25 mg, 50 mg and 100 mg of *sildenafil*. RxList, *Viagra*, 3 Jan. 2011, <http://www.rxlist.com/viagra-drug.htm>.

109 See Colum Lynch, *Muammar Qaddafi’s Viagra War*, Turtle Bay, 28 Apr. 2011, http://turtlebay.foreignpolicy.com/posts/2011/04/28/moammar_qaddafis_viagra_war and Karen Leigh, *Rape in Libya: The Crime that Dare Not Speak its Name*, Time Magazine, 9 Jun. 2011, <http://www.time.com/time/world/article/0,8599,2076775,00.html>.

110 See *Libya rape claims ‘hysteria’ – UN Human Rights Investigator Says*, 10 Jun. 2011, The Tripoli Post, <http://tripolipost.com/articledetail.asp?c=1&i=6155>.

Rape in armed conflict violates the terms of the Geneva Conventions,¹¹¹ and prohibitions of rape and other forms of sexual violence are elements of customary international humanitarian law, binding in all international and non-international conflict.¹¹² Islamic law classifies rape as a war crime,¹¹³ and Libyan domestic protocols outlaw rape as an “offence of unlawful wounding.”¹¹⁴

As a death sentence against one whose life does not represent a “danger or damage to society,” so-called honor killings run counter to Libyan domestic law.¹¹⁵ Authorities on honor killings in Libya note that the practice nonetheless has a strong foothold in the country, citing reduced sentences for those convicted of so-called honor killings compared to other forms of murder.¹¹⁶ The state’s participation in furthering these killings is a violation of Libya’s obligation to protect the right to life under the ICCPR.¹¹⁷

Forcible disappearance¹¹⁸

More than 1,170 people have been registered as missing in Misrata,¹¹⁹ and the UN confirms that at least 1,000 have been kidnapped or disappeared since February 2011.¹²⁰

PHR investigators received corroborated testimonies from four local Kerzaz residents and facility staff outside of Misrata who reported that Qaddafi forces demolished a home for the elderly and abducted its 36 resident disabled, elderly, and homeless civilians. As of this writing, their whereabouts remain unknown.

According to Osman, an occupational therapist who is the caretaker at the Kerzaz elderly care facility, Qaddafi forces attacked the town of Kerzaz at noon on 19 March 2011.¹²¹ Osman reported that he was at his father’s home—a short walk from the facility where he had worked for 20 years—when an explosive weapon shot through both an exterior and interior wall of the house. As a physically handicapped man who walks with an assistive cane, Osman had difficulty fleeing. Many Kerzaz residents deserted the town and sought refuge elsewhere.

111 Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) art. 76(1), 1125 U.N.T.S. 3 [acceded 7 Jun. 1978]; Geneva Convention Protocol II, *supra* note 55, at art. 4(2)(e)-7(1).

112 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at 323.

113 See Farhad Malekian, *The Homogeneity of International Criminal Court with Islamic Jurisprudence*, 9 International Criminal Law Review 595, 602-603 (2009) [discussing war crimes].

114 Regarding domestic violence and rape, “[t]hese acts constitute the offence of unlawful wounding, regardless of who commits them, whether a man or a woman or a national or non-national, and regardless of whether the injury is slight, major or serious.” Libyan Arab Jamahiriya, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant: Fourth periodic reports of States parties due in 2002 (5 Dec. 2006), http://www.icj.org/IMG/Lybia_report.pdf. Law No. 20 of 1991 states “Citizens in Great Jamahiriya, male and female, are free and equal in rights. These rights are not to be violated.” Law No. 20 also states that “[a]ny hostile external contact to society is considered an act of treason.” Law No. 20 of 1991, *supra* note 9, at arts. 1, 7, 17, 18.

115 According to Law No. 20 of 1991, it is “prohibited to practice the death sentence except as a punishment or against he whose life represents danger or damage to society.” Law No. 20 of 1991, *supra* note 9, at art. 4.

116 Rana Lehr-Lehnardt, *Treat Your Women Well: Comparisons and Lessons from an Imperfect Example from Across the Water*, 26 S. Ill. U. L. J. 403 (2002).

117 “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.” ICCPR, *supra* note 62, at art 6.1.

118 PHR defines “enforced disappearance” 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.” Rome Statute of the International Criminal Court, *supra* note 68, at art. 7(2)(i).

119 Portia Walker, *More than 1,000 Libyans Missing from Misrata*, The Washington Post, 4 Jun. 2011, http://www.washingtonpost.com/world/middle-east/more-than-1000-libyans-missing-from-misrata/2011/05/30/AGmuw2IH_story.html.

120 Lisa Schlein, *People in Battle-Torn Libya Facing Critical Shortages*, Voice of America, 7 Jun. 2011, <http://www.voanews.com/english/news/People-in-Battle-Torn-Libya-Facing-Critical-Shortages-123354293.html>.

121 Interview with key informant no. 16 in Kerzaz, Libya (9 Jun. 2011).

Osman reported that he spoke with a close friend and his son who lived next to the facility on 29 March. This friend told Osman that he saw Qaddafi forces first shell the residential care facility on 19 March, before surrounding it with military vehicles and troops. He saw loyalist troops in green uniforms forcibly enter the facility's five main buildings, and he then saw the same soldiers force the 36 residents and two staff into a white Toyota passenger van and other military vehicles at gunpoint. According to the eyewitness, the convoy left that day and headed east out of town. Osman told PHR investigators that on 4 April, Qaddafi forces killed his friend and friend's son, eyewitnesses to these acts. Osman saw the bodies of the father and son on the road outside their home.

Two days after opposition forces regained control of Kerzaz in April, Osman returned to the residential care facility. He found it destroyed and emptied of its long-term inhabitants, including 12 elderly residents, six handicapped adults, and 18 homeless young men. Osman found evidence that military had stayed at the facility, including left-behind uniforms, ammunition, and field rations. Osman spoke with several rebel fighters who reported that they found several injured Qaddafi forces who they transported to the hospital in Misrata.

PHR investigators interviewed four local Kerzaz residents and facility staff who corroborated Osman's telling of the events. PHR investigators inspected the residential care facility on 8 and 9 June and witnessed the effects of the shelling, destruction, and looting of the facility. Local residents and volunteer crews had just begun to clean and repair the facility.

PHR also documented the testimony of a 21-year-old freedom fighter who experienced physical abuse by Qaddafi troops and witnessed his father's abduction.

Adam, a 21-year-old self-described freedom fighter from the rural town of Tomina outside Misrata, told PHR investigators that on 16 March 2011 he awoke to loud voices outside his home.¹²² He and his father, a well-known rebel fighter, then went outside and saw some 15 members of the Qaddafi armed forces standing directly in front of Adam's house. This eyewitness described the soldiers as black Libyans from the town of Tawergha, each carrying a Kalashnikov assault rifle and wearing a green uniform and black boots. He also saw in front of his rural home four military vehicles and two soldiers carrying RPG launchers.

The officer in charge, who wore two-starred shoulder straps as insignia, demanded that Adam and his father turn in any weapons they owned. Adam's father went into the house and returned with his rifle, which he handed to the ranking officer. Other Qaddafi forces standing several meters in front of the house then began firing their weapons directly at Adam's home apparently to force his family to flee outside. One soldier launched an RPG at the house next door, where Adam's uncle and uncle's family lived.

Adam then saw his extended family, including women and children, running from the two neighboring homes. Adam witnessed Qaddafi forces begin to beat his family with the butts of their rifles, hitting each of the dozen family members in the head and stomach until they fell to the ground. Women and young children were crying, as the men pleaded for the soldiers to stop abusing their wives and daughters. According to Adam's mother, another eyewitness, soldiers cursed epithets and beat them before stealing their family possessions.

Adam watched a soldier level an AK-47 to the head of his 25-year-old cousin, a fifth-year medical student who had been volunteering on the front line as an emergency medic. The officer in charge and two other Qaddafi soldiers then beat Adam's father in front of him. One soldier put the barrel of his gun to the father's chest, and the officer put his 9mm pistol to the right side of his head and threatened, "You will be dead. You are a traitor." The soldiers forced Adam's father into one of their white Toyota trucks, and left.

Neither Adam nor his family has received any word from Adam's father since the attack in mid-March. Adam's mother believes he was taken to Sirte, where many prisoners are apparently being held.

¹²² Interview with key informant no. 35 in Tomina, Libya (10 Jun. 2011).

In addition to the stories documented above, one 25-year-old resident of Kerzaz reported to PHR that 19 civilians—mostly men—from his neighborhood had been kidnapped by Qaddafi troops and were still missing.¹²³ According to TNC census data provided to Physicians for Human Rights, among the 11,379 inhabitants of Kerzaz and Tomina, 190 are reported missing (1.7%) and 34 were reported killed (0.3%).¹²⁴

Legal discussion

Enforced disappearance violates customary international humanitarian law and is prohibited in both international and non-international conflicts.¹²⁵ The ICCPR requires that timely court proceedings determine the legality of any detention.¹²⁶

The United Nations Human Rights Committee, the body that enforces the ICCPR, has declared that the enforced disappearance of an individual results in inhuman treatment of the individual's family members,¹²⁷ and that derogation from the ICCPR's prohibition of enforced disappearance is never allowed.¹²⁸ Enforced disappearance may qualify as a crime against humanity under the Rome Statute.¹²⁹ Libyan law further requires state authorities to carry out all detentions at known locations and to notify family members.¹³⁰

Using civilians as human shields¹³¹

PHR investigators received corroborated testimonies from four eyewitnesses that Qaddafi troops forcibly detained 107 civilians and used them as human shields to guard military munitions from NATO attacks south of Misrata during April and May 2011. PHR also documented that Qaddafi forces used civilians to physically shield them from active fire and that they shielded weaponry in civilian areas, including markets, mosques, and schools.

Thirty-eight-year-old Abdula reported to PHR investigators that Qaddafi troops forcibly detained his family and 14 other families totaling 107 civilians at a tile factory near Kararim.¹³² According to Abdula, several hundred Qaddafi troops were based just outside the enclosed factory where the civilians were held captive. Abdula reported the presence of heavy tanks, artillery, RPGs¹³³, and small arms.

On or around 30 April, soldiers ordered at gunpoint several detainees to serve as human shields for troops. These military forced Abdula, his wife, and two children ages two and three to move outside the factory compound. Guards put Abdula's two young children on top of a tank and forced other civilians to gather around the other weaponry. When Abdula's children began to cry, Abdula asked the soldiers if his family could return to the factory—to which one Qaddafi soldier replied, "You'll stay here, and if NATO attacks us, you'll die too." Abdula reported that on that same day, NATO drones bombed tanks and munitions approximately 100 meters away from the civilian detainees, none of whom was injured.

123 Interview with key informant no. 32 in Kerzaz, Libya (9 Jun. 2011).

124 Investigation conducted by local team in Misrata, sent to PHR on 23 Jun. 2011.

125 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at 340.

126 ICCPR, *supra* note 62, at art 9(4).

127 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at 343 (referencing U.N. Human Rights Committee's remarks regarding *Quinteros v. Uruguay* and *Lyashkevich v. Belarus*).

128 UN Human Rights Committee, General Comment No. 29, U.N. Doc. CCPR/C/21/Rev.1/Add.11 (31 Aug. 2001).

129 Rome Statute of the International Criminal Court, *supra* note 68, at art. 7(1)(i).

130 Law No. 20 of 1991, *supra* note 9, at art. 14.

131 PHR adopts its definition of "human shields" from the Rome Statute, which forbids "Utilizing the presence of a civilian or other protected person to render certain points, areas or military forces immune from military operations." Rome Statute of the International Criminal Court, *supra* note 68, at art. 8(2)(b)(xxiii).

132 Interview with key informant no. 43 in Misrata, Libya (10 Jun. 2011).

133 RPGs are portable grenade launchers that fire from the shoulder and can reach distances that range from 150 to 500 meters. See Peter A. Kaiser, Historical Dictionary of the U.S. Army 403 (Jerald E. Brown ed., 2001).

Detainees at the tile factory in Kararim were mostly women, elderly adults, and children ranging in age from nine months to 85 years. Three were physically disabled men.¹³⁴ All were terrified, according to Abdula, because military forces were firing Grad rockets¹³⁵ from this location, apparently against besieged Misrata.

Abdula reported that on 12 May 2011, rebel fighters attacked Qaddafi forces near the tile factory. Some loyalist troops fled, according to Abdula, while others continued fighting until 15 May when the rebels liberated Kararim and the detained civilians at the factory. Abdula and his family later fled to Misrata where he and 10 others are still seeking refuge in a friend's one-room apartment. They are too afraid to return home to Kerzaz.

In addition to reports that Qaddafi forces illegally used civilians as human shields, PHR documented three occasions in which Qaddafi forces placed military weapons and supplies in civilian areas to shield them from attack (e.g., next to mosques, markets, and in schools). In one instance, Qaddafi troops hid military tanks in a fish market, forcing NATO to attack a populated area.

