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HUMAN RIGHTS WATCH

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Libya: Letter to Misrata Councils ^[1]

April 8, 2012

****Update: In response to Human Rights Watch's [April 8 letter to the leaders of the Misrata Councils](#) ^[1], the Misrata Local Council sent [this reply](#) ^[2] on April 11 (Human Rights Watch translation; [original in Arabic](#) ^[3]), the Misrata Military Council sent [this reply](#) ^[4] on May 3 (Human Rights Watch translation; [original in Arabic](#) ^[5])****

Misrata Local Council

Misrata Military Council

Misrata, Libya

Dear Sirs:

Human Rights Watch is writing to raise concerns about serious crimes that have been and continue to be committed by armed groups from Misrata, some of them amounting to crimes against humanity. As the civilian and military leadership in the city, we urge you to take immediate steps to halt the commission of these crimes, and to support prosecution of those responsible. We emphasize that senior officials, such as yourself, could be held criminally responsible for ordering these crimes, or for failing to prevent or punish them, by courts including the International Criminal Court (ICC) in The Hague.

Human Rights Watch has been documenting human rights violations in Libya since 2005, pressing the former Gaddafi government to halt an array of abuses, including torture, forced disappearances and political killings. During the uprising last year, we extensively documented war crimes committed by pro-Gaddafi forces across Libya, including in Misrata. We visited Misrata during the siege and documented indiscriminate attacks on civilians, attacks on medical facilities, the use of landmines and cluster munitions in civilian areas, and arbitrary arrests and torture. We spoke about these violations with influential governments, the United Nations, and the media. And we called for accountability for these crimes after having supported efforts to invoke the jurisdiction of the ICC.

Since then, we have continued our work in Libya, documenting violations by actors on all sides of the political and military divide and calling for perpetrators to be held accountable. We believe that justice for serious crimes committed by all parties is vital for victims, the rule of law, and stability in Libya. Unlike in the past, human rights violations should be investigated and prosecuted.

Unfortunately, in recent months we have documented serious violations by individuals and groups affiliated with anti-Gaddafi forces, committed in a climate of impunity. These violations have occurred in many parts of Libya, but we write to you today about grave abuses by armed groups from Misrata that continue to this day.

A key focus of our work has been conditions in detention facilities, of which there are at least seven in Misrata today, some run by official governmental bodies and others by armed groups and militias. The treatment of detainees in these facilities varies. In some facilities, the staff and guards are professional. In others, Human Rights Watch and other organizations have documented torture and physical maltreatment, in some cases leading to deaths. In addition to physical abuse, none of the roughly 3,000 detainees in the Misrata area have had a proper judicial review and therefore all appear to be arbitrarily detained.

We urge you to halt this abuse, and to ensure that all detainees are transferred to state-run facilities in coordination with the competent government authorities. Human Rights Watch is also encouraging the government to expedite its efforts to receive these detainees and to provide them with prompt judicial reviews.

Another serious matter is the crimes we have documented by Misratan militias against the people of Tawergha, including killings, torture, looting, home destruction and the ongoing forced displacement of some 30,000 people. Some officials from Misrata have publicly said that the people of Tawergha should never return because of the crimes they committed against the people of Misrata.

Human Rights Watch is aware of the crimes committed in Misrata during the war by Gaddafi forces, having documented many of them ourselves. We call for the perpetrators of these crimes to be held accountable. However, it is unlawful collective punishment to prevent a whole community from returning to their homes because of the actions of some individuals. If the reason for preventing the Tawerghans from returning is based on fears for their security, it is the responsibility of local and national officials to provide them with the security they need to return to their homes and to hold those making threats against them accountable. It is also for individual Tawerghans to decide if they wish to return to their homes, having considered the security risks.

Human Rights Watch is not the only organization to document these serious abuses. Notably, on March 2, 2012, the United Nations Commission of Inquiry made strong

conclusions about abuses against the people of Tawergha. The commission's final report found:

The Misrata *thuwar* have killed, arbitrarily arrested and tortured Tawerghans across Libya. The destruction of Tawergha has been done to render it uninhabitable. Murder, torture and cruel treatment, and pillaging which occurred during the hostilities constitute a war crime. Where they have continued since, they violate international human rights law. The torture and killing by Misratan *thuwar* would also, given the widespread and systematic manner in which they have occurred here, be capable of constituting a crime against humanity, and the facts indicate crimes against humanity have taken place.

A crime against humanity can be certain crimes committed as part of a widespread or systematic attack on a civilian population – meaning the crimes are committed as the policy of the state, or of an organization such as a militia. Crimes against humanity can include murder, torture, deportation or forced transfer, arbitrary detention or persecution of a group on political, racial, ethnic or other grounds.

As the civilian and military leadership in Misrata, you have a legal obligation to prevent these crimes from being committed by forces under your command. You are also obliged to support steps to hold the perpetrators accountable. Failure to do so could result in criminal responsibility.

United Nations Security Council Resolution 1970 gives the ICC ongoing jurisdiction over war crimes and crimes against humanity committed in Libya since February 15, 2011. As such, the ICC could prosecute senior civilian officials, military commanders or persons effectively acting as military commanders for serious crimes committed by forces or subordinates under their effective command and control. This can happen if the official or commander *knew or should have known* that his subordinates or forces were committing or were about to commit such crimes and failed to take all necessary and reasonable measures to prevent the crime, or to submit the matter to the competent authorities for criminal investigation and prosecution.

To end these ongoing abuses and crimes, we believe you should take the following minimum steps:

End all abuse in detention facilities run by armed groups and militias under your effective control.

Support and cooperate with investigations of abuse in detention facilities in Misrata and prosecutions by the competent state authorities of those suspected of wrongdoing;

Transfer all detainees to the custody of competent state authorities;

Remove individuals responsible for the physical and psychological maltreatment of detainees from their positions in detention facilities, and provide all evidence of such abuse to the competent state authorities;

Issue immediate orders to armed groups under your command to stop killings, arbitrary arrests, looting and home destructions in Tawergha, as well as in Tomina and Kararim, and make clear that any such acts will be treated as a criminal offense;

Support and cooperate with investigations of attacks on the Tawergha community by competent state authorities and prosecution of those suspected of wrongdoing;

Ensure that all individuals who wish to do so can return to their homes in Tawergha, Tomina and Kararim.

Thank you for your attention. We stand ready to discuss these issues further at your convenience. The vision of the post-Gaddafi Libya was one where a new government would uphold the rule of law, ensure the protection of the rights of all Libyans, and prosecute those responsible for crimes. We hope that, with your efforts, this vision can be realized.

Sincerely,

Sarah Leah Whitson

Executive Director

Middle East and North Africa Division

cc: General Prosecutor Abdelaziz al-Hasadi

ICC prosecutor Luis Moreno-Ocampo

Source URL: <http://www.hrw.org/news/2012/04/08/libya-letter-misrata-councils>

Links:

[1] <http://www.hrw.org/news/2012/04/08/libya-letter-misrata-councils>

[2] <http://www.hrw.org/news/2012/04/11/misrata-local-council-response-human-rights-watch>

[3] <https://admin.hrw.org/ar/news/2012/04/11>

[4] <http://www.hrw.org/news/2012/05/03/misrata-military-council-response-human-rights-watch-o>

[5] <http://www.hrw.org/ar/news/2012/05/03-0>

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