

HUMAN RIGHTS WATCH

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March 8, 2017

General Khalifa Hiftar
Commander of the Libyan National Army
Al-Marj, Libya

Delivery by e-mail

Subject: Civilians Trapped by Benghazi Hostilities

Dear General Hiftar,

Human Rights Watch is writing to you as commander of the Libyan National Army (LNA) to raise concerns about the situation of tens of civilians reported trapped by fighting in the area of Ganfouda in the city of Benghazi who lack food, medicine and clean water. We are also concerned about lengthy screening procedures and detention of residents who left the besieged neighborhood seeking safety.

Human Rights Watch has been tracking violations against civilians in Benghazi since the 2011 uprising. Our researchers were on the ground to document the situation from the first days of the revolution. We have continued to document violations in Benghazi by all sides since the beginning in May 2014 of hostilities that continue until this day.

Siege and Safe Passage

Relatives of civilians trapped in Ganfouda and civil society activists told Human Rights Watch that civilians remaining in Ganfouda, including children and the elderly, have little or no access to food, clean drinking water, electricity, fuel or medical care, while enduring air strikes and shelling in their vicinity. According to relatives, the situation of civilians deteriorated even further after the last evacuation operation organized by the LNA forces on January 24.

As the military leadership controlling the city of Benghazi, you have direct responsibility over forces positioned in the Ganfouda area who are currently preventing these vital items from reaching civilians.

We urge you to instruct forces under your command to allow humanitarian aid into Ganfouda, ensure humanitarian workers have freedom of movement, and to allow the safe departure of all remaining civilians who wish to leave the neighborhood. The same obligations apply to the Benghazi Revolutionary Shura Council (BRSC), which is composed of militias that oppose your forces and are currently controlling the few areas of Ganfouda where civilians remain.

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Outside contact with civilians trapped in Ganfouda is severely limited, making it difficult to confirm information about them. Relatives of those trapped told Human Rights Watch that between 30 and 45 families remain, along with an unknown number of migrant foreign workers.

According to media reports and relatives who spoke to Human Rights Watch, civilians from Ganfouda were evacuated after a temporary ceasefire on two separate occasions in recent months. On December 10, 2016, four families left Ganfouda and were received by LNA forces, and on January 24, an unknown number of civilians were evacuated from Ganfouda to areas controlled by the LNA.

Screening and Detention

Family members have told Human Rights Watch that they have had little if any contact with civilians who left Ganfouda on these two occasions and little information on those among them who are currently in the custody of LNA forces in various locations in eastern Libya.

Little information is available about the screening process of people who left the besieged areas in recent months. According to one relative, 36 women and children remain held in Kweifiyah Prison in Benghazi, and 50 men remain held in three different locations in Benghazi, including Kweifiyah Prison, after the January 24 evacuations from Ganfouda. It was not possible to confirm the number or status of these detainees or whether they were accused of, or charged with, a crime.

Relatives of civilians who remain in Ganfouda told Human Rights Watch that their family members refused to leave the area on previous occasions due to their fear of arrest, humiliation or ill-treatment by LNA forces. According to family members, remaining residents seek the presence of an independent international organization to oversee the evacuation and transfer of civilians to areas in western Libya, outside of the control of the LNA.

Recommendations

Given the role played by the forces you command in besieging Ganfouda and screening the civilians who leave it, and detaining a number of them, we believe it is incumbent on you to:

- Facilitate the safe movement of civilians, in particular to escape the siege and hostilities in Ganfouda;
- Instruct forces under your command to allow and facilitate rapid and unimpeded passage of humanitarian relief for civilians in need;
- Grant humanitarian relief personnel freedom of movement, and protect them from attack, harassment, intimidation, and arbitrary detention;
- Presume persons who the LNA screens as they leave areas of conflict to be civilians unless there is evidence to the contrary;
- Limit any screening of persons to hours rather than days or weeks, and only allow agencies or personnel with a screening mandate to screen people;
- Provide to all persons taken into custody all protections and due process rights granted to detainees under Libyan and international law;
- Ensure that all those detained are held in humane conditions in a recognized detention center accessible to independent monitors, and are treated with dignity and respect;

- Ensure that anyone arrested in conjunction with the conflict in Benghazi, and who remains in detention, is provided a judicial review of the legality of their detention;
- Ensure that minors shall be detained only as a last resort and only for the shortest appropriate period of time, in keeping with international law. Children suspected of being recruited and used by militant groups should be treated as victims not aggressors, with a view to their recovery and reintegration, not punishment;
- Publicly issue information about the number of fighters and civilians detained;
- Ensure that detainees' families are promptly notified about their location and judicial status;
- Ensure that the screening and detaining authorities do not presume affiliation to ISIS or other extremist groups based solely on a person's gender, age, or tribal affiliation.

The laws of war require that all parties to a conflict take constant care during military operations to spare the civilian population.

While the laws of war do not prohibit sieges of enemy forces, starvation of civilians as a method of warfare is prohibited and constitutes a war crime.

We are sure that you know, as a senior military commander, you carry legal responsibility for ordering or failing to prevent such violations being committed by forces under your command. You are also obligated to support steps to hold the perpetrators accountable.

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 military commanders or persons effectively acting as military commanders for serious crimes committed by forces or subordinates under their effective command and control.

Request for Information

We respectfully ask you to answer the following questions:

- What are you doing to ensure that necessary food items, medicine and clean water reach the civilians remaining in Ganfouda at the earliest possible time?
- What will you do to ensure a safe passage of civilians who wish to leave the besieged neighbourhood in Benghazi?
- How many fighters and civilians leaving Ganfouda have forces under your command screened and released?
- How many fighters and civilians from Ganfouda, including women and children, remain in LNA detention or detention under other authorities?
- Where can one get a list of the names of the persons being held in detention?
- In which detention facilities are the fighters and civilians who remain detained by the LNA or other authorities currently being held?
- Is any humanitarian organization or third party permitted to visit the persons in detention?
- How many of the detainees have been charged with a crime? Please specify their names and what the charges against them are. How many of them have been presented to a judge? How many had the opportunity to seek judicial review and appeal their detention?

- What is the legal basis for the detention of anyone who hasn't been charged with a crime?

Thank you for your attention. We plan to publicly release this letter and will reflect your responses to our queries as long as we receive them by March 16, 2017.

We look forward to your response, and stand ready to discuss these issues further at your convenience.

Should you have any questions regarding this matter or to submit your responses to our queries, please do not hesitate to contact [REDACTED] at [REDACTED].

Respectfully,

Sarah Leah Whitson
Executive Director
Middle East and North Africa
Human Rights Watch