

AMNESTY INTERNATIONAL

QUESTIONS AND ANSWERS

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Q&A: Human rights and war in Libya

Following a United Nations Security Council resolution on 18 March 2011 to allow foreign military action against Libya, conflict still rages between al-Gaddafi's forces, rebels based in Benghazi, and international forces attacking from the air. Amnesty International examines some of the human rights issues at stake.

What are the obligations under international law of parties to the conflict in Libya?

There is now an international armed conflict in Libya between coalition forces and the Libyan government.

There is also a non-international armed conflict between the Libyan government and rebel fighters. It is critical that all parties involved in the conflict respect fully international humanitarian law (the laws of war) and applicable human rights law.

All parties must refrain from targeting civilians or civilian objects. They should strictly adhere to the definition of military targets and the prohibition of indiscriminate and disproportionate attacks contained in Protocol I Additional to the Geneva Conventions, which reflect customary international law.

The rules described here apply to all parties and to all situations of armed conflict (international or non-international). In particular, there should be:

- (a) no direct attack on civilians or civilian objects;
- (b) no indiscriminate or disproportionate attacks;
- (c) all necessary precautions, including in choice of means and methods of attack, to minimize harm to civilians;
- (d) no attack on the infrastructure even if used for military purposes, if the incidental short-term and long-term consequences for civilians would be disproportionate to the concrete and direct military advantage sought in the specific attack;
- (e) no attack on media outlets solely because they are being used for propaganda purposes;
- (f) no attack on other civilian objects even if their destruction is deemed by the attacker to be likely to lessen the will of the enemy to fight; and
- (g) humane treatment for all those not directly participating in hostilities, including fighters who have been captured, injured or have surrendered.

Have Libyan forces been respecting international humanitarian law?

Amnesty International is troubled by reports that Libyan government forces have been bombarding rebel-held cities and towns, including through the use of artillery. In a densely populated urban environment, artillery cannot be used in a way that properly distinguishes between civilians and fighters. Its persistent use in these circumstances violates the prohibition on indiscriminate attack.

There have also been unconfirmed reports that Libyan airstrikes directly targeted civilians or were indiscriminate. Amnesty International is still working to verify these reports. We have received worrying reports of ongoing shelling or air strikes in several towns and villages where civilians are likely to have been at risk, and which are effectively cut off from the rest of the world because telephone networks have been disconnected. There are serious concerns for the

fate of the population trapped in these areas.

While the use of aircraft to attack military targets may be legitimate, attacking forces must adhere strictly to the rules that safeguard civilians. Under no circumstances can they carry out attacks which directly target civilians or are indiscriminate or disproportionate.

Are pro-government Libyan forces allowed to attack rebels?

While they are directly participating in hostilities, rebel fighters temporarily lose the immunity from attack ordinarily enjoyed by civilians. In other words, fighters can be attacked while they are fighting.

However, fighters who are no longer participating in hostilities due to surrender, capture or injury, must not be attacked and must be treated humanely. Amnesty International is deeply troubled by reports that captured fighters may have been captured and then ill-treated or even killed.

What about reports that Libya is using 'human shields'?

Using civilians to attempt to prevent attacks on military targets constitutes a war crime. Protocol I of the Geneva Conventions prohibits the use of such tactics.

However, the Protocol also makes it clear that even if one side is shielding itself behind civilians, that this "shall not release the Parties to the conflict from their legal obligations with respect to the civilian population and civilians..."

Furthermore, Article 50(3) of Protocol I states that: "The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character."

In other words, those planning an attack on a military target must take into account the presence of civilians even if they are being used as 'human shields'; and, if an attack is likely to result in disproportionate harm to civilians, the attack must be cancelled.

Are rebels using also using 'human shields'?

Amnesty International is not aware of deliberate use of human shields by rebel fighters. However, it has received reports that rebels are failing to take feasible precautions to protect civilians in the areas where they are operating.

Warring parties have obligations to take precautions to protect civilians and civilian objects under their control against attack. Protocol I of the Geneva Conventions requires each party to avoid, to the maximum extent feasible, locating military objectives within or near densely populated areas (Article 58(b)).

What is Amnesty International calling for from al-Gaddafi's Government?

Colonel al-Gaddafi must immediately rein in his security forces and end killings, enforced disappearances and other human rights violations.

He should disclose the names of all those whom his forces are holding and where they are held and allow international access to ensure their safety and well-being.

What humanitarian guarantees are needed for civilians?

All parties to the conflict must ensure that civilians who want to leave the country be immediately allowed safe passage in dignity and safety. All parties to the conflict where necessary must allow the establishment of humanitarian corridors - safe routes to leave the country. They must also facilitate the transportation of supplies and humanitarian workers to deliver assistance as needed.

The stranded populations include thousand of refugees and asylum-seekers, such as Somalis,

Ethiopians, and Eritreans, who are reportedly facing considerable danger and who would face a real risk of persecution or serious harm if they were forced to return to their home countries.

All parties must also ensure that anyone fleeing Libya is allowed immediate access at the border - be it a land or sea border - of whichever country they are able to reach, without discrimination and irrespective of their background.

What are the initial findings by Amnesty International researchers in Libya?

Amnesty International has had researchers based in Benghazi for nearly three weeks. The team has been investigating the enforced disappearance of dozens of people since the outbreak of the demonstrations in mid-February which forced the Libyan government and security forces out of most of eastern Libya.

Amnesty International has also found clear evidence of the use of lethal force against protesters in February and - more worrying still - that in many cases protesters who posed no threat were deliberately killed.

It is clear that hundreds have died in Libya since unrest began. This has included people deliberately killed, killed as a result of excessive or indiscriminate use of lethal force, those who were caught in the ongoing armed conflict, and as a result of human rights abuses.

What is the situation with enforced disappearances in Libya?

Amnesty International received a number of disturbing reports of enforced disappearances. There are serious concerns that those who have disappeared and are in the custody of Colonel al-Gaddafi's forces are at great risk of being tortured or even killed.

Some may be held as bargaining chips, possibly to put pressure on friends and relatives who may support the opposition. Families of people believed to be held by Colonel al-Gaddafi and his forces fear even making their names public lest their captors take reprisals against them.

What is the situation for journalists in the country?

There are indications of a campaign of attacks and harassment against journalists. This is seen most clearly in the detention and torture by Colonel al-Gaddafi's forces of three BBC staff who were subjected to beatings and mock executions, the incommunicado detention of two Al Jazeera correspondents and two cameramen, the killing of an Al Jazeera cameraman near Benghazi, and the detention of a Brazilian journalist, a journalist from the Guardian newspaper and four New York Times journalists (all now released).

International journalists have been allowed into Tripoli but have been kept under very tight restrictions, denying them access to areas where attacks and human rights violations have been reported.

Has Amnesty International been able to confirm reports of mercenary fighters assisting the al-Gaddafi government?

Our researchers have seen foreign nationals being held on suspicion of being mercenaries but it was not clear if they were in fact mercenaries or whether they were in the wrong place at the wrong time. We have called on the African Union and its member states to immediately investigate reports of mercenaries, to monitor, and where appropriate stop, suspicious flights and secure Libya's air, sea and land borders to prevent the entry of such forces.