

Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; the Working Group on Arbitrary Detention; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

REFERENCE:
AL LBY 1/2020

10 June 2020

Excellency,

We have the honour to address you in our capacities as Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination; Working Group on Arbitrary Detention; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on the sale and sexual exploitation of children, including child prostitution, child pornography and other child sexual abuse material and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 42/9, 42/22, 35/15, 34/16 and 34/19.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **the use of mercenaries and related actors in the context of hostilities near Tripoli and the human rights impact of this practice**.

According to the information received:

In the one year since the start of the offensive by the Libyan National Army (LNA) to seize the capital Tripoli on 4 April 2019, military operations around Tripoli left at least 685 civilian casualties, around 150,000 people displaced and some 893,000 people in need of humanitarian assistance (as of 31 March 2020). These figures have significantly increased since the beginning of April due to a further escalation of the fighting and despite the threat of the Covid-19 pandemic.

Forces under the Government of National Accord (GNA) and the LNA have allegedly relied on the support of different foreign armed actors, including mercenaries, mercenary-related actors and private military and security personnel, to shore up and sustain their military capacities and capabilities. Some of these actors have allegedly been involved in violations of international human rights law and international humanitarian law.

Firstly, on 23 September 2019, armed Russian private military personnel operating in support of the LNA, reportedly apprehended five civilian men in their house in Al-sbeaa' village, some 47 km south of Tripoli, seemingly without any legal justification. The detainees were subsequently moved to several locations in

the area with their hands tied and eyes blindfolded before some of the Russian private military personnel opened fire at them in an apparent execution at a farm in Al-sbeaa' in the early morning of 24 September. Three of the victims (Mr. **Abu Ajila Ali Enbis**, Mr. **Muhannad Abu Ajila Ali Enbis**, Mr. **Hamza Ammar Juma' Burbash**) were killed, while one was injured (Mr. **Husam Abu Ajila Ali Enbis**) and another one (Mr. **Mohammad Abu Ajila Ali Enbis**) avoided the fire by quickly falling to the ground. As a result of the injuries sustained in the shooting, Mr. Husam Abu Ajila Ali Enbis' right leg was later amputated up to the knee.

Reports indicate that Russian private military personnel have been deployed to Libya on at least two occasions, in early September and November 2019, to support the LNA. The name of one private military company (ChVK Wagner also referred to as Wagner Group) has been cited in this connection. Some of this personnel was allegedly moved to the conflict frontline near Tripoli where they operated as snipers and provided, inter alia, support to the LNA in directing and detecting incoming artillery fire from the opposing party to the conflict. This is said to have contributed to increasing the capacity and precision of LNA strikes against GNA-affiliated forces.

Secondly, from late December 2019, Syrian fighters from armed factions affiliated with the Syrian National Army (SNA), were allegedly deployed to take part in the hostilities in Tripoli in support of the GNA. Their recruitment, payment and transfer to Libya has reportedly been undertaken by Turkey, with the support of Turkish private military and security companies. An estimated one to two thousand are said to have been transferred to Tripoli and Misrata on commercial flights from Turkey in January 2020, with more fighters joining thereafter.

After arriving in Libya, some of the Syrian fighters were reportedly integrated into local GNA-affiliated armed groups on the Tripoli conflict frontline, while others were kept in the rear. Reports suggest that some of the Syrian fighters were captured and killed. Some of the bodies were repatriated via Turkey to Syria, while others were apparently buried directly in Libya.

The Syrian fighters are believed to be members of some of the armed factions that had allegedly committed war crimes and serious human rights abuses during the conflict in Syria, such as recruitment of children, imposition of severe restrictions on women's rights in areas controlled by some of the groups, and extrajudicial killings. The fighters deployed to Libya may include children (under the age of 18 years), some of whom were reportedly internally displaced due to the conflict in Syria and received military training by the armed group that recruited them prior to being transferred to Libya.

The fighters appear to have been motivated to deploy to Libya by comparatively high wages (between 500 and 2,000 US dollars per month), the prospect of obtaining Turkish passports, and compensation to family members in case of

death or serious injury. Monthly compensation is said to have varied depending on the specialisation and experience of the individual fighters, with higher wages offered to those with experience in urban warfare.

