

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

REFERENCE:
AL OTH 42/2020

9 June 2020

Dear Mr. al-Sharief,

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 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 and 34/19.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on information we have received. Special Procedures mechanisms can intervene directly with Governments and other stakeholders (including non-state actors) on allegations of abuses of human rights that fall within their mandates by means of letters, which include urgent appeals, allegation letters, and other communications. The intervention may relate to a human rights violation that has already occurred, is ongoing, or which has a high risk of occurring. The process involves sending a letter to the concerned actors identifying the facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action. Communications may deal with individual cases, general patterns and trends of human rights abuses, cases affecting a particular group or community, or the content of draft or existing legislation, policy or practice considered not to be fully compatible with international human rights standards.

In this connection, we would like to bring to your attention allegations we have received concerning the **human rights impact of the use of mercenaries and related actors in support of the Libyan National Army in the context of hostilities near Tripoli**.

According to the information received:

On 4 April 2019, the Libyan National Army launched an offensive to seize the capital Tripoli. As of 31 March 2020, the hostilities caused at least 685 civilian casualties, around 150,000 people displaced and some 893,000 people in need of humanitarian assistance. Since the beginning of April these figures have significantly increased due to a further escalation of the fighting and despite the threat of the Covid-19 pandemic.

Libyan National Army Chief of Staff Office

The Libyan National Army (LNA) 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 its military capacities and capabilities. Some of these actors have allegedly been involved in violations of international human rights law and international humanitarian law.

Firstly, the LNA military capabilities have reportedly been strengthened through the support of Russian private military personnel that had been deployed to Libya on at least two occasions, in early September and November 2019. 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 support to the LNA in directing and detecting incoming artillery fire from the opposing party to the conflict. Their operations appeared to have had a direct impact on the conflict dynamics in Tripoli in the last quarter of 2019 by increasing the capacity and precision of the LNA to strike forces affiliated with the Government of National Accord (GNA). This is said to have contributed to the LNA regaining momentum in the wider context of the Tripoli offensive at the time.

In one instance on 23 September 2019, armed Russian private military personnel believed to be operating in support of the LNA, reportedly apprehended five civilian men in their house in Al-sbeaa' village, some 47 km south of the Libyan capital Tripoli, seemingly without any legal justification.. The detainees were subsequently moved to several locations in the area while having their hands tied and being blindfolded. In the early morning of 24 September, four of the Russian private military personnel took the civilians to a farm in Al-sbeaa', asked them to kneel down, opened fire and then immediately drove away from the scene. Three of the family members (Mr. **Abu Ajila Ali Enbis**, Mr. **Muhannad Abu Ajila Ali Enbis** and Mr. **Hamza Ammar Juma' Burbash**) were killed, while one was injured (Mr. **Husam Abu Ali Ajila**) 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.

In addition, in the past months, the LNA has allegedly relied on recently recruited and deployed Syrian fighters. Throughout the conflict, the LNA has reportedly also recruited and used Chadian and Sudanese fighters, particularly to provide protection of rear LNA bases and infrastructure, therefore freeing up other military personnel to take direct part in the fighting near Tripoli. Two LNA commanders, Mr. [REDACTED] and Mr. [REDACTED], have been cited in connection with the recruitment of Chadian and Sudanese mercenaries. Several armed groups, including 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) are further believed to support the LNA, mainly in the south of Libya.

Moreover, reports indicate that 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. Recruitment of new fighters by some of the Sudanese armed groups reportedly significantly intensified in the second half of 2019, including in Darfurian refugee camps in Chad.

The above-mentioned Sudanese armed groups have allegedly provided support in exchange for money, arms and equipment. Reports indicate that fighters from the armed groups received monthly salaries, sometimes intermittently, with officers receiving higher amounts. The groups also received payment 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. In Chad, private gain was also reported as the main motivation for nationals engaging in mercenary activities and joining armed groups in Libya.

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.

While we do not wish to prejudge the accuracy of these allegations, we are concerned about the human rights impact linked to the recruitment, funding and use of foreign armed actors, including mercenaries, by the LNA. We are concerned such actors supporting the LNA may have contravened the prohibition of summary executions of persons *hors de combat* as well as the jus cogens norms prohibiting arbitrary detention, arbitrary deprivation of life and torture or other cruel, inhuman or degrading treatment or punishment.

