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BY EMAIL

28 February 2011

Re: EIPR, INTERIGHTS and Human Rights Watch v Libya

Letter of Introduction of the Complaint

Pursuant to Articles 55 and 56 of the African Charter on Human and Peoples' Rights (the Charter) read with Rule 102 of the Rules of Procedure of the African Commission on Human and Peoples' Rights (the Commission) this complaint is submitted by the Egyptian Initiative for Personal Rights (EIPR), Human Rights Watch (HRW) and INTERIGHTS. The Egyptian Initiative for Personal Rights (EIPR) is an Egypt-based human rights organisation working on human rights litigation within North Africa.

Human Rights Watch and INTERIGHTS are both international human rights organisations with observer status before the African Commission. We are jointly submitting this complaint in respect of the ongoing serious human rights violations currently taking place in Libya, which is a party to the African Charter.

This communication concerns the violent repression of ongoing protests that started in Benghazi on 16 February 2011 and which have spread to other major cities and towns in the country, including the capital Tripoli. The applicants urge the African Commission to respond to the grave and urgent situation referred to below, which has already given rise to numerous violations of human rights, and which threatens to escalate even further to a more serious level of human rights crisis. According to Navi Pillay, the UN High Commissioner for Human Rights, “widespread and systematic attacks against the civilian population may amount to crimes against humanity”.¹ The African Commission must do all in its power to ensure that the Libyan authorities cease the violations including the use of lethal force against protesters and infringements of their rights to freedoms of expression and assembly, and take immediate measures to safeguard the protesters’ rights as protected under the African Charter.

Since the protests started, an effective news blackout has been imposed: foreign journalists were unable to enter the country before February 23, and access to much of the country remains extremely difficult; the government has shut down all internet communications; and some Libyans who have given phone interviews to the media have been arrested, making it extremely difficult to obtain and verify information on developments there. The following background material is based on information received by Human Rights Watch and other organisations and on reports in the international media.

The urgent situation currently unfolding in Libya is a matter of public notoriety. The events to which this application relates have been the subject of international condemnation. For example, the African Union Peace and Security Council has condemned Libya's “indiscriminate and excessive use of force and lethal weapons against peaceful protesters.”² The UN Secretary General has expressed deep concern at the escalating scale of violence in Libya and emphasized that it must stop immediately. He reiterated his call for respect for basic freedoms and human rights, including peaceful assembly and information.³ The UN Human Rights Commissioner Navi Pillay has called for immediate cessation of the grave human rights violations committed by Libyan authorities and urged an independent international investigation into the violent suppression of protests in the country.⁴ The Arab League Secretary General Amr Moussa called for an end to violence stating that the demands of Arab people for change are

¹ *Pillay calls for international inquiry into Libyan violence and justice for victims*, 22 February 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>

² *African Union Condemns Libyan Crackdown, Says it Violates Human Rights*, Bloomberg, 23 February 2011 <http://www.bloomberg.com/news/2011-02-23/african-union-says-libyan-crackdown-violates-human-rights-1-.html>

³ *UN chief urges restraint by Arab leaders as protests continue*, <http://www.un.org/apps/news/story.asp?NewsID=37575&Cr=protests&Cr1>

⁴ *Pillay calls for international inquiry into Libyan violence and justice for victims*, 22 January 2011, <http://www.ohchr.org/EN/NewsEvents/Pages/media.aspx?IsMediaPage=true>

legitimate and the Arab League has suspended Libya.⁵ European Union foreign ministers have condemned Libya's repression of anti-government protesters and have called on the country to respect Libyans' right to free expression and assembly.⁶ Libya's deputy ambassador to the United Nations in New York called for international intervention to stop the violent attacks against street demonstrations⁷ and called on the International Criminal Court (ICC) to investigate and hold accountable those responsible for serious crimes in Libya.⁸ In resolution 1970 on 26 February 2011, the UN Security Council unanimously deplored "the gross and systematic violation of human rights, including the repression of peaceful demonstrators, expressing deep concern at the deaths of civilians", rejected "unequivocally the incitement to hostility and violence against the civilian population made from the highest level of the Libyan government" and referred the situation to the International Criminal Court.⁹

This communication is filed against the Respondent as a state party to the Charter. Pursuant to Article 56 (7) of the Charter this complaint has not been submitted to any other procedure of international investigation or settlement. The facts of the case presented are derived from documents and/or reports from contacts and organisations working on human rights issues in Libya. These have been supplemented by press reports.

This communication is a follow up to our request for provisional measures submitted to the Commission on 24 February 2011. In our request for provisional measures we specifically requested the Commission to:

- I. Stop and prevent the use of unjustified lethal force against protesters, whether by the security forces, mercenaries or other bodies or individuals acting on behalf of the State.
- II. Allow people within Libya to air their grievances through peaceful protests.
- III. Allow the free flow of information, including by permitting international journalists to enter and report freely.
- IV. Open up all forms of communication by restoring full use of internet, television stations, mobile phones and social networks.
- V. Respect the rights of detainees.
- VI. Ensure that those injured during the protests are permitted access to appropriate medical treatment.
- VII. Undertake a thorough, impartial and prompt investigation to hold accountable those responsible for these violations.