One downtown resident of Misrata reported that on or around 10 April 2011, NATO attacked the "old fish market" (a Quonset-like structure) in central Misrata where Qaddafi forces had hid five military tanks.¹³⁶ The resident further explained that after the surviving troops fled the area, rebel forces destroyed the tanks, so they were no longer operable. PHR investigators inspected the fish market and saw the roof of the building partially collapsed and several charred remains of military tanks.

In another instance, Qaddafi forces stored tanks next to a Kerzaz village mosque and kidnapped a resident who questioned their motives.

Mohamed, a 46-year-old resident of Kerzaz and father of seven, reported to PHR that Qaddafi forces placed munitions and military vehicles next to the local mosque and camped at a nearby school for several days.¹³⁷ When his 52-year-old brother confronted the military at the mosque that they should not place weapons there, he was beaten and disappeared. Mohamed's brother has not been seen or heard from since.

In a third instance, Qaddafi forces destroyed a Tomina village school and used the demolished interior as a storage facility in which to shield military and stolen medical supplies.

Osman, a teacher at the Tomina elementary school, reported that pro-Qaddafi military attacked the school on 26 April and used the building as a military base. Qaddafi forces fled the school on 14 May when rebel forces gained control of the area.¹³⁸ PHR investigators documented destruction of the school's perimeter wall and exterior classroom walls, marked with evidence of fallen mortar shells and gunfire. Debris from fallen plaster was scattered throughout the interior, and overturned desks lay in each of the classrooms. One classroom was filled with medical supplies, including diagnostic sonography equipment, consistent with Osman's reports that Qaddafi soldiers pillaged medical supplies and stored them there.

PHR's findings corroborate UN reports that Qaddafi troops positioned tanks in residential areas of Misrata to avert NATO airstrikes. Libyan authorities also threatened to deploy human shields

¹³⁴ Interview with key informant no. 45 in Misrata, Libya (10 Jun. 2011).

¹³⁵ Grad rockets (BM-21) are a type of "multiple rocket launcher" (MRL), that can fire up to 40 rockets at one time with a range of up to 20 km. Mounted on trucks, Grad rockets can be fired remotely from a distance of up to 60 meters away. *BM-21 122-mm Multiple Rocket Launcher*, GlobalSecurity.org, <http://www.globalsecurity.org/military/world/russia/bm-21.htm> (11 Jul. 2011).

¹³⁶ Interview with key informant no. 54 in Misrata, Libya (10 Jun. 2011).

¹³⁷ Interview with key informant no. 34 in Kerzaz, Libya (10 Jun. 2011).

¹³⁸ Interview with key informant no. 29 in Tomina, Libya (9 Jun. 2011).

in efforts to safeguard strategic telecommunications sights.¹³⁹ NATO generals reported that Qaddafi's use of human shields made NATO efforts "more difficult, but not impossible."¹⁴⁰

Legal discussion

In general, international humanitarian law requires parties to a conflict to distinguish between military and civilian targets. Using civilians to shield otherwise legitimate military targets violates this norm. The Geneva Conventions, specifically the Fourth Geneva Convention and the First Additional Protocol, prohibit the use of civilians to shield military objectives or operations in international conflict.¹⁴¹ The Rome Statute also defines as a war crime the use of civilians to render military forces, points, or areas immune from military attack.¹⁴² Such acts are also prohibited in non-international armed conflict since they would violate the "general protection against the dangers arising from military operations" that operates in such situations.¹⁴³ The International Committee of the Red Cross has found the prohibition of the use of human shields as a norm of customary international humanitarian law that would be applicable to all parties to international and non-international armed conflict.¹⁴⁴ The evidence documented by PHR above implicates Qaddafi's forces in violating these international legal obligations.

Intentional and indiscriminate attacks on civilians

As Qaddafi forces began to shell civilian homes and mosques in Tomina and Kerzaz, many families fled for safety to Misrata and neighboring towns. Some villagers remained at their homes to look after their farms, livestock, and possessions, hiding during the day and venturing out at night when they were less likely to be targeted by snipers or marauding Qaddafi forces.

In what follows, PHR presents evidence that Qaddafi forces:

1. destroyed civilian homes and shot at residents;
2. targeted civilians in their homes;
3. destroyed religious buildings;
4. destroyed public property while endangering civilian lives;
5. pillaged civilian property (committing other rights violations in the process); and
6. used indiscriminate and explosive weapons to attack civilians.

Qaddafi forces destroy homes and shoot at residents

PHR took corroborated testimony from Isa, brother of a 31-year-old officer in Qaddafi's national air force named Omar who defected on 17 February 2011 to fight with the rebels. According to Isa, Qaddafi military had orders to kill Omar for defecting. While Isa passed through a rebel check point

139 U.N. Office of the High Commissioner of the Human Rights Council, Report of the High Commissioner under Human Rights Council Resolution S-15/1, ¶ 50, U.N. Doc. A/HRC/17/45 (7 Jun. 2011), http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1112.pdf. See also John F. Burns, 'Libyan Officials Threaten to Use "Human Shields"', New York Times, 16 May 2011, <http://www.nytimes.com/2011/05/17/world/africa/17libya.html>.

140 *Gadhafi could face rape charges, international prosecutor says*, CNN, 29 Jun. 2011, <http://www.cnn.com/2011/WORLD/africa/06/28/libya.war/index.html>.

141 Geneva Convention (IV), art. 28, stating, "The presence of a protected person may not be used to render certain points or areas immune from military operations." Geneva Convention Protocol I, *supra* note 111, at art. 51.7, stating, "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations."

142 Rome Statute of the International Criminal Court, *supra* note 68, at art. 8(2)(b)(xxiii).

143 Geneva Convention Protocol II, *supra* note 55, at art. 13(1), stating "the civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations." Geneva Convention Protocol II also prohibits the taking of hostages in article 4(2)(c) which is often an element of the use of human shields.

144 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at 337-340.

on the outskirts of Tomina on 6 March, he heard news that Qaddafi forces had attacked his and Omar's family home.¹⁴⁵

When Isa and six other men from his village approached his home, he saw the home in flames and saw soldiers exiting the property. From their vehicles, Qaddafi military shot and killed two men at the scene and wounded Isa. Four men drove Isa to a Misrata hospital where he received emergency treatment. When PHR investigators interviewed Isa in his home in early-June 2011, it was the first time he had returned since being shot by the soldiers. His family had been in hiding, and most of Tomina was still deserted.

PHR examined Isa and confirmed a scar on his left shoulder blade (scapula) consistent with a bullet entry wound. An X-ray confirmed the presence of a five-centimeter bullet lodged lateral to his scapula. PHR investigators inspected Isa's home and saw evidence of its nearly complete destruction by fire and pillaging. Investigators noted that scrawled in red lipstick on the bathroom mirror was a message in Arabic which read, "Qaddafi revolution forever."

When Qaddafi forces destroyed civilian homes, residents were forcibly displaced as they fled for safety.¹⁴⁶ PHR investigators received corroborated reports of Qaddafi troops destroying homes, forcing residents to flee, and arbitrarily detaining some civilians.

At 11:00 a.m. on 21 April 2011, a 55-year-old widow reported that two explosive weapons directly hit and partially destroyed the family's home in Kerzaz.¹⁴⁷ Five of her children and two grandchildren were at home at the time of the blast. The eight family members immediately fled by car to the nearby town of Tomina and stayed with relatives for one week. As fighting intensified in Tomina, they again fled and found safety in an open field outside of town. Shortly after arriving there, three armed loyalist forces in green uniforms apprehended the family and forced them under armed escort to drive to Kararim, south of Misrata, where Qaddafi forces had expropriated a tile factory, which they were now using as a military base.

PHR investigators also took testimony from an eyewitness who recounted how Qaddafi troops ransacked his home and killed three of his family members as they attempted to flee.

Emad, a 27-year-old resident of Tomina, and his young brother opened the gate to their home on 17 March and saw more than a dozen armed military in two vehicles in front of their family farm.¹⁴⁸ Qaddafi soldiers rushed the gate and began to pummel the brothers with the butts of their Kalashnikov rifles. Two soldiers tied the brothers' wrists with rope and put them in the back of the family's Toyota truck. Six soldiers got back in their vehicles and drove the brothers to a nearby military check point where they were further beaten and interrogated. An officer there demanded to know from the unarmed brothers, "Why don't you like Qaddafi? Where are your weapons?" After one half hour of intimidation, threats, and beating, they released the two brothers.

When they returned home, their mother reported that soldiers had harassed the 10 women and four children in their home, cursed at them, and stole the household's money and gold jewelry.¹⁴⁹ Out of fear, Emad's family and relatives packed some belongings and immediately fled Tomina in a three-vehicle convoy. Driving the lead vehicle, Emad reported that he saw Qaddafi forces manning a checkpoint at the roundabout on the road to Misrata. He immediately swerved. He then heard gunshots and saw a Qaddafi soldier fire an RPG which hit the second and third vehicles. Emad's brother and elderly father were killed instantly. His five-year-old niece died later that day at the polyclinic hospital. PHR investigators inspected the family vehicles, which showed evidence of being damaged by an explosive device. Their home had also been set on fire.

145 Interview with key informant no. 30 in Tomina, Libya (9 Jun. 2011).

146 Forced displacement, or "deportation or forcible transfer of population" as it is referred to in the Rome Statute, entails "expulsion or other coercive acts from the area in which [civilians] are lawfully present, without grounds permitted under international law". Rome Statute of the International Criminal Court, *supra* note 68, at art. 7(2)(d).

147 Interview with key informant no. 45 in Misrata, Libya (10 Jun. 2011).

148 Interview with key informant no. 25 in Tomina, Libya (9 Jun. 2011).

149 Interview with key informant no. 52 in Tomina, Libya (9 Jun. 2011).

In addition to targeting and destroying civilian homes in Kerzaz, Qaddafi forces attacked mosques and used them as vantage points from which to target civilians.

At 7:30 a.m. on 21 April 2011, 20-year-old Abdulmois reported that he awoke to gunshots outside his home in Kerzaz.¹⁵⁰ Sitting in the front room 30 minutes later with five family members, Abdulmois saw his 56-year-old grandmother collapse in the chair next to him, blood pouring from the left side of her head. She had been fatally shot from a bullet fired through the front window. He quickly went outside and saw an armed sniper wearing green military fatigues, a green cap, and a green kerchief around his neck crouched on top of the wall of the mosque next to his home. The sniper shot once at Abdulmois, but missed. Abdulmois rushed back inside and, with his family, covered the elderly woman with a sheet and prayed over her body. They then hid in a back room. Abdulmois heard sporadic gunshots and the sound of heavy artillery for about one half hour.

Fifteen minutes later, five armed military forcibly entered Abdulmois' family's home and marched the family at gunpoint to the main street one block away. Qaddafi soldiers handcuffed them and forced them to lie on the ground. More military rounded up eight other neighbors of Abdulmois and began to beat each of the 13 civilians. Abdulmois was kicked in the groin and flanks. He suffered blows to the back with the butts of their rifles. When Abdulmois' uncle began to argue with one of the soldiers, he was shot in the left upper leg. At 1:30 that afternoon, around 40 Qaddafi military in green fatigues left Kerzaz in three large transport trucks, a light utility vehicle, and two stolen civilian cars into which they put eight male detainees, ages 17 to 60. Their whereabouts remain unknown. Five seriously injured civilians, including Abdulmois and his uncle, were left on the road. Later that day, neighbors drove them to a hospital for emergency medical care. His family and most of the residents of Kerzaz evacuated the town and returned in May after rebels gained firm control of the area.

Qaddafi forces destroy religious buildings

PHR inspected three mosques in the towns of Kerzaz and Tomina that were destroyed by shelling, reportedly by Qaddafi forces. Below are details of the destruction of one mosque in Kerzaz.

One Sheik in Kerzaz reported that he was in his home reading the Koran on 18 March, when he heard the rumble of tanks and shelling outside. His home is situated on the main road opposite the mosque where he led public prayers.¹⁵¹ The Sheik testified that in front of his home, he saw smoke and rubble surrounding the minaret of the mosque, which collapsed from direct shelling. He then saw the tank's turret rotate and aim its main gun at his neighbor's home. He crouched for safety after hearing a second explosion from the tank, which he saw destroy the house next door. After a third blast, the Sheik fled. When he returned to his home later that night, he said it had been damaged and looted. He also reported to PHR that he saw neighbors' livestock killed. The Sheik told PHR, "Qaddafi says he is a Muslim, but with his actions against Misrata, he does not reflect the Muslim faith. Even if Qaddafi were not Muslim, he should not attack mosques; it is sacred for all." The Sheik further reported that he had heard from his fellow worshippers that Qaddafi forces used some mosques to launch attacks against civilians.

PHR investigators also spoke with an injured 22-year-old rebel fighter with a cast on his left arm (externally fixated), who was being evacuated by boat to Benghazi for further medical treatment.¹⁵² He provided PHR investigators video from a cell phone which was reportedly captured from a Qaddafi soldier. The video clearly showed a military man in green uniform operating a back-hoe truck and using it to destroy a mosque's minaret. Other military looked on.

