



## **32<sup>nd</sup> Brigade Massacre: Evidence of War Crimes and the Need to Ensure Justice and Accountability in Libya**

December 2011

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2 Arrow Street | Suite 301  
Cambridge, MA 02138 USA  
+1 617 301 4200

1156 15th Street, NW | Suite 1001  
Washington, DC 20005 USA  
+1 202 728 5335

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## **Acronyms**

CAT	United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
EIMET	Expanded International Military Education and Training
ERB	Ethics Review Board
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IFP	International Forensic Program at Physicians for Human Rights
IHL	International humanitarian law
NTC	National Transitional Council of Libya
OPCAT	Optional Protocol to the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment
OTP	Office of the Prosecutor at the International Criminal Court
PHR	Physicians for Human Rights
SPT	Subcommittee for the Prevention of Torture
NPM	National Preventative Mechanism
UNSMIL	United Nations Support Mission in Libya

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# LIBYAN ARAB JAMAHIRIYA



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



The death of Colonel Muammar Qaddafi following his capture by opposition forces near his hometown Sirte in October 2011 signaled the end of Libya's eight-month war. While Col. Qaddafi's death prevented Libyans and the international community from holding him accountable for four decades of dictatorial rule marked by gross human rights violations, alleged war criminals from all sides of the recent conflict remain at large and must be brought to justice.

The rule of law must be the bedrock of a new and free Libya. As the interim government charts a new course for the country in a post-Qaddafi era, it must ensure that perpetrators are held accountable for atrocities (i.e., grave violations of human rights, including possible war crimes and crimes against humanity) that they committed or ordered. Individual accountability is the best guarantee for preventing future human rights violations and ending a cycle of violence.

Physicians for Human Rights (PHR) conducted an investigation into one such atrocity that occurred at a warehouse in Tripoli during the final days of Ramadan in late August 2011. Initial reports offered conflicting numbers and partial accounts of the events. Physicians for Human Rights sought to clarify what took place and identify who ordered and carried out the alleged torture, rape, and summary executions. To answer these questions, PHR investigators interviewed three eyewitness survivors of the massacre as well as one of the alleged perpetrators, conducted medical evaluations of two of the survivors documenting evidence of torture, and forensically documented the crime scene for evidentiary purposes, cited in part here in corroboration of the accounts of the interviewed witnesses.

The evidence PHR gathered elicits a pattern of crimes including murder, torture, rape, and unlawful confinement of civilians and combatants at a warehouse in Tripoli, which 32<sup>nd</sup> Brigade soldiers used as a makeshift detention facility. The collected testimonies place high-ranking military authorities at the warehouse crime scene, demonstrate their intent to carry out the massacre, and document their plans to conceal and destroy evidence of their crimes. The evidence of war crimes in this report provides a measure of truth and acknowledgment for victims and helps to build an important historical record; this report also provides recommendations for future investigations for international or national courts of law, for the purpose of securing justice and accountability for all Libyans.

The findings from this medico-legal investigation constitute the basis for this report, which for the first time provides a detailed and comprehensive account of the 32<sup>nd</sup> Brigade massacre on 23 August 2011. It also demonstrates the requisite level of forensic expertise that the new Libyan government needs to employ when investigating other crime scenes. The international community can best support the interim authorities in that endeavor by providing such expertise and building local capacity to conduct forensic investigations. This capability is critical as Libya currently faces alleged war crimes committed by all sides, which the interim government must thoroughly investigate and address.

This report concludes with detailed policy recommendations to Libyan authorities and the international community, which serve as a road map to investigate alleged crimes and thus ensure justice and the rule of law. Key policy recommendations include the critical importance of immediately securing all sites where alleged war crimes and other similar acts occurred so that evidence may be preserved for future prosecution and truth seeking efforts; allowing the International Criminal Court (ICC) to continue investigating crimes in Libya, including alleged acts by any party; dedicating human and financial resources to building domestic institutions that will address the crimes of the past and seek accountability for crimes according to international legal standards; developing a transparent and thorough vetting process to ensure that

perpetrators of war crimes and other international crimes do not hold positions of power in the new government; ensuring that the International Committee of the Red Cross (ICRC) can access detainees in Libya and ensure their wellbeing; and supporting the professionalization of the police and the armed forces.

## Methods and Limitations

The findings of this report are based on a field investigation Physicians for Human Rights conducted in Libya from 5 to 19 September 2011. The PHR team comprised Richard Sollom, MA, MPH, Deputy Director at PHR; Hani Mowafi, MD, MPH, attending physician at the Boston Medical Center's Trauma and Emergency Department; and Stefan Schmitt, MS, Director of the International Forensic Program at PHR.

The team conducted 51 semi-structured interviews with Libyans who reported human rights violations and possible war crimes (including combatants and non-combatants), as well as civil society leaders and interim government authorities. Among these 51 respondents were four eyewitnesses to the 32<sup>nd</sup> Brigade massacre, which this report details.

To select these 51 information-rich cases, field researchers conducted purposeful, intensity sampling to garner cases that highlighted individual human rights violations. To strengthen the qualitative research design, field investigators further employed chain (or snowball) sampling to locate corroborating witnesses, who were interviewed independently away from the original source, for probative evidence.

Other forms of corroboration utilized in this study included

- physical evaluations of torture survivors;<sup>1</sup>
- crime scene analysis using forensic methods;<sup>2</sup>
- visual verification of actual locations of reported human rights violations;
- review of photographic and video evidence; and
- corroboration of data with concurrent events reported in the media.

Qualitative inquiry domains centered on select human rights violations that may constitute war crimes (e.g., murder, torture, rape, unlawful confinement). To ensure consistency, investigators followed a semi-structured interview format with probes to elicit *who, what, why, when, where, and how* a reported human rights violation took place. To facilitate documentation of unanticipated issues, investigators combined semi-structured questions with open-ended questions. Interviews were conducted in Arabic (or in English with a bilingual interpreter) and were held in private settings. All interviews lasted between one and three hours.

Witnesses 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 inquiries, and if they reported events that coincided with dates and times of known events. Three of the four witnesses interviewed for this report are surviving victims and eyewitnesses of the massacre at the warehouse and interviews were held at places of their choosing (e.g. home,

1 Medical evaluations of two witnesses and massacre survivors, Mohammad and Ali, revealed physical findings that were highly consistent with and, in some cases, virtually diagnostic of allegations of specific methods of torture and ill treatment. Note: medical examination of Omar was not conducted as local Libyan military council members interrupted PHR's interview before an exam could take place.

2 Physicians for Human Rights. *Forensic Crime Scene Report on the Alleged Massacre of Detainees at the Khalat Al Forjan Neighborhood, Tripoli, Libya on August 23rd, 2011. Documented by PHR/IFP Director Stefan Schmitt on September 9 & 10, 2011 – PHR/IFP Case #: LIBAGC20110823* (on file with Physicians for Human Rights) (hereinafter PHR Forensic Crime Scene Report).



office, mosque). A fourth eyewitness, an alleged perpetrator of the warehouse massacre, was interviewed in private while in custody of the NTC-affiliated military council in Zawiya and returned to his captors after the interview. PHR investigators received reports of detainee abuse; concerns about detainee safety and well-being were subsequently raised with the military council in Zawiya, NTC authorities in Tripoli, as well as the International Committee of the Red Cross (ICRC).<sup>3</sup> The testimony from the alleged perpetrator is presented here in corroboration of the overall sequence of events as documented in the victims' testimonies and the description of the physical evidence documented at the crime scene. Cross referencing between all four accounts, as well as comparison to physical evidence, establish the accounts as highly credible. Testimonies from the eyewitnesses detailed in this report omit no relevant findings, and all eyewitness testimonies received by PHR are included herein.

An independent PHR ethics review board (ERB) approved the methods to be used for this investigation. In review of the investigators' plan to protect human subjects, the ERB was guided by the World Medical Association's Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects.<sup>4</sup> All in-person medical evaluations of torture and ill treatment were conducted in accordance with the United Nations *Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (also known as the "Istanbul Protocol").<sup>5</sup> Precautions were taken to protect the privacy and anonymity of the eyewitnesses and the confidentiality of their personal information.

To minimize the impact on their physical, mental and social integrity, interviewees in this report are referred to under single-name pseudonyms, and some identifying information has been removed. The three survivors of the warehouse massacre interviewed for this report are referred to as "Mohammad," "Omar," and "Ali." The detained guard from the detention center at the warehouse and alleged perpetrator interviewed for this report is referred to under the pseudonym "Laskhar." Reported perpetrator names and officers in command within military hierarchy are preserved as documented through the interviews.

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. PHR obtained additional consent to conduct physical evaluations of two men who had reported physical assault. These evaluations were based on the Istanbul Protocol – Arabic version.<sup>6</sup> With local physicians, PHR made referrals as needed for follow-up care for survivors of torture.

By its nature this study is subject to certain limitations. The qualitative research design aimed to garner an in-depth understanding of an event where war crimes were possibly committed by a small group of soldiers at one specific location in August 2011. The non-random selection of survivors of the massacre and one perpetrator does not permit generalization of PHR's findings to all former detainees under Col. Qaddafi's forces during the armed conflict in Libya.

3 For example, PHR received unconfirmed reports that one 32<sup>nd</sup> Brigade soldier and warehouse guard was shot by his captors. Interview with key informant no. 17, in Zawiya, Libya (10 Sep. 2011). See also, *Libya: Fears for detainees held by anti-Gaddafi forces*, Amnesty International, 30 Aug. 2011, <http://www.amnesty.org/en/news-and-updates/libya-fears-detainees-held-forces-loyal-ntc-2011-08-30>.

4 WMA Declaration of Helsinki – Ethical Principles for Medical Research Involving Human Subjects, adopted Jun. 1964 (last amended Oct. 2008), <http://www.wma.net/en/30publications/10policies/b3/>.

5 Office of the U.N. High Commissioner for Human Rights, *Istanbul Protocol: Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, U.N. Doc. HR/P/PT/8/Rev.1 (1999), available at <http://www.ohchr.org/Documents/Publications/training8Rev1en.pdf> (hereinafter *Istanbul Protocol*).

6 *Istanbul Protocol* (Arabic version), HR/P/PT/8/Rev.1 (1999), available at <http://www.ohchr.org/Documents/Publications/training8Rev1ar.pdf>.

Moreover, the scope of the investigation also does not permit a full analysis of the human rights situation in Libya at the time of the investigation. To mitigate recall bias among interviewees, investigators conducted all interviews within two weeks of the event. As some war trauma survivors are known to experience memory impairment (dissociation),<sup>7</sup> corroboration was sought among eyewitness sources. Further corroboration of witness testimony was sought from objective sources (e.g., physical evaluations, crime scene analysis, review of photographic and video evidence).

This investigative study should be construed as a snapshot in time, providing 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.

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7 David H. Gleaves and Tara L. Williams, *Critical Questions: Trauma, Memory, and Dissociation*, *Psychiatric Annals*, 35: 8, 648-54 (2005).

Libya, the North African country formerly known as The Socialist People's Libyan Arab Jamahiriya,<sup>8</sup> comprises 6.6 million people including more than 166,000 non-nationals.<sup>9</sup> A civilian-led uprising against the 42-year-long dictatorship of Col. Muammar Qaddafi began in February 2011<sup>10</sup> and concluded with the declaration of a free Libya in October 2011.<sup>11</sup> Libya's National Transitional Council (NTC) passed a Constitutional Declaration in August proclaiming a democratic state based on Islamic law.<sup>12</sup> The NTC elected a new Prime Minister on 31 October,<sup>13</sup> who appointed a new government in late November 2011.<sup>14</sup>

## Overview of the conflict in Libya

As unrest spread across the Middle East in early 2011, Libyans began protesting against the government of Col. Qaddafi. Activists organized around 17 February 2011, a date known in Libya as the Day of Anger, though conflict had erupted on 16 February in eastern Libya.<sup>15</sup>

Reports that Qaddafi troops used snipers, machine guns, and mortar rounds against protesters<sup>16</sup> led the international community to denounce Col. Qaddafi for employing excessive force.<sup>17</sup> In a speech delivered to the Libyan people on 21 February, Col. Qaddafi's son, Saif Al-Islam, threatened civil war if anti-government protests continued.<sup>18</sup>

On 5 March, rebel leaders formed an interim government in Benghazi named the National Transitional Council. The Council defined itself as a transitional body intended to encourage the development to a democratic state.<sup>19</sup> In late July, rebel military chief Abdul Fattah Younis died under suspicious circumstances, suggesting deep internal divisions among rebel leaders.<sup>20</sup>

Condemning Col. Qaddafi's excessive use of force during the conflict, the Arab League called on the United Nations to impose a no-fly zone over Libya on 12 March.<sup>21</sup> The UN Security Council

- 8 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 18 Nov. 2011). See also Muammar Qaddafi, *The Green Book* (1975), available at <http://oestrem.com/thingstwicewp-content/uploads/2011/02/Qaddafi-green-book.pdf>.
- 9 CIA World Factbook, *Libya*, last updated 15 Nov. 2011, <https://www.cia.gov/library/publications/the-world-factbook/geos/ly.html>.
- 10 *Clashes Erupt as Libya braces for "Day of Anger"*, AFP, 16 Feb. 2011, <http://www.google.com/hostednews/afp/article/ALeqM5joXWpcbCKxSO2oZgTYVdWvEzPBTA?docId=CNG.603a9efadd0bcd2842eeb2db6ed43c73.101>.
- 11 *Libya's new rulers declare country liberated*, BBC News, 23 Oct. 2011, <http://www.bbc.co.uk/news/world-africa-15422262>.
- 12 The Constitutional Declaration [Libya], art. 1, 3 Aug. 2011, available at [http://portal.clinecenter.illinois.edu/REPOSITORYCACHE/114/w1R3bTIKELG95H3MH5nvrSxchm9QLb8T6EK87RZQ9pfnC4py47DaBn9jLA742IFN3d70Vn0YueW7t67gWXEs3XivJJxM8n18U9Wi8vAo07\\_24166.pdf](http://portal.clinecenter.illinois.edu/REPOSITORYCACHE/114/w1R3bTIKELG95H3MH5nvrSxchm9QLb8T6EK87RZQ9pfnC4py47DaBn9jLA742IFN3d70Vn0YueW7t67gWXEs3XivJJxM8n18U9Wi8vAo07_24166.pdf). See also Robert Birsel, *Libya's new rulers set out steps to elections*, Reuters, 31 Aug. 2011 <http://www.reuters.com/article/2011/08/31/libya-constitution-idUSL5E7JV2CF20110831>.
- 13 *Structure: National Transitional Council*, National Transitional Council, <http://www.ntclibya.com/InnerPage.aspx?SSID=7&ParentID=3&LangID=1> (last visited 8 Dec. 2011).
- 14 *Libya to Announce New Government on Sunday: NTC*, AFP, 14 Nov. 2011, <http://news.yahoo.com/libya-announce-government-sunday-ntc-202948361.html>.
- 15 *Clashes Erupt as Libya braces for "Day of Anger"*, *supra* note 10.
- 16 *Blood in the streets*, *The Economist*, 10 Feb. 2011, [http://www.economist.com/blogs/newsbook/2011/02/protests\\_libya](http://www.economist.com/blogs/newsbook/2011/02/protests_libya).
- 17 *U.N. Security Council comes down on Gadhafi as opposition takes shape*, CNN, 26 Feb. 2011, [http://articles.cnn.com/2011-02-26/world/libya.protests\\_1\\_moammar-gadhafi-moammar-gadhafi-quryna?s=PM:WORLD](http://articles.cnn.com/2011-02-26/world/libya.protests_1_moammar-gadhafi-moammar-gadhafi-quryna?s=PM:WORLD).
- 18 *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/>.
- 19 Q & A, National Transitional Council, <http://www.ntclibya.com/InnerPage.aspx?SSID=15&ParentID=11&LangID=1> (last visited 10 Jun. 2011).
- 20 David D. Kirkpatrick, *Death of Rebel Leader Stirs Fear of Tribal Conflict*, NY Times, 28 Jul. 2011, <http://www.nytimes.com/2011/07/29/world/africa/29libya.html?pagewanted=all>.
- 21 *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>.

subsequently authorized a no-fly zone on 17 March,<sup>22</sup> and NATO began attacking Qaddafi soldiers en route to Benghazi.<sup>23</sup>

Col. 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 Col. Qaddafi and the NTC, including the African Union<sup>24</sup> and United Nations.<sup>25</sup> Col. Qaddafi's government demanded that NATO cease its attacks and allow Col. Qaddafi to remain in Libya, but no agreements were made.<sup>26</sup> After the UN Security Council referred the situation in Libya to the International Criminal Court, the ICC's Office of the Prosecutor (OTP) conducted an investigation into crimes in Libya since 15 February 2011. On the basis of this investigation, the Chief Prosecutor applied for arrest warrants for Col. Qaddafi, his son Saif Al-Islam, and his intelligence chief, Abdullah Al-Senussi.<sup>27</sup> On 27 June 2011, the Court issued arrest warrants for these three individuals, citing evidence of murder and persecution of civilians as possible crimes against humanity.<sup>28</sup>

Qaddafi forces retained control of Tripoli until late August, when rebels overtook Tripoli's Green Square<sup>29</sup> and destroyed Col. Qaddafi's Bab Al-Azizia compound.<sup>30</sup> Qaddafi loyalists maintained a stronghold in Col. Qaddafi's hometown of Sirte until 20 October,<sup>31</sup> when Col. Qaddafi was reportedly captured and killed<sup>32</sup> by opposition forces from Misrata.<sup>33</sup> Saif Al-Islam and Abdullah Al-Senussi were later captured and detained by opposition forces in Libya in mid-November.<sup>34</sup>

The NTC officially declared Libya "liberated" on 23 October.<sup>35</sup> Between 30,000 and 50,000 people reportedly died during the conflict,<sup>36</sup> and more than 800,000 Libyans and third-country nationals fled to neighboring Tunisia.<sup>37</sup> At least 70% of those people displaced to Tunisia have

22 *Id.*

23 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>.

