

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	189
Land:	Libyen
Kilde:	UK Home Office
Titel:	Country Information and Guidance. Libya: Prison conditions
Udgivet:	5. september 2014
Optaget på baggrundsmaterialet:	5. september 2014

Country Information and Guidance

Libya: Prison conditions

5 September 2014

Preface

This document provides guidance to Home Office decision makers on handling claims made by nationals/residents of Libya as well as country of origin information (COI) about Libya. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether - in the event of a claim being refused - it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the guidance contained within this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Within this instruction, links to specific guidance are those on the Home Office's internal system. Public versions of these documents are available at <https://www.gov.uk/immigration-operational-guidance/asylum-policy>.

Country Information

The COI within this document has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the [Common EU \[European Union\] Guidelines for Processing Country of Origin Information \(COI\)](#), dated April 2008, and the European Asylum Support Office's research guidelines, [Country of Origin Information report methodology](#), dated July 2012.

Feedback

Our goal is to continuously improve the guidance and information we provide. Therefore, if you would like to comment on this document, please email: cpi@homeoffice.gsi.gov.uk.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to make recommendations to him about the content of the Home Office's COI material. The IAGCI welcomes feedback on the Home Office's COI material. Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>

It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,
5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspectorukba@icinspector.gsi.gov.uk

Website: <http://icinspector.independent.gov.uk/country-information-reviews>

Contents

Preface	
Paragraphs	
Guidance	
Basis of claim	1.1
Summary of issues	1.1.1
Consideration of issues: risks of persecution	1.1.2
Information	2.2
Prison numbers	2.1.1
Overview	2.2.1
Prison conditions	2.3.1
Monitoring	2.4.1
Death penalty	2.5.1
Context	
Annex A: Map	
Annex B: Caselaw	
<u>Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)</u>	
<u>AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 (IAC) (14 July 2014)</u>	

1. Guidance

Updated 05 September 2014

1.1. Basis of claim

- 1.1.1 Fear of being imprisoned on return to Libya and that prison conditions are so poor they amount to torture or inhuman treatment or punishment.
- 1.1.2 This guidance is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of humanitarian protection. Prison conditions which are systematically inhuman and life-threatening are always contrary to Article 3 ECHR. However, even if those conditions are not severe enough to meet that threshold, Article 3 may be breached if, because of a person's individual specific circumstances, detention would amount to inhuman or degrading treatment.
- 1.1.3 If the prison sentence or the prison regime, irrespective of its severity, is discriminatory or being disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion, the person may qualify as a refugee.

See Asylum Instruction on [Humanitarian Protection](#)

1.2. Summary of issues

- Is there a real risk of the person being imprisoned on return?
- Are prison and detention centre conditions in Libya so severe that prisoners/detainees suffer treatment contrary to Article 3 ECHR?

[Considering the asylum claim and assessing credibility](#), and also the process guidance on [interviewing/assessing the claim](#)

1.3. Consideration of issues

Is the person reasonably likely to be imprisoned on return?

- 1.3.1 Decision makers must establish the likelihood that the person will be imprisoned on return, including if necessary whether the alleged offence constitutes an offence under Libyan law and, if so, is one which is likely to be punishable by a term of imprisonment.

For further information please refer to the country information on [prison conditions](#)

Are prison conditions in Libya so severe that prisoners suffer treatment contrary to Article 3 ECHR?

- 1.3.2 Prison and detention centre conditions in Libya are generally harsh. Overcrowding, lack of adequate nutrition, poor medical care, lengthy pre-trial incarceration, torture, sexual violence, incommunicado detention and deaths in custody do occur in both government and militia run detention facilities.