150 Interview with key informant no. 24 in Kerzaz, Libya (10 Jun. 2011).

151 Interview with key informant no. 51 in Kerzaz, Libya (10 Jun. 2011).

152 Interview with key informant no. 48, in Benghazi, Libya (10 Jun. 2011).

Qaddafi forces destroy public property while endangering civilian lives

In addition to religious structures, Qaddafi forces reportedly attacked public spaces populated by civilians.

A shopkeeper in Misrata reported to PHR that he had seen a Qaddafi tank fire into the central market of Misrata on 23 March 2011.¹⁵³ PHR investigators inspected the city's main food market, which showed evidence of fire damage and shelling. The market was completely destroyed.

Qaddafi forces pillage¹⁵⁴ civilian property

Another way in which armed forces intentionally targeted civilians was by pillaging civilian food and livelihoods, hindering civilians' ability to survive with limited resources. Pillaging of a family's possessions often accompanies other violent acts, such as inhumane treatment:

One inhabitant of Kerzaz, whom Qaddafi forces held captive for six days and tortured, reported to PHR that Qaddafi forces burned his town's food stores.¹⁵⁵ After he escaped detention in Misrata, he returned to his town and spoke with neighbors who recounted attacks by loyalist troops, including the destruction of food stores. PHR investigators verified a torched residential home, where the community had transported food and stockpiled dry goods, and saw roughly 30 cubic meters of scorched and incinerated food stocks.

Official military orders retrieved in Misrata provide strong evidence that Qaddafi ordered troops to starve Misrata inhabitants.¹⁵⁶ In addition to pillaging food stores, Qaddafi forces restricted or blocked opposition-populated areas from receiving humanitarian aid—including food¹⁵⁷—despite food instability and shortages.¹⁵⁸ Qaddafi forces also destroyed ships attempting to bring humanitarian aid into Misrata, exacerbating food insecurity.¹⁵⁹

Qaddafi forces use indiscriminate and explosive weapons to attack civilians

PHR investigators documented reports that Qaddafi forces used indiscriminate and other explosive weapons¹⁶⁰ against civilians in Misrata and surrounding villages, including Grad rockets and mortars. For example, one man detailed how his home was destroyed by mortar fire that also seriously injured two young children:

Yahya, a 23-year-old resident of Kerzaz, reported to PHR that on 19 April 2011 his family's home was hit by a mortar, which injured two young children.¹⁶¹ PHR investigators verified a 12-inch-diameter hole through the home's front-facing wall. The explosive device also penetrated the 10-foot-wide living room and shot through and destroyed an interior wall. Behind this second wall, Yahya's mother

153 Interview with key informant no. 53 in Misrata, Libya (10 Jun. 2011).

154 Pillaging is defined as the "destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." Rome Statute of the International Criminal Court, *supra* note 68, at art. 8(2)(a)(iv).

155 Interview with key informant no. 32 in Kerzaz, Libya (9 Jun. 2011).

156 Document provided to PHR by Hikma Hospital on 24 Jul. 2011. See also Chris Stephen, *Qaddafi Files Show Evidence of Murderous Intent*, The Guardian, 18 Jun. 2011, http://www.guardian.co.uk/world/2011/jun/18/Qaddafi-misrata-war-crime-documents?CMP=tw_t_gu.

157 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 171.

158 Stephanie Nebehay, ICRC alarmed by situation in Libya, says fears worse, Reuters, 5 Jul. 2011, <http://www.reuters.com/article/2011/07/05/us-libya-aid-idUSTRE7643UI20110705>; Moni Basu, *Libya: The war wasn't supposed to go on this long*, CNN, 29 Jun. 2011, <http://edition.cnn.com/2011/WORLD/africa/06/29/analysis.libya.war/>; Nick Carey, *Qaddafi's future not up for debate: Libyan government*, Reuters, 27 Jun. 2011, <http://www.reuters.com/article/2011/06/26/us-libya-idUSTRE7270JP20110626>.

159 *Libya: UN official voices concern as fighting blocks aid delivery in West*, U.N. News Centre, 12 May 2011, <http://www.un.org/apps/news/story.asp?NewsID=38352&Cr=Libya&Cr1>.

160 Indiscriminate weapons "employ a method or means of combat which cannot be directed at a specific military objective" Geneva Convention Protocol I, *supra* note 111, at art. 51.

161 Interview with key informant no. 26 in Tomina, Libya (9 Jun. 2011).

reported that she, her four daughters, and four young grandchildren had gathered.¹⁶² She opined this back room was the most secure in the house because it had no windows or exterior walls, yet the wall collapsed and seriously injured two of her grandchildren who suffered head wounds.

PHR also received written testimony from residents of Misrata who reported that Qaddafi forces attacked them in their homes with explosive weapons:

One civilian in Misrata reported that Qaddafi forces launched explosive weapons into the Alhbary neighborhood in Misrata where this man lived.¹⁶³ Explosive devices hit his neighbor's house, where Halima lived with her eight children and husband. The projectile landed inside the fence surrounding the home where Halima was working before Friday prayers. Both her legs were fractured and the left leg was amputated. The injured civilian ultimately died as a result of her wounds. Her daughter witnessed the atrocity and suffered shrapnel injuries.

Another civilian reported to PHR that his mother and father were at home when Qaddafi troops began launching explosive munitions into the area.¹⁶⁴ When his mother went into the yard to look after some grain and vegetables, a falling explosive landed 20 meters from where she stood. Shrapnel hit the mother, who died instantly. The explosive device also caused damage to a portion of the family home. His father was about 60 meters away from the projectile when it landed, and he underwent treatment for shrapnel injuries. The area had been hit by explosives for several days, he testified.

A third civilian reported to PHR that on 21 June at 8:30 p.m., Qaddafi troops launched an explosive device into the yard of his house.¹⁶⁵ The family was inside the home at the time. The previous day, his wife returned from the hospital after she delivered a baby. Following the explosion, which destroyed the fence in front of the house, the kitchen caught on fire and the family ran outside. Abraham, their 15-year-old child, was seriously injured following the explosion and died as a result of his injuries. Later, the family found shrapnel and small iron pellets in the area. The mother was burned by the explosion and lost all of her hair as a result. She was taken to the hospital. A 12-year-old son suffered extensive burns on his hands and legs, and remained at the hospital with his mother for treatment. This father reported that he was caught in the fire between the yard and the kitchen, and also suffered burns.

In addition, Qaddafi troops reportedly used cluster munitions against populated areas of Misrata.¹⁶⁶ Cluster munitions open in mid-air and scatter small explosive devices over a large area, making targeted aim impossible and harming civilians indiscriminately.¹⁶⁷

Qaddafi forces also reportedly laid landmines to maim and kill civilians in Misrata.¹⁶⁸ Landmines,¹⁶⁹ which include "anti-personnel mines," explode when a person comes into contact

162 Interview with key informant no. 27 in Tomina, Libya (9 Jun. 2011).

163 Correspondence with key informant no. 55 (19 Jul. 2011).

164 Correspondence with key informant no. 56 (19 Jul. 2011).

165 Correspondence with key informant no. 57 (19 Jul. 2011).

166 See Amnesty International, *Libya: Attacks Against Misrata Residents Point to War Crimes*, 6 May 2011, <http://www.amnesty.org/en/news-and-updates/report/libya-attacks-against-misrata-residents-point-war-crimes-2011-05-05>; Human Rights Watch, *Libya: Cluster Munitions Strike Misrata*, 15 Apr. 2011, <http://www.hrw.org/en/news/2011/04/15/libya-cluster-munitions-strike-misrata>; Rebecca Fordham, *Libyan Kids Maimed by War Remnants*, Al Jazeera, 7 Jun. 2011, <http://english.aljazeera.net/indepth/features/2011/06/20116674436348565.html>; Tracey Shelton, *Children of Misrata Hit Hard in Libyan Town Ravaged by Fighting*, The National, 4 Jul. 2011, <http://www.thenational.ae/news/worldwide/africa/children-of-misrata-hit-hard-in-libyan-town-ravaged-by-fighting>.

167 United Nations Development Program (UNDP), *Cluster Munitions, Crisis Prevention and Recovery*, http://www.undp.org/cpr/we_do/cluster_munitions.shtml (last visited 20 Jul. 2011).

168 See Amnesty International, *Libya: Civilians at Risk Amid New Mine Threat*, 25 May 2011, <http://www.amnesty.org/en/news-and-updates/libya-civilians-risk-amid-new-mine-threat-2011-05-25>; Rebecca Fordham, *Libyan Kids Maimed by War Remnants*, Al Jazeera, 7 Jun. 2011, <http://english.aljazeera.net/indepth/features/2011/06/20116674436348565.html>; *Libya rebels take casualties in Zliten advance*, AP, 10 Jul. 2011, http://www.google.com/hostednews/afp/article/ALeqM5i9jbd5tDAHv4Zfe_9ADI_jFShTYw?docId=CNG.a51e0ccb6c8ecb11fbc3a0a97df80911.361.

169 Physicians for Human Rights shared the Nobel Peace Prize in 1997 for its work to ban landmines. PHR published four reports on landmines from years 1991-present on seven countries: Cambodia (1991); Somalia (1992); Angola,

with them. Landmines do not discriminate between armed forces and civilians.¹⁷⁰ Anti-vehicle landmines¹⁷¹ were also found in Misrata, and were used to prevent civilians in Misrata from receiving humanitarian aid.¹⁷² Rebels have reported injuries resulting from anti-vehicle mines meant to destroy tanks.¹⁷³

The United Nations documented that Qaddafi forces indiscriminately launched rockets and mortars against homes and mosques in Misrata.¹⁷⁴ Because Grad rockets have wide strike areas, they are recognized as indiscriminate weapons that cannot be directed to selective targets.¹⁷⁵ The UN also alleged that Qaddafi forces have not taken necessary safety measures when using anti-tank landmines, including making mines easily detectable and removable.¹⁷⁶ The UN has called on Libyan armed forces to discontinue use of explosive weapons in populated areas, including shelling intended to damage civilian buildings and livelihoods.¹⁷⁷

Legal discussion

Participants in armed conflict must adhere to the principles of distinction and proportionality. International law forbids military forces from intentionally¹⁷⁸ targeting civilians in non-international armed conflict, and weapons that by their nature indiscriminately target civilians are explicitly outlawed.¹⁷⁹

Participants in armed conflict must adhere to the principles of distinction and proportionality. Soldiers commit war crimes when they intentionally target religious structures¹⁸⁰ and homes, towns, or villages that are not legitimate military targets.¹⁸¹ International law prohibits armed forces from attacking places of worship and from incorporating religious sites into military offensives.¹⁸²

Mozambique, Iraqi Kurdistan, Cambodia, and northern Somalia [1993], as well as a guide for epidemiological-based surveys to quantify public health consequences of landmines (2000).

170 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (“Mine Ban Treaty”) art. 2(1), 3 Dec. 1997, 2056 U.N.T.S. 211, available at <http://www.icbl.org/index.php/icbl/Treaties/MBT/Treaty-Text-in-Many-Languages/English>.

171 Anti-vehicle landmines are designed to explode when vehicles drive over them. These often yield multiple casualties. WHO, Guidance for surveillance of injuries due to landmines and unexploded ordnance (2000), available at http://www.who.int/violence_injury_prevention/publications/surveillance/landmines/en/.

172 Amnesty International, *Al-Qaddafi’s Forces Carry Out Indiscriminate Attacks in Misratah*, 8 May 2011, <http://www.amnesty.org/en/for-media/press-releases/al-Qaddafi%E2%80%99s-forces-carry-out-indiscriminate-attacks-misratah-2011-05-08>; C.J. Chivers, *Land Mines Descend on Misurata’s Port, Endangering Libyan City’s Supply Route*, New York Times, 6 May 2011, http://www.nytimes.com/2011/05/07/world/africa/07libya.html?_r=1&src=tpw.

173 Ernesto Londono, *In Libya, rebels gaining in the west*, The Washington Post, 6 Jul. 2011, http://www.washingtonpost.com/world/middle-east/in-libya-rebels-gaining-in-the-west/2011/07/06/gIQAaNvA1H_story.html?hpid=z4.

174 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 166. See also Amnesty International, *Libya: Misrata - under siege and under fire* 15 (2011), <http://www.amnesty.org/en/library/asset/MDE19/019/2011/en/4efa1e19-06c1-4609-9477-fe0f2f4e2b2a/mde190192011en.pdf>.

175 Amnesty International, *Libya: Renewed Rocket Attacks Target Civilians in Misratah*, 23 Jun. 2011, <http://www.amnesty.org/en/news-and-updates/libya-renewed-rocket-attacks-target-civilians-misratah-2011-06-23>.

176 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 186; Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at Rule 81; Human Rights Watch, *Government Use of Landmines Confirmed*, 30 Mar. 2011, <http://www.hrw.org/fr/news/2011/03/30/libya-government-use-landmines-confirmed>.

