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## **Libya: Q&A on an International Commission of Inquiry**

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### **Introduction**

Human rights conditions in Libya remain precarious as the non-international armed conflict between the eastern-based armed group known as the Libyan National Army (LNA) and the Tripoli-based, internationally recognized Government of National Accord (GNA) that began in April 2019 enters its 10<sup>th</sup> month and systemic human rights violations, including against migrants, continue unabated.

Intermittent armed conflicts and political rifts since 2011 have had a devastating effect on civilians. Armed groups have been committing human rights crimes with impunity. The 2014 conflict led to the political division of the country, which in turn prevented an institution-building process.

In April 2019, the LNA, under the command of Khalifa Hifter, launched an attack against armed groups affiliated with the GNA, in an effort to ‘rid Tripoli of terrorists and militias,’ and take control of the capital. As of December 2019 the ensuing armed conflict had killed thousands, including at least 284 civilians, [according to the UN Mission in Libya](#) (UNSMIL).

Rival armed groups, particularly the LNA and their allies, who have superior air power, have carried out hundreds of drone and air strikes in and around Tripoli since the start of the conflict, killing and displacing civilians. The fighting has caused internal displacement of at least 150,000 people, and shuttered 220 schools, affecting the schooling of at least 116,000 children.

Despite multiple UN-led attempts to promote a ceasefire and negotiations for a political settlement, parties to the conflict and their international backers have yet to back down. During the latest attempt for ‘de-escalation,’ Germany initiated the “Berlin process” kicking off with a conference in January 2020. International backers of the local conflict parties and other foreign governments including the UAE, Russia, Turkey, China, US, Italy, France and Egypt signed a 55-point statement of intent to support a peace deal and a permanent ceasefire. At writing, intense fighting remained ongoing.

In addition to the conflict-related abuses, Human Rights Watch has documented other systematic violations, including arbitrary detention, enforced disappearances and torture. Widespread abuses

against migrants and asylum seekers by smugglers and the GNA-linked coast guard and prison authorities have reached horrifying levels of ill-treatment and inhumane detention conditions.

### **Who are the parties to the conflict in Libya?**

There are two major opposing Libyan parties to the conflict, each supported by one or more foreign countries. On the one hand, there is the eastern-based armed group known as the Libyan National Army, under the command of Khalifa Hifter, affiliated with the non-recognized Interim Government. The LNA and Interim Government are however recognized by the House of Representatives, the country's sole legislative authority.<sup>1</sup> The LNA is supported by multiple armed groups from the east and west of the country, including along the western Libyan coast from the towns of Sebratha and Sorman, and from Tarhouna. Militias with a strict Salafist Islamist agenda from eastern Libya also support the LNA.

The LNA has received military support from the [United Arab Emirates \(UAE\) and Jordan](#) in violation of the Libya arms embargo<sup>2</sup> according to a UN report. The UAE, now also a party to the conflict, operates a military airbase in eastern Libya. The UAE is now a party as, in addition to supplying weapons and ammunition to the LNA, UAE fighter warplanes and armed drones operate in support of the LNA. Some of the strikes [reportedly conducted by the UAE](#) included an attack in July 2019, against a migrant center in Tajoura near Tripoli, killing at least 50 civilians. Foreign fighters from [Sudan and Chad](#) and [Russian fighters](#) from a private security company also reportedly support the LNA.

On the opposing side are the Tripoli-based internationally recognized Government of National Accord (GNA) and affiliated armed groups from western Libya, including from Tripoli and Misrata. Turkey, now also a party to the conflict, is reportedly the main foreign backer of the GNA after having [signed two memorandums of understanding in late 2019](#) that outline maritime and security cooperation between Turkey and the GNA. Turkey is now a party, as [Turkey reportedly](#) supports the GNA with [weapons, armored vehicles](#) and armed drones and reportedly

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<sup>1</sup> The House of Representatives was elected in July 2019 as a 200-seat parliament, to replace the interim General National Congress (GNC). Due to boycotts and insecurity, only 188 seats were filled. Following their election, around 158 of the new members of parliament convened in Tobruk, in the east, citing security fears in Tripoli. Several members boycotted the move. In November 2014, the Libyan Supreme Court issued a ruling, declaring unconstitutional an amendment to the Constitutional Declaration, which paved the way for the House of Representative's election law. The elected parliament rejected the Supreme Court decision, and some members of the former legislature, the GNC, reconvened claiming to be the legitimate legislature and demanded the dissolution of the House of Representatives. The GNC was eventually dissolved and the HOR remains the sole legislative authority.