The deployment of the Syrian fighters appears to have roughly coincided with the signature of a Memorandum of Understanding on Security and Military Cooperation between your Excellency's Government and the Government of Turkey on 27 November 2019. The document, available online, covers a broad scope of activities, including, inter alia, exchange for 'guest personnel' defined as 'members of defence and security agencies and sent by one Party to the other Party' without specifying whether such personnel is part of the formal state security institutions or whether they can be drawn from armed groups based in a third country. In late December 2019, your Excellency's Government reportedly requested military and security assistance from Turkey on the basis of the Memorandum of Understanding and, on 2 January 2020, the Turkish parliament authorised the deployment of personnel and other assets.

Thirdly, both GNA and LNA forces allegedly relied on armed groups as well as individual mercenaries from Sudan and Chad, and more recently also from Syria. Reports indicate that Sudanese and Chadian fighters have been particularly used in the south of Libya. Recruitment of new fighters by some of the Sudanese armed groups reportedly significantly intensified in the second half of 2019, including in Darfuran refugee camps in Chad.

The Sudanese armed groups, largely hailing from Darfur, have allegedly provided support in exchange for money, arms and equipment. Their fighters received monthly salaries, sometimes intermittently, with officers receiving higher amounts, while the groups were also compensated for attacking and seizing new installations and property while being allowed to retain vehicles and property seized. Reportedly, compensation for such attacks was higher than payments received for protecting facilities and property. Moreover, some of these armed groups have allegedly provided protection to migrant traffickers, kidnapped migrants for ransom and engaged in smuggling of arms, drugs and cars, often in association with local criminal groups. In Chad, private gain was also reported as the main motivation for nationals engaging in mercenary activities and joining armed groups in Libya.

It is alleged that your Excellency's Government is supported by at least one Sudanese armed group, namely the Justice and Equality Movement and several Chadian armed groups, including Le Conseil de commandement militaire pour le salut de la république and l'Union des forces de la résistance. The LNA, on the other hand, is allegedly supported by the Sudan Liberation Army-Abdul Wahid, the Sudan Liberation Army-Minni Minawi (SLA/MM), the Gathering of the Sudan Liberation Forces, and the Front pour l'alternance et la concorde au Tchad (FACT). The LNA has allegedly mainly used the fighters to provide protection of rear LNA bases and infrastructure, therefore freeing up other military personnel to

take direct part in the fighting near Tripoli. Moreover, some SLA/MM personnel were based in Ra's Lanuf near oil installations, while a small group of fighters from FACT allegedly joined the hostilities on the Tripoli frontline in exchange for monetary compensation.

While we do not wish to prejudge the accuracy of these allegations, we are gravely concerned about the recruitment and use of mercenaries and related actors in Libya, notably the impact this may have on the protracted armed conflict.

In particular, we are concerned that the alleged conduct of Russian private military personnel may have contravened the prohibition of summary executions of persons *hors de combat* as well as the jus cogens norm prohibiting the arbitrary detention, arbitrary deprivation of life and torture or other to cruel, inhuman or degrading treatment or punishment.

We are also gravely concerned by the alleged recruitment of Syrian children to directly participate in the hostilities in Libya. We wish to recall that children recruited to take part in hostilities are exposed to a broad range of human rights abuses, as observed by the Working Group on the use of mercenaries in its report on the recruitment of children by non-State armed groups, including mercenaries and private military and security companies (A/HRC/39/49). The recruitment of Syrian boys who have been deprived of most of their childhood by the long and brutal conflict in Syria only to see their vulnerable social and economic situation being exploited and to be recruited and used as mercenaries is of particular concern. As further noted in a joint report by the Special Rapporteur on sale and sexual exploitation of children and the Special Rapporteur on trafficking in persons, especially women and children, situations of armed conflict expose children to multifaceted vulnerabilities and put them at a higher risk of, *inter alia*, being trafficked, sold and sexually exploited, and used in the worst forms of child labour (A/72/164).

We further note that the way in which some of the above-mentioned actors, such as the Syrian, Sudanese and Chadian fighters, have been allegedly recruited and used in the armed conflict in Libya appears consistent with the international legal definition of a mercenary.

We wish to express concern that the above-mentioned allegations contravene obligations undertaken by Libya as a party to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Moreover, the provision of armed mercenary personnel has been specifically prohibited with respect to Libya by the arms embargo imposed by UN Security Council Resolution 1970 (2011). In this context, we further wish to stress that the deployment and use of mercenaries in an armed conflict may threaten several human rights, including, among others, the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, and freedom from arbitrary arrest and detention.