⁵ *Arab League demands end to Libya violence*, 21 February 2011
<http://www.jpost.com/Headlines/Article.aspx?id=209186>

⁶ *EU Denounces Libya Violence; Prepares to Evacuate Nationals*, 21 February 2011
<http://www.voanews.com/english/news/EU-Denounces-Libya-Violence-Prepares-to-Evacuate-Nationals-116598713.html>

⁷ *Libya Protests: Thousands of Foreigners Flee Violence*, BBC News, 22 February 2011,
<http://www.bbc.co.uk/news/world-africa-12535883>

⁸ *Libya: Commanders Should Face Justice for Killings Reports of "Random" Fire in Tripoli, At Least 62 Dead*, Human Rights Watch, 22 February 2011 <http://www.hrw.org/en/news/2011/02/22/libya-commanders-should-face-justice-killings>

⁹ <http://www.un.org/News/Press/docs/2011/sc10187.doc.htm>

A. Background

Protests started in Benghazi on Wednesday 16 February 2011, following the detention, the previous day, of prominent opposition lawyer Fathi Terbil, who has now been released.

On Saturday February 19, 2011, thousands of demonstrators gathered in the eastern Libyan cities of Benghazi, Baida, Ajdabiya, Zawiya, and Derna. The protests in Benghazi began during funerals for the 14 demonstrators who had been killed by security forces the day before. Sources in Benghazi's Al Jalaa Hospital told Human Rights Watch that the hospital had received the bodies of 35 people that day, killed by gunshot wounds to the chest, neck, and head.¹⁰ Followed by thousands of protesters, the funeral procession walked from the square in front of the Benghazi court to the Hawari cemeteries. On the way the marchers passed the Katiba El Fadil Bu Omar. Witnesses confirmed that security officers with yellow berets fired indiscriminately on protesters.¹¹ Security forces again opened fire on protesters marching in funeral processions in Benghazi on Sunday February 20, 2011. It has been reported that security forces using machine guns and heavy weapons shot at protesters from their barracks and others fired shots from vehicles as they drove through the streets. Protests spread to Tripoli later the same day and security forces used live rounds and tear gas to disperse protests there on Sunday night.

On Monday February 21, 2011, Libyan state TV reported that an operation had been mounted against the protesters in Tripoli. Again it has been reported that soldiers used live ammunition against protesters on Monday evening. Witnesses in Tripoli have described Libyan government forces firing "randomly" at protesters in the capital on the night of 21 February 2011. They report hearing the sound of gun fire and large explosions. Witnesses also saw masked men in military uniforms and heavy machine guns heading towards the protesters.¹²

The witness accounts provided to Human Rights Watch and media reports indicate that there have been a series of violent attacks against peaceful protests and funeral processions in a number of Libyan cities since 17 February. Sources at hospitals within the affected cities confirm that security forces and non-Libyan forces apparently enlisted by the Government, and both, apparently acting at the behest of the Government, have fired on protesters, killing and injuring many people. As at February 20, 2011, according to information provided to Human Rights Watch by Libyan hospital and other sources, the estimated death toll was at least 233.¹³ Hospitals reported that most bullet wounds were to the head, chest and neck.¹⁴

Accounts of the use of live ammunition by security forces, including machine gun fire, resulting in hundreds of deaths and injuries, raise serious concern that the authorities are

¹⁰ *Libya: Security Forces Kill 84 over Three Days*, Human Rights Watch, 18 February 2011

¹¹ *Libya: Governments Should Demand End to Unlawful Killings*, Human Rights Watch, 20 February 2011

¹² *Libya: Commanders Should Face Justice for Killings Reports of "Random" Fire in Tripoli, At Least 62 Dead*, Human Rights Watch, 22 February 2011
<http://www.hrw.org/en/news/2011/02/22/libya-commanders-should-face-justice-killings>

¹³ *Libya: Governments Should Demand End to Unlawful Killings*, Human Rights Watch, 20 February 2011

¹⁴ *Libyan Leader Must End Spiralling Killings*, Amnesty International, 20 February 2011

using excessive and unlawful lethal force against peaceful protesters. The excessive use of force against demonstrators by security forces and mercenaries has already led to many violations, notably of the right to life. There are also serious and ongoing violations of the rights to freedoms of assembly and expression. There has also been a systematic and widespread breach of freedom of information through the country-wide interference with all lines of communication including blocking internet and mobile phones, and preventing access to certain television channels. There is also a risk of widespread unlawful detentions and ill treatment of detainees.