<https://www.hrw.org/world-report/2015/country-chapters/libya>

<sup>2</sup> The Security Council Committee established pursuant to resolution 1970 (2011) sanctions measures imposed by the Security Council that included a two-way arms embargo, travel bans and asset freezes. The arms embargo is binding for all Member States who are required to prevent the sale or supply to Libya of arms and related materiel of all types and prohibits the export by Libya of all arms and related materiel. After 2011, the Council modified the embargo on multiple occasions, lastly by resolution 2174 (2014) where the Council reinforced the arms embargo.

<https://www.un.org/securitycouncil/sanctions/1970>

deployed thousands of Turkey-backed Syrian fighters to support the GNA. The GNA also [reportedly contracted foreign fighters](#) from Chad and Sudan to fight on its behalf.

All parties to the conflicts in Libya are obliged to abide by the laws of war. This requires them to take all feasible steps to protect civilians. Certain serious violations of the laws of war, when committed with criminal intent, are war crimes. Those who commit, order, assist, or have command responsibility for war crimes in Libya are subject to prosecution by domestic courts or the [International Criminal Court](#) (ICC), which has a mandate over war crimes, crimes against humanity, and genocide committed there since February 15, 2011.

### **What violations of international law have been reported in Libya?**

The LNA under the command of Hiftar and their backers, including the UAE, have attacked armed groups in Tripoli with artillery, armed drones and fighter jets. Human Rights Watch found during a December 2019 visit to Libya that some of these strikes were disproportionate and indiscriminate, in violation of the laws of war, resulting in the killing and wounding of civilians and destruction of civilian infrastructure. LNA or LNA-affiliated forces have also launched strikes using cluster munitions that are internationally prohibited weapons due to their indiscriminate nature. Since the beginning of the conflict in April 2019, no one from the LNA or affiliated groups have been held to account for these violations.

Groups aligned with the Government of National Accord, for their part, often failed to ensure that there were no civilians present adjacent to military facilities that they have targeted, heightening the risk of civilian harm. They too fall short of their obligations under international humanitarian law to protect civilians.

A [UN Panel of Experts report](#) on Libya from December 2019 stated that the United Arab Emirates, Turkey, Sudan, and Jordan had repeatedly violated the arms embargo on Libya by supplying weapons and fighters to the conflict parties. Transferring weapons and ammunitions to armed groups who have a well-documented history of serious violations risks complicity in war crimes.

Violations associated with the recent military offensive on Tripoli since April 2019, including the unlawful killing of civilians, are a symptom of the widespread impunity that has characterized this conflict. The ongoing conflicts among armed groups throughout the country have also damaged vital civilian infrastructure, including hospitals.

Human Rights Watch has repeatedly documented the plight of several thousand detained migrants and asylum seekers who face inhumane conditions in detention facilities run by the GNA's Interior Ministry and by smugglers and traffickers. They are subjected to forced labor, beatings, and sexual assault. Support by the European Union to Libyan authorities to intercept and return migrants to Libya is instrumental in enabling these abuses. Assistant Secretary General Andrew Gilmour reported to the Human Rights Council during its 40<sup>th</sup> session that migrants are being subject to "[unimaginable horrors](#)." Mr. Gilmour said that in the his 30 years of professional work, reports of sexual violence, torture, and extortion against detained migrants in Libya "were the most harrowing accounts I have ever heard."

Impunity thrives, creating fertile ground for systematic and gross human rights and humanitarian law violations by armed groups, including torture and ill-treatment, rape and other acts of sexual violence, arbitrary arrests and detention, forced displacement, enforced disappearances, and unlawful killings. Some of these crimes may amount to crimes against humanity. A parliament member, Seham Sergewa, remains missing after an armed group with links to the LNA abducted her from her home in Benghazi in July 2019. Sergewa had been outspoken in opposing the LNA assault on Tripoli.

The deliberate targeting of journalists, human rights defenders, lawmakers, state officials, members of the judiciary, prosecutors and lawyers further undermines the rule of law and muzzles free speech.