177 U.N. Office for the Coordination of Humanitarian Affairs, *United Nations Humanitarian Chief Highlights Humanitarian Consequences of Continued Fighting in Libya*, 11 Mar. 2011, <http://ochanet.unocha.org/p/Documents/USG%20Amos%20Statement%20Libya%2017March2011.pdf>.

178 Geneva Convention Protocol II, *supra* note 55, at art. 13.2. See also ICRC, Customary International Humanitarian Law 37 (2009), available at <http://www.icrc.org/eng/assets/files/other/customary-international-humanitarian-law-i-icrc-eng.pdf>.

179 ICRC, Customary IHL, §71. Available at http://www.icrc.org/customary-ihl/eng/docs/v1_cha_chapter20_rule71; Rome Statute of the International Criminal Court, *supra* note 68, at arts. 8(2)(b)(xx); Report of the High Commissioner under Human Rights Council Resolution S-15/1*, *supra* note 139, at ¶ 31.

180 Rome Statute of the International Criminal Court, *supra* note 68, at art. 8 (2)(b)(ix).

181 *Id.*, at art. 8 (2)(b)(v).

182 Geneva Convention Protocol I, *supra* note 111, at arts. 52(3)-53.

International law also prohibits armed forces from pillaging property and anything else that civilians need to survive.¹⁸³ Intentionally inflicting starvation on civilians is also a war crime under international law¹⁸⁴ and its prohibition has been declared a norm of customary international humanitarian law, applicable in both international and non-international conflict.¹⁸⁵ Domestic law also prohibits such acts, as Libyan law prohibits forced entry of any civilian home.¹⁸⁶

Qaddafi's indiscriminate and intentional attacks on civilians have the effect of forcibly displacing many of these civilians.¹⁸⁷ Such forced displacement violates international humanitarian law,¹⁸⁸ and forced deportation is one of the enumerated acts that may constitute a crime against humanity under the Rome Statute of the International Criminal Court.¹⁸⁹

Violations of medical neutrality: Attacks against medical workers, facilities, supplies, transport, and patients

Physicians for Human Rights inspected four medical facilities and interviewed 21 Libyan medical personnel, including physicians, medical students, nurses, medics, and hospital administrators. PHR investigators took testimony from seven eyewitnesses who reported targeted attacks by Qaddafi troops against medical workers, facilities, transports, and supplies as well as civilian patients:

One senior ophthalmologist at Misrata's Central Hospital reported that Qaddafi forces began attacking the city's 150-bed hospital on 23 March 2011.¹⁹⁰ According to the physician, the hospital withstood a two-month siege during which around-the-clock snipers atop adjacent buildings targeted and shot at medical workers, patients, and other civilians either entering or leaving the main entrance; ambulances were also targeted. The situation became so grave that, using a small back entrance, hospital workers organized the transfer of some 100 patients within two hours to a private facility outside the city center. Another attending physician noted that the hospital was at that time in critical need of medical supplies and medicine, including anesthesia and pain medication.¹⁹¹ When PHR investigators visited the hospital in early June, the facility was empty of patients and staff as the entire hospital had been relocated to other facilities. The building showed evidence of destruction by shelling and gunshot, and engineers and work crews were in the process of repairing the facility.

One specialist physician reported to PHR that on 6 March 2011 a sniper shot him in the right flank while he was entering the central hospital.¹⁹² His scar revealed evidence of a bullet's entry and exit through his right flank.

PHR investigators also received reports from several eyewitnesses that Qaddafi troops attacked ambulances carrying injured combatants:

An orthopedic surgeon reported logging eight separate instances where ambulances marked with the emblematic Red Crescent were attacked while medics tried to reach injured combatants on the

183 Geneva Convention (IV), *supra* note 82, at art. 53; Geneva Convention Protocol II, *supra* note 55, at art. 14. The definition for pillaging includes stealing or destroying anything that civilians need in order to survive. Rome Statute of the International Criminal Court, *supra* note 68, at art. 8(2)(b)(xvii).

184 Rome Statute of the International Criminal Court, *supra* note 68, at art. 8.2(b)(xxv).

185 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at 186.

186 "The home is inviolable and shall not be entered or searched except under the circumstances and conditions defined by the law." Constitutional Proclamation, *supra* note 88, at art. 12.

187 The conflict in Libya has led hundreds of thousands of people across its borders. USAID, *U.S. Government (USG) Humanitarian Fact Sheet #37, Fiscal Year (FY) 2011, Libya – Complex Emergency*, 28 Jul. 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/libya_ce_fs37_07-28-2011.pdf.

188 Geneva Convention (IV), *supra* note 82, at art. 49.

189 Rome Statute of the International Criminal Court, *supra* note 68, at art. 7.1(d).

190 Interview with key informant no. 09 in Misrata, Libya (7 Jun. 2011).

191 Interview with key informant no. 02 in Misrata, Libya (7 Jun. 2011).

192 Interview with key informant no. 10 in Dafnia, Libya (7 Jun. 2011).

western front line of battle outside Misrata.¹⁹³ Two of the incidents took place the day prior to PHR's visit, and investigators documented the partial destruction of two ambulances, both of which showed evidence of shelling.

PHR investigators spoke with a fourth-year medical student working at the western-front field hospital. He witnessed one of the ambulance attacks.¹⁹⁴ According to the student, the medic parked the ambulance next to a mosque so the medical workers could pause for afternoon prayers. While exiting the vehicle, the first mortar hit, but did not cause any injury or damage. A second mortar followed and exploded next to the ambulance. The student ran to the mosque for cover and returned shortly thereafter to find the nurse bleeding profusely from his head.

Another fourth-year medical student reported to PHR that on 29 May 2011 he was wounded by shrapnel while driving in an ambulance toward the front line.¹⁹⁵ The soft-tissue injury required five stitches, and he returned to work at the field hospital that same day.

A medic reported that he had transported an injured Qaddafi soldier to the field hospital, where the attending physician told PHR investigators that he had treated the combatant for gunshot wounds. He was transported later that day by ambulance to Hikma hospital in Misrata.

In addition, PHR documented reports that Qaddafi soldiers occupied Misrata's medical college main hospital, and collected evidence of damage to the physical structures.

Staff at the Medical Technical College, strategically located at one of Misrata's main points of entry, reported that Qaddafi forces occupied its many buildings since 13 March 2011.¹⁹⁶ PHR investigators inspected the medical college, which showed signs of heavy destruction by shelling and gunfire. Qaddafi troops reportedly also used Misrata's main public hospital, empty due to major renovations at the time, for military purposes.¹⁹⁷

Libyan doctors further reported to PHR that Qaddafi troops regarded them and other health workers who helped injured combatants as targets.¹⁹⁸ Qaddafi forces reportedly prevented doctors from impartially documenting accurate numbers of deaths and injuries,¹⁹⁹ and medical records from hospitals have gone missing.²⁰⁰

These findings are consistent with reports that Qaddafi forces indiscriminately attacked²⁰¹ hospitals in Misrata using tanks and artillery,²⁰² severely damaging medical facilities²⁰³ and directly targeting ambulances.²⁰⁴

193 Interview with key informant no. 10 in Dafnia, Libya (7 Jun. 2011).

194 Interview with key informant no. 11 in Dafnia, Libya (7 Jun. 2011).

195 Interview with key informant no. 13 in Dafnia, Libya (7 Jun. 2011).

196 Interview with key informant no. 38 in Misrata, Libya (7 Jun. 2011).

197 Interview with key informant no. 39 in Misrata, Libya (7 Jun. 2011).

198 See Mary Fitzgerald, *Frontline surgeon says morale of anti-Gadafy forces high*, Irish Times, 7 Jun. 2011, <http://www.irishtimes.com/newspaper/world/2011/0607/1224298498069.html>.

199 Report of the High Commissioner under Human Rights Council Resolution S-15/1*, *supra* note 139, at ¶ 26.

200 *Misrata Fighting Killed Estimated 12 a Day-WHO*, Reuters, 27 May 2011, <http://af.reuters.com/article/libyaNews/idAFLDE74Q12120110527>.

201 *Air strikes fail to deter Qaddafi forces*, Al Jazeera, 24 Mar. 2011, <http://english.aljazeera.net/news/africa/2011/03/20113242425700917.html>.

202 *Libyan hospitals struggle amid heavy fighting*, BBC World Service, 7 Mar. 2011, http://www.bbc.co.uk/worldservice/news/2011/03/110307_libya_doctor_wt.shtml.

203 *Video: Libya: Misurata hospital damaged in fighting*, The Telegraph, 24 Mar. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8405273/Libya-Misurata-hospital-damaged-in-fighting.html>.

204 *Doctors operating without anesthesia in Misrata hospital*, CNN, 24 Mar. 2011, <http://edition.cnn.com/2011/WORLD/africa/03/24/libya.hospital.scene/index.html>.

Because Qaddafi troops destroyed several hospitals in Misrata, the Central Hospital was overwhelmed with injured persons.²⁰⁵ Military destruction and pillaging of hospitals contributed to Misrata's current shortage of drugs and medical supplies.²⁰⁶ The UN confirms that Qaddafi military attacked protesters in hospitals, prevented wounded protesters from accessing medical care,²⁰⁷ and abducted patients from hospitals as well as doctors who attempted to protect them.²⁰⁸ Qaddafi files uncovered in Misrata provide strong evidence that Qaddafi ordered military forces to hunt down injured rebel soldiers, explicitly violating international humanitarian law.²⁰⁹

In clear violation of the principles of medical neutrality, Qaddafi military reportedly forcibly disappeared at least fourteen medical personnel, according to the United Nations,²¹⁰ forcing medical professionals to flee the country.²¹¹ "Physicians have an ethical duty to care for their patients, and governments have a duty to ensure that appropriate conditions exist to allow them to do so."²¹²

Legal discussion

The ICESCR, to which Libya is a party, requires Libya to respect its citizenry's right to the highest attainable standard of physical and mental health.²¹³ Included in this requirement is the obligation not to inhibit access to healthcare as a punitive measure.²¹⁴ Under this treaty, governments must provide non-discriminatory medical care for those in need.²¹⁵

Additionally, international humanitarian law requires all parties to allow for the care of the sick and wounded.²¹⁶ Improperly using or destroying the Red Cross or Red Crescent symbol also violates international humanitarian law of non-international conflict.²¹⁷

Medical neutrality is also recognized as customary international humanitarian law, applicable in both international and non-international conflict. The elements of medical neutrality enumerated as such by the International Committee of the Red Cross include the protection of medical professionals, the prohibition of punishing health professionals for adhering to medical ethics, and the protection of medical units, medical transport, and distinctive emblems.²¹⁸

205 Abbeer Tayel & Sara Ghasemilee, *More Massacres in Misrata*, Al Arabiya, 13 Apr. 2011, <http://english.alarabiya.net/articles/2011/04/13/145252.html>.

206 See Report of the International Commission of Inquiry, *supra* note 75, at ¶ 177; Lisa Schlein, *People in Battle-Torn Libya Facing Critical Shortages*, *Voice of America*, 7 Jun. 2011, <http://www.voanews.com/english/news/People-in-Battle-Torn-Libya-Facing-Critical-Shortages-123354293.html>.

207 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 130.

208 *Id.*, at ¶ 137.

209 Chris Stephen, *Qaddafi Files Show Evidence of Murderous Intent*, *The Guardian*, 18 Jun. 2011, http://www.guardian.co.uk/world/2011/jun/18/Qaddafi-misrata-war-crime-documents?CMP=tw_t_gu.

210 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 116.

211 *Id.*, at ¶ 174; Report of the High Commissioner under Human Rights Council Resolution S-15/1*, *supra* note 139, at ¶ 53.

212 *Attacks on Medical Personnel Causing Increasing Concern*, WMA, 17 Mar. 2011, [http://www.wma.net/en/40news/20archives/2011/2011_02/index.html.pdf?print-media-type&footer-right=\[page\]/\[toPage\]](http://www.wma.net/en/40news/20archives/2011/2011_02/index.html.pdf?print-media-type&footer-right=[page]/[toPage]).

213 ICESCR, *supra* note 64, at art. 12.

214 Committee on Economic, Social, and Cultural Rights, General Comment on Article 12, ¶ 34, E/C.12/2000/4.

215 ICESCR, *supra* note 64, at arts. 2(2), 12(2)(d).

216 Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, 12 Aug. 1949, 6 U.S.T. 3114, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of the Armed Forces, art. 3, 12 Aug. 1949, 6 U.S.T. 3217, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, art. 3, 12 Aug. 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 3, 12 Aug. 1949, 6 U.S.T. 3516, 75 U.N.T.S. 287.

217 Geneva Convention Protocol II, *supra* note 55, at art. 12, 8.

218 Customary International Humanitarian Law, Volume I: Rules, *supra* note 59, at Rules 79-104.

Libya and International Criminal Justice: UN and ICC Involvement

The International Criminal Court in Libya

The United Nations Security Council unanimously passed Resolution 1970 on 26 February 2011, which referred the situation in Libya to the International Criminal Court.²¹⁹ Because Libya is not a state party to the Rome Statute, the treaty that established the Court, a Security Council referral was the only avenue through which Libya could come under the Court's jurisdiction.