- 1.3.3 Reports indicate that those perceived to have been closely involved with the Gaddafi family or regime, African migrants and other tribal and minority ethnic groups are at particular risk of ill treatment in detention.
- 1.3.4 Prison conditions in general are not so systematically inhuman and life-threatening as to meet the high threshold of Article 3. However, the particular circumstances of some individuals are likely to place them at risk of suffering treatment contrary to Article 3 ECHR.
- 1.3.5 The decision maker must carefully consider the individual factors of each case to determine whether detention will cause a particular person in their particular circumstances to suffer treatment contrary to Article 3 ECHR. Relevant factors include:
- likely length of detention,
 - likely type of detention facility;
 - who is controlling/administering the particular detention facility;
 - reason for detention;
 - particular profile of the person;
 - person's age, gender and state of health.
- 1.3.6 Libya retains the death penalty and has continued to pass the death penalty since the overthrow of Col. Gaddafi. Decision-makers must determine whether there is a real risk of the person being intentionally deprived of their life or that, on the basis of the available evidence, a real risk that a person would be convicted and face the death penalty in Libya.

[See asylum process guidance on Non suspensive appeals certification under section 94 of the NIA Act 2002](#)

[See Asylum Instruction on Humanitarian Protection](#)

Policy summary

Prison and detention centre conditions in Libya are extremely poor, but in general are not so systematically inhuman and life-threatening to meet the high threshold of Article 3. Dependant on the particular circumstances of the person concerned, prison conditions are likely to reach the Article 3 threshold in individual cases. Each case must be considered on its facts.

Pro-Gaddafi loyalists, those perceived to have been working or fighting on his behalf, African migrants, and other tribal and minority ethnic groups are at particular risk of ill-treatment..

Where in an individual case treatment does reach the Article 3 ECHR threshold, a grant of humanitarian protection will be appropriate, or Discretionary Leave if the person is excluded from HP. (but see also para. 1.1.3).

Where a claim falls to be refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2. Information

2.1. Prison Numbers

- 2.1.1 According to research conducted by the OHCHR and UN Support Mission in Libya “In September 2013, the Ministry of Justice reported that of the estimated 8,000 conflict-related detainees, 4,000 are under the custody of the Judicial Police (a total of 6,400 detainees, including those held for common crimes, are held by the Judicial Police). The remaining 4,000 conflict-related detainees are being held by the Military Police under the Ministry of Defence; by the SSC and the Combating Crime Department, both composed mainly of armed brigades and operating under the Ministry of the Interior; and by armed brigades not affiliated to any Ministry. The highest concentration of conflict-related detainees of around 2700 is in some seven facilities in Misrata.”¹
- 2.1.2 The same report noted that “Although reliable figures on the total number of detention facilities in Libya are not available, 37 detention facilities were under the authority of the Ministry of Justice as of September 2013, according to the Ministry, the vast majority having been handed over by armed brigades. The Ministry of Justice has also renovated buildings to be used as new prisons, such as the al-Jawwiyyah prison in Misrata, inaugurated in August 2013 and expected to come fully into operation by the end of 2013.”²
- 2.1.3 The U.S. Department of State reported that “Accurate numbers of those incarcerated unrelated to the conflict, including a breakdown by holding agency, were not available, although multiple reports estimated the number to be in the thousands. The main category was foreigners, of which a majority appeared to be irregular migrants. Government facilities under the authority of the Ministry of Interior that held irregular migrants generally were of poorer quality than any other facilities.”³
- 2.1.4 Amnesty International reported in their Public Statement of 3 March 2014 that:
- “Thousands of conflict detainees remain held in detention centres across the country with varying levels of government control. Ther majority have been held without charge or trial (since 2011), judicial review or access to lawyers. When control of detention facilities was handed to the government, militia members were allowed to enter state institutions without adequate vetting. In many cases, militia members recognise the government’s authority only nominally. Law 29/2013 on Transitional Justice requires the authorities to charge or release all detainees ‘affiliated to the former regime’ by 2 March 2014 but Amnesty International believes that this deadline has not been fully met. State-affiliated militias still arbitrarily detain individuals in ordinary criminal cases or following armed clashes”.⁴

¹ UN Office of the High Commissioner for Human Rights (OHCHR)/ UN Support Mission in Libya, *Torture and Deaths in Detention in Libya*, October 2013, Places of detention and detaining authority, <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

² UN Office of the High Commissioner for Human Rights (OHCHR)/ UN Support Mission in Libya, *Torture and Deaths in Detention in Libya*, October 2013, Places of detention and detaining authority, <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

³ US Department of State, *Country Report on Human Rights Practices for 2013: Libya*, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dld=220366>