### **Who has called for an international inquiry into alleged serious crimes in Libya?**

The Office of the High Commissioner for Human Rights (OHCHR) and the Special Representative of the Secretary General (SRSG) and Head of the United Nations Support Mission in Libya (UNSMIL), Ghassan Salamé, have called for the establishment of an investigative mechanism to document violations and abuses in the country.

During the September 2019 Human Rights Council session, Deputy High Commissioner Kate Gilmore highlighted the deteriorating human rights and humanitarian situation and stated that “the High Commissioner strongly supports the establishment of an international body mandated to investigate the full range of violations of international human rights and humanitarian law in Libya.” At the same session, SRSG Salamé also called for the “[Human Rights Council to establish an investigative mechanism, such as a commission of inquiry](#).” In December 2019, OHCHR reiterated the call “for the creation of an investigative mechanism into serious crimes committed in Libya.”

In their statements at the Human Rights Council in September 2019, the European Union called for “comprehensive, independent and credible investigations” to be undertaken by the Human Rights Council. This call was echoed by other States, including Malta and Switzerland. Local, regional and international human rights organizations, in December 2019 also made [a joint call](#) for an international inquiry to document violations in Libya, identify those responsible for them, preserve evidence for use in future criminal proceedings, and publicly report on the human rights situation there.

### **Why is criminal accountability important?**

Investigating and prosecuting individuals implicated in serious violations of international human rights and humanitarian law is an obligation under international law. Holding individuals accountable for human rights abuses and serious crimes is important because it may help deter future violations and promote respect for the rule of law, while also providing a measure of redress for victims and affected communities. It can also promote discipline, professionalism, and

responsible command and control by military and law enforcement officials and improve relations with the civilian population. Authorities on all sides of the Libyan conflict that fail to ensure that those implicated in abuses are credibly investigated and prosecuted where there is sufficient evidence, undermine their standing, and increase the likelihood of international action being taken against them such as travel bans or asset freezes.

Overall, ensuring that those accused of serious crimes are brought to credible justice is vital for a lasting peace in Libya.

### **Why is an international commission of inquiry needed now?**

Through its field work, Human Rights Watch has documented a steady deterioration in the human rights and humanitarian situation in Libya since the beginning of 2019. Insufficient domestic and international efforts to ensure a measure of accountability for past and ongoing serious crimes in Libya have emboldened actors engaged in the armed conflict to commit violations and abuses with impunity. The UN Human Rights Council [shut down its Commission of Inquiry on Libya](#) in 2012, resulting in inadequate public reporting on crimes committed by all sides in Libya. While UNSMIL and OHCHR have published several human rights reports on Libya since 2012 including on violations against migrants, conditions in detention centers, enforced disappearances and conduct of hostilities, they have not done so systematically. Lack of access at different times to parts of Libya such as the south and the east, further contributed to the lack of overall public reporting on human rights conditions.

The Office of the High Commissioner for Human Rights has [highlighted on multiple occasions](#) that the “inability of the justice system [in Libya] to function effectively has led to widespread impunity, particularly for violations and abuses perpetrated by armed groups.”

Domestic courts, affected by political divisions and armed conflict, are barely functional, with procedures hampered by [grave due process violations](#). Those include forced confessions, ill treatment, and lack of access to lawyers. In some areas, including the south, the [criminal justice system has effectively collapsed](#). Lawyers, judges and prosecutors have been [targets of militias](#) and risk retaliation for their work.

The ICC has a [mandate](#) over serious crimes in Libya, yet since the ouster of the Libyan strongman Muammar Gaddafi in 2011 the court has only issued arrest warrants against one individual linked to the current conflict: LNA special forces commander, [Mahmoud el-Warfalli](#), whose current whereabouts and activities are unknown..

The international community has failed to use long-standing [UN sanctions](#) particularly against individuals who have committed serious human rights violations. Since the 2011 revolution, the UN Security Council mandated Sanctions Committee for Libya has [listed only eight people for individual targeted sanctions](#), namely two militia commanders and six individuals involved in trafficking.

Reinforcing current accountability mechanisms is a critical way of addressing ongoing violations and abuses in Libya.

Where criminal justice through prosecutions is elusive or limited, fact-finding and investigative bodies can generate diplomatic support to push for greater and more comprehensive accountability; raise the profile of the crimes committed; deter further abuses; assign responsibility and in some instances set out a strategy to realize criminal accountability in a given situation.