24 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>.

25 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>.

26 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>.

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

28 International Criminal Court, *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*, ICC-01/11 [27 Jun. 2011], available at <http://www.icc-cpi.int/iccdocs/doc/doc1101337.pdf>.

29 *Libyan rebels in Tripoli's central square*, Al-Jazeera, 22 Aug. 2011, <http://www.aljazeera.com/news/africa/2011/08/201182122425905430.html>.

30 Douglas Stanglin, *Rebels capture Gadhafi compound*, USA Today, 23 Aug. 2011, <http://content.usatoday.com/communities/ondeadline/post/2011/08/reports-rebels-enter-gadhafi-compound-raise-flag/1>.

31 Christopher Gillette and Kim Gamel, *Gaddafi killed as last stronghold falls*, AP, 21 Oct. 2011, [http://www.samoobserver.ws/index.php?view=article&id=36269%3Agaddafi-killed&option=com\\_content&Itemid=62](http://www.samoobserver.ws/index.php?view=article&id=36269%3Agaddafi-killed&option=com_content&Itemid=62).

32 *Libya after Gaddafi – Friday 21 October*, The Guardian, Middle East Live, 21 Oct. 2011, <http://www.guardian.co.uk/world/middle-east-live/2011/oct/21/libya-after-gaddafi-live-updates>.

33 Huma Khan, *Obama Hails News Gadhafi's Death, Calls it a 'Momentous Day'*, ABC News, 20 Oct. 2011, <http://abcnews.go.com/International/libyan-dictator-moammar-gadhafi-dead/story?id=14776976>.

34 Clifford Krauss & David D. Kirkpatrick, *Libyan Fighters Catch Qaddafi's Last Fugitive Son*, NY Times, 19 Nov. 2011, <http://www.nytimes.com/2011/11/20/world/africa/gaddafi-son-captured-seif-al-islam-qaddafi-libya.html?hp>; Chris Stephen & Luke Harding, *Gaddafi's intelligence chief captured in southern desert*, The Guardian, 20 Nov. 2011, <http://www.guardian.co.uk/world/2011/nov/20/gaddafi-son-pretended-camel-herder>.

35 *Libya's new rulers declare country liberated*, *supra* note 11.

36 Rory Mullholland, *Residents Flee Gaddafi Hometown*, AFP, 3 Oct. 2011, [http://www.huffingtonpost.com/2011/09/08/libya-war-died\\_n\\_953456.html](http://www.huffingtonpost.com/2011/09/08/libya-war-died_n_953456.html).

37 *UNHCR Southern Tunisia Weekly Update*, UNHCR Issue 2, 1 Aug. 2011, <http://www.unhcr.org/4e37c5356.pdf>.

since returned to Libya.<sup>38</sup> At the time of this report, between 100,000 and 150,000 people remained internally displaced within Libya.<sup>39</sup>

## Overview of the battle for Tripoli

With slightly more than one million inhabitants, Tripoli constitutes roughly 15 percent of Libya's total population.<sup>40</sup> Unrest in the capital began on 20 February 2011,<sup>41</sup> when loyalist forces fired live ammunition at protesters from aircraft<sup>42</sup> and shot at crowds of unarmed worshippers.<sup>43</sup>

Qaddafi security forces retained control of Tripoli until late August,<sup>44</sup> establishing military checkpoints around the central Green Square<sup>45</sup> and blocking all main roads leading out of the city.<sup>46</sup> Loyalist troops attacked major hospitals, forcibly removing patients with gunshot wounds.<sup>47</sup> As fighting intensified, medical personnel abandoned hospitals they deemed unsafe.<sup>48</sup> At least 13 mass graves containing casualties from the conflict have been discovered in and around Tripoli.<sup>49</sup>

The final battle for Tripoli began on 20 August 2011, when revolutionary forces initiated an uprising within the city.<sup>50</sup> Following claims from Qaddafi officials that the rebellion had been quelled,<sup>51</sup> various brigades of revolutionary forces stationed in nearby Zawiyah, Gharyan, and Zlitan fought to support rebels inside the city.<sup>52</sup> These united rebel forces gained control of Tripoli's airport and Green Square on 22 August.<sup>53</sup>

In a symbolic victory against Col. Qaddafi's four decade-long rule,<sup>54</sup> rebel forces on 23 August gained control of the Bab Al-Azizia compound, Col. Qaddafi's residence and main base, housing

38 *Id.*

39 Internal Displacement Monitoring Centre, *Libya: Many IDPs return but Concerns Persist for Certain Displaced Groups*, 7 Nov. 2011, [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/17D3C14CA74CFCEBC12579410053A209/\\$file/libya-overview-nov2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/17D3C14CA74CFCEBC12579410053A209/$file/libya-overview-nov2011.pdf).

40 CIA World Factbook, *supra* note 9.

41 *Libya Protests: Tripoli hit by renewed clashes*, BBC News, 21 Feb. 2011, <http://www.bbc.co.uk/news/world-africa-12531637>.

42 *Id.*

43 Press Statement, Hillary Rodham Clinton, US Secretary of State, *Situation in Libya*, 21 Feb. 2011, <http://www.state.gov/secretary/rm/2011/02/156836.htm>.

44 *Libya Profile*, BBC News, 1 Nov. 2011, <http://www.bbc.co.uk/news/world-africa-13755445>.

45 David D. Kirkpatrick and Kareem Fahim, *Qaddafi Forces Violently Quell Capital Protest*, NY Times, 25 Feb. 2011, <http://www.nytimes.com/2011/02/26/world/africa/26libya.html?pagewanted=all>.

46 Missy Ryan, *Blast and gunfire rock Tripoli*, Reuters, 20 Aug. 2011, <http://www.reuters.com/article/2011/08/20/us-libya-idUSTRE77A2Y920110820>.

47 David D. Kirkpatrick and Kareem Fahim, *Inside a Libyan Hospital, Proof of a Revolt's Costs*, NY Times, 25 Aug. 2011, <http://www.nytimes.com/2011/08/26/world/africa/nato-joins-hunt-for-qaddafi-gadhafi-gaddafi.html?scp=1&sq=tripoli%20hospital&st=cse>; *Libya: End Violent Crackdown in Tripoli: Disappearances and Torture Major Concerns*, Human Rights Watch, 13 Mar. 2011, <http://www.hrw.org/news/2011/03/13/libya-end-violent-crackdown-tripoli>; David Poort, *Doctors Reveal Hospital Horrors Under Gaddafi*, AL-Jazeera, 15 Sept. 2011, <http://english.aljazeera.net/indepth/features/2011/09/2011191564045846547.html>.

48 *Libya: Hundreds of bodies found at Tripoli hospital*, BBC News, 26 Aug. 2011, <http://www.bbc.co.uk/news/world-africa-14687658>.

49 *Libya: Mass Graves Found in and Around Tripoli*, AP, 14 Sep. 2011, [http://www.huffingtonpost.com/2011/09/14/libya-mass-grave\\_n\\_962395.html](http://www.huffingtonpost.com/2011/09/14/libya-mass-grave_n_962395.html)

50 *Blast and gunfire rock Tripoli*, *supra* note 46.

51 *Id.*

52 *Libyan rebels in 'final push' for capital*, AL-Jazeera, 21 Aug. 2011, <http://www.aljazeera.com/news/africa/2011/08/2011182193129278233.html>.

53 *Libyan rebels in Tripoli's central square*, *supra* note 29.

54 Harriet Sherwood, *Muammar Gaddafi's was the beating heart of the regime*, The Guardian, 23 Aug. 2011, <http://www.guardian.co.uk/world/2011/aug/23/muammar-gaddafi-compound-heart-regime>.

two military brigades.<sup>55</sup> On 27 August, rebel fighters gained control over the last few remaining loyalist bases in Tripoli.<sup>56</sup>

## Summary of the 32<sup>nd</sup> Brigade Massacre at Khalat Al Forjan, Tripoli

The following detailed chronological account of the 32<sup>nd</sup> Brigade massacre synthesizes corroborating testimonies from four eyewitnesses. PHR conducted separate in-depth interviews with three survivors of the massacre (Mohammad,<sup>57</sup> Omar,<sup>58</sup> and Ali<sup>59</sup>) and one alleged perpetrator (Laskhar,<sup>60</sup> a mid-level officer with the 32<sup>nd</sup> Brigade, who is currently detained after turning himself in to local authorities). PHR investigators identified these four key informants through *purposeful intensity sampling* (described in the Methods section above).

### “Agricultural Compound” served as makeshift prison next to the 32<sup>nd</sup> Brigade barracks

The massacre took place on 23-24 August 2011 during Col. Qaddafi’s final days of control as rebels closed in on Tripoli. At a makeshift prison<sup>61</sup> in the Khalat Al Forjan neighborhood in Salahaddin district, loyalist forces reportedly massacred 53 civilians and combatants.<sup>62</sup> Some 30 soldiers from the 32<sup>nd</sup> Brigade guarded the makeshift prison, an enclosed warehouse of corrugated metal and cinder blocks inside a walled 6,000-square-meter compound, 24 hours a day, seven days a week.<sup>63</sup>

55 *Rebels capture Gadhafi compound, supra* note 30.

56 Paul Schemm and Hdeel Al-Shalchi, *Libya’s Rebels Say They Control Key Border Crossing*, Huffington Post, 27 Aug. 2011, [http://www.huffingtonpost.com/2011/08/27/libya-rebels-key-border-crossing\\_n\\_938870.html](http://www.huffingtonpost.com/2011/08/27/libya-rebels-key-border-crossing_n_938870.html).

57 The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 11, in Zawiya, Libya (9-11 Sep. 2011).

58 The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 37, in Tripoli, Libya (9 Sep. 2011).

59 The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 36, in Zawiya, Libya (10 Sep 2011).

60 The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 16, in Zawiya, Libya (10 Sep. 2011). Title of “mid-level officer” corroborated in interview with key informant no. 15, in Hamieda, Libya (10 Sep. 2011).

61 Reports variously refer to the site of the massacre as the warehouse, Yarmouk Prison, makeshift jail, metal hangar, farm shed, baking shed, or barn. See, e.g., Robert F. Worth, *The Surreal Ruins of Qaddafi’s Never-Never Land*, NY Times Magazine, 21 Sep. 2011, [http://www.nytimes.com/2011/09/25/magazine/the-surreal-ruins-of-qaddafis-never-never-land.html?nl=todaysheadlines&adxnnl=1&emc=tha210&adxnnlx=1317133302-Bebe8ISFgp%205isTjHKhU2w&pagewanted=all#&wtoeid=growl1\\_r1\\_v3](http://www.nytimes.com/2011/09/25/magazine/the-surreal-ruins-of-qaddafis-never-never-land.html?nl=todaysheadlines&adxnnl=1&emc=tha210&adxnnlx=1317133302-Bebe8ISFgp%205isTjHKhU2w&pagewanted=all#&wtoeid=growl1_r1_v3); *Libya massacre site discovered near Tripoli*, CBC News, 28 Aug. 2011, <http://www.cbc.ca/news/world/story/2011/08/28/libya-massacre.html>; *Detainees Killed by Al-Qaddafi Loyalists*, Amnesty International, 26 Aug. 2011, <http://www.amnesty.org/en/news-and-updates/libya-detainees-killed-al-gaddafi-loyalists-2011-08-26>; Richard Spencer, *Libya: Last Act of Bloody Vengeance by Khamis Brigade*, The Telegraph, 28 Aug. 2011, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8728597/Libya-last-act-of-bloody-vengeance-by-Khamis-Brigade.html>; Martin Fricker, *Libya: rebels imprisoned in baking shed before being gunned down and burned alive*, Daily Mirror, 29 Aug. 2011, <http://www.mirror.co.uk/news/top-stories/2011/08/29/rebels-imprisoned-in-baking-shed-before-being-gunned-down-burned-alive-115875-23379749/>; Anthony Loyd, *Muammar Gaddafi’s Son Khamis Reportedly Visited Detainees Hours Before they Were Massacred*, The Australian, 29 Aug. 2011, <http://www.theaustralian.com.au/news/world/muammar-gaddafis-son-khamis-reportedly-visited-detainees-hours-before-they-were-massacred/story-e6frg6so-1226124330907>.

62 Interview with key informant no. 37, *supra* note 58. The number of bodies (or skeletal remains) found at the site was reported to be between 45 and 150; most reports documented the existence of approximately 50 human remains. See, e.g., *Libya: Evidence Suggests Khamis Brigade Killed 45 Detainees: Bodies Found in Burned Warehouse*, Human Rights Watch, 29 Aug. 2011, <http://www.hrw.org/news/2011/08/29/libya-evidence-suggests-khamis-brigade-killed-45-detainees>; Arwa Damon and Kareem Khadder, *Witness: Gadhafi’s Troops Killed Nearly 150 Detainees*, CNN, 29 Aug. 2011, <http://edition.cnn.com/2011/WORLD/africa/08/28/libya.massacre.report/>; *Libya massacre site discovered near Tripoli, supra* note 59; *Libya: ‘Mass Killing’ Sites in Tripoli*, BBC News, 31 Aug. 2011, <http://www.bbc.co.uk/news/world-africa-14729083>; *Libyan Rebels Free over 10,000 Detainees But 50,000 Still Missing*, The Tripoli Post, 29 Aug. 2011, <http://tripolipost.com/articledetail.asp?c=1&i=6784>.

63 Interview with key informant no. 16, *supra* note 60.



The temporary prison was located behind the Yarmouk military base of the 32<sup>nd</sup> Brigade – Libya’s elite forces headed by Col. Qaddafi’s youngest son, Khamis – on the grounds of an agricultural cooperative on the southern outskirts of Tripoli – referred to here as the “Agricultural Compound.” The occupation of the Agricultural Compound was reportedly a result of NATO bombings of the 32<sup>nd</sup> Brigade’s Al Yarmouk military base. According to a 6 March 2011 Google Earth image, no bomb damage at Al Yarmouk is observed; however, an image of the same area from 19 August 2011 shows several destroyed buildings within the military compound. (See Figure 1.)

Loyalist forces took over the compound and began holding men suspected of supporting opposition forces as early as March 2011.<sup>64</sup> Although some detainees were reportedly released during the conflict, the prison population grew steadily to 153 at the time of the massacre.<sup>65</sup> One day prior to the massacre, survivors reported that guards conducted a roll call, and 153 detainee names were collected.<sup>66</sup> Among this total detainee population, there are at least 20 known survivors.<sup>67</sup> At least 53 charred human skeletons, based on a count of visible skulls, were discovered inside the warehouse three days following the massacre after 32<sup>nd</sup> Brigade soldiers tried to incinerate the remains of the executed detainees.<sup>68</sup>

Several additional corpses were reportedly exhumed from shallow graves in the compound on 8 September 2011, as well as a neighboring compound used by 32<sup>nd</sup> Brigade soldiers.<sup>69</sup> It is probable that some of these men died as a result of torture prior to the massacre.<sup>70</sup> Thus the whereabouts and total number of surviving detainees of the 23 August warehouse massacre is unknown as of the time of this report.

Khalat Al Forjan and Yarmouk 32nd Brigade Military Base — Google Earth Image from 6 March 2011



Khalat Al Forjan and Yarmouk 32nd Brigade Military Base — Google Earth Image from 19 August 2011

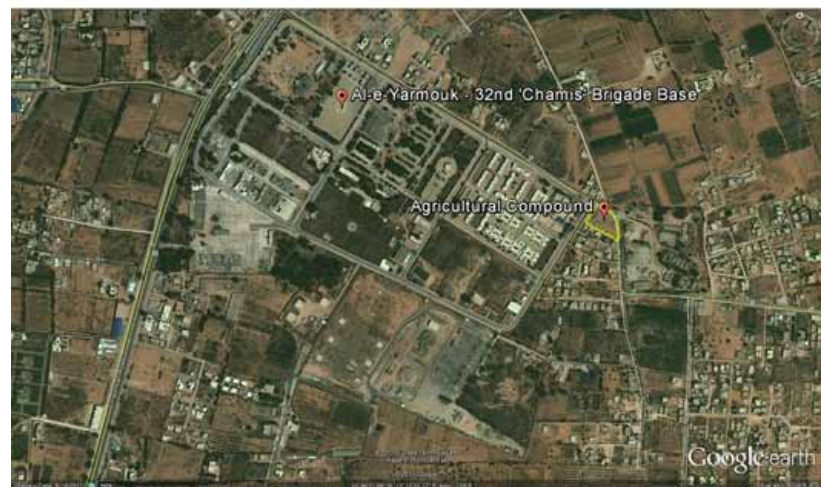


Figure 1. Google Earth Images of Yarmouth 32nd Brigade Military Base Pre- and Post-Damage.