⁴ Amnesty International: *Public Statement MDE 19/001/2014: ‘Teetering on the edge: Ongoing human rights violations and abuses in Libya’*, <http://www.amnesty.org/en/library/asset/MDE19/001/2014/en/b2710a1c-e9cc-4e48-90bd-b58776135d89/mde190012014en.html>

2.2. Overview

- 2.2.1 The U.S. Department of State noted in its annual report covering 2013 that “Prisons and detention facilities fell well short of international standards, and could be harsh and life-threatening, with overcrowding the greatest threat to the well-being of detainees and prisoners.”⁵ The OHCHR/ UN Support Mission in Libya joint report also highlighted that several detainees “developed chronic diseases apparently because of lack of adequate nutrition, ventilation and sunlight; exposure to humidity; and poor detention conditions in general. Others suffered from poor medical care, and several died in custody apparently as a result of lack of adequate medical treatment.”⁶
- 2.2.2 Human Rights Watch noted in its annual report covering 2013 that “The judicial police, tasked with running detention facilities, remained weak and ill-equipped. There were at least two prison riots in Tripoli and Benghazi, including one at al-Roueimy prison in Tripoli in September 2013 when authorities wounded at least eight detainees with live fire. Armed groups attacked at least two convoys transferring detainees between their prison and a Tripoli court. Numerous prison breaks occurred in Sabha. In Benghazi, 1,200 detainees managed to escape after a riot in August (2013).”⁷
- 2.2.3 The U.S. Department of State further reports “Administration of prisons and detention centres continued to be guided by the 2005 Law No. 5 on Correctional and Rehabilitation Institutions, which outlined the organizational structure and delineated the authority of the more than 10,000-officer-strong Judicial Police. Some reports noted, however, that less than a quarter of those officers were active, with the rest largely failing to report for work. The ratio of detainees and prisoners to guards varied significantly, and guards generally were poorly trained.”⁸
- 2.2.4 The same report notes that “Recurrent prison breaks underscored the incapacity of the Ministry of Justice to administer detention facilities adequately. On 26 March and 30 April 2013, dozens of inmates escaped Sabha Prison. On 14 June 2013, an armed attack freed another 50 to 60 inmates and killed one person in his cell. On 27 July 2013, an estimated 1,400 inmates, including 500 reportedly charged with murder, escaped from Kweifiya Prison in Benghazi. Many escapees were not returned to prison by the end of 2013.”⁹
- 2.2.5 The 2013 annual report by the U.S. Department of State further states that “The interim government urged military councils and militia groups to transfer detainees to authorized judicial authorities. The greatest concentration was in greater Tripoli, Misrata, and Benghazi. During the year there was a period of transition when control of a number of detention facilities transferred from various militia groups to the Judicial Police under the Ministry of Justice. After such transfers, the ministry often shared control over these facilities with other parties, including the militias that had been running them, or the

⁵ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

⁶ UN Office of the High Commissioner for Human Rights (OHCHR)/ UN Support Mission in Libya, Torture and Deaths in Detention in Libya, October 2013, Torture and other ill-treatment <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

⁷ Human Rights Watch, World Report 2014: Libya, 21 January 2014, Arbitrary Detention, Torture, and Deaths in Custody, <http://www.hrw.org/world-report/2014/country-chapters/libya?page=2>

⁸ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

⁹ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

militias were simply deputized under the authority of the government and the management of the prison did not change.”¹⁰

- 2.2.6 A UN News Service article reported that “Since 2012, the Government has sought to bring armed brigades involved in detentions under the official authority of the State by affiliating them to specific ministries, even though in many cases the armed brigades have retained actual control of the detention centres. In April 2013, Libya also adopted a law criminalizing torture, enforced disappearances and discrimination, providing for terms of imprisonment ranging from five years to life, and in September this year, it adopted a new law on transitional justice which requires conflict-related detainees to be screened within 90 days. The UN recommends that Libyan authorities and the armed brigades accelerate the process of handing over detainees to the control of State authorities, and in the meantime take measures to protect detainees against torture or other ill-treatment.”¹¹
- 2.2.7 The U.S. Department of State stated that “The government continued to assume authority over some detention facilities formerly controlled by revolutionary militias. As of September 2013 the Ministry of Justice assumed authority over more than 37 detention facilities, and had made significant improvements to conditions. On August 29, UNSMIL reported improved medical care at Zleiten Prison. The ministry also renovated buildings to be used as detention centers and prisons, such as the al-Jawwiyyah Prison in Misrata. The ministry transferred detainees and prisoners to this facility and publicly inaugurated it on August 13.”¹²