Two key, general issues in international criminal law that either have been taken up by the ICC or may come before the Court in the near future are crimes against humanity and war crimes. Defined in Article 7 of the Rome Statute, crimes against humanity include the commission of any one of 11 specific offenses when committed as part of a widespread or systematic attack against a civilian population, when the alleged perpetrator had knowledge of the attack.²²⁰ While the term *crimes against humanity* is often used interchangeably with that of war crimes, it is important to note the differences between the two concepts and how each is being utilized in the context of international justice in Libya. For example, crimes against humanity must be either widespread or systematic, but a war crime may be only one specific event.²²¹ Article 8 of the Rome Statute defines war crimes not only as the perpetration of enumerated crimes but also as the violation of specific rules of armed conflict as outlined in the Geneva Conventions.²²²

The Court relies on complementarity, or the reliance on local legal systems as a primary method to seek accountability for serious crimes. The ICC is a court of last resort, which means that the Court only has jurisdiction over situations when the State concerned is unwilling or unable to genuinely investigate or prosecute offenders.²²³

Crimes Against Humanity

Investigators from the Office of the Prosecutor of the ICC initiated an investigation pursuant to the Security Council referral on 26 February 2011. While the investigators did not take statements from witnesses in Libya out of concern for the security of potential witnesses, they interviewed dozens of individuals in at least 10 countries.²²⁴ Based on this investigation, ICC Chief Prosecutor Luis Moreno-Ocampo applied for arrest warrants on 16 May 2011 for Muammar Abu Minyar Qaddafi, his son Saif Al Islam Qaddafi, and Libya's intelligence chief Abdullah Al Sanousi. The Prosecutor applied for warrants based on crimes against humanity allegedly commit-

219 S.C. Res. 1970, ¶ 6, U.N. Doc. S/RES/1970 [26 Feb. 2011].

220 The eleven crimes listed under Article 7 of the Rome Statute include: "murder; extermination; enslavement; deportation or forcible transfer of population; imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; torture; rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity; persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court; enforced disappearance of persons; the crime of apartheid; other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health." Rome Statute of the International Criminal Court, *supra* note 68, at art. 7.

221 The Rome Statute's definition of crimes against humanity includes "widespread or systematic" as an element of the crime, but the Statute's definition of war crimes does not include this requirement. See Rome Statute of the International Criminal Court, *supra* note 68, at arts. 7, 8.

222 *Id.*, at art. 8.

223 Rome Statute of the International Criminal Court, *supra* note 68, at art. 17.

224 Luis Moreno-Ocampo, The Office of the Prosecutor of the International Criminal Court, Statement to the United Nations Security Council on the situation in the Libyan Arab Jamahiriya, pursuant to UNSCR 1970 [2011], available at <http://www.icc-cpi.int/NR/rdonlyres/0BDF4953-B5AB-42E0-AB21-25238F2C2323/0/OTPSStatement04052011.pdf>.

ted in Libya since 15 February 2011.²²⁵ The Court issued these three warrants on 27 June 2011 for these individuals' alleged responsibility for murder and persecution of civilians as crimes against humanity. While the warrants relate to these two crimes, the Prosecutor presented the Court with additional information regarding torture, arbitrary arrest, and disappearance.²²⁶ The targeted nature of the warrants does not reflect the more general level of criminality on the part of Qaddafi and other indicted leaders as documented firsthand by PHR.

The text of the warrants refers to crimes of murder and persecution that were allegedly committed after 15 February 2011 "until at least" 25 or 28 February 2011.²²⁷ The limited timeframe of crimes referenced in the warrants does not indicate that crimes only were committed between those dates. PHR's research revealed a variety of crimes over a wider time span. The warrants were likely drafted to focus on the crimes for which there was at the time the strongest evidence, and it follows that the specific instances listed in the Prosecutor's application for the warrants may reflect prosecutorial strategy more than a comprehensive description of crimes. Charges other than those referenced in the warrant may be added by the Prosecutor at a later date.²²⁸

War Crimes

Unlike international human rights law, which applies at all times, international humanitarian law only applies in times of armed conflict. Therefore, violations of international humanitarian law, or war crimes, can only occur in situations of armed conflict. Whether a situation can be considered a non-international armed conflict turns on two points:

1. the organization of forces engaged in hostilities against a government, and
2. the protracted nature of the armed violence.²²⁹

Such a definition creates a distinction between sustained hostilities between an organized group and a government and random acts of violence or banditry.

The International Commission of Inquiry established by the Human Rights Council found that the situation in Libya met both elements of the definition of armed conflict: the Commission confirmed that a non-international armed conflict began in Libya by or around 24 February 2011 and in its report to the Council noted that both international humanitarian law and international human rights law were both applicable to the situation in Libya after that time.²³⁰

Elements of international humanitarian law that come into play during a non-international armed conflict are Common Article 3 and Additional Protocol II of the Geneva Conventions. Common Article 3, which refers to Article 3 of all four Geneva Conventions, calls for civilians and members of the armed forces who are sick or detained to be treated humanely and without

225 Office of the Prosecutor, International Criminal Court, Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Qaddafi, Saif Al-Islam Qaddafi and Abdullah Al-Senussi, ICC-01/11 (16 May 2011).

226 The Pre-trial Chamber's public decision on the Prosecutor's application for warrants mentions information included in the application about the arbitrary arrest of those suspected of acting against the government (e.g. paragraphs 20, 28, 34, 43, 44, 45, 53, 56), torture of individuals in detention or of those suspected of acting against the government (e.g. paragraphs 20, 46, and 47), and the disappearance of protesters and other individuals (e.g. paragraph 20). Decision on the Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Qaddafi, Saif Al-Islam Qaddafi and Abdullah Al-Senussi, International Criminal Court, ICC-01/11 (27 Jun. 2011).

227 International Criminal Court, Warrant of Arrest for Muammar Mohammed Abu Minyar Qaddafi, ICC-01/11 (27 Jun. 2011); International Criminal Court, Warrant of Arrest for Saif Al-Islam Qaddafi, ICC-01/11 (27 Jun. 2011); International Criminal Court, Warrant of Arrest for Abdullah Al-Senussi, ICC-01/11 (27 Jun. 2011).

228 There is speculation that the Chief Prosecutor may add more charges to the existing arrest warrants after his public statements regarding the use of rape as a weapon of war. Karen Leigh, *Rape in Libya: The Crime that Dare Not Speak its Name*, Time, 9 Jun. 2011, <http://www.time.com/time/world/article/0,8599,2076775,00.html>.

229 *Prosecutor v. Tadic*, Case No. IT-94-1, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, § 70, (Int'l Crim. Trib. for the Former Yugoslavia 2 Oct. 1995).

230 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 4.

discrimination, and specifically prohibits violence to life and person, hostage taking, outrages upon personal dignity, and extrajudicial executions.²³¹ Common Article 3 also refers to the necessary collection and care of the wounded and sick.²³² Additional Protocol II to the Geneva Conventions elaborates on the protections contained in Common Article 3 and includes additional measures such as those that protect children, strengthen the protection of the wounded, sick, and medical personnel, and forbid attacks on civilians and objects indispensable to civilian survival.²³³ Libya has ratified all four Geneva Conventions and Additional Protocols I and II, and is therefore bound by their terms. In a non-international armed conflict, all parties to the conflict must abide by Common Article 3, which has been recognized by the International Court of Justice as “elementary considerations of humanity.”²³⁴ Elements of both Common Article 3 and Additional Protocol II are also recognized by the International Committee on the Red Cross as binding customary international humanitarian law.²³⁵

The report of the International Commission of Inquiry also noted that another armed conflict, one of an international nature, came into existence when external military action began pursuant to Security Council Resolution 1973.²³⁶ Note that both international and non-international armed conflicts trigger the applicability of international humanitarian law, but the language of Security Council Resolution 1970 ensured that some participants in the international aspect of the conflict would not face prosecution before the International Criminal Court. In referring the situation in Libya to the Court, the Security Council exempted nationals of states not party to the Rome Statute from the Court’s jurisdiction.²³⁷ This limitation means that countries such as the United States do not fall under International Criminal Court jurisdiction regarding the situation in Libya. Given the restricted nature of international intervention thus far, any warrants for war crimes coming from the Court will likely be directed at either the Qaddafi regime or leaders of rebel groups. In fact, statements from Ocampo regarding Qaddafi’s use of rape as a weapon of war imply that he and other regime leaders may be the most likely targets of a future war crimes prosecution at the ICC.²³⁸

At the time of this report’s publication, the Prosecutor had not yet applied for additional warrants for charges of war crimes, but Ocampo’s public references to Qaddafi’s alleged use of rape as a weapon of war indicates he may be willing to add war crimes charges to the earlier charges of crimes against humanity.

As of the publication of this report, there was no substantial evidence from PHR’s research, UN reports, or other investigations that demonstrate acts of genocide in Libya. If evidence of such crimes were to appear in the future, the Office of the Prosecutor at the International Criminal Court could apply for warrants on the basis of these new charges.

231 Geneva Conventions Common Article 3, *supra* note 217.

232 *Id.*

233 Geneva Convention Protocol II, *supra* note 55.

234 Military and Paramilitary Activities in and Against Nicaragua (Nicar. V. U.S.), 1986 I.C.J. 14, ¶ 218.

235 See, e.g., Customary International Humanitarian Law, Volume I: Rules, *supra* note 59.

236 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 4.

237 The Resolution stated that “nationals, current or former officials or personnel from a State outside the Libyan Arab Jamahiriya which is not a party to the Rome Statute of the International Criminal Court shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in the Libyan Arab Jamahiriya established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State.” S.C. Res. 1970, ¶ 6, U.N. Doc. S/RES/1970 [26 Feb. 2011].

238 *Evidence Emerging of Use of Rape as Tool of War in Libya*, U.N. News Centre, 8 Jun. 2011, <http://www.un.org/apps/news/story.asp?NewsID=38664&Cr=libya&Cr1=>; Ed Pilkington, *Qaddafi Investigated by ICC Over Promoting Rape as War Policy*, The Guardian, 8 Jun. 2011, <http://www.guardian.co.uk/world/2011/jun/08/Qaddafi-investigated-icc-rape-policy>.

Qaddafi regime officials have documented allegations of war crimes perpetrated by rebel forces in Libya. Physicians for Human Rights was unable to confirm such reports as security concerns prevented investigators from interviewing pro-Qaddafi forces or civilians in Qaddafi-controlled areas outside Misrata.

The UN reported that opposition forces tortured and subjected to forms of ill-treatment a number of detained foreign nationals in Libya, following interviews with detained foreign nationals from countries including Niger, Chad, Syria, and Algeria.²³⁹ The UN also concluded that some opposition forces treated migrant workers inhumanely,²⁴⁰ documenting an extrajudicial killing of Chadian nationals “arrested on the basis of their ethnicity”²⁴¹ and physical abuse of a Sudanese national reportedly by opposition forces at a security checkpoint in Misrata.²⁴² The majority of rebel-perpetrated violations against migrant workers that the UN documented occurred immediately following the opposition takeover of Benghazi on 19 February.²⁴³

The UN reported that rebel troops may have raped women during town raids in Ajdabiya, Al-Marj, and Benghazi, but could not verify individual reports of rape.²⁴⁴ After Human Rights Watch reported that opposition forces burned homes, damaged civilian property, and pillaged medical equipment from a polyclinic in Rayayinah as well as a hospital in al-Awaniya in early July after capturing both towns,²⁴⁵ the opposition-run Military Council of the west region announced that it would investigate Human Rights Watch’s allegations.²⁴⁶ Residents of towns outside Tripoli reported that rebel fighters burned homes and stole food, furniture, and animals from civilians.²⁴⁷

As of mid-August, an increasing number of civilian militia groups and gangs opposing Qaddafi began operating in rebel-controlled areas as entities distinct from official opposition forces,²⁴⁸ underscoring the need to differentiate between crimes committed by these gangs and possible war crimes committed by opposition military.

Legal discussion

According to the UN, alleged crimes by opposition forces do not amount to “widespread or systematic attacks,” and as a result would not qualify as crimes against humanity.²⁴⁹ Because the entire situation in Libya was referred to the ICC, the definitions of war crimes and crimes against humanity in the Rome Statute would apply to opposition forces as well as Qaddafi’s forces. The International Committee of the Red Cross has analyzed key aspects of international humanitarian law and has found that many elements rise to the level of customary international

239 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 127-129.

240 *Id.*, at ¶ 261.

241 *Id.*, at ¶ 206.

242 *Id.*

243 *Id.*

244 *Id.*, at ¶ 217-219.

245 Human Rights Watch, *Libya: Opposition Forces Should Protect Civilians and Hospitals*, 13 Jul. 2011, <http://www.hrw.org/en/news/2011/07/13/libya-opposition-forces-should-protect-civilians-and-hospitals>.