Against this backdrop and the current facts before the African Commission, there is an imminent and grave risk of irreparable harm to the rights of many people in Libya at the current time.

B. Violations of the African Charter

The Libyan government is obliged to put an end to the ongoing African Charter violations. Interim measures are urgently required at this critical stage to deal with these grave circumstances.

Failure to adopt measures to give effect to the African Charter

In the present situation, the Libyan State is directly responsible for violations of the rights of its citizens, as well as being responsible for failing to take necessary and reasonable measures to prevent further violations in conformity with Article 1 of the African Charter.

Right to life

Reports from Human Rights Watch and contacts in Libya indicate that many people have been killed as a result of live ammunition fired at protesters, by law enforcement officials and suspected mercenaries acting on behalf of the Government. Reports indicate that security agents wielding mortars and machine guns have indiscriminately fired on peaceful protesters and mourners proceeding to bury their dead, on a number of occasions within the last six days. As at February 20, 2011, the estimated death toll was at least 233 in five Libyan cities. Reports suggest that these are increasing

The use of lethal force violates Libya's obligations under Article 4 of the African Charter. Further, Libya is under a positive obligation to employ its law enforcement machinery to take all feasible steps to protect individuals from violence. There is a real and imminent risk of escalating loss of life if the current situation prevails.

Freedom of assembly and freedom of expression

The protests by Libyans to peacefully express their discontent over the prevailing political situation, and during burial processions, have been brutally repressed by security

operatives. This is in violation of Libya's African Charter obligations under Articles 9 (2) read together with Article 10, in respect of freedom of assembly and freedom of expression. The Libyan government continues to threaten repressive measures against further dissent. The recently established General Committee for Defence has stated that its forces would cleanse Libya of anti-government elements.¹⁵

Freedom to receive information

Communication within and out of Libya is extremely difficult as the government has shut down all internet communications and until February 23 foreign journalists were not able to enter the country. Some Libyans who have given phone interviews to the media have been arrested. Libyan state TV denied there had been any massacres, dismissing the reports as "baseless lies" by foreign media.¹⁶

The Libyan authorities have responded to the protests by interfering with all lines of communication including blocking internet and mobile phones, and preventing access to certain television channels. This strict control of media outlets means that the actual scope and gravity of the human rights violations can only be estimated. Such systematic and widespread breach of freedom of information throughout the country is an infringement of Libya's obligations under Article 9 of the African Charter to guarantee the right to receive and to impart information.

C. Exhaustion of local remedies

The Applicants submit that there are no effective domestic remedies in Libya for mass violations such as those described in the present complaint. In *Malawi African Association vs Mauritania*¹⁷, the African Commission stated that: "It does not believe that the condition that internal remedies must have been exhausted can be applied literally to those cases in which it is "neither practicable nor desirable" for the complainants or the victims to pursue such internal channels of remedy in every case of violation of human rights. Such is the case where there are many victims."

D. Relief sought

The Applicants submit this letter as an introduction to the complaint, without prejudice to the later submission of additional facts and legal arguments under the Charter. In requesting the Commission to examine their case, the Applicants:

- i) Request a declaration that the Respondent is in violation of Articles 1, 4, 9 (2) read together with 10, and 9 of the African Charter, and an order to provide appropriate redress for these violations.

¹⁵ *Libyan leader Muammar Gaddafi appears on state TV*, BBC News, 22 January 2011
<http://www.bbc.co.uk/news/world-africa-12533069>

¹⁶ Ibid

¹⁷ Communication 54/91 Paragraph 85

- ii) Demand that Respondent State undertakes a thorough and impartial investigation and ensure that any alleged perpetrators are brought to justice and held accountable for any violations.
- iii) Urge that the Respondent state's national law is reviewed to:
 - a) Provide for adequate and effective safeguards against abusive use of force by security and law enforcement officials.
 - b) Ensure that arbitrary or abusive use of force by law enforcement officials is punished as a criminal offence under the law in Libya.
 - c) Provide for appropriate standards on demonstrations, crowd control and the lethal use of force in line with the African Charter.
- iv) Request that the Libyan government integrate human rights training for security and law enforcement officials. The training should include handling violent or potentially violent scenarios, crowd control and riots.
- v) Seek just compensation for:
 - a) Next of kin of the protestors who died as a result of the protests.
 - b) Protestors injured and maimed during the protests.

E. Conclusion

In light of the points of law and facts mentioned above, and without prejudice to any facts, points of law and evidence which may be introduced at later stages, the applicants respectfully request the Commission to be seized of this complaint. The Applicant will make submissions on admissibility and the merits when invited to do so.



Hossam Bahgat, Executive Director, Egyptian Initiative for Personal Rights



Clive Baldwin, Senior Legal Advisor, Human Rights Watch

A handwritten signature in dark ink, appearing to read 'Judy Oder', with a stylized, cursive script.

Judy Oder
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