[Return to contents](#)

2.3. Prison conditions

- 2.3.1 Amnesty International stated in its annual report covering 2012 that “Torture and other ill-treatment remained widespread, particularly in detention facilities controlled by militias, and were used to punish detainees and extract “confessions”. Detainees were especially vulnerable during arrest, in their first days of detention and during interrogation. Many signed “confessions” under torture or duress. Article 2 of Law 38 of 2012 gave legal weight to interrogation records of armed militias, at the discretion of judges.”¹³
- 2.3.2 The UK Foreign and Commonwealth annual human rights report covering 2013 reported that “Concerns remain about conditions in detention centres, particularly those outside government control, and the mistreatment of detainees. The International Committee of the Red Cross, Human Rights Watch, and Médecins Sans Frontières have all had direct access to detention facilities, and have raised concerns about the conditions, the treatment of individuals in them, and in particular the treatment of migrants in detention. Overcrowding, lack of food and medical supplies, and allegations of mistreatment and torture, including sexual violence, have been reported.”¹⁴

¹⁰ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dld=220366>

¹¹ UN News Service, Despite Government efforts, torture widespread in Libya's detention centres – UN report, 1 October 2013, <http://www.un.org/apps/news/story.asp?NewsID=46151&>

¹² US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dld=220366>

¹³ Amnesty International, Annual Report 2013; Libya, 23 May 2013, Torture and other ill-treatment, <http://www.amnesty.org/en/region/libya/report-2013>

¹⁴ UK Foreign & Commonwealth Office, Foreign and Commonwealth Office 2013 Human Rights and Democracy Report, 10 April 2014, Libya – Country of Concern, Torture: <https://www.gov.uk/government/publications/libya-country-of-concern/libya-country-of-concern>

- 2.3.3 A report by OHCHR and the UN Support Mission in Libya published in October 2013 reported that “The situation regarding torture in Libya remains alarming. While there seems to be progress in some detention centres and the Ministry of Justice indicates a reduction in the number of torture allegations, torture continues to take place in multiple facilities, including facilities nominally under the authority of the Ministries of Justice, Defence and the Interior. The situation of lengthy arbitrary detention by armed brigades continues to facilitate torture, and detainees have died in circumstances strongly suggesting that torture was the cause.”¹⁵
- 2.3.4 A UN News Service article reported that:
- “Torture continues to be widespread in Libya's detention centres, according to a United Nations report released today (1 October 2013), which noted that some 27 people have died in custody in the past two years, with physical abuse cited as the cause(...). Eleven deaths in custody detailed in the report took place in 2013 in detention centres that are under the nominal authority of the Government but, in effect, are run by armed brigades which emerged during the 2011 revolution. In some cases, members of the armed brigades freely admitted, and even tried to justify, the physical abuse of detainees.”¹⁶
- 2.3.5 A February 2014 report by the UN Secretary-General on the UN Support Mission in Libya highlighted that “The Ministry of Justice estimates that less than 7,000 people continue to be detained in relation to the 2011 conflict and are awaiting judicial processes. This represents an ongoing and serious human rights concern. These detainees are held mostly by armed brigades over whom the Government has nominal but not effective authority”.¹⁷ The same report further noted that “prolonged detention and interrogation in the absence of effective State control or oversight has created an environment conducive to torture and other forms of ill treatment”.¹⁸
- 2.3.6 In March 2014 the UN Secretary-General stated that “In October 2013, the United Nations Support Mission in Libya reported that sexual violence was used in 2012 and 2013 as an element of torture in detention and was perpetrated largely against men in detention facilities operated by armed brigades”.¹⁹
- 2.3.7 In March 2014, Amnesty International highlighted that “Torture and other ill-treatment remain widespread in state and militia-run facilities. While treatment has improved in certain facilities, in some torture remains widespread and in others it is systematic. In 2013, detainees reported beatings with hoses, rifle butts, electric cables, water pipes, in some cases while being suspended in contorted positions. Some also reported electric