246 Military Council of the west region, *Reply to Statement of Human Rights Watch on July 13, 2011 regarding claims of human rights abuses in areas under the Libyan Revolutionaries Controls and the request to protect of civilians and their property in some areas*, 19 Jul. 2011, <http://feb17.info/wp-content/uploads/2011/07/Zentan-1.jpg>.

247 David D. Kirkpatrick and C.J. Chivers, *Tribal Rifts Threaten to Undermine Libya Uprising*, New York Times, 13 Aug. 2011, <http://www.nytimes.com/2011/08/14/world/africa/14Libya.html?pagewanted=all>.

248 Steven Sotloff, *In Benghazi, a Nostalgia for Gaddafi as Libya’s Rebels Fail to Keep the Peace*, TIME, 16 Aug. 2011, <http://www.time.com/time/world/article/0,8599,2088749,00.html#ixzz1VCv9EK42>.

249 Report of the International Commission of Inquiry, *supra* note 75, *summary*.

humanitarian law.²⁵⁰ The ICRC found that many of the laws discussed in this report would be applicable to armed groups in non-international conflict. PHR calls for a thorough and impartial investigation into all alleged crimes that may have been committed by opposition forces.

Alleged NATO War Crimes

In early June, the Qaddafi government claimed NATO strikes killed 700 civilians and wounded 4,000 since the beginning of NATO's intervention in mid-March, but neither NATO nor other international sources has confirmed these numbers.²⁵¹ The Qaddafi government could not provide evidence of these claims, stating only that the casualties had been spread across the country.²⁵² Qaddafi government authorities, opposition leaders, and international media dispute exact estimates of civilian casualties.²⁵³

Media report casualties due to NATO bombing in cities across Libya. Eighty-five civilians may have been killed in Majer on 9 August,²⁵⁴ and 11 imams may have died in Tripoli on 13 May due to NATO strikes.²⁵⁵ NATO has not verified these accounts and claims that the 85 who died in Majer were Qaddafi soldiers, not civilians.²⁵⁶ Qaddafi's government also alleged that a NATO strike targeted state television satellite dishes and injured 15 people, despite a 2006 Security Council resolution barring attacks on media outlets during armed conflict.²⁵⁷ NATO officials acknowledged that nine civilians were killed in Tripoli on 19 June from a NATO strike that missed its target.²⁵⁸

Qaddafi's government reported excessive collateral damage against civilians as a result of the current NATO offensive, testifying that 3,000 NATO airstrikes resulted in 500 civilian deaths and injuring 2,000 more.²⁵⁹ Such allegations, however, have garnered some doubt among international authorities, given instances of likely fraudulent reporting.²⁶⁰ The UN does not have conclusive evidence that NATO deliberately or systematically targeted civilians.²⁶¹

250 See Customary International Humanitarian Law, Volume I: Rules, *supra* note 59.

251 *Libya Alleges Mass Civilian Deaths in NATO Air Strikes*, RTT News, 1 Jun. 2011, <http://www.rttnews.com/Content/GeneralNews.aspx?id=1636291&SM=1>.

252 *Libya says Nato air raids 'killed 700 civilians'*, BBC News, 31 May 2011, <http://www.bbc.co.uk/news/world-africa-13611132>.

253 Andrew Gilligan, *Libya: Nato air strike 'kills 11 imam'*, The Telegraph, 13 May 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8513402/Libya-Nato-air-strike-kills-11-imams.html>; *NATO denies killing civilians in Libya strike*, Al Jazeera, 25 Jun. 2011, <http://english.aljazeera.net/news/africa/2011/06/201162513183844244.html>.

254 Imed Lamoum, *Libya blasts NATO village 'massacre,' rebels in crisis*, AFP, 9 Aug. 2011, <http://www.google.com/hostednews/afp/article/ALeqM5iEHOMgf54GFGdViCxL-nLS3pr4og?docId=CNG.c23568239de2d2c9560efb10644f622c.651>.

255 Andrew Gilligan, *Libya: Nato air strike 'kills 11 imams'*, The Guardian, 13 May 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8513402/Libya-Nato-air-strike-kills-11-imams.html>.

256 Rami Al-Shaheibi, *NATO: Libya airstrike killed troops, not civilians*, AP, 11 Aug. 2011, <http://www.google.com/hostednews/ap/article/ALeqM5gKEjKx0bB22IW81-NywiqKlIOVJg?docId=8dfaab06752a4b7fac39b9da92a64d1b>.

257 *NATO rejects growing criticism of airstrike against Libyan TV*, AP, 9 Aug. 2011, http://www.washingtonpost.com/world/middle-east/nato-rejects-growing-criticism-of-airstrike-against-libyan-tv/2011/08/09/gIQAeykR4_story.html.

258 *NATO acknowledges civilian casualties in Tripoli strike*, NATO, 19 Jun. 2011, http://www.nato.int/cps/en/natolive/news_75639.htm; Nick Hopkins, *Libya: Nato admits civilian deaths in Tripoli air raid*, The Guardian, 20 Jun. 2011, <http://www.guardian.co.uk/world/2011/jun/19/nato-libya-strike-civilian-deaths>.

259 The UN Commission of Inquiry in Libya received reports from the Qaddafi government that: "NATO launched about 3,000 airstrikes on several civilian and military targets in Libya. According to the same reports, these strikes resulted in the death of 500 civilians and 2,000 injured. The same reports stated that NATO had targeted schools, universities, mosques, and others civilian locations. According to the same sources, 56 schools and three universities were directly hit by these strikes." Report of the International Commission of Inquiry, *supra* note 75, at ¶ 232.

260 Libyan authorities reported a young female car crash victim to the media as a casualty of NATO air strikes. *Libyan girl 'hurt in Nato strike' was actually injured in a car crash*, Metro, 7 Jun. 2011, <http://www.metro.co.uk/news/865535-libyan-girl-hurt-in-nato-strike-was-actually-injured-in-car-crash>.

261 Report of the International Commission of Inquiry, *supra* note 75, at ¶ 233.

International humanitarian law prohibits unnecessary civilian deaths in times of conflict²⁶² as well as the deliberate targeting of civilian objects.²⁶³ Failure to adhere to these international laws would constitute a war crime.²⁶⁴ Alleged war crimes by any group must be independently investigated and any perpetrator must be held accountable. While Security Council Resolution 1970 states that nationals of states not party to the Rome Statute of the ICC would not be subject to the Court's jurisdiction over the situation in Libya,²⁶⁵ many NATO member states are also party to the Rome Statute. Nationals from states party to the Rome Statute therefore may fall under the Court's jurisdiction and may be subject to future investigation and/or prosecution. PHR affirms that all claims of civilian deaths due to NATO bombing should be thoroughly and impartially investigated.

Conclusions and Policy Recommendations

The recent attacks on civilians documented in this report violate human rights treaties and international humanitarian law, and place Qaddafi's government in breach of its international legal obligations.

Implications for the United States

The US maintained a policy of engagement with Libya since 2003, when Libya abandoned its nuclear program,²⁶⁶ accepted responsibility for actions related to the Pan Am 103 bombing,²⁶⁷ and agreed to pay reparation to the families of that bombing.²⁶⁸ Libya's assistance to the U.S. regarding counter-terrorism pursuits also supported this focus on engagement.²⁶⁹ This cautiously friendly policy abruptly ended on 25 February 2011, when President Obama issued Executive Order 13566, which declared a national emergency in Libya, imposed targeted financial sanctions on Libyan officials, froze certain Libyan funds, and included other financial restrictions.²⁷⁰ On 21 March 2011, President Obama notified Congress about US involvement in Libya as required under the War Powers Resolution²⁷¹ and outlined US objectives in Libya.²⁷² The letter detailed US involvement in implementing Security Council Resolutions 1970 and 1973 and cited the humanitarian emergency and the need to protect civilians as the motivation for US involvement. In other fora, President Obama has called for Qaddafi to give up power.²⁷³ On 15 July 2011,

262 Geneva Convention Protocol I, *supra* note 111, at art. 57.1(a)(i)(iii)(iii).

263 Geneva Convention Protocol I, *supra* note 111, at arts. 52.1.,2.,3.

264 Rome Statute of the International Criminal Court, *supra* note 68, at art. 8.2(b)(i)(ii)(iv).

265 S.C. Res. 1970, ¶ 6, U.N. Doc. S/RES/1970 [26 Feb. 2011].

266 IAEA Press Release, *International Atomic Energy Agency, IAEA Director General to Visit Libya*, 22 Dec. 2003, <http://www.iaea.org/newscenter/pressreleases/2003/prn200314.html>.

267 The Pan Am 103 bombing refers to the bombing of Pan Am flight 103 on 21 Dec. 1988, which killed 270 people. The bombing is also called the Lockerbie bombing because the plane crashed in Lockerbie, Scotland. Libya formally accepted responsibility for the bombing in a letter to the UN Security Council on 15 Aug. 2003. Permanent Mission of the Libyan Arab Jamahiriya, Letter dated 15 Aug. 2003 from the Chargé d'affaires of the Permanent Mission of the Libyan Arab Jamahiriya to the President of the Security Council, U.N. Doc. S/2003/818 [15 Aug. 2003].

268 Libya announced arrangements for the payment of compensation through a special fund to families of the Pan Am 103 bombing in its 15 Aug. 2003 letter to the Security Council. *Id.*

269 *U.S. to Renew Diplomatic Relations with Libya*, MSNBC, 15 May 2006, http://www.msnbc.msn.com/id/12799651/ns/world_news-mideast_n_africa/t/us-renew-diplomatic-relations-libya/.

270 Exec. Order No. 13566, 76 Fed. Reg. 11315-8 [15 Feb. 2011], <http://www.gpo.gov/fdsys/pkg/FR-2011-03-02/pdf/2011-4753.pdf>.

271 War Powers Resolution, 50 U.S.C. § 1543(a).

272 Letter from President Obama to Speaker of the House of Representatives and President Pro Tempore of the Senate, 21 Mar. 2011 <http://www.whitehouse.gov/the-press-office/2011/03/21/letter-president-regarding-commencement-operations-libya>

273 Massimo Calabresi, *Obama Refines Talk of Libyan Intervention*, Time, 4 Mar. 2011, <http://www.time.com/time/nation/>

the United States formally recognized the Transitional National Council as the legitimate authority in Libya.²⁷⁴

The United States provides humanitarian assistance both in Libya and to neighboring countries. The United States Agency for International Development (USAID) and Department of State humanitarian funding for Libya totaled near \$84 million in FY 2011; these funds have been dedicated to various pressing needs including health care, the destruction of landmines and unexploded ordnance, and emergency relief.²⁷⁵

On 4 August 2011, President Obama announced the creation of an interagency Atrocities Prevention Board that will allow the US to respond proactively and effectively to emerging crises and prevent mass atrocities. The President also announced visa bans for individuals responsible for violating human rights. Such developments indicate that this Administration is prioritizing human rights in its foreign policy, and the US response to ongoing crimes in Libya should reflect this human rights framework.

Policy recommendations for the United States:

- Increase humanitarian assistance to displaced persons from Libya in Tunisia, Egypt, and other countries surrounding Libya and provide expanded humanitarian aid inside Libya if the security situation so allows.
- Increase funding for medical care, including medical supplies, staff, and training.
- Increase funding for the evacuation of third-country nationals from Libya.
- Cooperate with the International Criminal Court and the Transitional National Council to effectuate the arrest warrants against Muammar Qaddafi, Saif Al Islam Qaddafi, and Abdullah Al Sanousi, and any individuals to be subject to future indictments at the Court.
- Cooperate with the Office of the Prosecutor of the International Criminal Court by offering intelligence and other relevant information to the Court.
- Provide intelligence on financial matters to other countries so that they too can freeze assets of Qaddafi and other Libyan officials.
- Ensure that the Atrocities Prevention Board is fully resourced and that it has the necessary standing within the Administration to ensure effective and timely implementation of its recommendations. Allow the members of the Board to cooperate with human rights groups and members of civil society in order to gain information about developments relating to mass atrocities.
- Support legislative efforts in the US Congress, including the Medical Neutrality Protection Act of 2011 (H.R. 2643), introduced by Representatives Jim McDermott (D-WA) and Walter Jones (R-NC), so that the US may more effectively respond to violations of medical neutrality.

Implications for Libyan opposition forces

All parties to armed conflict must adhere to international humanitarian law and international human rights law. Alleged crimes committed by opposition forces must be thoroughly and impartially investigated and any perpetrators must be held accountable. Leaders of the opposition forces should ensure that those involved in the conflict abide by these non-derogable norms.

[article/0,8599,2057191,00.html](http://reliefweb.int/sites/reliefweb.int/files/resources/libya_ce_fs37_07-28-2011.pdf).

274 U.S. Recognizes Libyan Rebels' Authority, CNN, 15 Jul. 2011, http://articles.cnn.com/2011-07-15/world/libya.us.recognition_1_libyan-rebels-transitional-national-council-misrata?_s=PM:WORLD.