64 *Id.*

65 Interview with key informant no. 37, *supra* note 58. Reports citing the number of detainees in the warehouse vary from 130 to 175 people, though the most frequently reported number of detainees is 153. See, e.g., *Evidence Suggests Khamis Brigade Killed 45 Detainees*, *supra* note 62; Lesley Yarranton and Martin Frick, *Bodies of 150 Rebels Found Torched in Warehouse as Colonel Gaddafi’s Carnage is Revealed*, *The Daily Record*, 28 Aug. 2011, <http://www.dailyrecord.co.uk/news/uk-world-news/2011/08/28/bodies-of-150-rebels-found-torched-in-warehouse-as-colonel-gaddafi-s-carnage-is-revealed-86908-23378452/>; *Detainees Killed by Al-Gaddafi Loyalists*, *supra* note 61; *Witness: Gadhafi’s Troops Killed Nearly 150 Detainees*, *supra* note 62.

66 Interview with key informant no. 11, *supra* note 57; Interview with key informant no. 37, *supra* note 58.

67 List of 20 known survivors [on file with Physicians for Human Rights].

68 Interview with key informant no. 51 in Tripoli, Libya (9 Sep. 2011).

69 PHR Forensic Crime Scene Report, *supra* note 2.

70 Interview with key informant no. 16, *supra* note 60.



Picture 1. Warehouse inside Agriculture Compound with Isuzu pickup truck [smaller insulated box] parked close to the building; Mitsubishi Personnel Transport Truck on the left. These are two of the vehicles in which detainees were allegedly abused/tortured. (PHR Forensic Crime Scene Report, photo DSC\_0399, supra note 2)

### Soldiers systematically caged and tortured each incoming detainee

The three key informants described a similar chronology of events during their first days of captivity. They reported that they were detained by groups of men in official uniform, although some in these groups were reportedly known to be deputized civilians from a paramilitary militia.<sup>71</sup> They gave highly consistent accounts of torture, which involved electrocution with “Taser” type electroshock weapons, as well as beating with electric cables, metal rods, and wooden planks and batons.<sup>72</sup>

Soldiers reportedly incarcerated all incoming detainees for days in small metal structures mounted on the backs of two or more pickup trucks parked inside the compound.<sup>73</sup> The three eyewitnesses reported that they were detained in these enclosed box-like cargo areas. The eyewitnesses variously referred to these mobile detention facilities as the “box,” “cage,” and “fridge.”<sup>74</sup>

They also reported that these box-like detention facilities were too small in which to sit or stand.<sup>75</sup> Torture and solitary confinement alternated for several days.<sup>76</sup> Subsequent transfer to cramped detention in a slightly larger container inside the same compound usually followed before a detainee was finally moved into



Picture 2. This Isuzu pickup truck with a smaller insulated box - interior height 1.26 meters - was parked close to the warehouse. It is likely the “fridge” Mohammad was placed in after having been beaten by guards. (see page 17). (PHR Forensic Crime Scene Report, photo DSC\_0556, supra note 2)

71 Interview with key informant no. 37, supra note 58.

72 Interview with key informant no. 11, supra note 57; Interview with key informant no. 36, supra note 59; Interview with key informant no. 37, supra note 58.

73 Interview with key informant no. 11, supra note 57.

74 *Id.*; Interview with key informant no. 36, supra note 59; Interview with key informant no. 37, supra note 58.

75 Interview with key informant no. 11, supra note 57; Interview with key informant no. 36, supra note 59; Interview with key informant no. 37, supra note 58.

76 Interview with key informant no. 11, supra note 57; Interview with key informant no. 37, supra note 58.



the large metal shed referred to as the warehouse (see *Picture 2*).

Surviving detainees gave highly consistent accounts of inhuman conditions inside the warehouse with no sanitation, little food, and scarce water. They also reported a lack of medical care for the severely wounded, sexual violence and rape, deaths from torture, and eyewitness accounts of the massacre on 23 August.



*Picture 3. Empty white refrigeration transport container with the logo "msc" located inside the Compound. (PHR Forensic Crime Scene Report, photo DSC\_0418, supra note 2)*

Laskhar, a mid-level officer with the 32<sup>nd</sup> Brigade, provided critical, self-incriminating information on torturing both civilians and opposition forces under his custody at the Agricultural Compound makeshift prison in Khalat Al Forjan. He stated that the officer in charge was Lt. Col. Mohamad Mansour, who reported directly to Khamis Qaddafi. Laskhar reported that Mansour was present at the compound two to three times each week as well as every Friday.<sup>77</sup>

Laskhar reported that his superior, Sergeant Major Hamza el Harizi, gave orders to him and other soldiers to beat all incoming detainees.<sup>78</sup> When a new detainee arrived at the detention facility, he was brought to the front office where a small group of guards interrogated him and took turns beating him. Laskhar himself admitted that he participated in beating new detainees several times a week using the butt of his rifle, whips made from cable wire, wood, and metal batons.



*Picture 4. Wooden handles with suspected blood stains, possibly implements used to beat detainees at the Agricultural Compound. (PHR Forensic Crime Scene Report, photo DSC\_0611, supra note 2)*

He reported direct knowledge of eight detainees who had died from this type of torture and participated in the torture of four of these eight men, which took place at various times from April to August 2011. Laskhar reported that both Harizi and Mansour knew of the eight killings and ordered the soldiers to bury the bodies. According to Laskhar, they buried four bodies within the compound.

Loyalist forces detained Mohammad, a student and opposition fighter, and brought him to the makeshift prison at the Agricultural Compound in June 2011.<sup>79</sup> When he first arrived, soldiers from the 32<sup>nd</sup> Brigade forced Mohammad to his knees and violently began

to beat him. The soldiers told Mohammad, "Tell us you're a rat, and we'll stop beating you!" Mohammad refused, and he was further beaten until he lost consciousness.

Covered in blood, blindfolded, and handcuffed, Mohammad awoke later that night and was placed in the "fridge" – a cramped enclosed metal box without ventilation on the back of a pickup parked inside the compound (see *picture 2*). It was hot, and it was difficult to breathe. His hands were painful, bloody, and swollen from lack of blood flow. He pounded on the metal wall to be let out, but was left there until the next morning, when a soldier dragged him back to the office to record his information. A second round of interrogations and beating ensued. They

<sup>77</sup> Interview with key informant no. 16, *supra* note 60.

<sup>78</sup> *Id.*

<sup>79</sup> Interview with key informant no. 11, *supra* note 57.

put him back in the “fridge” and gave him a small amount of food, but he could not chew as his jaw had been broken during a previous beating.<sup>80</sup>

Qaddafi forces detained Ali, a day laborer who cooked for the opposition forces, and took him to the makeshift prison at Khalat Al Forjan where they bound and blindfolded him.<sup>81</sup> Ali reported that in a small office, soldiers lashed his body with a whip of frayed metal electrical cables approximately five centimeters in diameter (which he later saw when he was not blindfolded), until he lost consciousness. Later that day guards threw Ali into the “fridge” with his hands bound.

Due to severe pain from the beatings on his back and buttocks, Ali reported that he found it impossible to rest against them without severe pain. He could not lean against a wall or lay down on his back/backside at all. Ali stayed crouched for nearly four hours until guards dragged him out of the “fridge” and beat him again until he lost consciousness.

This pattern repeated for five consecutive days. He received very little food during his isolation, and when he asked for water, the guards sometimes poured motor oil or urine, from bottles in which detainees had relieved themselves, into his open mouth. At a moment of complete despair, he asked the guards to kill him, but they said it would be a waste of a bullet and beat him more.<sup>82</sup>

Loyalist forces accused Omar, a businessman and father of four, of supporting opposition forces.<sup>83</sup> They hunted him down and finally caught him at a checkpoint while he was driving with his family. They brought Omar into the small office near the main entrance to the compound at Khalat Al Forjan and stripped off his clothes. For several hours soldiers with the 32<sup>nd</sup> Brigade repeatedly punched and kicked him, whipped him with electrical cables, and electrocuted him with a Taser stun gun. While the soldiers continued to flog him, they accused him of using his automobile business to fund and support opposition forces. Under torture, Omar confessed to these charges.

Later that day soldiers transferred Omar to the “fridge,” where he could barely breathe due to the heat and lack of air. Guards dragged him out each day for beatings and lashings and confined him inside the “fridge” for five consecutive days before transferring him to a separate detention facility in the same compound, called the warehouse.<sup>84</sup>

### **Soldiers imprisoned 153 men in inhuman conditions in the warehouse**

Inside the walled compound, soldiers used an agricultural shed to detain together up to 153 men, approximately 120 of whom were reported to be civilians.<sup>85</sup> This enclosed warehouse of rusting corrugated metal and cinder blocks measured roughly 120 square meters. The condi-



*Picture 5. Suspected urine jugs into which detainees relieved themselves, found in the personnel carrying box of the Mitsubishi truck. (PHR Forensic Crime Scene Report, photo DSC\_0579, supra note 2)*

<sup>80</sup> *Id.*

<sup>81</sup> Interview with key informant no. 36, *supra* note 59.

<sup>82</sup> *Id.*

<sup>83</sup> Interview with key informant no. 37, *supra* note 58.

<sup>84</sup> *Id.*

<sup>85</sup> See, e.g., *Witness: Gadhafi's Troops Killed Nearly 150 Detainees*, *supra* note 62; *Evidence of Libya Detainee Massacre*: Human Rights Watch, The National Post, 29 Aug. 2011, <http://news.nationalpost.com/2011/08/29/evidence-of-libya-detainee-massacre-human-rights-watch/>.

tions were inhuman. For example, detainees were given very little food or water, and the water they were given was often polluted.<sup>86</sup> The lack of water was so extreme that some men drank their urine due to extreme thirst.<sup>87</sup> A complete lack of toilet or bathing facilities added to the inhuman conditions. Because there was no toilet, many detainees did not defecate, which led to medical emergencies. For example, one detainee reportedly suffered rectal prolapse when he finally had a bowel movement after not having defecated for one month. The soldiers left him for a full day with his prolapsed rectum outside his body before they finally transferred him to the military hospital.<sup>88</sup>

Ali wore the same clothes for two months and was not allowed to wash or bathe. His wounds from the lashings became infected with “worms” – most probably maggots – but he received no medical treatment. His soiled clothing began to stick to his wounds, and when he tried to pull away his clothing, it tore his skin and he began to bleed.<sup>89</sup>

Soldiers continued to beat and torture detainees inside the warehouse. They gagged, blindfolded, and bound detainees’ hands and feet and hung them from a beam.<sup>90</sup> They forced other detainees to lift the victims by a rope and suspend them while the guards beat them with electric cables, sticks, rocks as well as rakes and other farm equipment.<sup>91</sup> Sometimes the guards electrocuted the suspended detainee with Taser stun guns and forced other detainees to beat their fellow inmates.<sup>92</sup> The young and old were abused the same.<sup>93</sup> Surprised by what the human body could endure, Omar recalled, “We were sometimes beaten with heavy chains to the point that my back was totally black.”<sup>94</sup>

Some detainees reportedly died from such torture.<sup>95</sup> Omar recounted the brutal beating of one man, Abdelkarim Bourjib from Zawiya, whom guards savagely tortured until his death.<sup>96</sup> Before he was killed, they broke his fingers and humiliated him for several days by forcing him to crawl on all fours and bark like a dog.<sup>97</sup>

### **Soldiers raped and sexually violated detainees**

Ali reported that guards sexually violated and raped detainees.<sup>98</sup> Late at night he witnessed soldiers enter the warehouse and forcibly remove young detainees. He did not witness the rapes himself, although he said it was widely known among the men that such abuses occurred. He reported that he did witness one act of sexual violence when two guards, whose names Ali gave to PHR investigators, tried to force one detainee to rape another man. At gunpoint the two detainees were forced to undress fully and lie on top of one another naked.<sup>99</sup>

86 Interview with key informant no. 11, *supra* note 57; Interview with key informant no. 36, *supra* note 59; Interview with key informant no. 37, *supra* note 58.

87 Interview with key informant no. 36, *supra* note 59.

88 Interview with key informant no. 11, *supra* note 57; Interview with key informant no. 37, *supra* note 58. The diagnosis was related to the witnesses from a fellow detainee who was a physician.

89 Interview with key informant no. 36, *supra* note 59.

90 *Id.*; Interview with key informant no. 37, *supra* note 58.

91 Interview with key informant no. 36, *supra* note 59.

92 *Id.*; Interview with key informant no. 37, *supra* note 58.

93 Interview with key informant no. 36, *supra* note 59; Interview with key informant no. 37, *supra* note 58.

94 Interview with key informant no. 36, *supra* note 59.

95 Interview with key informant no. 16, *supra* note 60; Interview with key informant no. 37, *supra* note 58.

96 Interview with key informant no. 37, *supra* note 58.

97 *Id.*

98 Interview with key informant no. 36, *supra* note 59.

99 Interview with key informant no. 36, *supra* note 59.

Laskhar witnessed two incidents of rape in late-May 2011.<sup>100</sup> On two separate occasions, he saw the same soldier (name withheld) rape young male detainees. According to Laskhar, both incidents happened late at night outside of the warehouse but within the walled compound, between two parked vehicles.

### **Khamis Qaddafi ordered execution of all detainees on 23 August 2011**

At around 12:00 noon on 23 August 2011, Laskhar saw Faraj Abu Ghalia (Deputy Chief of Military Intelligence) enter the room where Khamis Qaddafi was conducting a meeting at the 32<sup>nd</sup> Brigade.<sup>101</sup> Laskhar was also present in the room with his direct superior, Sergeant Major Hamza el Harizi, who was speaking with his superior, Lt. Col. Mohammad Mansour, on the telephone. According to Laskhar, after Harizi finished the call, he told Laskhar that Khamis Qaddafi ordered all detainees at the compound be killed and that the operation begin that night.<sup>102</sup>

On 23 August 2011, 153 men were held in the warehouse.<sup>103</sup> Just before the evening call to prayer, a guard named Mustafa<sup>104</sup> whispered through an opening of the warehouse to the group, "You will either escape or die."<sup>105</sup> He told the men that he would unlock the main door so they could escape, but to wait 30 minutes before fleeing. At around 8:00 p.m. Omar began to organize the men into groups of about ten to escape quietly in groups, but the detainees started to celebrate chanting "God is great."<sup>106</sup> Mohammad believed the noise alerted the soldiers.<sup>107</sup> One of them (name withheld) found the door unlocked and yelled, "Who opened the coffin?"<sup>108</sup>

A second soldier (name withheld) then entered the warehouse and fired his nine-millimeter pistol at one of the new detainees from Misrata who was sitting near the door; he apparently died instantly.<sup>109</sup> Another man (name withheld) was also shot, but not killed.<sup>110</sup>

The same two 32<sup>nd</sup> Brigade soldiers stepped outside and began firing their automatic weapons through the thin metal gate at the reported 153 detainees trapped inside the ware-



*Picture 6. The damage to the metal gate in this photo is consistent with at least 21 suspected gunshots entering from the outside through the padlocked metal gate and into the warehouse room. (PHR Forensic Crime Scene Report, photo DSC\_0526, supra note 2).*

100 Interview with key informant no. 16, *supra* note 60.

101 *Id.*

102 *Id.*

103 Interview with key informant no. 11, *supra* note 57; Interview with key informant no. 37, *supra* note 58.

104 The name of this guard has been changed to protect his identity.

105 Interview with key informant no. 37, *supra* note 58.

106 *Id.*

107 Interview with key informant no. 11, *supra* note 57.

108 *Id.*

109 *Id.*

110 *Id.*





Picture 7. Agricultural Compound warehouse entrance showing rusted metal façade. [PHR Forensic Crime Scene Report, photo DSC\_0621, supra note 2]

house.<sup>111</sup> Mohammad saw men cower and run in chaos. He witnessed many get shot and die. He then saw grenades land inside the warehouse, which the soldiers had thrown through the openings high above the main door.<sup>112</sup> Omar believed the soldiers threw seven grenades into the warehouse, and more men died from the explosions.<sup>113</sup>

Mohammad next saw the soldiers enter the warehouse and begin firing their automatic weapons directly at the detainees.<sup>114</sup> Omar worked his way to the front left corner where he hid behind some tires and farm equipment.<sup>115</sup>

At one point one of the soldiers' weapons jammed, and a detainee picked up a metal object

and threw it at this soldier while he (the detainee) ran out of the warehouse.<sup>116</sup> The soldier got his weapon to work, fired four shots at the fleeing detainee, and killed him.<sup>117</sup>

Mohammad saw another detainee grab a fire extinguisher and, while running past the soldier, create a cloud of smoke so he could safely escape.<sup>118</sup> Other detainees were also able to run past the soldiers at that same time.<sup>119</sup> But many of those who ran left out of the warehouse toward the main entrance of the compound were shot and killed.<sup>120</sup> A few of these detainees made it out safely, and other 32<sup>nd</sup> Brigade soldiers ran out to track them down.<sup>121</sup> Other detainees ran straight toward the compound wall opposite the warehouse.<sup>122</sup> Some 20 detainees managed to escape safely by scaling the wall of the compound.<sup>123</sup>

Later that night, Harizi told Laskhar to ensure there were no survivors among the detainees.<sup>124</sup> Laskhar arrived at the compound at 11:00 p.m. and proceeded to search for detainees who had survived the initial attacks. With a flashlight he inspected wounded men who lay on the ground inside the warehouse and others who had apparently escaped but were still within the walled compound. Laskhar reported that he had executed 12 detainees with his nine-millimeter



Picture 8. Possible charred fire extinguisher. [PHR Forensic Crime Scene Report, photo DSC\_527, supra note 2]

111 *Id.*

112 *Id.*

113 Interview with key informant no. 37, *supra* note 58.

114 Interview with key informant no. 11, *supra* note 57.

115 Interview with key informant no. 37, *supra* note 58.

116 Interview with key informant no. 11, *supra* note 57.

117 *Id.*

118 *Id.*

119 *Id.*

120 *Id.*; Interview with key informant no. 37, *supra* note 58.