¹⁵ UN Office of the High Commissioner for Human Rights (OHCHR)/ UN Support Mission in Libya, *Torture and Deaths in Detention in Libya, October 2013, Conclusion and Recommendations* <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

¹⁶ UN News Service, *Despite Government efforts, torture widespread in Libya's detention centres – UN report, 1 October 2013*, <http://www.un.org/apps/news/story.asp?NewsID=46151&>

¹⁷ UN Security Council, *Report of the Secretary-General on the United Nations Support Mission in Libya, Detentions*, paragraph 33, 26 February 2014: http://www.ecoi.net/file_upload/1226_1394790223_n1423775-lbiya.pdf

¹⁸ UN Security Council, *Report of the Secretary-General on the United Nations Support Mission in Libya, Detentions*, paragraph 34, 26 February 2014: http://www.ecoi.net/file_upload/1226_1394790223_n1423775-lbiya.pdf

¹⁹ UN Security Council, *Conflict-related sexual violence, Report of the Secretary-General*, paragraph 72, 13 March 2014: http://www.ecoi.net/file_upload/1930_1399456345_n1426364.pdf

shocks, burns with cigarettes, heated metal or boiling water, threats with murder or rape and shootings with assault rifles on their limbs”.²⁰

- 2.3.8 The OHCHR/UN Support Mission in Libya reported that “Detainees told UNSMIL that they were constrained in contorted positions; beaten on the soles of their feet (falaqa); beaten all over the body with whips, cables, plastic hoses, metal chains, bars and wooden sticks; and given electric shocks with live wires or taser-like weapons. Several said they were hanged upside down and beaten for hours, burned with cigarettes, had hot liquids poured on them, and were exposed to burning metals (...) Other detainees reported rape by having sticks or bottles inserted into their anuses, or said they were beaten on their genitals”.²¹
- 2.3.9 The UN Secretary-General reported that “Conditions of detentions in a number of facilities, especially those holding illegal migrants under the authority of the Ministry of the Interior, remain largely unacceptable. The Ministry of Justice made significant efforts to improve conditions at several facilities, including in Zliten, where UNSMIL observed improvements, particularly in the medical care of detainees.”²²
- 2.3.10 The U.S. Department of State noted that “Makeshift detention facilities were used throughout the country. Conditions at these facilities varied widely, but consistent problems included overcrowding, poor ventilation, the lack of necessities such as mattresses, and poor access to hygiene and health care. Militias reportedly detained persons at schools, former government military sites, and other informal venues, including private homes and, in one case, a zoo. Many prisons and detention centres were outside central government control, and the conditions in some prisons and detention centers were harsh to the point of being life threatening. Access to food in Ministry of Justice prisons generally was adequate, although access to potable water was a critical problem in Joodayem, Salah Aldeen, and Dafniya prisons.”²³
- 2.3.11 With regards to torture the U.S. Department of State noted that throughout 2013:
- “Torture and abuse took place, however, in facilities under the nominal authority of the government and in nongovernment facilities, the government relied on militias to manage nongovernmental incarceration facilities due to its lack of administrative resources and capability. There were also private detention facilities belonging to illegal armed groups [...] In all types of establishments detainees and prisoners were reportedly tortured and abused [...] Treatment varied from facility to facility and typically was worst at the time of arrest. Reported abuses included beatings with belts, sticks, hoses, and rifles; administration of electric shocks; burns inflicted by boiling water, heated metal, or cigarettes; mock executions; suspension from metal bars; and rape. Abuses of detainees, particularly alleged Qadhafi loyalists and sub-Saharan Africans allegedly

²⁰ Amnesty International, *Teetering on the edge: Ongoing human rights violations and abuses in Libya, Torture and other ill-treatment*: 3 March 2014: <http://www.amnesty.org/en/library/asset/MDE19/001/2014/en/26f9a137-403d-4685-a74e-f4cc999f2523/mde190012014en.pdf>