275 USAID, U.S. Government (USG) Humanitarian Fact Sheet #37, Fiscal Year (FY) 2011, Libya – Complex Emergency, 28 Jul. 2011, available at http://reliefweb.int/sites/reliefweb.int/files/resources/libya_ce_fs37_07-28-2011.pdf.

For further discussion of alleged crimes by opposition forces, see discussion *supra*, at “Alleged Rebel Forces Crimes”, page 33 this document.

Policy recommendations for Libyan opposition forces:

- Abide by all norms of international human rights law and international humanitarian law, including the principles of distinction and proportionality.
- Immediately cease all attacks on civilians and end any violations of medical neutrality.
- Investigate any and all alleged attacks on civilians by rebel forces and hold perpetrators of any abuse accountable.
- Respect medical facilities, transport, and supplies, and prohibit acts that interfere with individuals’ access to medical care.

Implications for the Transitional National Council

The Transitional National Council is the political body that represents the Libyan opposition to Qaddafi.²⁷⁶ The TNC has been recognized by several dozen countries, including the United States, as the legitimate governing authority in Libya.²⁷⁷ As the interim authority, the TNC will need to guide Libya through a political transition to democracy.

Policy recommendations for the Transitional National Council:

- Cooperate with the International Criminal Court regarding the arrest of Muammar Qaddafi, Saif Al Islam Qaddafi, Abdullah Al Sanousi, pursuant to the Court’s warrants.
- Cooperate with the Court in the arrest of any future individuals subject to warrants of the Court. Preserve any and all evidence of crimes in Libya in order to facilitate the work of the ICC.
- Develop and implement prosecutions of human rights violators that reflect international legal standards. Strengthen Libyan legal institutions so that they can fairly implement accountability measures for perpetrators of human rights violations.
- Ensure that perpetrators of human rights violations will be held accountable for their crimes and will not play leading roles in the upcoming political transition. Develop fair and transparent standards and procedures to vet individuals, including members of rebel and Qaddafi forces, to be integrated into new government and security structures. The vetting process should include remitting weapons and information on weapons caches to the transitional authorities.
- Support a peaceful transition from conflict that will bring perpetrators of human rights violations to justice. Enforce the rule of law and strongly oppose acts of vigilante justice.
- Allow international observers to monitor a transition of power.
- Adhere to the principles of democracy, transparency, and accountability during the political transition.
- Consider workable reparations schemes to rebuild the lives of individuals and communities harmed by human rights violations.

²⁷⁶ *Founding Statement of the Interim Transitional National Council*, The Libyan Interim National Council, 5 Mar. 2011, <http://www.ntclibya.org/english/founding-statement-of-the-interim-transitional-national-council/>.

²⁷⁷ Marc Champion and Joe Parkinson, *U.S. Recognizes Libyan Rebel Group*, Wall Street Journal, 16 Jul. 2011, <http://online.wsj.com/article/SB10001424052702304203304576447551762812720.html>.

Implications for Muammar Qaddafi and loyalist forces

This report details the crimes of Muammar Qaddafi and his troops, including forced disappearance, summary execution, torture, indiscriminate attacks on civilians, and violations of medical neutrality. These crimes violate international human rights law and international humanitarian law. Evidence of these crimes has been corroborated by the Human Rights Council's investigation as well as the Office of the Prosecutor of the International Criminal Court. The ICC has issued arrest warrants for Qaddafi and others based on evidence of murder and persecution.

Policy recommendations for Muammar Qaddafi and loyalist forces:

- Immediately cease all attacks on civilians, including extrajudicial killings, rape, torture, forced disappearance, and attacks on medical facilities, professionals, transport, supplies, and patients.
- Call on supporters and troops to put down their arms and surrender immediately under international supervision.
- Submit to the warrants issued by the International Criminal Court.

Implications for NATO

NATO assumed primary command and control over coalition military efforts in Libya after initial control by the United States. The primary objective of NATO involvement in Libya is to protect civilians from Qaddafi's attacks, which includes enforcing the arms embargo and no-fly zone from United Nations Security Council resolutions 1970 and 1973, respectively.

Policy recommendations for NATO:

- Take extreme caution to mitigate collateral damage to civilians, including those used by Qaddafi's and loyalist forces as human shields.
- Launch impartial and independent investigations into any credible allegation of crimes committed by NATO forces, including alleged attacks on civilians.

Implications for the International Criminal Court

On 27 June 2011, the ICC issued arrest warrants for Muammar Abu Minyar Qaddafi, Saif Al Islam Qaddafi, and Abdullah Al Sanousi. The Court's Chief Prosecutor, Luis Moreno Ocampo, applied for the warrants after an investigation of crimes against humanity and war crimes in Libya.

Policy recommendations for the International Criminal Court:

- Continue to liaise with non-governmental organizations and other civil society groups to collect information about continuing crimes in Libya.
- Apply for additional warrants for individuals and/or add charges to existing indictments if requisite evidence becomes available.
- Because the ICC investigators did not gather information inside Libya for their application for arrest warrants, investigators should use the evidence collected by PHR and other independent organizations to investigate these and other reports of war crimes and crimes against humanity.

The United Nations Security Council unanimously adopted Resolution 1970 on 26 February 2011, which established an arms embargo to Libya, referred the situation in Libya from 15 February 2011 onwards to the International Criminal Court, and enacted targeted financial and travel sanctions on Libyan leaders. On 17 March 2011, the Security Council adopted Resolution 1973, which demanded an immediate cease-fire and an end to attacks on civilians, authorized member states to enforce a no-fly zone, and expanded targeted sanctions on Libyan leaders.

Policy recommendations for the United Nations Security Council:

- Ensure that any humanitarian aid effort for the people of Libya authorized via the Security Council is transparent and equitable.
- Authorize an investigation of alleged NATO violations of international humanitarian law.
- Deploy international impartial observers to monitor the political transition in Libya.
- Ensure that future Security Council action regarding Libya takes into account the interests of victims of human rights violations.

Implications for the international community

Active assistance from the international community is necessary for Libya to facilitate a peaceful transition to political stability. The European Union, Arab League, African Union, and Libya's immediate neighbors must aid those fleeing violence, condemn the continued criminality of the Qaddafi regime, and take positive steps to assist with Libya's efforts to seek peace, justice, and reconciliation. The nations surrounding Libya have seen an influx of individuals fleeing Libya and a corresponding increase in humanitarian needs. According to USAID figures at the end of July 2011, approximately 277,000 people had crossed into Tunisia, nearly 200,000 had crossed into Egypt, nearly 14,000 had gone to Algeria, over 77,000 had entered Niger, and about 48,000 had gone to Chad.²⁷⁸ Those with the closest geographic connections to Libya must ensure that those fleeing violence have safe refuge and access to necessary services. The European Union also must provide safe refuge to those fleeing Libya, and member states must not turn a blind eye to the violence occurring in Libya. Additional attention and funding must be dedicated to repatriating third-country nationals who are fleeing violence in Libya.

Policy recommendations for the international community:

- Provide international impartial observers to monitor the transition of power in Libya.
- Ensure the UNHCR has the necessary contributions to support its work in Libya.

Policy recommendations for Libya's regional neighbors:

- Cooperate with the UNHCR and humanitarian aid organizations in order to ensure aid reaches those fleeing violence in Libya.
- Offer safe refuge to those fleeing the conflict in Libya.

Policy recommendations for the European Union:

- Fund humanitarian aid efforts to those in Libya and to those who have fled to neighboring countries.
- Offer safe refuge in member states to those fleeing the conflict in Libya.
- Increase funding for the evacuation of third-country nationals from Libya.

²⁷⁸ USAID/ODFA, Libya Program Map, Libya Complex Emergency, 28 Jul. 2011, available at http://www.usaid.gov/our_work/humanitarian_assistance/disaster_assistance/countries/libya/template/maps/fy2011/libya_07282011.pdf.

Policy recommendations for the Arab League:

- Assist a transitional government with achieving political stability, justice for past crimes, and social reparation and reconciliation.
- Support the transition to democratic leadership in Libya.
- Increase funding for the evacuation of third-country nationals from Libya.

Policy recommendations for the African Union:

- Cooperate with the International Criminal Court and facilitate the arrest of indicted Libyan leaders. Encourage countries party to the Rome Statute to adhere to their obligation to arrest indicted individuals if they appear on their territory.

Libya Conflict Timeline

- **15 February 2011:** Libyan families of prisoners killed in 1996 hold protest in Benghazi over incarceration of Fethi Tarbel, a lawyer representing them.²⁷⁹
- **17 February 2011:** Protestors, organized by social media, hold “day of rage” featuring demonstrations commemorating 2006 usage of lethal force against protestors assaulting the Italian embassy.²⁸⁰
- **23 February 2011:** Muammar Qaddafi vows to crush all protests, claiming that demonstrators are led by Islamists and other extreme factions.
- **1 March 2011:** United Nations General Assembly unanimously suspends Libya from Human Rights Council after an estimated 1,000 protestors had been killed by Qaddafi.²⁸¹
- **6 March 2011:** Qaddafi forces attack Misrata for the first time in a series of quick attacks lasting half of the day.²⁸²
- **17 March 2011:** After requests by the Arab League and Libyan rebels, the United Nations Security Council (Resolution 1973) authorizes a no-fly zone over Libya, specifically Benghazi, in order to prevent further casualties (United States operation called “Odyssey Dawn”). Luis Moreno-Ocampo opens ICC investigation on Qaddafi and his entourage.²⁸³
- **24 March 2011:** The United States hands over control of the Libyan no-fly zone to NATO (“Operation Unified Protector”).
- **7 April 2011:** NATO airstrikes accidentally kill 13 rebels in Ajdabiya. This adds to the friendly fire total where the in previous week, 13 rebels including three medical students were killed by coalition forces.²⁸⁴
- **12 April 2011:** Due to reports of stranded migrants in Misrata, the International Organization of Migration begins evacuations by sea.²⁸⁵
- **15 April 2011:** Presidents Barack Obama and Nicholas Sarkozy, as well as Prime Minister David Cameron call for an increased presence in Libya, with more airstrikes and a goal of ultimately removing Qaddafi from power.²⁸⁶ Human Rights Watch announces that Qaddafi forces have been using cluster munitions in Misrata.²⁸⁷
- **23 April 2011:** Save the Children reports that children are being subjected to sexual assault by Qaddafi forces in Libya. The agency, along with other human rights groups, conducts a 13-day investigation into the accusations.²⁸⁸
- **30 April 2011:** NATO airstrikes kill Qaddafi’s youngest son and three grandchildren. The

279 *Clashes Erupt as Libya Braces for “Day of Anger”*, AFP, 16 Feb. 2011, <http://www.google.com/hostednews/afp/article/ALeqM5joXWpcbCKxS02oZgTYyVdWEZPBTA?docId=CNG.603a9efadd0bcd2842eeb2db6ed43c73.101>.

280 *Timeline: Libya’s Uprising Against Muammar Gaddafi*, Reuters, 21 Mar. 2011, <http://www.reuters.com/article/2011/03/21/us-libya-timeline-idUSTRE72K41V20110321>.

281 Bill Varner, *UN General Assembly Suspends Libya from Human Rights Panel*, Bloomberg, 1 Mar. 2011, <http://www.bloomberg.com/news/2011-03-01/un-general-assembly-suspends-libya-from-human-rights-council.html>.

282 Interview with key informant no. 28 in Kerzaz, Libya [9 Jun. 2011].

283 *Security Council Authorizes “All Necessary Measures” to Protect Civilians in Libya*, U.N. News Centre, 17 Mar. 2011, <http://www.un.org/apps/news/story.asp?NewsID=37808>.

284 *Libyan Rebels near Ajdabiya ‘Killed in Nato Airstrike’*, BBC News, 7 Apr. 2011, <http://www.bbc.co.uk/news/world-africa-12997181>.

285 *LIBYA: Timeline of Key Events Since 4 April*, IRIN, 14 Jun. 2011, <http://www.irinnews.org/report.aspx?reportid=92970>.

286 Allegra Stratton, *Obama, Cameron & Sarkozy: No Let-up in Libya Until Gaddafi Departs*, The Guardian, 15 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/15/obama-sarkozy-cameron-libya#history-link-box>.

287 *Libya: Cluster Munitions Strike Misrata*, Human Rights Watch, 15 Apr. 2011, <http://www.hrw.org/en/news/2011/04/15/libya-cluster-munitions-strike-misrata>.