121 Interview with key informant no. 11, *supra* note 57.

122 *Id.*; Interview with key informant no. 37, *supra* note 58.

123 Interview with key informant no. 11, *supra* note 57; Interview with key informant no. 37, *supra* note 58.

124 Interview with key informant no. 16, *supra* note 60.

pistol that night,<sup>125</sup> corroborated by Mohammad's eyewitness testimony.<sup>126</sup>

Mohammad reported the following account: he and 17 other escapees hid near a house behind the compound and witnessed the events that took place next.<sup>127</sup> He saw two detainees still within the compound bring water to the injured inside the warehouse. The soldiers who had tracked down the men who had tried to escape out the main entrance came back and shot these two detainees. He saw a soldier shoot wildly with a machine gun. He saw the soldier named Laskhar hunt down survivors with a flashlight and execute them with his nine-millimeter pistol. According to Mohammad, two Tuareg<sup>128</sup> soldiers as well as two black African soldiers (possibly from Mali or Niger, he said) combed the area looking for survivors. Some soldiers turned on the headlights of cars parked in the compound, apparently to aid them in finding any survivors. 32<sup>nd</sup> Brigade soldiers then pulled two trucks in front of the warehouse and piled bodies into them.



Picture 9. One 9mm cartridge casing with a percussion impression, consistent with having been discharged from a Glock pistol, was documented on the ground immediately outside of the warehouse entrance door on 9 September 2011. (PHR Forensic Crime Scene Report, photo DSC\_684, *supra* note 2)

### **Soldiers incinerated bodies to cover up massacre**

The next morning on 24 August, Hamza el Harizi brought a Caterpillar excavator to the compound apparently to dig a mass grave for the executed detainees.<sup>129</sup> The heavy equipment seemingly broke down, hindering their plans to bury the bodies *en masse*. Hamza reportedly searched for other excavating equipment, but failed to find any.<sup>130</sup> This might also explain the various areas of machine-dug excavations documented in the Agricultural Compound on 9 September 2011, as reported in the forensic report.<sup>131</sup>

At that point, one of the soldiers (name withheld) fled, but Laskhar remained with Hamza, who did not know what to do with the bodies.<sup>132</sup> Laskhar reported that sometime later that same week Lt. Col. Mansour ordered that they collect all corpses, amass them inside the warehouse, and burn all the bodies. (Laskhar reportedly told officials at the Zawiya military council that Khamis Qaddafi's plan was to burn the bodies, then attack the compound with rocket-propelled grenades, and blame NATO.<sup>133</sup>) Laskhar said they followed his orders. According to Laskhar, they then collected automobile tires and put them inside the warehouse with the bodies. The

<sup>125</sup> *Id.*

<sup>126</sup> Interview with key informant no. 11, *supra* note 57.

<sup>127</sup> *Id.*

<sup>128</sup> The Tuareg are a pastoralist semi-nomadic community of Berber origin. Between one and two million Tuareg people live in minority communities in a number of countries, including southern Algeria, Libya, Mali and Niger. See Andrew Meldrum, *Tuaregs: 5 Things You Need to Know*, Global Post, 29 Oct. 2011, <http://www.globalpost.com/dispatch/news/regions/africa/111028/tuaregs-5-things-you-need-know>; Smithsonian Institute National Museum of African Art, *Who are the Tuareg?*, Art of Being Tuareg: Sahara Nomads in a Modern World, <http://africa.si.edu/exhibits/tuareg/who.html> (last visited 21 Nov. 2011).

<sup>129</sup> Interview with key informant no. 16, *supra* note 60.

<sup>130</sup> *Id.*

<sup>131</sup> PHR Forensic Crime Scene Report, *supra* note 2.

<sup>132</sup> Interview with key informant no. 16, *supra* note 60.

<sup>133</sup> Interview with key informant no. 17, *supra* note 3.

soldiers then poured diesel fuel over the bodies and tires and torched the warehouse and its contents.<sup>134</sup>

Libyan opposition forces discovered the Khalat Al Forjan massacre site on 26 August, after entering Tripoli from the south and gaining control of the 32<sup>nd</sup> Brigade headquarters.<sup>135</sup> The skeletal remains of approximately 50 people were found burned inside the charred warehouse,<sup>136</sup> and additional corpses were found with their wrists bound<sup>137</sup> outside the warehouse itself.<sup>138</sup>

### **Profile 1: Mohammad<sup>139</sup> Survived Torture and Witnessed Massacre at Khalat Al Forjan**

PHR conducted a series of three interviews with “Mohammad” (pseudonym) on 9-11 September 2011. Mohammad was initially detained on 15 June 2011 and was an eyewitness to and survivor of the massacre at the warehouse in the Agricultural Compound at Khalat Al Forjan.

Prior to his detention, in February 2011, Mohammad had joined the revolutionary forces to defend his town. When Zawiya fell to Col. Qaddafi’s forces on 12 March 2011, Mohammad fled the area. He hid at his family’s vacant farm house 40 kilometers from Zawiya, but left after three weeks when he began to fear Qaddafi loyalists would inform on him. In April he returned home to Zawiya, and learned from his family that he was on “Muammar Qaddafi’s wanted list.” (Six of his relatives have similar names, and each was harassed at checkpoints and interrogated.)

#### ***Hunted down and taken into custody***

When revolutionary forces sought to retake Zawiya on 11 June 2011, Mohammad rejoined the fighting. That day, while manning an anti-aircraft gun on the back of a pickup truck, Mohammad came under fire. His driver was shot in the shoulder and pulled off the truck to the side of the road. Scared, Mohammad jumped out of the truck and left his gun because he did not want to be seen as a rebel fighter and captured. He hid for five hours in a nearby building then walked home when it was dark. He reported that the next day the town was nearly empty, as residents stayed inside because they feared being shot by Qaddafi snipers.

On the morning of 15 June, Mohammad went to open up his family’s small shop. At around noon, he noticed three armed Qaddafi soldiers in green uniforms park their Hilux truck across from his shop. Next he saw a known Qaddafi loyalist talk to the military and point toward the shop. Mohammad ran outside sensing that someone had just informed on him. He saw the three soldiers fire their weapons in the air and at his feet. Then one shouted, “Don’t move, you rat!” While two soldiers held him at gunpoint, the third took his ID and found his name on a list. The beating began. One took the butt of his AK-47 rifle and beat him on the right side of his face with it, reportedly breaking his teeth and causing bleeding from his nose and mouth. He fell to

134 Interview with key informant no. 16, *supra* note 60.

135 While some sources allege that the location of the massacre was discovered by families living in the surrounding area, Human Rights Watch reported that an NTC fighter found the massacre site on 26 August. See, e.g., *Bodies of 150 Rebels Found Torched in Warehouse*, *supra* note 65; *Evidence Suggests Khamis Brigade Killed 45 Detainees*, *supra* note 62.

136 See *supra* note 62.

137 At least one of the corpses identified as a soldier was reportedly found outside the warehouse with his hands tied behind his back, though some sources claim that at least one dead soldier discovered outside the structure had his ankles tied, not his hands. See, e.g., Martin Fricker and Lesley Yarranton, *Libya: two mass graves discovered in warehouse*, *Sunday Mirror*, 28 Aug. 2011, <http://www.mirror.co.uk/news/top-stories/2011/08/28/libya-two-mass-graves-discovered-in-warehouse-115875-23377191/>; *Evidence of Libya Detainee Massacre: Human Rights Watch*, *supra* note 82.

138 Between four and ten bodies were reportedly discovered outside the structure. See, e.g., Clemens Höges, *Warehouse of Horror: Evidence of a Massacre Found Near Tripoli*, *Spiegel Online*, 29 Aug. 2011, <http://www.spiegel.de/international/world/0,1518,783020,00.html>. Two bodies discovered outside the structure may have been Qaddafi soldiers who refused to participate in the massacre. See, e.g., *Libya: two mass graves discovered in warehouse*, *supra* note 137.

139 All information in Profile 1 was reported during the interview with PHR. The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 11, *supra* note 57.

the ground. After what he described as 15 minutes of beating, the military threw Mohammad in their truck and drove him a short distance away to a building they had taken over in the center of town. The three uniformed men handed over Mohammad to other military there.

#### ***Whipped and brutalized during interrogation***

Mohammad was brought into a large empty hall. Two large dark-skinned men in khaki military uniforms stood by a table with an empty chair beside it. On the table lay a makeshift whip of bundled “high-voltage” cable wires bundled together with duct tape, and a truncheon made from a two- to three-centimeter diameter BBR exhaust pipe attached to a one-meter-long piece of wood. Mohammad reported that both men spoke poor Arabic with an accent he recognized as from Tawerga.<sup>140</sup> They each wore insignia from Lewa-32 – Khamis Qaddafi’s brigade.

The two soldiers ripped off his outer shirt, tied his feet together and his hands together behind his back with black telephone wire, and blindfolded him using a black plastic garbage bag. The two interrogators demanded to know if there were rebel snipers in Zawiya and the location of his “brother rats.” When Mohammad replied that he did not know, they began to whip and bludgeon him. While one tore off his belt and began to whip Mohammad, the other forcefully kicked him in the flanks causing him to fall off the chair.

Forcing Mohammad to crouch on his knees, one soldier then leveled his “general purpose machine gun” to his right temple and told Mohammad, “Prepare yourself to die.” Mohammad started to pray. According to Mohammad, the other soldier present said, “Talking doesn’t work on such animals. Just kill him.” The soldier pulled the trigger firing continuous rounds inches from Mohammad’s right ear. He remembered blood coming from his ear and becoming deaf in that ear.

The soldiers became more violent, throwing him face first onto the floor. “Say you’re a rat!” Mohammad refused. One soldier grabbed the makeshift whip and violently lashed his back with the cable wires. His undershirt became soaked in blood, and his back still bore the marks of those lashings at the time of his interview with PHR (see medical evaluation of Mohammad below). The last thing he remembered before losing consciousness was seeing one of the soldiers take a running start and jump on top of his chest.

#### ***Tortured and sexually violated in detention***

Mohammad woke up later the same day in a semi-truck trailer cold and shivering, wearing a blood-soaked undershirt. He was blindfolded and handcuffed. He experienced loud ringing in his ears, and severe pain at his right lower rib cage. He felt his ribs may have been broken. Four other detainees present told Mohammad he was being held by 32<sup>nd</sup> Brigade forces in Al Maya, a town situated between Zawiya and Tripoli. He was detained without food and was given very little water. He reported that soldiers continuously beat and tortured him for three days. He recounted one particularly traumatizing episode: After pouring water over his body, soldiers wearing rubber gloves held him down, while other soldiers used a Taser stun gun inflicting severe pain all over his body. With tears in his eyes, he told how one of his torturers inserted the Taser down his pants and shot repeated bursts of electrical current to his genitals.

#### ***Beaten unconscious and crammed into the small metal “fridge”***

On 18 June 2011, 32<sup>nd</sup> Brigade military transferred Mohammad to Tripoli. According to Mohammad, while driving at high speed, his captors opened the back of the Toyota LandCruiser, held him by his feet with his torso and head outside the vehicle, and repeatedly shoved him in and out of the truck. At mid-afternoon that day, they arrived at the Agricultural Compound situated behind the barracks of the 32<sup>nd</sup> Brigade in the Khalat Al Forjan region of Tripoli. Two

<sup>140</sup> The town of Tawerga lies approximately 205 km southeast of Tripoli. Due to its key location along a 19<sup>th</sup>-century slave trade route, Tawerga is mostly comprised of dark-skinned Libyans. Sam Dagher, *Libya City Torn by Tribal Feud*, W.S. Journal, 21 Jun. 2011, <http://online.wsj.com/article/SB10001424052702304887904576395143328336026.html>.

soldiers from the 32<sup>nd</sup> Brigade, Laskhar and another soldier (name withheld), took Mohammad into a small office on the premises and interrogated him for several hours. They searched his cell phone and demanded to know details of contacts, text messages, photographs, and even songs. When Laskhar learned that Mohammad was from Laskhar's hometown of Zawiya, Laskhar told Mohammad he would be singled out for "special treatment." He forced Mohammad to his knees and violently began to beat him. "Tell us you're a rat, and we'll stop beating you!" Mohammad refused, and he was further beaten until he lost consciousness.

Covered in blood, blindfolded, and handcuffed, he awoke later that night and was placed in the "fridge" – a cramped, enclosed metal box without ventilation on the back of a pickup parked in the yard. It was hot, and it was difficult to breathe. His hands were painful, bloody, and swollen from lack of blood flow. He pounded on the metal wall to be let out, but was left there until the next morning, when a military guard dragged him back to the office to record his information. A second round of interrogations and beating ensued. They put him back in the "fridge" and gave him a small amount of pasta, but he could not chew as his jaw had been reportedly broken during a previous beating. They gave him a can of soda, which was all he could tolerate due to the pain.

### ***Suffered 15 days in solitary confinement with open wounds from torture***

When the military brought in new detainees from Misrata on 20 June, they put them in the "fridge" and transferred Mohammad and one other detainee into a blue "shell" truck with a metal container on the back, where four other detainees were already being held.

Inside the container were several adjoining cells measuring less than one meter wide, less than one meter deep, and just over one meter tall. The cells were separated by metal bars so that detainees could see and speak to one another. Mohammad described the 15 days he spent in this cramped cell as the worst suffering he had endured. He was only allowed to urinate in a small plastic bottle and went one month before passing a stool. The military gave him a small piece of bread, which he could barely eat due to his injured jaw. His hands and feet were terribly swollen, and a young doctor who was also detained with him in the container advised Mohammad to try to elevate his hands and legs to reduce the swelling. He also reported severe back pain due to the prolonged position he was forced to adopt because the cell was too small in which to sit, lie down, or even stand up.

On about the 12<sup>th</sup> day of being in the "cage," Mohammad noticed that his open wounds from being lashed with metal cables were infected. A Libyan doctor who intermittently visited the detainees apparently told the guards to allow Mohammad to wash his lesions and to stay in the sun to let them dry.

### ***Endured squalid conditions and inhuman treatment in the warehouse***

After 15 days of solitary confinement in the container, 32<sup>nd</sup> Brigade soldiers moved Mohammad to the warehouse – a roughly 10- by 12-meter enclosed farm shed made of rusting corrugated metal and cinder blocks – inside the same compound. At that time in early July 2011, there were 114 detainees in the warehouse, and although better than the extreme conditions of solitary confinement, the warehouse provided only approximately one square meter of space per person.

Mohammad and the other detainees were forced to sleep on a dirt floor; food and water were intermittent, and Mohammad reported that at times seven men shared a single bottle of water. A complete lack of toilet or bathing facilities added to the inhuman conditions. Mohammad reported that because there was no toilet, many detainees did not defecate, which led to medical emergencies. For example, one detainee suffered rectal prolapse when he finally had a bowel movement after not having defecated for one month. The guards left him for a full day with his prolapsed rectum protruding outside his body before they finally transferred him to the military hospital.

Mohammad recognized some men from his hometown and sat with them. There were



informants in the warehouse who reported to the soldiers, so Mohammad kept to the people he knew and tried not to speak about recent events. According to Mohammad, he received further beatings, and more severe torture was meted out to all newcomers.

32<sup>nd</sup> Brigade soldiers forced some of the detainees to perform manual labor around the compound. In August at the beginning of Ramadan, Mohammad and another long-serving detainee were forced to work in the kitchen and cook for the soldiers. There was no fuel so they cooked with firewood. One of the guards, Mustafa, usually supervised their work and was eventually left in charge of the detainees in the warehouse. This guard allowed a former detainee (name withheld) occasionally to smuggle in food and water at night for the detainees, as the soldiers were no longer feeding them.

#### ***Witnessed massacre at Khalat Al Forjan***

On 23 August 2011, the detainees had gone two days without food or water, according to Mohammad. On that day, 153 men were reportedly held in the warehouse and had only four remaining 1.5 liter bottles of water to share among them.

Just before the evening call to prayer, the guard named Mustafa whispered through an opening of the warehouse to the group that in 30 minutes he would be back to unlock the main door so they could escape. He also told the group to wait 30 minutes after he had unlocked it before they fled. The detainees started to celebrate, chanting "God is great." Mohammad believed the noise may have alerted the other soldiers. One of them (name withheld) found the door unlocked and yelled, "Who opened the coffin?" Mohammad and the others fell silent. A second soldier (name withheld) then entered the warehouse and reportedly fired his nine-millimeter pistol at one of the new detainees from Misrata who was sitting near the door. He died instantly. Another man (name withheld) was also shot, but apparently not killed.

The same two 32<sup>nd</sup> Brigade soldiers stepped outside and began firing their "Kalashnikov" and automatic weapons through the thin metal wall at the detainees trapped inside the warehouse. Mohammad saw men cower and run in chaos. He witnessed many get shot and apparently die.

He then saw grenades land inside the warehouse, which the soldiers had thrown through the openings high above the main door. More men died from the explosions. He next saw the soldiers enter the warehouse and begin firing their automatic weapons directly at the detainees. According to Mohammad, the soldiers repeated this pattern of attack four or five times: fire from outside the warehouse, launch grenades, enter the warehouse and fire into the crowd, then reload their weapons.

At one point one of the soldiers' weapons jammed, and one of the detainees picked up a metal object and threw it at the soldier while he ran out of the warehouse. The soldier got his weapon to work, fired four shots at the fleeing detainee, and reportedly killed him. Mohammad saw another detainee grab a fire extinguisher and, while running past the soldier, create a cloud of smoke so he could safely escape. Other detainees were also able to run past the soldiers at that same time, but many of those who ran left out of the warehouse toward the main entrance of the compound were shot and killed. A few of these detainees made it out safely, and other 32<sup>nd</sup> Brigade soldiers ran out to track them down.