²¹ UN Office of the High Commissioner for Human Rights (OHCHR) / UN Support Mission in Libya, *Torture and Deaths in Detention in Libya, October 2013, Torture and other ill-treatment*, <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

²² UN Security Council, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 5 September 2013, S/2013/516, paragraph 41.: http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_516.pdf

²³ US Department of State, *Country Report on Human Rights Practices for 2013: Libya, Section 1c*, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

aligned with Qadhafi, similarly were reported at militia-run facilities throughout the country. Militias subjected other categories of detainees to torture”.²⁴

2.3.12 According to The U.S. Department of State, “Incommunicado detention was a severe problem. Government authorities and militias held detainees incommunicado for unlimited periods in recognized, as well as unofficial and unknown, detention centres”.²⁵ Similarly, a February 2014 report by the UN Secretary-General on the UN Support Mission in Libya highlighted that “Detainees are usually held without access to lawyers and limited to no access to family or relatives”.²⁶

2.3.13 With regards to political prisoners the U.S. Department of State reported that:

“To the extent that they controlled security forces, the government and various militias held persons, particularly former Qadhafi officials, internal security organization members, and others accused of subverting the revolution, in a variety of temporary facilities on political grounds. Since most detainees were held for more than a year without being brought before a judge and were denied access to a lawyer, it was not possible to evaluate whether they were political detainees and prisoners. In view of the sweeping nature of retaliation against former regime adherents, it was likely that a number were political detainees”.²⁷

2.3.14 The OHCHR/ UN Support Mission in Libya joint report also highlighted that detainees “include individuals suspected of having fought on the side of or otherwise having supported Qadhafi’s regime, and their family members. Some have been detained apparently on the basis of belonging to certain tribal or ethnic groups, including Warfalla, Tawergha, and Mashashia, as these groups are collectively perceived by some as having supported the former regime. Given the arbitrary nature of the arrests and lack of judicial oversight, cases of personal score-settling are not uncommon”.²⁸

2.3.15 The same report notes that “Men and women were reportedly held separately. In some instances minors were held in Ministry of Justice prisons with adults. Human rights organizations reported that militias also held minors with adults.”²⁹

2.3.16 In June 2014, Human Rights Watch published a report describing the torture and abuse of migrants and asylum seekers in Libya, based on interviews with 138 detainees, almost 100 of whom reported torture and other abuses. The detainees complained of being beaten with iron rods, whipped with rubber cables, and being suspended upside down

²⁴ U.S. Department of State, Country Reports on Human Rights Practices for 2013: Libya, section 1c, 27 February 2014: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366%20-%20See%20more%20at:%20http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

²⁵ U.S. Department of State, Country Reports on Human Rights Practices for 2013: Libya, section 1d, 27 February 2014: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366%20-%20See%20more%20at:%20http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

²⁶ UN Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, Detentions, paragraph 34, 26 February 2014: http://www.ecoi.net/file_upload/1226_1394790223_n1423775-lbiya.pdf

²⁷ U.S. Department of State, Country Reports on Human Rights Practices for 2013: Libya, section 1e, 27 February 2014: <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366%20-%20See%20more%20at:%20http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

²⁸ UN Office of the High Commissioner for Human Rights (OHCHR)/ UN Support Mission in Libya, Torture and Deaths in Detention in Libya, October 2013, Torture and other ill-treatment: <http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf>

²⁹ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

from trees. Other complaints included men and women being strip-searched by male guards, being shot at, electric shocks and being confined in very small spaces with overflowing blocked toilets. The report found that migrant detention centres in particular lacked provision for sanitation, medical care and treatment, and were hugely overcrowded.³⁰

[Return to contents](#)

2.4. Monitoring

2.4.1 With regards to monitoring the U.S. Department of State reported that:

“The government permitted some independent monitoring, but the disaggregation of administration and multiplicity of facilities hindered monitors’ ability to gain a comprehensive vision of the system. The International Committee of the Red Cross (ICRC) reported visiting 10,000 detainees in 33 places of detention from January to July. UNSMIL, in addition to local NGOs such as the International Organization for Cooperation and Emergency Aid, visited places of detention on a case-by-case basis.” The same report also noted that “The lack of central oversight and accountability in militia-run facilities permitted widespread abuse”.³¹