The deployment of mercenaries and private military personnel to Libya is all the more concerning given the multitude and opacity of armed groups and other actors operating in a context of impunity. We are especially concerned that some of those deployed to Libya are affiliated with armed groups that, in some cases, have been accused of serious human rights abuses during the conflict in Syria, thus seemingly perpetuating a cycle of abuse and impunity. Moreover, we wish to refer to the global study of national regulations of private military and security companies published by the Working Group (A/HRC/36/47), which pointed to the difficulties in preventing and holding foreign private military personnel accountable for their actions, including in situations of armed conflict.

The lack of transparency concerning the status, roles and command and control mechanism exercised over all the above-mentioned actors as well as the precise nature of their activities in Libya raises serious accountability and remedy concerns as well as questions about the respect of relevant international law.

We also express our concern at the transfer of foreign mercenaries and related actors in the current context of the Covid-19 pandemic. The conflict in Libya has left local communities severely ill-prepared to face the pandemic, and a continuous recruitment and use of mercenaries and foreign armed actors to sustain hostilities would be in disregard for the health and safety of the civilian populations as well as for the repeated calls by the Secretary-General for a humanitarian pause.

For further specific references to international human rights instruments and standards relevant to these allegations, please refer to the **Annex on Reference to international human rights law** attached to this letter.

As it is our responsibility, under the mandate provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or any comment(s) you may have on the above-mentioned allegations.
2. Please indicate whether the above-mentioned allegations, including the abduction, detention and subsequent killing of the five civilians by Russian private military personnel, have been or are the subject of an investigation and/or prosecution by the relevant authorities and provide information about their outcomes, including as regards remedies for the victims. Please include information on eventual cooperation with the authorities of other States in this regard.
3. Please indicate what measures have been taken by your Excellency's Government to prevent the use of children under the age of 18 years, including Syrian and other foreign nationals, in hostilities in Libya.

4. Please provide detailed information on Russian private military personnel, Syrian, Sudanese and Chadian fighters and any other similar armed actors operating in Libya, including their precise roles, nature of activities undertaken in Libya, chains of command, modes of recruitment, contracting and payment, and respective numbers of such personnel that has been killed, injured or taken into custody by enemy forces in Libya.
5. Please explain how the recruitment and use of foreign fighters in Libya is compatible with international legal obligations of your Excellency's Government and share information on the applicable domestic regulatory and accountability frameworks concerning mercenaries, foreign fighters and private military and security companies. Please include specific examples where available.
6. With respect to the Syrian fighters, please clarify the respective roles of your Excellency's Government and of Turkish authorities in recruiting, financing, transporting and using Syrian fighters in the hostilities in Libya, as well as applicability of the Memorandum of Understanding on Security and Military Cooperation between Turkey and the Government of National Accord of Libya in this regard.
7. Please indicate what measures your Excellency's Government has taken, or is considering to take, to prevent and protect against human rights violations and abuses in the context of the deployment of mercenaries and related actors to the conflict in Libya, particularly in the current context of the Covid-19 outbreak.

This communication and any response received from your Excellency's Government will be made public via the communications reporting website within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary measures be taken to investigate the allegations made above and to prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

We would like to inform your Excellency's Government that after having transmitted an allegation letter to the Government, the Working Group on Arbitrary

Detention may transmit the case through its regular procedure in order to render an opinion on whether the deprivation of liberty was arbitrary or not. Such letters in no way prejudge any opinion the Working Group may render. The Government is required to respond separately to the allegation letter and the regular procedure.

Please note that letters were sent to the Russian Federation and Turkey expressing similar concerns, as relevant. A letter with similar relevant concerns was also addressed to the LNA. Please note that this letter does not in any way imply the expression of any opinion concerning the legal status of any country, territory, city or area, or of its authorities.

Please accept, Excellency, the assurances of our highest consideration.

Chris Kwaja

Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Elina Steinerte

Vice-Chair of the Working Group on Arbitrary Detention

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Nils Melzer

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Annex

Reference to international human rights law

In connection with the above-mentioned allegations, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

We wish to recall that both international humanitarian law and international human rights law continue to apply in a situation of armed conflict. Libya must respect its obligations under international human rights law with respect to individuals within its territory or subject to its jurisdiction and it remains under an obligation to take all appropriate diplomatic, economic, judicial and other measures to protect the human rights of the population living in the part of its territory that is outside its control.