Other detainees ran straight toward the compound wall opposite the warehouse. Some of them managed to breach the three-meter-high wall and safely escape. Mohammad was one of the last two detainees to come out of the warehouse. They both ran toward the back compound wall where the trucks with the "shells" were parked and climbed over.

Mohammad reported that he and 17 other escapees hid near a house behind the compound and witnessed the events that took place next. He saw two detainees still within the compound bring water to the injured inside the warehouse. The soldiers who had tracked down the men who had tried to escape out the main entrance came back and shot these two detainees. He saw a soldier shoot wildly with a machine gun. He saw the soldier named Laskhar hunt down survivors with



a flashlight and execute them with his nine-millimeter pistol. According to Mohammad, two Tuareg soldiers as well as two black African soldiers (possibly from Mali or Niger, he said) combed the area looking for survivors. Some soldiers turned on the headlights of cars parked in the compound apparently to aid them in finding any survivors. 32<sup>nd</sup> Brigade soldiers then pulled two trucks in front of the warehouse and piled bodies into them.

Fearing that soldiers would find him, Mohammad left the home in which he was hiding with another detainee at around 2:00 a.m. and took shelter at another house farther back from the compound. The two men climbed to the roof and found three other detainees already there (one man was from Ghiryan, a second from Zleitan and a third from Ain Zara). From the roof, Mohammad could still see the warehouse and the compound where he saw several cars parked as well as a truck with a mounted machine gun. The owner of the house brought them food and bandages. The five men stayed there until 5:00 a.m. At sunrise the owner of the house gave one of the men his cell phone. This man called his brother who came with a car and took the five men to their homes.

## Medical evaluation of Mohammad<sup>141</sup>

### *Reported physical symptoms*

Mohammad described that his hands became grotesquely swollen after soldiers bound his wrists when he was first detained; when the ligatures were finally cut, he reported losing consciousness due to the severe pain in his hands.

Mohammad stated that his inability to open his jaw after he was beaten limited his ability to chew food. He reported that he continues to suffer back pain, hip pain and knee pain from 15 continuous days of cramped detention in stress positions, bound with his arms suspended over his head, in a small metal cage where he could neither stand nor sit.

Mohammad reported that he again lost consciousness after being stomped on, and that he had difficulty breathing and moving his flank for weeks after the initial injury. Mohammad stated that he continues to have pain at his right upper quadrant of his abdomen and the lower half of his right chest and flank.

He reported painful and infected wounds on his forearms from the beatings with frayed electrical and air-conditioning cables. Mohammad stated that the scars from these injuries still cause him to itch at them every night. He also reported persistent, painful and occasionally bloody bowel movements daily for weeks after his escape on 23 August. He reportedly had his first normal bowel movement on 10 September 2011.

### *Assessment of physical evidence*

At the time of his medical evaluation, Mohammad had evidence of healed bruising in his right flank. This tenderness and bruising is consistent with Mohammad's account of a crush injury where one of his captors took a running jump and stomped on his ribs with boots as he lay prone on the concrete floor. The multiple, linear, hypertrophic, hyper-pigmented scars on his abdomen, forearms and arms are highly consistent with his account of traumatic and infected lacerations resulting from whipping with electrical cables.

The wounds have since healed by secondary intention (i.e., when wound edges are



*Profile 1 photo 1. Healed linear hypertrophic, hyper-pigmented lacerations on left biceps, lateral view. (Photo on file with PHR.)*

141 Mohammad's medical evaluation was conducted by Hani Mowafi, MD in Zawiya, Libya (11 Sep. 2011).

not re-approximated and healing occurs from the base of the wound toward the surface of the skin, leaving a biconvex shaped scar) but remain very pruritic (itchy).

His joint swelling is most prominent at his knee, and his limited active range of motion of his left knee is consistent with the confinement he described in the first several weeks of his detention.

Further, he suffers from significant edema (swelling) of both feet, which is likely due to vascular insufficiency associated with prolonged standing and prolonged binding of the ankles given his young age and health status prior to detention.

Mohammad also has ligature scars on both wrists and complains of persistent numbness in the ulnar nerve distribution, most likely as a result of a neuropraxia<sup>142</sup> from the severe pressure on his ulnar nerve at the level of the wrists.



*Profile 1 photo 2. Medial view of significant edema (swelling) of the right foot. (Photo on file with PHR).*



*Profile 1 photo 3. Anterior view of ligature scars on left wrist and healed single laceration on the left lateral forearm. (Photo on file with PHR).*

Mohammad described severe pain and inability to chew following blunt injury to his jaw, which is highly consistent with a broken jaw. He continues to suffer some discomfort when chewing and has some temporomandibular crepitus<sup>143</sup> when opening his mouth. While he does not appear to have obvious malocclusion, he has several missing and broken teeth that he indicated are from the same beating that resulted in his broken jaw.

His poor nutritional status while in detention is supported by persistent findings of under-nutrition on exam, including muscular atrophy, wasting, and prominent rib retractions. He declined a rectal and genital exam; however, his symptoms are consistent with his account of prolonged retention of stool and severe constipation, likely associated with anal fissures.

Mohammad's allegations of torture are highly consistent with and supported by the physical evidence cited above. He continues to have significant physical symptoms and disabilities related the torture he alleged. It is important to

note that some of the beatings Mohammad described likely resulted in additional bruises and soft tissue injuries, which would not leave lasting physical sequelae.

While PHR did not conduct a formal psychological assessment of Mohammad, he exhibited signs of psychological distress during his three interviews. He became tearful when recounting his torture by electrocution to his genitals. He exhibited signs of detachment making little eye contact, while speaking softly with restricted range of affect. His eye contact did improve in one-on-one discussions and with repeated visits. Mohammad did report experiencing intrusive thoughts of his detention and abuse as well as regular nightmares, but said that these were lessening since his escape from the Agricultural Compound; they came nightly while in detention, and now he only rarely experiences them.

<sup>142</sup> Neurapraxia is a dysfunction of the peripheral nervous system, characterized by inability to conduct nerve impulses throughout the body. Lack of impulse conduction leads to temporary loss of sensory and motor function. Jun Kimura, *Electrodiagnosis in Diseases of Nerve and Muscle: Principles of Practice*, Ch.4 (Kimura eds. 3rd ed. 2001).

<sup>143</sup> Temporomandibular crepitus refers to a dysfunction of the temporomandibular joint which causes a grating, popping, or crunching sound in the ear. Gradual loss of the cartilage that provides a cushion between the hinge-shaped joint where the mandible articulates with the temporal bone of the skull causes the mandible to grate painfully on the temporal bone during chewing, speaking and other movements. Kenneth E. Sack, *Current Rheumatology Diagnosis & Treatment*, Ch.1, *Palpation* (Imboden, Hellmann, Stone eds.2007). Nripendra Dhillon, *Current Diagnosis & Treatment in Otolaryngology- Head and Neck Surgery*, Ch. 1, *Temporomandibular Joint* (Lalwani eds. 2008).

## Profile 2: Omar<sup>144</sup> was Detained 95 Days Before Escaping Massacre at Khalat Al Forjan

PHR interviewed “Omar” (pseudonym) on 9 September 2011. Omar was initially detained on or around 20 May 2011 and was an eyewitness and survivor to the massacre at the warehouse in the Agricultural Compound at Khalat Al Forjan, where 32<sup>nd</sup> Brigade soldiers detained him for 95 days. According to Omar, he was the longest-serving detainee at the Agricultural Compound, which enabled him to provide detailed accounts of many of his fellow detainees as well as the events surrounding the massacre on 23 August 2011.

### ***Blindfolded and abducted in front of wife and child***

Omar reported that on 17 February 2011, he was in Dubai for business. He returned home to Libya on or around 19 February and found that many people had begun protesting in the streets – including his family members and friends. He and his wife tried helping injured protesters and also donated blood at a local hospital in Zawiya. He believed these actions may have brought his name to the attention of Qaddafi forces.

For the next three months, Omar reported that he was occasionally questioned by Qaddafi soldiers, who threatened to steal his cars. In mid-May 2011 Omar, his wife, and four children drove to Tripoli to see a pediatric specialist for their newborn son. At the same time, Omar’s nephew was moving some of the new automobiles to storage for safety, which Omar had asked him to do while he was out of town.

While driving a Mercedes-Benz, his nephew was apprehended by soldiers who apparently recognized the car and plate number. Intending to arrest Omar, they instead found his nephew and realized they had the wrong person. They then reportedly forced the nephew to call Omar to find out his location. When Omar received the call from his nephew, Omar told him that they were near Ganzoor on the road driving back home from Tripoli.

When Omar and his family arrived at the 27-kilometer checkpoint on the road from Tripoli to Zawiya on or around 20 May, eight uniformed and masked soldiers from the Khamis 32<sup>nd</sup> Brigade stopped them. A soldier forced him out of his car and asked, “Are you Omar?” He said that he was Omar and then noticed his nephew in the backseat of one of their vehicles. When some of the soldiers took off their masks to take a drink, Omar recognized three soldiers (names withheld).

One of the soldiers, whom Omar knew, asked him, “What religion are you? Why do you have such poisonous ideas about Qaddafi?” The soldiers then searched him, took his cigarettes and money, blindfolded him, bound his hands and forced him in to their vehicle. The soldiers told Omar’s wife to leave with the children and drove off with Omar and his nephew without saying why they were arrested or where they were heading.

They drove to a building, and Omar could hear the sound of the sea. Qaddafi forces began to interrogate him, and they accused him of giving 225,000 Libya Dinars (\$180,000 USD) to the revolutionary forces and of transporting anti-Qaddafi forces to Tunisia. (Omar named his three accusers, who were all part of the civilian militia – Popular Guards or *Harrass al Shaabi* under the command of Mansour Daw – and subsequently captured after the fall of Tripoli).

Blindfolded with his hands tied behind his back, Omar was locked in a small room with his nephew for approximately four hours. Six armed men entered at various times to beat and kick him. He suffered a blow to his left flank where he had recently undergone surgery and yelled out in pain. He then fell unconscious.

### ***Subjected to five days of torture in solitary confinement***

Omar and his nephew were subsequently taken to the Agricultural Compound – a makeshift

144 All information in Profile 2 was reported during the interview with PHR. The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 37, *supra* note 58.

detention facility next to the barracks of the Khamis 32<sup>nd</sup> Brigade on the southern outskirts of Tripoli. Soldiers brought Omar into a small office near the main entrance to the compound and stripped off his clothes. Omar reported that for several hours soldiers beat and tortured him. They repeatedly punched and kicked him, whipped him with electrical cables, and electrocuted him with a Taser stun gun. According to Omar, while the soldiers continued to flog him, they accused him of using his business to fund and support anti-Qaddafi forces. (He later saw two of his vehicles parked inside the compound, apparently stolen by 32<sup>nd</sup> Brigade soldiers. Omar produced copies of his car registration and a subsequent re-titling of his car by a senior soldier at the detention center shortly after his arrest.) Under torture, Omar confessed to the charges against him, but pleaded that they release his nephew, who had no involvement.

Later that day 32<sup>nd</sup> Brigade guards transferred Omar to a small makeshift cell on the back of a pickup truck parked inside the compound. Omar reported that being in the enclosed metal container out in the sun made it extremely difficult to breathe. Guards dragged him out each day for beatings and lashings and confined him inside the container for five consecutive days before transferring him to a separate detention facility in the same compound, called the warehouse.

***Endured three continuous months of inhuman treatment in detention***

The warehouse was a separate building on the compound formerly used to house agricultural equipment and had a dirt floor. When Omar was transferred to the warehouse, there were 27 other detainees being held inside. Each new detainee underwent similar treatment when soldiers brought him in to the warehouse: With his wrists tied behind his back, each man was hung from a beam by rope. Guards forced other detainees to hold the rope suspending the detainee from the beam in the middle of the warehouse. Guards then took turns beating, electrocuting, abusing, and humiliating the new detainee. Such beatings occurred daily, and focused on recent arrivals regardless of age or medical condition. Surprised by what the human body can endure, Omar said, "We were sometimes beaten with heavy chains to the point that my back was totally black."

According to Omar, some detainees died from such torture. He recounted the brutal beating of one man, Abdelkarim Bourjib from Zawiya, whom guards savagely tortured until his death. They broke his fingers and humiliated him for several days by forcing him to crawl on all fours and bark like a dog. They held him for ten days in solitary confinement in a cage on the back of a truck parked in the compound. Omar did not recall when Abdelkarim died, but he is believed to be buried somewhere in the compound or nearby. Visibly shaking with tears in his eyes, Omar began to speak of other horrors that soldiers committed, specifically targeting the younger detainees, but did not want to give details for fear that the sexual nature of the abuse would cause them shame.

Omar also reported to PHR that the 32<sup>nd</sup> Brigade soldiers guarding the warehouse gave the detainees insufficient food and water, consisting of only a small piece of bread with a thin spread to eat for an entire day, or a handful of pasta; many of the men reportedly suffered severe constipation. Many detainees did not have bowel movements for weeks, and one reportedly suffered rectal prolapse after finally moving his bowels after five weeks of constipation. Guards left him for a day with his prolapsed rectum protruding out, and he physically deteriorated. Finally they brought in a doctor, who told the guards to send him to Mitiga military hospital where he spent one month recuperating before returning to the warehouse. The guards occasionally allowed this physician from Zleitan to treat detainees with shots of antibiotics and vitamins, but the physician later refused to return to the detention facility.

Omar said that when he was first detained he weighed 101 kilograms, but after three months in detention he had lost 25 kilograms.

***Witnessed and safely escaped massacre at Khalat Al Forjan***

Nearing the end of August, Omar heard soldiers talk of anti-Qaddafi forces approaching Tripoli,

and they became uneasy. Omar reported that on 19 August, soldiers prevented detainees from having any water for the next two days, but the guard named Mustafa did smuggle in some water late the second night (about one liter for every seven men). One of the detainees was a physician, and he checked the other men's pulses to determine who was least dehydrated and thus could forego their share of the water for the others in worse condition.

Omar believed that other guards suspected Mustafa had been helping the detainees and so replaced him with new guards who "looked like they had death in their eyes." Omar began to fear they would all be killed, so he offered Mustafa a bribe of LYD 200,000 to free him. The guard did not accept the bribe, but reassured Omar that if he heard any plans of a massacre, he would release Omar and all the other detainees.

The detainees became frantic from fear and thirst. One man reportedly drank his own urine from a plastic bottle. Another detainee attempted to escape by climbing through a hole in the warehouse wall, but guards immediately shot and killed him. The guards rushed in and forced all detainees, about 150 at that time, to lie prone on the ground. The guards pummeled them with wooden poles and stomped on their backsides.

Later that night, Mustafa told Omar (through the hole in the upper wall of the warehouse) that the guards had left the man who had tried to escape to rot in the sun. Mustafa was apparently worried that the dogs would eat the corpse, but was afraid to bury the man in view of the other guards.

On the night of 22 August, Mustafa came to the window before evening prayer with some food and water and said to Omar, "You will either escape or die." As he had earlier promised, Mustafa left the door of the warehouse unlocked for them, so they could escape later that night. The detainees began organizing into groups of about ten to escape quietly in groups, but somehow the guards discovered that the door was unlocked and began to attack the group with grenades and automatic weapons. (Omar drew a detailed diagram of the warehouse and the location where each group of men was sitting as well as where the grenades landed.<sup>145</sup>)

Omar believed the soldiers threw seven grenades into the warehouse, and at least two did not explode. He worked his way to the front left corner where he hid behind some tires and farm equipment. When there was a pause in the shooting, detainees rushed the door and ran in all directions. Some were shot dead while others, like Omar, managed to escape safely by scaling the wall of the compound.

### **Psychological assessment of Omar**

While PHR did not conduct a formal psychological assessment of Omar, he exhibited signs of psychological distress when recounting his story. At several points during his interview, he became tearful and was visibly shaken when recounting abuse of other detainees that he had witnessed, most significantly when detailing the alleged rape of a teenage boy. He had to stop briefly and took several minutes to compose himself before voluntarily continuing. When asked whether he wanted to stop or whether he wanted not to have his story taken at all, he responded, "These are truths I put forward for the whole world to see ... in the open." He then indicated that it was important for him to continue.

Omar exhibited similar signs of distress the following day when he relayed to PHR investigators reports of alleged abuse of his former guards (names withheld) at the Agricultural Compound who were now in custody of local military councils. He became tearful and agitated saying, "We didn't sacrifice 35,000 dead just for someone to come and execute the law off the top of his head! It's wrong. We're the victims ... and we're the first ones to want justice, but not like this.

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<sup>145</sup> Schematic drawing (on file with Physicians for Human Rights).

[It is] not for any one person to fire off a bullet or two.... Our people are cultured, and we won't hand over any prisoners of war until there's a credible authority in place."

Omar also reported experiencing recurrent intrusive thoughts about his detention, hyper-arousal symptoms such as difficulty falling and staying asleep, and diminished participation in both of his businesses. He did not report any nightmares related to his prolonged detention and was able to recall details of his detention in extreme detail.

### **Profile 3: Ali<sup>146</sup> was Detained at Two Massacre Sites**

PHR interviewed "Ali" (pseudonym) on 10 September 2011. Ali was initially detained sometime in mid-April 2011 at the warehouse in the Agricultural Compound at Khalat Al Forjan. He was then transferred in early August to another makeshift prison, apparently located on the premises of a Brazilian construction company (Odebrecht) located in Guser Bin Gashir, Tripoli, where he was a witness to six summary executions of detainees.