2.5. Death penalty

2.5.1 Human Rights Watch reported in January 2014 that:

“Military and civil courts imposed at least 28 death sentences, 12 of them passed in absentia, since Gaddafi’s fall in October 2011. The Misrata Military Court sentenced two members of Gaddafi’s military to death for violations committed during the 2011 conflict, including indiscriminate attacks against civilians and torture. A civil court in Misrata sentenced a former Gaddafi official and pro-Gaddafi fighter to death for unlawful killings during the 2011 uprising. Civil courts in Misrata, Benghazi, Zawiyah, and Tripoli sentenced 12 civilians to death on charges related to the 2011 conflict and common crime charges, including murder. Lawyers and family of the accused alleged serious due process violations, including the inability to call defence witnesses. The Supreme Court had yet to approve the death sentences at time of writing.”³²

2.5.2 The UK Foreign & Commonwealth annual report covering 2013 reported that “Libya still retains the death penalty and continues to pass the death sentence, although there have been no executions since liberation”.³³ Similarly, Amnesty International noted that Libya imposed at least 18 death sentences in 2013 but did not carry out executions.³⁴ Amnesty International is also concerned that the death penalty is used in Libya by military and special courts and tribunals, sometimes against civilians, and that people are

³⁰ Human Rights Watch: Libya: ‘Whipped, Beaten and Hung from Trees’: 22 June 2014:

<http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>

³¹ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1c, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

³² Human Rights Watch, World Report 2014 - Libya, 21 January 2014, Death penalty, <http://www.hrw.org/world-report/2014/country-chapters/libya?page=2>

³³ UK Foreign & Commonwealth Office, Foreign and Commonwealth Office 2013 Human Rights and Democracy Report, 10 April 2014, Libya – Country of Concern, Death penalty:

<https://www.gov.uk/government/publications/libya-country-of-concern/libya-country-of-concern>

³⁴ Amnesty International, Death sentences and executions in 2013, Reported death sentences in 2013 and Regional Overviews – Middle East and North Africa, March 2014

<http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>

sentenced to death after trials in their absence.³⁵ The report further highlighted that most death sentences were passed for crimes allegedly committed during the 2011 armed conflict, but others “concerned ordinary cases such as murder. Serious concerns about fair trials remain, due to the precarious security situation, the intimidation of lawyers and the lack of central government control over the whole country”.³⁶

[Return to contents](#)

³⁵ Amnesty International, Death sentences and executions in 2013, Global Figures, March 2014
<http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>

³⁶ Amnesty International, Death sentences and executions in 2013, Regional Overviews – Middle East and North Africa, March 2014
<http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>

Annex A: Map

This is a map of Libya showing major cities and towns.



United Nations, Department of Field Support, Cartographic Section: Libya, March 2013
<http://www.un.org/Depts/Cartographic/map/profile/libya.pdf>

Weblinks for other maps on Libya:
ESRI/UN Cartographic Section (UNCS), Libya, September 2013
http://reliefweb.int/sites/reliefweb.int/files/resources/lby_ocha.pdf
Nations Online, Political map of Libya, Undated [Last accessed: 14/05/2014]

<http://www.nationsonline.org/oneworld/map/libya-political-map.htm>

Annex B: Caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion.

‘Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom *not* to hold and *not* to have to express opinions’. Paragraph 32

‘Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution.’ Paragraph 42. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 (IAC) (14 July 2014)

The Upper Tribunal held that (see paragraph 215):

Country guidance

(1) In the aftermath of the armed revolution that brought about the fall of the dictatorial and repressive regime of Colonel Qadhafi, the central government in Libya has relied on various militias to undertake security and policing functions. Those militias and the many others that operate within Libya, often have their own interests, loyalties and priorities which may or may not coincide with the interests of the central government.

Article 15(c)

(2) There is not such a high level of indiscriminate violence in Libya, within the meaning of Article 15(c) of Council Directive 2004/83/EC ("the Qualification Directive") so as to mean that substantial grounds exist for believing that an individual would, solely by being present there, face a real risk which threatens his or her life or person.