In its General Comments 31 (CCPR/C/21/Rev.1/Add.13, para 11) and 36 (CCPR/C/GC/36, para 64), the Human Rights Committee has affirmed the applicability of the ICCPR and international human rights law more generally to situations of armed conflict. Furthermore, in its General Comment 26 (CCPR/C/21/Rev.1/Add.8/Rev.1), the Human Rights Committee confirmed that State obligations under the ICCPR with respect to individuals within its territory continue to apply notwithstanding subsequent changes in government or territorial organization and control. The continued obligation to ensure respect for recognised human rights in relation to the population of the part of the State territory outside the effective control of the State has further been recognized in the practice of the Human Rights Committee and the Committee against Torture, among others.

We wish to refer to the inherent right to life and the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, as enshrined in article 3 and 5 of the Universal Declaration of Human Rights (UDHR) and in article 6 and 7 of the ICCPR, the latter ratified by Libya in 1970, as well as to common article 3(1)(a) of the Geneva Conventions that categorically prohibits, "violence to life and persons in particular murder of all kinds, mutilation, cruel treatment and torture", against those not taking active part in the hostilities. Both the inherent right to life and the principle of distinction between combatants and those not taking direct part in hostilities are rules recognized as part of customary international law and are universally binding at all times.

Both international humanitarian law and international human rights law require States to carry out thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions, and war crimes committed by their nationals or armed forces, or on their territory by a foreign State, or over which they have jurisdiction. Furthermore, States must take appropriate measures to bring perpetrators to justice and to provide effective remedies to victims. The right to an effective remedy is also enshrined in the UDHR (article 8) and the ICCPR (article 2(3)). It is further enshrined in the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and

Serious Violations of International Humanitarian Law (General Assembly Resolution 60/147, Chapter II). In line with the Principles on Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (ECOSOC resolution 1989/65 of 24 May 1989), there must be thorough, prompt and impartial investigations of all suspected cases of extra-legal, arbitrary and summary executions (principle 9).

We would like to recall that it is now widely accepted that States' obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para 8). This was reaffirmed by the Human Rights Committee specifically with respect to the right to life in its General Comment No. 36 (CCPR/C/GC/36, para 21).

The preventive obligations of States with respect to the right to life are synergetic with the obligation States have to respect and ensure respect of the Geneva Conventions as provided by their common Article 1. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties.

With respect to the treatment and protection of children in situations of armed conflict, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, ratified by Libya in 2004, requires State parties to take all feasible measures to ensure that persons who have not attained the age of 18 years do not take direct part in hostilities, either as members of State armed forces (article 1) or on behalf of armed groups (article 4). To that effect, States are obliged to "take all necessary legal, administrative and other measures to ensure the effective implementation and enforcement [...] within its jurisdiction" (article 6(1)). Moreover States are required to make the principles and provisions of the Optional Protocol widely known (article 6(2)) and take all feasible measures to demobilise or otherwise release victims of such practices from service and, when necessary, accord them "all appropriate assistance for their physical and psychological recovery and their social reintegration" (article 6(3)). In addition, UN Security Council resolution 1261 (1999) identifies and condemns the recruitment and use of children in armed conflicts by States and non-State armed groups as one of the six grave violations committed against children in times of armed conflict.

Finally, we would like to recall that your Excellency's Government is a party since 2000 to the International Convention against the Recruitment, Use, Financing and Training of Mercenaries. Article 5 of this Convention prohibits State parties to recruit, use, finance or train mercenaries and shall make offences related to mercenarism punishable by appropriate penalties. The Convention also contains provisions outlining the responsibility of States to cooperate in preventing mercenary offences (Article 6) and implementing the Convention (Article 7); to take adequate measures to establish

jurisdiction over mercenary offences committed in its territory (Article 9(1)(a)) and to either extradite or prosecute those suspected of mercenary offences found on the territory of the State (Articles 9, 10 and 12). Since 2005, your Excellency's Government is also party to the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa which sets out the responsibility of State parties to "take all necessary measures to eradicate all mercenary activities in Africa" (Art 6).

Both instruments define a mercenary through several cumulative criteria, including, *inter alia*: being specially recruited to fight in an armed conflict, being motivated by private gain, not being a national of a party to the conflict, and not being a member of the armed forces of a party to the conflict.

The interplay between the recruitment and use of mercenaries and the right of peoples to self-determination was elaborated by the Human Rights Council in its resolution A/HRC/RES/42/9 of 2019. Invoking the Charter of the United Nations, this resolution condemned the threat posed by mercenary activities to the exercise of the right of peoples to self-determination (para. 9), called for criminal responsibility of those involved in the planning, ordering, recruiting, using, training and financing of such activities (para. 11) and urged States to ensure accountability in this respect (para. 12). Similar concerns were expressed by the General Assembly in its resolution A/RES/74/138 of 2019.