Ali is a day laborer who stated that he had no political affiliations, but began supporting the revolutionary forces as of 19 February, preparing them meals in Martyr's Square in Zawiya. At that time Qaddafi forces were attacking the city, trying to retake Zawiya.

One night, around nightfall, after he had just cooked for the different groups in the square, Ali and a group of revolutionary forces in Zawiya came under attack. Tanks reportedly fired 14.5mm shells into the crowd in Martyr's Square. Revolutionary forces returned fire, but were heavily outgunned. Ali was not carrying a weapon, but retreated with others to a nearby mosque. He turned the corner and was suddenly hit by shrapnel. His left foot, leg, thigh, and lower abdomen were severely wounded. Rebels carried him to an ambulance and drove him to Zawiya hospital where he underwent emergency surgery.

Ali stayed overnight in the hospital, where he heard that Qaddafi forces may attack and occupy the hospital. Ali called his brother to take him home, but as soon as he got in his brother's car, the wound in his leg broke open and began bleeding heavily. His brother brought him back to the hospital where doctors immediately operated on him a second time. Ali's leg was placed in a cast, and he stayed a second night in hospital before returning home.

The next day, family members who worked at the same hospital told Ali that Qaddafi forces overran the hospital and arrested wounded patients on suspicion of being combatants. Ali recuperated at home for the next month.

#### ***Abducted from home and falsely accused of rape***

On or around 8 April, Qaddafi forces reportedly searched for Ali at his uncle's home. When his family told him this news, Ali called a friend who was related by marriage to the officer in charge of the local Khamis Qaddafi 32<sup>nd</sup> Brigade. Ali told his friend that he had been at the protest in Martyr's Square for only a few days and that he did not carry any weapons. He also said that he had injured his leg from a fall. His friend in turn contacted the relative (name withheld), who reportedly said that if Ali did not have a weapon, "then he's in the clear."

Around a week later in mid-April, four armed soldiers wearing camouflage uniforms came to Ali's house. His brother met them at the door. One of the men wore a mask, which was common, Ali said, when a local soldier wants to hide his identity. The four armed men told Ali that they only needed him for five minutes and to come with them. Ali was comfortable going with them because he had earlier told the truth about not carrying a weapon. The soldiers put Ali in the middle of the back seat of their white Toyota Tundra. They drove him to the Zawiya military base near the hotel at the entrance of town. Fifteen minutes before arriving they called ahead and said, "Yes we got the man." They then blindfolded him.

<sup>146</sup> All information in Profile 3 was reported during the interview with PHR. The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 36, *supra* note 59.



When they arrived at the base, soldiers asked Ali if he knew Laskhar. Ali said that he knew him and that Laskhar and his parents were maternal cousins. The soldiers asked Ali if there was a problem between Laskhar and him, and he said there was none. The soldiers then accused him and two others of catching Laskhar in front of his home, tying his hands, stealing his gun, and raping him. The soldiers refused to give details when this event supposedly occurred.

When Ali again denied the charges, he heard a voice say, "It was you who did this!" Blindfolded, Ali recognized the voice of his cousin, Laskhar, who reportedly accused Ali and two other men (names withheld) of these acts. When he again denied the charges and called it shameful that they would falsely accuse him, they began to whip him with cable wires, pummel him with batons, and electrocute him with a Taser gun. He was beaten until he fell unconscious.

Ali awoke after being dragged outside and thrown into the trunk of a car. While stopping at several checkpoints on the way to Tripoli, Ali heard conversations between the soldiers and learned that the driver was Hamza Al-Hareezi. (He would soon discover that Hamza was the officer-in-charge of the detention facility where he was being taken.) At each checkpoint, Hamza told the guards, "We have a rat in the back." Guards at the checkpoints opened the trunk and beat Ali with the butts of their rifles. According to Ali, one soldier put a gun to his head, cocked the trigger, but then said it was a waste of a bullet and continued beating him instead.

#### ***Caged and tortured upon arrival at Khalat Al Forjan***

When they arrived at the Agricultural Compound, the soldiers took Ali, who was bound and blindfolded, into a room and began to lash his body with a whip of frayed metal electrical cables approximately five centimeters in diameter (which he later saw when he was not blindfolded), until he lost consciousness. They beat him until he lost consciousness.

Later that day guards threw Ali into the "fridge." His wrists were bound above him and tied to the top of the metal structure. Due to severe pain from the beatings on his back and buttocks, Ali reported that he found it impossible to rest against them without severe pain. He could not lean against a wall or lay down on his back/backside at all. Ali stayed crouched for nearly four hours until guards dragged him out of the fridge and beat him again until he lost consciousness.

This pattern repeated for five consecutive days. He received very little food during his isolation, and when he asked for water, the guards sometimes poured motor oil or urine, from bottles in which detainees had relieved themselves, into his open mouth. Ali said that he began to confess to whatever the guards wanted so they would not beat him as severely.

After five days, when soldiers took his official statement in the morning, he denied what he had said the previous night, and the beatings resumed. At a moment of complete despair, he asked the guards to kill him, but they said it would be a waste of a bullet and beat him more. Ali reported that he was initially detained with five other detainees in separate cages on the back of a truck parked inside the compound. They all received the same treatment. Some he saw die in the truck.

#### ***Electrocuted, beaten, and starved at Khalat Al Forjan***

Ali reported that on his fifth day in the "cage," a military officer (name withheld) transferred him and other detainees to the warehouse, an agricultural shed inside the compound, and gave them food. The soldiers began to bring more detainees to the warehouse in groups of ten to twenty, so it got crowded quickly. The conditions were inhuman. Everyone slept on the ground floor without covers. They were forced to urinate in small plastic bottles, which they also cut in half to defecate in them. They were given very little food, yet according to Ali the guards had plenty of food and gave their scraps to the dogs. The water they were given was often polluted; the situation was so bad that some men drank their urine to rehydrate.

Ali wore the same clothes for two months and was not allowed to wash or bathe. His wounds from the lashings became infected with "worms" – most probably maggots – but he received no

medical treatment. His soiled clothing began to stick to his wounds, and when he tried to pull away his clothing, it tore his skin and he began to bleed. Some guards were more humane and brought him bandages and alcohol to clean his wounds, but when the other guards saw any of their fellow soldiers treating the detainees kindly, they replaced them.

Ali reported that several new guards (names withheld) arrived at Khalat Al Forjan and all took part in torturing the detainees. According to Ali, the guard named Mustafa was among them. Ali stated Mustafa participated in the beating as much as any of the others, "like we were beasts and not men." Guards gagged, blindfolded, and bound detainees' hands and feet and hung them from a beam in the warehouse. They forced other detainees to lift the victims by a rope and suspend them while the guards beat them with electric cables, sticks, rocks as well as rakes and other farm equipment. Sometimes the guards electrocuted the suspended detainee with Taser stun guns and forced other detainees to beat their fellow inmates. The young and old were abused the same.

***Soldiers raped and sexually violated detainees at Khalat Al Forjan***

Ali reported that guards (names withheld) raped and sexually violated detainees. Late at night he witnessed soldiers enter the warehouse and forcibly remove young detainees. He did not witness the rapes himself, although he said it was widely known among the men that such abuses occurred. He reported that he did witness one act of sexual violence when two guards (names withheld) tried to force one detainee to rape another man. At gunpoint the two detainees were forced to undress fully and lie on top of one another naked.

***Soldiers murdered six detainees, including two doctors, at Odebrecht***

Ali reported that he was detained inside the warehouse for about 80 days until guards there moved him and 21 other detainees several kilometers away to another detention facility in Tripoli for unknown reasons. This second makeshift prison was apparently located on the premises of a Brazilian construction company (Odebrecht) located in Guser Bin Gashir, Tripoli. According to Ali, the detention facility was divided into several three-by-four-meter cells. Eight detainees were already there; after two weeks another 16 detainees arrived, then 21 more after another week. Daily beatings took place throughout Ramadan usually after the evening call to prayer. Ali was detained there for three weeks, which he called "the worst 21 days of my life."

Early on the morning of 21 August, a guard (name withheld) called out for two doctors and four other detainees from the group. They were blindfolded and led outside. Ali heard a round of gunfire and believed the guards killed the two doctors and four detainees. Everyone inside the cells panicked. "We all cowered against each other fearful of what was about to happen. Then nothing. The guards had run away. I don't know why they killed those six men." Forty-five minutes later Ali and the other detainees slowly emerged from the cells at the Odebrecht facility and found five detainees shot and killed and one other gasping for breath. Ali said that there was no hope for this man as there was no way to transport him or to get help.

Some 50 men came out of that detention facility, and walked about one kilometer from the construction company compound where they had been detained. Ali walked for a while and eventually found a ride from Tripoli to Zawiya. He left around 8:00 a.m. and arrived home at almost 2:00 p.m. When Ali got home, his family was overjoyed as they thought that he had been killed.

**Reported physical symptoms**

Ali reported numbness and paresthesias in his upper extremities from his bondage and prolonged suspension, from which he lost consciousness. Ali continues to suffer from pain in his shoulders from being suspended from a beam by a rope around his bound arms while in detention.

Ali reported that he has severe joint pain in his hips and knees from being beaten while forced to kneel on the concrete floor with legs crossed. He reported shrapnel injury in his left foot, which became infected. Ali also reported painful swelling in his feet from being forced to stand in stress positions. Ali reported open wounds from his beatings early in his detention, and these conditions ultimately led to infections.

When he was finally permitted to remove his clothes, his infected skin ripped open leaving open sores on his hips and abdomen that became infested with “worms” – most probably maggots. Ali stated he was not given any medical treatment, and he treated his own wounds by pressing barley chaff from the floor of the Agricultural Compound into his wounds to dry them out.

While PHR did not conduct a formal psychological assessment of Ali, he exhibited signs of psychological distress during his interview. Ali became tearful when describing the conditions of his detention – most significantly the suffering he endured when he was locked in a cell on the back of a truck in a cramped space.

Further, he displayed a restricted, muted, affect when describing a wide range of abuses he experienced. He described some intrusive thoughts and symptoms of hyper-arousal including difficulty falling and staying sleeping since his detention, but did not report any nightmares.

**Assessment of physical evidence**

Ali’s wound infections have since healed leaving scars on his trunk, abdomen, hips and buttocks highly consistent with his report of post-traumatic wound infections. He has multiple linear, “tram-track” scars on his back and buttocks that are virtually diagnostic of the whipping with electrical cables that he alleged.

He also has circumferential scars around his wrists that are highly consistent with severe abrasions and lacerations from tight and prolonged ligature restraint.

Ali continues to have significant non-pitting, lower extremity edema that causes him pain when walking and is likely a result of venous insufficiency that is atypical for a man of his age and habitus. Such swelling is also consistent with his account of prolonged standing and upright confinement. Ali has crepitus in both knees; he also has a left foot drop as a likely result of peroneal nerve damage from beatings.

He has decreased tone and stability of both shoulder joints and has neuropraxia and paresthesias (numbness, tingling, or a “pins and needles” feeling) in both arms. This condition has resulted in some cramp-



Profile 3 photo 1. Posterior view of multiple broad, linear, “tram-track” scars on upper, middle, and lower back. (Photo on file with PHR)



Profile 3 photo 2. Anterior view of severe abrasions and lacerations to left and right wrists. (Photo on file with PHR)



Profile 3 photo 3. Superior view of severe edema, venous hypertrophy, and scar tissue on dorsal surface of left foot. (Photo on file with PHR)

147 Ali’s medical evaluation was conducted by Hani Mowafi, MD in Zawiya, Libya (10 Sep. 2011).

ing deformity of his hands and decreased grip strength that are likely due to a brachial plexus (the network of nerves running from the spine to the upper extremity) injury and are all highly consistent with his account of his suspension.

The physical symptoms, disabilities Ali recounted, and the physical examination findings cited above are highly consistent and, in some cases, virtually diagnostic of the torture and ill-treatment Ali described. It is important to note that some of the beatings Ali recounted likely resulted in additional bruises and soft tissue injuries, which would not leave lasting physical sequelae.

#### **Profile 4: Laskhar<sup>148</sup> Tortured and Executed Detainees**

PHR interviewed “Laskhar” (pseudonym) on 10 September 2011. A mid-level officer in the Libyan armed forces, Laskhar reported that he had joined the army in 2007 and served the past four years with the Khamis 32<sup>nd</sup> Brigade. At the time of the interview, Laskhar was being held in custody at a temporary detention facility by the NTC-affiliated military council in Zawiya.

During the interview, which was conducted in a private room with Laskhar, an interpreter, and a PHR investigator present, Laskhar admitted to the torture and murder of more than 12 detainees under his custody at the makeshift prison (Agricultural Compound) at Khalat Al Forjan, which he said was in close proximity to the 32<sup>nd</sup> Brigade barracks in the southern outskirts of Tripoli. His motives for revealing self-incriminating evidence to PHR are unknown; however, Laskhar did report to PHR that he felt remorse in having committed the crimes discussed below.

##### ***Beat detainees at Khalat Al Forjan***

With other loyalist troops, Laskhar had fought against revolutionary forces since mid-February 2011. Near the end of March, he was transferred to Tripoli to guard detainees at the compound next to the 32<sup>nd</sup> Brigade in Khalat Al Forjan, Tripoli. Laskhar reported that up to 30 soldiers guarded this compound 24 hours a day, seven days a week. The officer in charge was Lt. Colonel Mohamad Mansour, who reported directly to Khamis Qaddafi. Laskhar reported that Lt. Col. Mansour was present at the compound two to three times each week as well as every Friday.

Laskhar reported that his superior, Hamza el-Harizi, gave orders to him and other soldiers to beat all incoming detainees. When a new detainee arrived at the detention facility, he was brought to the front office where a small group of guards would interrogate him and take turns beating him. Laskhar himself admitted that he participated in beating new detainees several times a week using the butt of his rifle, whips made from cable wire, wood, and metal batons. He reported eight detainees had died from this type of torture and participated in the torture of four of these eight men, which took place at various times from April to August 2011. Laskhar reported that both Hamza and Mansour knew of the eight deaths and ordered the soldiers to bury the bodies.

According to Laskhar, they buried four bodies within the compound (three together in one grave); three others were buried at a company across from the compound; and one body was apparently brought for unknown reasons to another 32<sup>nd</sup> Brigade site, possibly at “Kilometer 27.”

##### ***Witnessed a soldier rape two detainees***

Laskhar also reported that he witnessed two incidents of rape in late May 2011. On two separate occasions, he saw the same soldier (name withheld) from Tawerga rape young male detainees. According to Laskhar, both incidents happened late at night outside of the warehouse but within the walled compound between two parked vehicles.

<sup>148</sup> All information in Profile 4 was reported during the interview with PHR. The name of the eyewitness has been changed to protect his identity. Interview with key informant no. 16, *supra* note 60.

***Executed 12 civilians following Khamis Qaddafi's orders to massacre all detainees***

Laskhar told PHR that at 12:00 p.m. on 23 August 2011, he saw Faraj Abu Ghalia (Deputy Chief of Military Intelligence) enter the room where Khamis Qaddafi was conducting a meeting of the 32<sup>nd</sup> Brigade. He was also present in the room with his direct superior, Hamza, who was speaking with his superior, Mansour, on the telephone. According to Laskhar, after Hamza finished the call, he told Laskhar that Mansour had ordered all detainees at the compound be killed and that the operation begin that night. Laskhar further explained that these orders had come directly from Khamis Qaddafi.

According to Laskhar, the operation began at around 8:00 p.m. that night while he was still at the brigade barracks. Later that night, Hamza told Laskhar to ensure there were no survivors among the detainees. Laskhar arrived at the compound at 11:00 p.m. and reported that five other 32<sup>nd</sup> Brigade soldiers (three Libyans and two Tuaregs) had thrown grenades into the warehouse and used "Kalashnikov" rifles to attempt to kill the approximately 150 detainees trapped inside. Laskhar then proceeded to search for detainees who had survived the initial attacks. With a flashlight he inspected wounded men who lay on the ground inside and others who had apparently escaped but were still within the walled compound. Laskhar admitted to Physicians for Human Rights that he summarily executed 12 detainees with his nine-millimeter pistol that night.

***Ordered to burn detainees' bodies to hide evidence of massacre***

The next morning (Wednesday, 24 August 2011), Hamza brought a Caterpillar excavator to the compound apparently to dig a mass grave for the executed detainees. According to Laskhar, the heavy equipment broke down, hindering their plans to bury the bodies en masse. Hamza apparently searched for another backhoe truck, but failed to find one.

At that point, Laskhar reported that one of the soldiers (name withheld) fled, but Laskhar remained with Hamza, who did not know what to do with the bodies. Sometime later that same week Laskhar reported that Lt. Col. Mansour ordered that they collect all corpses, amass them inside the warehouse, and burn all the bodies. Laskhar said they followed his orders. They then collected automobile tires and put them inside the warehouse with the bodies. The soldiers then poured diesel fuel over the bodies and tires and torched the warehouse and its contents.

Laskhar reported that after this incident he fled the compound and hid for four days before returning home to Zawiya. Shortly after he arrived home, he reported that his uncle turned him in to the local NTC authorities in Zawiya. The NTC-appointed military council allowed PHR access to the detention facility where Laskhar was being held.