288 David Batty, *Libyan Children Suffering Rape, Aid Agency Reports*, The Guardian, 23 Apr. 2011, <http://www.guardian.co.uk/world/2011/apr/23/libyan-children-suffering-rape?intcmp=239>.

attack prompts assaults by angry Qaddafi Libyans on Western embassies including the burning of the British consulate in Tripoli.²⁸⁹

- **2 May 2011:** Qaddafi forces bomb the city of Misrata, preventing ships carrying humanitarian aid into the city.
- **6 May 2011:** Amnesty International claims that Qaddafi forces committed war crimes in the city of Misrata by indiscriminately using cluster bombs, snipers and artillery in heavily populated civilian areas.
- **16 May 2011:** International Criminal Court Chief Prosecutor Luis Moreno-Ocampo calls for the arrest of Muammar Qaddafi, his son Saif al-Islam and intelligence agency head Abdullah al-Sanussi for crimes against humanity. Moreno-Ocampo claims that Qaddafi had ordered the shooting of unarmed protestors.
- **17 May 2011:** Qaddafi forces fire rockets at rebels near Tunisian border which prompts Tunisia to report the action to the United Nations.²⁹⁰
- **23 May 2011:** Psychologist Siham Sergewa claims that Qaddafi forces used rape as a weapon of war. Siham based her conclusion on a visit to refugee camps on the Libyan-Tunisian border where she collected evidence of rape which she shared with the International Criminal Court.²⁹¹ Andrew Harding of the BBC interviewed Qaddafi soldiers who claimed they had been forced to rape women in Misrata and that it had been a policy of the army.²⁹²
- **29 May 2011:** A survey by Sergew indicates that thousands of Libyans are suffering from PTSD. The ICC corroborates her testimony that rape was used as a weapon of war.
- **1 June 2011:** NATO decides to extend airstrikes for an additional 90 days.²⁹³ UN human rights investigators release a report which alleges that both the Qaddafi regime and rebel forces are guilty of war crimes.²⁹⁴
- **7 June 2011:** Qaddafi government claims that 31 civilians are killed by NATO airstrikes.²⁹⁵
- **8 June 2011:** Qaddafi forces shell Misrata, killing ten rebels.²⁹⁶
- **9 June 2011:** ICC Chief Prosecutor Luis Moreno-Ocampo reports that Qaddafi ordered mass rapes and distributed Viagra-like substances to soldiers.²⁹⁷
- **16 June 2011:** President Obama sends a report to the United States Congress outlining the legal justification of U.S. involvement in Libya.²⁹⁸
- **17 June 2011:** The UN Human Rights Council extended the mandate for investigating abuses in Libya until the end of 2011.²⁹⁹

289 *NATO Strike Kills Qaddafi Son, Sparer Leader*, AP, 30 Apr. 2011, <http://www.cbsnews.com/stories/2011/04/30/501364/main20058730.shtml>.

290 *Libyan Forces Target Rebels Near Tunisian Border*, VOA News, 14 Jun. 2011, <http://www.globalsecurity.org/wmd/library/news/libya/2011/libya-110614-voa01.htm>.

291 Sara Sidner & Amir Ahmed, *Psychologist: Proof of Hundreds of Rape Cases During Libya's War*, CNN, 23 May 2011, <http://edition.cnn.com/2011/WORLD/africa/05/23/libya.rape.survey.psychologist/>.

292 Andrew Harding, *Libya: 'Forced to Rape in Misrata'*, BBC News, 23 May 2011, <http://www.bbc.co.uk/news/world-africa-13502715>.

293 *NATO Blasts Tripoli with Series of Airstrikes*, AP, 2 Jun. 2011, <http://www.foxnews.com/world/2011/06/02/nato-blasts-tripoli-with-series-airstrikes/>.

294 *Libya Conflict: UN Accuses Both Sides of War Crimes*, BBC, 1 Jun. 2011, <http://www.bbc.co.uk/news/world-africa-13622965>.

295 *Libya says NATO attacks on Tripoli kill 31*, Reuters, 7 Jun. 2011, <http://www.reuters.com/article/2011/06/07/us-libya-bombing-tripoli-toll-idUSTRE7565B820110607>.

296 Daa Hadid & Mike Corder, *Gadhafi Strikes Libya Rebels, NATO Pounds Tripoli*, AP, 8 Jun. 2011, available at <http://www.timesleader.com/news/Gadhafi-strikes-Libya-rebels-NATO-pounds-Tripoli-.html>.

297 Ed Pilkington, Xan Rice, Chris Stephen, Richard Norton-Taylor, *Gaddafi faces new ICC charges for using rape as weapon in conflict*, 9 Jun. 2011, <http://www.guardian.co.uk/world/2011/jun/08/gaddafi-forces-libya-britain-nato>.

298 *White House Defends Legality of US Military Action in Libya*, Reuters, 16 Jun. 2011, <http://www.guardian.co.uk/world/2011/jun/16/libya-war-congress-white-house-obama-legality>.

299 *UN Rights Body Extends Mandate of Libya Panel*, AP, 17 Jun. 2011, http://www.dailybulletin.com/ci_18298603

- **18 June 2011:** NATO claims that Qaddafi forces are using mosques and other civilian in order hide military targets.³⁰⁰ Rebels in Misrata claim to possess documents that exhibit war crimes on the part of Qaddafi.³⁰¹
- **19 June 2011:** NATO acknowledges that airstrikes killed a number of civilians in Tripoli.³⁰² Rebels in Derna unearthed a mass grave which they claim shows atrocities committed by Qaddafi's government.³⁰³
- **23 June 2011:** Qaddafi in a speech on state television accused NATO of being murderers for an air strike that killed 19 civilians.³⁰⁴
- **27 June 2011:** The International Criminal Court issues an arrest warrant against Qaddafi, his son Saif al-Islam, and his spy chief Abdullah Senussi, on indictments of committing crimes against humanity.³⁰⁵
- **12 July 2011:** Human Rights Watch condemns accounts of the rebels' pillaging and damaging of businesses, civilian homes, and hospitals in mountain towns recently captured by the rebels, including the town of Al-Qawalish.³⁰⁶
- **20 July 2011:** Five decapitated or brutally disposed corpses in Qaddafi uniforms are found between Zintan and Al-Qawalish. Rebels claim Qaddafi forces killed the men for being suspected as defectors, but investigations are ongoing.³⁰⁷
- **28 July 2011:** Rebel military chief Abdul Fattah Younis, who defected from Qaddafi's government, is killed en route to Benghazi after allegedly being summoned for questioning.³⁰⁸ Circumstances of the death remain unclear, as rebel leaders report different details of the assassination.³⁰⁹
- **5 August 2011:** Rebels claim Qaddafi's youngest son Khamis died in a NATO strike on Zlitan, but the Qaddafi regime refutes these allegations by airing recent footage of him on TV.³¹⁰
- **9 August 2011:** Qaddafi's government reports that a NATO strike over Majer, a small mountain village south of Zlitan, kills 85 civilians, including 33 children.³¹¹ NATO officials deny the claims, stating that the air strikes killed army men, not civilians.³¹²
- **10 August 2011:** The International Committee of the Red Cross issues a report

300 *Nato Says Libya Uses Mosques as Shields*, BBC News, 18 Jun. 2011, <http://www.bbc.co.uk/news/world-africa-13823947>.

301 Joshua Norman, *Report: Documented Proof of Qaddafi War Crimes*, CBS News, 18 Jun. 2011, http://www.cbsnews.com/8301-503543_162-20072301-503543.html

302 *NATO Admits Civilian Deaths in Libya Raid*, Al Jazeera, 19 Jun. 2011, <http://english.aljazeera.net/video/africa/2011/06/201161920139227219.html>.

303 *Secret Graves Found in Libya*, Al Jazeera, 19 Jun. 2011, <http://english.aljazeera.net/news/africa/2011/06/2011618233144981353.html>.

304 *Libya's Gadhafi Slams NATO over Civilian Deaths*, AP, 23 Jun. 2011, <http://www.kyivpost.com/news/world/detail/107329/>.

305 Marlise Simons, *Charges of War Crimes Brought Against Qaddafi*, N.Y. Times, 27 Jun. 2011, <http://www.nytimes.com/2011/06/28/world/africa/28libya.html>.

306 C.J. Chivers, *Libyan Rebels Accused of Pillage and Beatings*, N.Y. Times, 12 Jul. 2011, <http://www.nytimes.com/2011/07/13/world/africa/13libya.html?ref=europe>.

307 Ruth Sherlock, *The Headless Corpse, the Mass Grave and Worrying Questions about Libya's Rebel Army*, The Telegraph, 20 Jul. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8650436/The-headless-corpse-the-mass-grave-and-worrying-questions-about-Libya-s-rebel-army.html>

308 Rania El Gamal, *Libyan rebels say commander killed by allied militia*, Reuters, 29 Jul. 2011, <http://www.reuters.com/article/2011/07/29/us-libya-idUSTRE76Q76620110729>.

309 Chris Stephen & Haroon Siddique, *Libyan rebels fear rift after death of Abdel Fatah Younis*, The Guardian, 29 Jul. 2011, <http://www.guardian.co.uk/world/2011/jul/29/libyan-rebels-rift-death-younis>.

310 *Khamis Gaddafi 'shown alive on Libyan television'*, The Telegraph, 10 Aug. 2011, <http://www.telegraph.co.uk/news/8692827/Khamis-Gaddafi-shown-alive-on-Libyan-television.html>.

311 Herve Bar, *US launches anti-Kadhafi offensive in Africa*, AFP, 9 Aug. 2011, <http://www.google.com/hostednews/afp/article/ALeqM5iEH0Mgf54GFGdViCXL-nLS3pr4og?docId=CNG.c23568239de2d2c9560efb10644f622c.651>.

312 Rami Al-Shaheibi, *NATO: Libya airstrike killed troops, not civilians*, AP, 11 Aug. 2011, <http://www.google.com/hostednews/ap/article/ALeqM5gKEjKx0bB22IW81-NywiqKII0VJg?docId=8dfaab06752a4b7fac39b9da92a64d1b>.

condemning medical neutrality violations in armed conflicts, citing Libya as a prominent example of such violations.³¹³

- **21 August 2011:** Rebels capture Green Square in Tripoli and surround Qaddafi's compound.³¹⁴
- **22 August 2011:** Opposition forces control 85% of Tripoli.³¹⁵ Some 15,000 detainees in Tripoli are released.³¹⁶

313 Mark Tran, *Red Cross brands assaults on medics in conflict zones a 'humanitarian tragedy,'* The Guardian, 10 Aug. 2011, <http://www.guardian.co.uk/global-development/2011/aug/10/red-cross-medical-worker-assaults>.

314 *A Final Surge to Tripoli: Taking Control of the City*, New York Times, 22 Aug. 2011, <http://www.nytimes.com/interactive/2011/08/21/world/africa/libya-graphic.html>.

315 *Rebels say they are gaining ground in Libya; government disputes claim*, CNN, 13 Aug. 2011, <http://edition.cnn.com/2011/WORLD/africa/08/13/libya.war/>.

316 *Libya: timeline of the conflict*, The Telegraph, 22 Aug. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8714379/Libya-timeline-of-the-conflict.html>.

Official Libyan Military Document Obtained by PHR: Prohibits Vehicles Carrying Supplies, Fuel, and Other Services from Entering Misrata

الجماهيرية العربية الليبية الشعبية الاشتراكية العظمى

الشعب المسلح
اللجنة العامة المؤقتة للدفاع
منطقة مصراته الدفاعية الحدودية

الموضوع : منع مرور سيارات
ملف رقم : م.ص.د / 8 / 1
التاريخ : 28 / صفر / 1379 هـ
الموافق : 2011 / 3 / 4 ف

التنصر او الاستشهاد

التي / تشكيل ابو منيار المقاتل
بوابة كعام
بوابة الدافنية

يمنع منعاً باتاً دخول جميع سيارات التموين والوقود والخدمات الأخرى إلى مدينة مصراتة من جميع البوابات ونقاط التفتيش .
على ان يتم تسليم السلع التموينية إلى السلع التموينية زليتن بمستندات وواصلات تسليم .
والوقود او الزيوت تسلم إلى القاطع الدفاعي الحدودي الاول .

اجراءاتكم الفورية بالخصوص

يوسف أحمد البوحرر
أمر منطقة مصراتة الدفاعية الحدودية
ورئيس الغرفة الأمنية الرئيسية زليتن

صورة منه إلى :-
• الغرفة الأمنية بزليتن / للعلم
• دائرة استخبارات مصراتة / للعلم
• القاطع الدفاعي الحدودي الاول / للعلم
• ملف المعاملة
للحفظ

تعميم على جميع وحدات الإقليم
والجارات الداخلة عليه
اللواء

(Translation on next page)

English Translation:

The Socialist People's Libyan Arab Jamahiriya

The Armed People
The General Transitional Committee for Defense
Misrata Border Defensive Area

Subject: Prohibition on Vehicular Movement
File No.: M.S.D/8/51
Date: 3/4/2011

To: Abu Menyar Fighting Formation
Kiam Gate
Dafniya Gate

Vehicles carrying supplies, fuel, and other services are strictly prohibited from entering the city of Misrata from all gates and checkpoints. Supplies should be delivered with documentation and delivery receipts to Zlitan Supply Department. Fuel and oil shall be delivered to the First Border Defensive Sector.

Proceed immediately in this matter.

Major General
Yousif Ahmed Buhajar
Commander, Border Defensive Area
Chief of the Main Security Division of Zlitan

CC:
Zlitan Security Division: NB
Intelligence Department of Misrata: NB
The 1st Defensive Bordering Sector: NB
Case file: for retention

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