Given the dysfunctionality of courts in Libya there is a need for alternative judicial measures to fill the justice gap. Establishing an international commission of inquiry would be an important first step in that direction. The COI could act as a placeholder for preserving information and possibly evidence that could be used by the ICC in a future investigation. The COI could also feed into other judicial mechanisms in the long term such as courts in third countries taking on cases of serious human rights violations in Libya on the basis of universal jurisdiction or in the event of the establishment of ad hoc tribunals.

### **Why should the Human Rights Council establish a Commission of Inquiry?**

The Council's three resolutions on Libya since March 2017 have called on the Libyan authorities to increase efforts to hold those responsible for violations or abuses accountable and otherwise focused on providing technical assistance and capacity-building. These efforts failed provide the impartial, independent, and transparent investigations needed to address the gravity of ongoing serious crimes in Libya. It is now critical that the international community prioritise restoring the rule of law in Libya to bring about a measure of accountability and to break the cycle of impunity. The Council can play a vital role in this process by taking credible action to establish an independent international inquiry into violations and abuses of human rights and international humanitarian law in the country since May 2014. As stated by SRSG Salame, "...a Human Rights Council mandate to establish an investigative mechanism, such as a Commission of Inquiry, would be both the simplest and strongest basis for promoting accountability in Libya."

The Human Rights Council is empowered to establish such an inquiry. Creating commissions of inquiry and similar mechanisms falls under its [mandate](#) to "address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon." The Council has established many similar mechanisms, such as the Commission on Human Rights in South Sudan (2016), the Commission of Inquiry on Burundi (2016), the International Independent Fact-Finding Mission on Myanmar (2017), and the group of eminent international and regional experts on Yemen (2017).

### **What should the Commission of Inquiry be empowered to do?**

A Commission of Inquiry or similar dedicated mechanism for Libya should have a mandate and sufficient resources to:

- Conduct transparent, independent, impartial, effective and thorough investigations into violations and abuses of human rights and international humanitarian law, including those that may amount to crimes against humanity and war crimes, committed since the 2014 conflict led to the political division of the country, which in turn prevented an institution-building process;
- Monitor and regularly publicly report on the human rights situation throughout Libya;
- Collect and preserve evidence of, and, where possible, clarify individual responsibility for alleged violations of human rights and humanitarian law, with a view to laying the foundation for accountability, and make such information available to credible international and national judicial officials as appropriate;
- Formulate concrete recommendations to strengthen accountability, including through individual sanctions and reform of the national criminal justice system in coordination with UNSMIL and OHCHR to build on existing work;
- Work with governments and other mechanisms to put in place effective measures to promote accountability for violations and abuses of human rights and international humanitarian law, including through cooperation and information sharing with the ICC prosecutor, national judicial authorities, and UN bodies, including the UN Support Mission in Libya and the Panel of Experts on Libya.

### **Would a Commission of Inquiry be able to effectively conduct its work without access to Libya?**

Yes. International fact-finding bodies and other investigative mechanisms, as well as human rights organizations are able to carry out their work by interviewing victims, witnesses, and others in neighbouring countries and with the help of modern communication tools that allow them to connect to individuals in the affected territory. The Syria Commission of Inquiry, for example, have produced multiple, comprehensive reports on different aspects of the conflict without access to Syria. As such, lack of access does not present an insurmountable obstacle to ensuring accurate and robust reporting on violations and abuses in Libya.

### **What impact could a Commission of Inquiry have on the ground?**

Armed groups in Libya have been operating with impunity in large part due to lack of regular and robust international scrutiny. A commission of inquiry would fill this gap and could help to deter future violations and promote respect for the rule of law in the long term in concert with other bodies.

It will take strong political will to expose those behind the most serious violations in Libya and bring them to justice. The narrative that peace in Libya will come only through political and economic agreements and that holding abusive warlords and officials to account is

counterproductive is ill-conceived. Officials of governments participating in the conflict who pit political stability and justice as incompatible often do so to escape accountability. The success of the [Berlin process](#) to achieve sustainable peace will depend on steps that lay the foundation for concrete accountability.

Human Rights Watch's years of reporting in conflict areas around the world has found that justice often can contribute to achieving sustainable peace. By contrast, impunity typically acts as an insuperable barrier to ending conflict in the long-term.