Although a medical evaluation was not conducted, Laskhar did not present with any visible signs of mistreatment. He reported that "they treat me 100% well. I did not treat [the detainees] the way I am treated here." PHR was not able to confirm, however, the reliability of his statement regarding treatment in detention.



## Conclusion and Legal Analysis

The eyewitness testimonies presented in this report, corroborated by medical and forensic data, elicit strong evidence that Qaddafi forces committed serious human rights violations – such as murder, torture, rape, and unlawful confinement – all of which may amount to war crimes.

### Overview of war crimes

International humanitarian law (IHL), or the laws of war, applies during times of armed conflict. IHL is usually divided into situations of international and non-international armed conflict. A situation can be considered a conflict if forces engaged in hostilities are organized and if the violence is protracted.<sup>149</sup>

The UN Human Rights Council established an International Commission of Inquiry which found that a non-international armed conflict began in Libya in February 2011.<sup>150</sup> In a non-international armed conflict, particular elements of IHL apply, namely Common Article 3<sup>151</sup> and Additional Protocol II of the Geneva Conventions.<sup>152</sup> Common Article 3 refers to Article 3 of all four Geneva Conventions, and relates to the humane treatment of civilians and detained or injured combatants.<sup>153</sup> Additional Protocol II includes additional protections for civilians.<sup>154</sup> Libya is a party to all four Geneva Conventions as well as Additional Protocols I and II, and is bound by their terms. Key elements of Common Article 3 and Additional Protocol II are recognized as customary international humanitarian law and are binding on all states.<sup>155</sup>

### Murder and summary execution

Multiple sources of international law indicate that murder and summary execution<sup>156</sup> during armed conflict is a war crime. For example, willfully killing a non-combatant constitutes a grave breach of the Geneva Conventions, as is withholding fair trial rights before punishment

149 *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).

150 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, ¶ 4, U.N. Doc. A/HRC/17/44 (1 Jun. 2011).

151 "In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions..." Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, art. 3, 12 Aug. 1949, 75 U.N.T.S. 31; Geneva Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, art. 3, 12 Aug. 1949, 75 U.N.T.S. 85; Geneva Convention (III) relative to the Treatment of Prisoners of War, art. 3, 12 Aug. 1949, 75 U.N.T.S. 135; and Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, art. 3, 12 Aug. 1949, 75 U.N.T.S. 287 (acceded 22 May 1956).

152 "The High Contracting Parties, Recalling that the humanitarian principles enshrined in Article 3 common to the Geneva Conventions of 12 August 1949, constitute the foundation of respect for the human person in cases of armed conflict not of an international character". Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), *preamble*, 8 Jun. 1977, 1125 U.N.T.S. 609 (acceded 7 Jun. 1978).

153 See *e.g.*, *supra* note 151.

154 See *e.g.*, Geneva Conventions Protocol II, *supra* note 152, at art. 5.

155 See, *e.g.*, Jean-Marie Henckaerts & Louise Doswald-Beck, International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, Volume I: Rules (2009).

156 The United Nations defines 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 judicial due process. Arbitrary executions include killings committed for political reasons, deaths following torture or any other cruel, inhuman or degrading treatment, and killings following kidnapping or enforced disappearance. Executions resulting from a death sentence issued by a court are also arbitrary executions if the fair trial guarantees provided in Articles 14 and 15 of the U.N. Covenant on Civil and Political Rights are not respected. Arbitrary executions (to be distinguished from executions after a fair trial) often are killings under suspicious circumstances with the following characteristics: 1) The death occurred when the victim was in the hands of law enforcement officials (*e.g.*, police custody), or other state authorities. 2) An official inquiry following the death (*e.g.*, autopsy or medical report) did not occur. United Nations Training Manual on Human

for any alleged criminal conduct.<sup>157</sup> Murders of all kinds during non-international armed conflict are included in a list of enumerated war crimes in the Rome Statute, the treaty that created the ICC.<sup>158</sup> Summary executions also violate Libya's obligations under international law as a party to the International Covenant on Civil and Political Rights (ICCPR), which states that all people have a right to life that cannot be abrogated in times of emergency.<sup>159</sup>

## Torture and inhuman treatment

The prohibition of torture<sup>160</sup> is considered a *jus cogens* norm of international law, binding on all states. The Rome Statute also codifies torture as a war crime.<sup>161</sup> The prohibition of torture is widely recognized, and the International Committee of the Red Cross notes that the prohibition of torture, cruel or inhuman treatment, and outrages upon personal dignity is a norm of customary international humanitarian law.<sup>162</sup> Additional Protocol II of the Geneva Conventions also stipulates that all detainees must be treated humanely,<sup>163</sup> and prohibits authorities from physically or mentally harming detainees through unjustified acts or omissions.<sup>164</sup> Acts of torture, committed by a public official or without adequate redress by the government, are also violations of Libya's international legal obligations as a party to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT).<sup>165</sup>

Prohibitions of torture and summary executions were codified in Libyan domestic law under Col. Qaddafi's rule. For example, physically harming any accused or detained person violated the Libyan Constitutional Proclamation<sup>166</sup> and Libya's Great Green Charter of Human Rights,<sup>167</sup> and torturing a person accused of a crime violated the Libyan Penal Code.<sup>168</sup> Libyan Law No. 20 prohibited summary executions and guaranteed citizens the right to a trial.<sup>169</sup>

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Rights Monitoring 43–44, Professional Training Series No.7 [2001], <http://www.ohchr.org/Documents/Publications/training7part24en.pdf>.

157 Geneva Convention (IV), *supra* note 151, at art. 147; *supra* note 145; ICRC Customary International Humanitarian Law, *supra* note 155, at 311 (finding murder to be prohibited in customary international humanitarian law).

158 Rome Statute of the International Criminal Court, art. 8(2)(c)(i), 17 Jul. 1998, 2187 U.N.T.S. 90.

159 International Covenant on Civil and Political Rights arts. 6(1), 4(2), 16 Dec. 1966, 999 U.N.T.S. 171 (acceded 15 May 1970) (hereinafter ICCPR).

160 The UN Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment defines torture as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or 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" U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 1.1, 10 Dec. 1984, 1465 U.N.T.S. 85 (acceded 16 May 1989) (hereinafter CAT).

161 Rome Statute of the International Criminal Court, *supra* note 158, at art. 8(2)(c)(i).

162 ICRC Customary International Humanitarian Law, *supra* note 155, at 315.

163 Geneva Conventions Protocol II, *supra* note 152, at art. 4.1.

164 *Id.*, at art. 5.2(c).

165 "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." CAT, *supra* note 160, at art. 2.2. See also the ICCPR, which prohibits torture and acts of cruel, inhuman or degrading treatment or punishment. ICCPR, *supra* note 159, at art. 7.

166 "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>.

167 "Jamahiriyan society prohibits any and all injuries, whether physical or moral, against the person of a prisoner." The Great Green Charter of Human Rights of the Jamahiriyan Era, art. 2, 12 Jun. 1988, available at <http://www.unhcr.org/refworld/pdfid/3dda540f4.pdf>.

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

169 "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: Endorsement of Freedom, art. 35 (Libya), available at <http://www.unhcr.org/refworld/pdfid/3dda542d4.pdf>.

## Rape and sexual violence

Rape<sup>170</sup> in armed conflict violates the Geneva Conventions,<sup>171</sup> and prohibitions of rape and other forms of sexual violence are binding elements of customary international humanitarian law.<sup>172</sup> The Rome Statute includes rape and other forms of sexual violence in its definition of war crimes,<sup>173</sup> meaning that acts of rape during armed conflict may fall under the mandate of the ICC.<sup>174</sup> Islamic law classifies rape as a war crime,<sup>175</sup> and Libyan domestic protocols under Col. Qaddafi's rule outlawed rape as an "offence of unlawful wounding."<sup>176</sup>

## Unlawful confinement

The Rome Statute defines unlawful confinement<sup>177</sup> of civilians as a war crime,<sup>178</sup> and the ICCPR requires that timely court proceedings determine the legality of any detention.<sup>179</sup> Additional Protocol II of the Geneva Conventions stipulates minimum standard conditions for lawful confinement of civilians that include providing medical treatment for the sick and wounded<sup>180</sup> and ensuring humane treatment of all detainees without any adverse distinction.<sup>181</sup> Libyan law required state authorities to carry out all detentions at known locations and to notify family members.<sup>182</sup>

170 Rape refers to any situation in which "the perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of 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." ICC Elements of Crimes, art. 7, (1) (g)-1, U.N. Doc. PCNICC/2000/1/Add.2. The concept of "invasion" is intended to be broad enough to be gender neutral. *Id.*, at fn 15.

171 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 Conventions Protocol II, *supra* note 152, at art. 4(2)(e)-7(1).

172 ICRC Customary International Humanitarian Law, *supra* note 155, at 323.

173 Rome Statute of the International Criminal Court, *supra* note 158, at art. 8(2)(e)(vi).

174 See *e.g.*, *supra* note 170.

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

176 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](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 169, at arts. 1, 7, 17, 18.

177 The International Criminal Court may determine that state-sponsored widespread arrests, detentions, or abductions in which the whereabouts of detainees are unknown may qualify as "enforced disappearances," considered a crime against humanity. The Rome Statute 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 158, at art. 7(2)(i). See also Law No. 20 of 1991, *supra* note 169, at art. 7(1)(i).

178 *Id.*, at art. 8(2)(a)(vii).

179 ICCPR, *supra* note 159, at art 9(4).

180 Geneva Conventions Protocol II, *supra* note 152, at art. 5.1(a).

181 *Id.*, at art. 4.1.

182 "It is prohibited to seize or restrict the freedom of any human being by searching or interrogating him unless he is accused of an illegal act by a judicial and competent authority in cases and for periods of time determined by law. Precautionary detention is carried out at a known destination for the shortest period necessary for investigation and preservation of evidence. Relatives of the accused are notified of this. Law No. 20 of 1991, *supra* note 169, at art. 14.

## Ensuring Justice and Accountability

In the aftermath of four decades of egregious crimes committed under Col. Qaddafi, the people of Libya deserve to learn the truth and achieve justice under the rule of law.

Bringing perpetrators to justice and holding them accountable for the alleged war crimes documented in this report, as well as for the many horrific human rights violations committed during the past forty years, is the best guarantee against future violations and means to end a brutal cycle of violence. Transitional leaders in Libya face the essential albeit challenging task of prosecuting alleged war criminals in trials that conform to international legal norms. Transitional leaders also must establish the framework which will allow the people of Libya to learn the truth, locate the “missing” and develop a path toward peace and reconciliation.

The following analysis presents core elements of a roadmap to truth and justice for the Libyan people.

### ***Documenting and acknowledging crimes through thorough, independent investigations***

Libyan authorities must assure independent investigations into the serious crimes allegedly committed by Col. Qaddafi’s government. Prosecutions of crimes and ensuring accurate truth-telling depend on impartial and careful investigations conducted according to best forensic practices. PHR has provided detailed recommendations to the new authorities with respect to the recent Khalat Al Forjan massacre.

The following general recommendations to Libyan authorities relate to this massacre and other serious crimes:

- Engage and collaborate with international institutions to develop local capacity to document crimes and preserve evidence according to best practices.
- Immediately secure all sites where alleged war crimes and other similar acts occurred so that evidence may be preserved for future prosecution.
- Provide support and training to the medical community to assure critical medical and psycho-social support to survivors of the atrocities committed during the recent conflict and the abuses of the past.
- Ensure that victims and families are represented in any dialogue involving truth-seeking justice, identification of the missing, and policy development.

### ***Securing justice, supporting survivors, and searching for the missing***

Thousands of Libyans have lost loved ones in the recent violence as a result of human rights violations carried out by Col. Qaddafi’s security forces. Families have a fundamental right to know the fate of loved ones who died as a result of horrific prison conditions, torture, arbitrary executions, and mass killing.

In order to move forward with their lives and for societal reconciliation to occur, survivors and communities must be able to learn the truth about the “missing” and to mourn or bury remains with dignity. Criminal justice also requires death investigations to be conducted in a manner that respects the needs of family members.

The following are general recommendations to Libyan authorities for preservation of forensic evidence and accurate identification of human remains:<sup>183</sup>

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<sup>183</sup> PHR Forensic Crime Scene Report, *supra* note 2.

1. **Conduct a needs assessment with the participation of individuals with mass fatality expertise to help Libya lay the foundation and develop a robust plan for a comprehensive, forensically sound, national human identification effort, which meets the needs of the Libyan people while complying with international standards.**

The Libyan government is ultimately responsible for the development, adoption, implementation, and oversight of policies, procedures, and protocols regarding all aspects of post-mortem human identification. It is imperative that all such efforts regarding post-mortem human identification be of the highest professional nature and quality so as to ensure that they are conducted pursuant to objective, standardized criteria and otherwise performed in compliance with international forensic, scientific, technical, and legal standards. Equally critical is the responsibility of the Libyan government to ensure that all post-mortem human identification policies and protocols meet or exceed international transitional justice benchmarks, such as the those concerning the admissibility of any human identification evidence in judicial or other truth seeking fora, as well as the concomitant issues of transparency and due process for all relevant parties.

2. **Assure proper preservation of forensic evidence.**

As part of a National Human Identification Plan, the government should initiate an awareness, communication, and outreach campaign to inform the Libyan public about the dangers of the potential loss of forensic evidence due to uncontrolled and inexpert exhumation of human remains. Such a campaign will assist the government in an effort to gain public support to secure evidence of past crimes.

3. **Suspend all exhumation efforts where possible and secure suspected mass graves from inexpert excavations until proper forensic capacity and resources are available in Libya.**

Currently, Libya does not have the full capacity to properly exhume human remains from mass graves. To date, exhumations have been carried out by untrained personnel. It cannot be overstated that exhumations must be carried out by properly trained personnel in order to preserve any and all forensic evidence relevant to the exhumation. Improper exhumations destroy important identification evidence and tend to disarticulate remains. At best, disarticulation of remains complicates any future human identification effort by greatly increasing the DNA testing time and cost. At worst, disarticulation has the potential to completely compromise any human identification. Further, the reburial of exhumed remains also lacks standardized control over where exhumed remains are to be reburied, which obviously complicates or otherwise makes impossible their retrieval for future identification purposes.

4. **Suspend all DNA sample collection until a realistic and operational human DNA identification plan is developed, which includes proper sample collection approaches and procedures.**

Currently, there appear to be no standardized DNA sample collection procedures in place either for the collection of samples from human remains or for the collection of reference samples. Proper sample collection procedures are essential to ensure reliable future DNA analysis and human identifications. Improper sample collection merely serves to unnecessarily raise unrealistic expectations of victims' loved ones that a proper identification can be made, when this is far from the case at present. Proper sample collection approaches should include proper identification of the sample source, the collection of the proper sample type and amount, documentation of the collection, unique identification of the sample, and proper security and storage of the sample and associated data.



The UN Security Council referred the situation in Libya to the ICC in Resolution 1970, passed unanimously on 26 February 2011.<sup>184</sup> States party to the Rome Statute may come under the jurisdiction of the Court based on a self-referral or on the prosecutor's own initiation. The US Government, the African Union, and the Arab League, *inter alia*, supported Libya's Security Council referral.<sup>185</sup> The referral's widespread support included that of Libya's own ambassador to the United Nations, who urged Council members to pass a "courageous" resolution the day before the resolution was passed.<sup>186</sup>

Investigators from the OTP of the ICC launched an investigation pursuant to the Security Council referral, interviewing dozens of people in several countries. The investigation did not take place within Libya at that time. This investigation yielded information that led to the indictment of Col. Qaddafi, his son Saif Al-Islam, and Libya's intelligence chief, Abdullah Al-Senussi, for murder and persecution of civilians as crimes against humanity.<sup>187</sup> In ICC Chief Prosecutor Luis Moreno-Ocampo's application for the arrest warrants, the Chief Prosecutor presented the Court with additional information about other serious human rights violations.<sup>188</sup> Col. Qaddafi was killed after the issuance of the ICC arrest warrant (which the ICC rescinded on 22 November),<sup>189</sup> but Saif Al-Islam and Al-Senussi allegedly remain alive and in Libyan custody at the time of this report.<sup>190</sup>

The mandate of the Court did not end with the issuance of the three arrest warrants for crimes against humanity. The OTP can continue to investigate alleged crimes against humanity and war crimes, and can issue additional warrants if the information gathered so requires. In a report to the Security Council on 2 November 2011, Chief Prosecutor Ocampo stated that the OTP had conducted its first mission within Libya to prepare to collect evidence.<sup>191</sup> This positive step indicates that the OTP will continue investigating crimes arising from the conflict. Chief Prosecutor Ocampo noted that he was nearing completion of an investigation on the use of rape by Qaddafi forces during the conflict.<sup>192</sup> This investigation and others could result in additional charges for those already indicted by the Court or additional indictments of other

184 S.C. Res. 1970, U.N. Doc. S/RES/1970 (26 Feb. 2011).

185 See *Situation in Libya*, *supra* note 43; Press Statement, Hillary Rodham Clinton, US Secretary of State, *Liberation of Libya*, 23 Oct. 2011, <http://www.state.gov/secretary/rm/2011/10/175999.htm>; Press Statement, Erastus Mwencha, Deputy Chairperson of the Commission of the African Union, *Statement at 4th Meeting of the Libya Contact Group Istanbul*, 15 Jul. 2011, [http://www.au.int/en/dp/dcpauc/sites/default/files/Speech\\_of\\_the\\_DCP\\_-\\_4th\\_Contact\\_Group\\_on\\_Libya,\\_Istanbul,\\_15\\_July\[1\].pdf](http://www.au.int/en/dp/dcpauc/sites/default/files/Speech_of_the_DCP_-_4th_Contact_Group_on_Libya,_Istanbul,_15_July[1].pdf); African Union condemns Libya crackdown, RFI, 24 Feb 2011, <http://www.english.rfi.fr/node/77540>; AU slams 'disproportionate' force in Libya, NEWS 24, 24 Feb. 2011, <http://www.news24.com/Africa/News/AU-slams-disproportionate-force-in-Libya-20110223>.