Moreover, we are concerned about the lack of clarity regarding those responsible for the recruitment, financing and deployment and regarding the extent to which the private military personnel was integrated within operational and tactical chains of command within the LNA. This lack of clarity undermines the prospects of holding perpetrators of human rights violations to account.

The lack of transparency also makes it hard for victims to seek justice and effective remedies for human rights abuses committed by such actors. This is all the more concerning given the multitude and opacity of armed groups and other actors, including mercenaries, operating in a context of impunity in the current conflict.

We further note that the way some of the fighters affiliated with the LNA, particularly those associated with the above-mentioned Sudanese and Chadian armed groups, have been recruited, financed and used in the armed conflict in Libya appears consistent with the international legal definition of a mercenary. We wish to stress that the recruitment, use, financing and training of mercenaries impedes the right of peoples to self-determination and violates the purposes and principles enshrined in the Charter of the United Nations, as recalled by the Human Rights Council (A/HRC/RES/42/9).

In this context, we 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 as outlined in the Universal Declaration of Human Rights.

We also express our concern at the recruitment and use of foreign mercenaries and other foreign armed 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 provide detailed information on Russian private military personnel, Syrian, Sudanese and Chadian fighters and any other similar armed actors supporting the LNA, including their precise roles, nature of activities undertaken in Libya, chains of command, their 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.
3. Please indicate whether any investigations have been ordered into the above-mentioned allegations, including the abduction, detention and subsequent killing of the five civilians by Russian private military personnel, and if they were proven correct, of any proceedings that may have been or may be taken against those with direct or supervisory responsibility. Please include information on eventual cooperation with the authorities of other States in this regard.
4. Please indicate what measures have been taken, and are being taken, to prevent civilian casualties in LNA military operations involving mercenaries, foreign private military personnel, or similar actors, and to ensure that such operations are conducted in accordance with the principles of distinction and proportionality as well as the jus cogens norm on the right to life. Please include any additional measures taken in this respect in the current context of the Covid-19 outbreak.

5. Please provide information about measures that have been taken by the LNA to ensure the protection of civilians, including in operations conducted with the support of mercenaries, foreign private military personnel and similar actors.

This communication and any response received from the LNA 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 prevent the re-occurrence of the above-mentioned allegations and to extend cooperation to formal investigations into these allegations by relevant authorities in order to ensure the accountability of any person(s) found 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 the LNA to clarify the issues in question.

Please note that letters expressing similar concerns was sent to the Government of National Accord of Libya. Please also 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, Mr. al-Sharief, 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

Agnes Callamard

Special Rapporteur on extrajudicial, summary or arbitrary executions

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 and concerns, we would like to draw your attention 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. The LNA has, at a minimum, certain obligations to respect fundamental human rights recognized in customary international law and is therefore under the obligation to comply with the Universal Declaration of Human Rights, the Geneva Conventions of 1949 and the Customary Rules of International Humanitarian Law identified in the study of the International Committee of the Red Cross (“Customary Rules”). Rules of customary international law are universally binding at all times.

The Universal Declaration of Human Rights enshrines in its article 6 the right of every individual to life and in article 5 the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment, both provided for in the common article 3(1)(a) of the Geneva Conventions 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.

The Customary Rules are applicable to all parties to the non-international armed conflict in Libya. Under these Rules, the LNA must distinguish between combatants and civilians and direct attacks only against combatants (Rules 1, 6 and 7). Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited (Rule 2). Indiscriminate attacks are also prohibited (Rule 11). Further, launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited (Rule 14). Parties to the conflict must “do everything feasible to verify that targets are military objectives” (Rule 16) and take all feasible precautions to avoid and minimize incidental loss of civilian life (Rule 15).

Moreover, we would like to recall that the provision of armed mercenary personnel to Libya is prohibited under the arms embargo imposed by the UN Security Council in Resolution 1970 (2011) and more recently reiterated in Resolution 2510 (2020). The recruitment, use, financing and training of mercenaries is prohibited by the International Convention against the Recruitment, Use, Financing and Training of Mercenaries and by the Organisation of African Unity Convention for the Elimination of Mercenarism in Africa. Libya is party to both these instruments since 2000 and 2005 respectively. 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.