186 *Libyan envoy urges UN to save Libya*, Al-Jazeera, 26 Feb. 2011, <http://www.aljazeera.com/news/americas/2011/02/20112261323395683.html>.

187 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).

188 *Decision on the Prosecutor's Application Pursuant to Article 58*, *supra* note 28.

189 According to the ICC, "the purpose of criminal proceedings is to determine individual criminal responsibility and that jurisdiction cannot be exercised over a deceased person." Press Release, International Criminal Court, *Pre-Trial Chamber I orders the termination of the case against Muammar Gaddafi*, 22 Nov. 2011, ICC-CPI-20111123-PR745, [http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/pre\\_trial%20chamber%20i%20orders%20the%20termination%20of%20the%20case%20against%20muammar%20gaddafi](http://www.icc-cpi.int/menus/icc/press%20and%20media/press%20releases/pre_trial%20chamber%20i%20orders%20the%20termination%20of%20the%20case%20against%20muammar%20gaddafi).

190 See International Criminal Court, *Prosecution's Submissions of the Prosecutor's recent trip to Libya*, 25 Nov. 2011, ICC-01/11-01/11, <http://www.icc-cpi.int/iccdocs/doc/doc1276955.pdf>.

191 Office of the Prosecutor, *Statement to the United Nations Security Council on the Situation in Libya, pursuant to UNSCR 1970 (2011)* (2 Nov. 2011), available at [http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20unsc/statement%20to%20the%20united%20nations%20security%20council%20on%20the%20situation%20in%20the%20libyan%20arab%20jamahiriya\\_%20pur](http://www.icc-cpi.int/menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20unsc/statement%20to%20the%20united%20nations%20security%20council%20on%20the%20situation%20in%20the%20libyan%20arab%20jamahiriya_%20pur).

192 *Id.*; ICC Prosecutor May Bring Libya Rape Charges, Reuters, 9 Nov. 2011, available at <http://www.reuters.com/article/2011/11/09/us-libya-icc-idUSTRE7A82LA20111109>.

individuals. In late November, the OTP issued a submission on the Chief Prosecutor's recent trip to Libya, which confirmed the primacy of Libyan national jurisdiction at the same time that it allowed for the possibility of continued ICC involvement, through sequencing of trials as they relate to various crimes and also through possible ICC trials conducted in Libya.<sup>193</sup>

Given the information revealed in recent months about the 32<sup>nd</sup> Brigade massacre – described in detail above – and other crimes, the Court should continue to investigate all alleged crimes by parties on all sides of the conflict. Continued investigation will generate more information to create a clearer picture of what happened during and immediately after the conflict. Additional investigation may also lead to indictments for war crimes in addition to the indictments for crimes against humanity from earlier this year. The Office of the Prosecutor should adhere to its intention to impartially and independently examine all alleged crimes, including those allegedly committed by NATO or by rebel forces.

PHR calls upon Libyan authorities to fully cooperate with the ICC, including transferring individuals with outstanding arrest warrants issued by the Court. The following general recommendations to the ICC suggest ways to build upon the Court's current involvement in Libya while taking into account the primacy of willing and able domestic courts to conduct fair and just criminal proceedings.

- Continue investigating crimes in Libya, including alleged acts by any party. Issue additional arrest warrants if the information gathered so requires.
- Continue to liaise with Libyan authorities, civil society groups, and international human rights groups regarding investigations in Libya.
- Develop, staff, and resource an action plan to address challenges of locating victims and witnesses in Libya to ensure that the Court is provided with an accurate and comprehensive understanding of the scale and impact of these crimes.

In addition, the international community must actively support the Court's efforts to ensure that trials of possible war criminals are conducted effectively and efficiently. The international community (especially parties to the Rome Statute) should adhere to the following recommendations.

- States should cooperate with the ICC to facilitate the arrest of indicted individuals.
- States must meet international legal obligations by offering continued material and financial support to the ICC, and providing information that will assist the Court in its work.
- Participants in the December 2011 Assembly of States Parties should support the continued OTP investigation in Libya and ensure that the Chief Prosecutor's team has all necessary resources to complete the task at hand.
- Libya's neighbors must fulfill their special obligation to assist the transitional authorities in seeking accountability, including in helping bring those indicted by the ICC to the Court.

### ***Hybrid models for achieving justice and accountability***

As Libyan officials and the OTP continue to discuss the most effective means to prosecute those responsible for the most serious crimes under Col. Qaddafi's rule, authorities could determine how national and international court jurisdictions might be hybridized to ensure full and fair trials. High-level Libyan criminal prosecutions may take the shape of hybrid national-international legal proceedings, in which the ICC works cooperatively with domestic courts to investigate possible war crimes and hold perpetrators accountable.

<sup>193</sup> See *Prosecution's Submissions of the Prosecutor's recent trip to Libya*, *supra* note 190.

Hybrid national-international judicial models were established to prosecute possible war crimes in Sierra Leone (through establishment of the Special Court for Sierra Leone)<sup>194</sup> and Lebanon (through establishment of the Special Tribunal for Lebanon).<sup>195</sup>

### **Legal reforms and building a strong justice system in Libya**

The people of Libya face crucial decisions during the transition to democracy. The international community should support a transparent and peaceful transition by assisting in both the short- and long-term steps toward accountability.

The NTC is the political body that emerged in late February 2011 that has since been recognized as the Government of Libya, playing both executive and legislative roles. In August 2011, the NTC passed a Constitutional Declaration to serve as an interim constitution.<sup>196</sup> In late November, the NTC formed an interim government to serve an executive function, while it retained the role of parliament.<sup>197</sup> The NTC and the interim government together will run the country during this transitional period until elections are held in June 2012.<sup>198</sup> Transitional leaders have the responsibility to build a foundation of justice and accountability in the new Libya.

### **Central role of national judicial systems in Libya**

While the ICC is one key institution that can seek accountability for the most serious perpetrators of international crimes in Libya (see above), its work must be conducted in tandem with measures to ensure justice at the local level. Because the ICC's mandate is limited, its work must complement domestic investigations and prosecutions.

The ICC serves a particular purpose: It targets the most serious perpetrators of the most serious crimes. The ICC has a time-limited mandate in Libya, because the Security Council Resolution that referred Libya to the Court specified crimes allegedly committed after 15 February 2011.<sup>199</sup> Given reports from PHR and others detailing widespread criminality in Libya before, during, and after the conflict, there will be a need to address perpetrators and actions that fall outside of the Court's mandate.

Furthermore, Libyan local courts alone are responsible for trying mid- and low-level suspects, over whom the ICC has no jurisdiction. Through successful prosecutions, Libyan judicial institutions will be responsible for establishing foundations for accountability, which will allow Libya to have a meaningful process of reconciliation for a successful transition.

In addition, the ICC is not privileged over capable and well-functioning judicial systems in countries where crimes have occurred. The Court was created as a court of last resort – an institution that would investigate and prosecute crimes only when countries lacked the ability

194 The Special Court for Sierra Leone was set up jointly by the Government of Sierra Leone and the United Nations by Security Council resolution 1315 (2000) of 14 August 2000. Statute of the Special Court for Sierra Leone (2000), available at <http://www.sc-sl.org/LinkClick.aspx?fileticket=uClnd1MJeEw%3d&tabid=70>.

195 The Special Tribunal for Lebanon was created in 2007 by U.N. Security Council Resolution 1757. S.C. Res. 1757, U.N. Doc S/RES/1757 (30 May 2007), available at <http://www.stl-tsl.org/en/documents/un-documents/un-security-council-resolutions/security-council-resolution-1757>. Based in the Netherlands, the Special Tribunal has international and Lebanese staff, and people are tried under Lebanese criminal law. *What is the STL?*, Special Tribunal for Lebanon, <http://www.stl-tsl.org/en/ask-the-tribunal/what-is-the-stl> (Last visited 22 Nov. 2011).

196 The Constitutional Declaration [Libya], *supra* note 12.

197 *Libya to Announce New Government on Sunday: NTC*, *supra* note 14.

198 Alice Fordham, *Libya looks cautiously toward elections*, Washington Post, 11 Nov. 2011, [http://www.washingtonpost.com/world/middle\\_east/libya-looks-cautiously-toward-elections/2011/11/05/gIQA2GKHcn\\_story.html](http://www.washingtonpost.com/world/middle_east/libya-looks-cautiously-toward-elections/2011/11/05/gIQA2GKHcn_story.html); Alastair Macdonald, *Fearing Libya vacuum, ex-PM urges rapid vote*, Reuters, 16 Nov. 2011, <http://www.reuters.com/article/2011/11/16/us-libya-jibril-idUSTRE7AF16S20111116>.

199 S.C. Res. 1970, ¶ 4, U.N. Doc. S/RES/1970 (26 Feb. 2011).

or willingness to do so domestically. Under this principle of complementarity, the Court will not try cases that could be adjudicated fairly domestically. National judicial models have been established to prosecute high-level perpetrators of alleged war crimes and crimes against humanity, for example the Iraqi Higher Criminal Court.<sup>200</sup> Libyan authorities have expressed willingness to try alleged high-level perpetrators, though it is to be determined whether Libya has the capacity to do so effectively.

### Strengthening Libyan judicial institutions

For Libya to demonstrate to the ICC<sup>201</sup> its continued ability to try high-ranking offenders in domestic courts, many structural advances must occur within Libya to build institutions that uphold legal standards. A few key elements include a fair and thorough penal code drafted through a transparent and inclusive process; judges that are appointed or elected according to clear and fair processes and who have undergone a vetting process to eliminate those responsible for human rights violations; and a security infrastructure that is well-equipped to guarantee the security of defendants, witnesses, victims, and others. Such developments will demand significant time, resources, political will, and international support.

Any work of the ICC, while important, must complement local institutions' efforts to promote justice and the rule of law more generally in Libya. Libyan institutions might investigate crimes in cooperation with the ICC; develop vetting mechanisms for public officials; and develop reparations for victims. Concerted institution building must begin so that Libya's judiciary and security forces may establish justice and the rule of law.

Libya's transitional authorities should conduct investigations and prosecutions for a wide array of abuses, including those committed by all parties during the recent conflict. Accurately and thoroughly documenting crimes committed by all parties will be necessary to establishing accountability for perpetrators.

The following recommendations to both Libyan governing authorities and the international community outline steps necessary to holding perpetrators of war crimes and other human rights violations accountable according to the rule of law and international legal standards.

- Libyan governing authorities must dedicate human and financial resources to building domestic institutions that will address the crimes of the past and seek accountability for crimes according to international legal standards.
- The international community should offer assistance, training, and additional resources to transitional authorities in Libya for the purpose of rebuilding domestic judicial and security institutions.

200 The Iraqi Higher Criminal Court has jurisdiction over possible war crimes, crimes against humanity, and genocide committed between 17 July 1968 and 1 May 2003. Law No. (10) 2005 Law of The Iraqi Higher Criminal Court, Al-Waqe'ah al-Iraqia [Iraqi Official Gazette] 4006 of Oct 18, 2005, art. 1.2, available at [http://law.case.edu/saddamtrial/documents/ist\\_statute\\_official\\_english.pdf](http://law.case.edu/saddamtrial/documents/ist_statute_official_english.pdf).

201 According to the Rome Statute, "In order to determine inability in a particular case, the Court shall consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to obtain the accused or the necessary evidence and testimony or otherwise unable to carry out its proceedings." Rome Statute of the International Criminal Court, *supra* note 158, at art. 17.3. Should Chief Prosecutor Ocampo recognize Libya's ability to prosecute, "A decision by the Pre-Trial Chamber to confirm or not to confirm a decision taken by the Prosecutor...must be concurred in by a majority of its judges and shall contain reasons." ICC Rules of Procedure and Evidence, rule 110 [2002], ICC-ASP/1/3, available at [http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules\\_of\\_procedure\\_and\\_Evidence\\_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/F1E0AC1C-A3F3-4A3C-B9A7-B3E8B115E886/140164/Rules_of_procedure_and_Evidence_English.pdf). After this point, "The Prosecutor's deferral to a State's investigation shall be open to review by the Prosecutor six months after the date of deferral or at any time when there has been a significant change of circumstances based on the State's unwillingness or inability genuinely to carry out the investigation." Rome Statute of the International Criminal Court, *supra* note 158, at art. 18.3.

- Libyan governing authorities must provide adequate training in human rights to officials and law enforcement officers.

### **New constitution and transition to a democratic government**

A new Libyan constitution will be foundational to guaranteeing the rights of all Libyans. A National Assembly to be elected in June 2012 is scheduled to draft Libya's permanent Constitution.<sup>202</sup> Libya's current interim Constitutional Declaration declares that human rights and basic freedoms "shall be respected by the State,"<sup>203</sup> suggesting that Libya's National Assembly will face the task of formulating both a constitution and the accompanying legal framework enumerating human rights safeguards.

In order for Libya's new legal framework to protect effectively the rights of its citizens, Libyan authorities must review and amend existing penal codes to ensure alignment with international human rights norms. Any formal constitution and accompanying legal framework must guarantee development of effective accountability mechanisms for the police and military (once it is formed) alongside mechanisms to ensure that all persons accused of crimes receive timely court appearances and rights of due process, in addition to guarantees against torture and other forms of cruel, inhuman, and degrading treatment.

The following recommendations to Libyan authorities outline steps necessary to ensuring a rights-based approach to establishing a national legal framework that is accountable to its citizenry and international human rights norms.

- Involve all voices and stakeholders, including that of civil society groups, in the democratic transition.
- Engage in an inclusive national dialogue with multiple political voices during the drafting of a new constitution.
- Develop a transparent and thorough vetting process to ensure that perpetrators of war crimes and other international crimes do not hold positions of power in the new government.

The following recommendations outline steps through which Libyan authorities and the international community may work to prevent torture and ill treatment.

- The international community should support Libyan capacity building for effective investigation and documentation of torture and ill treatment.
- Libyan governing authorities must ensure that the International Committee of the Red Cross can access detainees in Libya; assess their condition and the condition of detention facilities; provide detainees with supplies to improve their wellbeing (including medical supplies); and seek solutions to prevent detainee abuse.
- The Libyan government should accede to the Optional Protocol (OPCAT) to the UN Convention Against Torture, which includes a Subcommittee for the Prevention of Torture (SPT).
- After acceding to OPCAT, Libyan authorities should allow the SPT to conduct monitoring investigations, and establish an in-country National Preventative Mechanism (NPM) to monitor places of detention, as stipulated by OPCAT.

In addition, Libyan authorities must take all necessary steps to prevent vigilante justice in Libya. This includes taking steps to prevent and investigate violent acts of revenge carried out

202 Oliver Holmes, *Libya's Prime Minister is a Low-Key Technocrat*, Reuters, 1 Nov. 2011, <http://www.reuters.com/article/2011/11/01/us-libya-premier-newsmaker-idUSTRE7A052S20111101>.

203 The Constitutional Declaration [Libya], *supra* note 12, at art. 7.



against members and supporters of the former regime. PHR urges an impartial and scientific investigation into Col. Qaddafi's death.

Furthermore, The United States may help facilitate Libya's democratic transition by acting upon the following recommendations.

- Support procedures that allow all democratic forces within Libya to participate in the drafting of a new constitution, a process which will only be successful if it is perceived as being the result of negotiations of credible Libyan representatives without international interference.
- Fully support rule-of-law programs and help professionalize the police and the armed forces, which could include EIMET training as soon as full and reliable vetting of trainees is possible to the highest standards of the Leahy law and a reliable standard of accountability for past atrocities has been achieved.

Finally, PHR calls on the Arab League to continue its engagement in the future development of Libya even after the conflict has ended. Such engagement may be realized in the following ways.

- Share the cost of international development and capacity building measures, particularly in the area of training and building a well-functioning infrastructure.
- Make contributions to Libya as a country, ensuring that Arab League Members do not favor certain ethnic groups in their support, which could widen the gap between local power bases and fracture Libyan society as a whole.

### **Security, human rights, and justice**

The effort to achieve justice and accountability in the aftermath of Col. Qaddafi's rule will have success only if the people of Libya can conduct their lives in a climate of overall security and stability. As Ian Martin, Special Representative of the Secretary-General for Libya emphasized on 28 November 2011 when presenting to the UN Security Council, security is the greatest and most pressing challenge facing the country.<sup>204</sup>

PHR urges the international community to provide financial and human resources to support:

- Containment of weapons;
- Demobilization of the former security sector;
- Training and development of police with special attention to human rights safeguards;
- Education for all citizens and government officials in human rights and tolerance of difference;
- Reconciliation based on recognition of the dignity and rights of all people and respect for the rule of law.

<sup>204</sup> UN Security Council, *Libyans Demonstrating Great Initiative, Responsibility in Post-Conflict Context*, SC/10459 (28 Nov. 2011), <http://www.un.org/News/Press/docs/2011/sc10459.doc.htm>.



2 Arrow Street, Suite 301  
Cambridge, MA 02138 US  
+1.617.301.4200

[physiciansforhumanrights.org](http://physiciansforhumanrights.org)

1156 15th Street NW, Suite 1001  
Washington, DC 20005 US  
+1.202.728.5335