Former regime members and associates

(3) Having regard to the generally hostile attitude of society to the former regime, the following are, in general, at real risk of persecution or Article 3 ill-treatment on return to Libya: -

- (a) former high ranking officials within the intelligence services of that regime;
- (b) others with an association at senior level with that regime.

(4) As a general matter, the closer an individual was to the centre of power within the former regime, the more likely that the individual will be able to establish a risk of persecution or Article 3 ill-treatment on return.

(5) The majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Qadhafi regime. Such employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.

(6) In general, family members of those described in (3) and (4) above are not at risk of persecution or a breach of their protected rights on return. It is possible, however, that an individual will be able to establish such a risk but this will need to be demonstrated by specific evidence relating to the individual's circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact-specific evidence of the risk to that particular family member.

Black Libyans etc

(7) A 'Black Libyan' is a Libyan of black African appearance, and includes a person who may not actually possess Libyan nationality but for whom Libya is their country of former habitual residence. There is endemic racism within Libyan society towards Black Libyans. However, Black Libyans who are not Tawurga or Tuareg are not per se at risk of persecution or Article 3 ill-treatment on return, and will only be able to establish the need for international protection with reference to some additional factor particular to that individual.

(8) The Tawurga are Black Libyans who are perceived by Libyans to have been mercenaries on the side of the Qadhafi regime and to have committed human rights abuses during the revolution. The Tuareg are also Black Libyans and are also perceived to have been supporters of the former regime.

(9) Whilst there remains a need for an individual assessment of each individual's circumstances, a person who is Tawurga or Tuareg will in general be able to establish the need for international protection. The same is true of persons from the Mashashiya ethnic or tribal group. The Mashashiya are not Black Libyans but are similarly perceived as a group to have been supporters of the Qadhafi regime.

Women

(10) Whilst Libya is a male-dominated society and there is evidence of discrimination and violence against women and poor recognition of women's rights, being female does not per se establish a risk on return. However, taking into account all the circumstances, including a woman's age, health, level of education and economic status, one or more of the following characteristics or factors are likely, depending on the circumstances, to be significant in relation to the assessment of risk on return for a woman:

- a) African ethnicity;
- b) Being a victim of sexual violence, including having been raped by soldiers loyal to the Qadhafi regime or by other combatants;
- c) Being a woman accused or suspected of sexual misdemeanours or offences against family honour.

Failed asylum seekers

(11) Failed asylum seekers are not, for that reason alone, at real risk on return.

Risk at point of return

(12) There is no real risk of harm to the ordinary traveller arriving either at Tripoli international airport or Benghazi airport.

(13) However, a person who has established that they come within one of the risk categories set out at (3), (4), (9) and (10) above, will be at risk from government security forces or from militias, on arrival at Tripoli International Airport, on account of information that is required to be given by passengers on arrival.

Risk following return

(14) Even if a person described in (13) above is able to pass through the airport without being detained, because of the presence of militias at various checkpoints such a person is reasonably likely to be detained at a checkpoint en route to his or her home area.

(15) Notwithstanding the prevalence of checkpoints manned by militias, it is possible to travel overland from Tripoli airport to other destinations without a real risk of persecution, serious harm or Article 3 ill-treatment. Land travel in general is possible and can be undertaken without giving rise to a risk of harm that requires recognition in terms of international protection. The evidence does not reveal such a level of arbitrary or irrational conduct on the part of militias at checkpoints such as to put the ordinary traveller at real risk. A claim to international protection is unlikely to succeed simply on the basis of a claimed risk of travel to any particular area of Libya. Area specific evidence would have to be adduced which establishes such a risk.

(16) The 'family book' is the main proof of citizenship, listing family members and being required, for example, to obtain employment or a bank loan. However, the fact that a person does not possess a 'family book' would not prevent travel within Libya and the lack of a family book would not itself give rise to a risk of harm.

Sufficiency of protection

(17) In general, an individual who succeeds in establishing a real risk of harm by reference to the risk categories set out at (3), (4), (9) and (10) above, will not be afforded a sufficiency of protection from that harm.

Internal relocation

(18) Likewise, such individuals would not, in general, have available to them the option of internal relocation.

(19) For persons who have established a real risk of proscribed ill-treatment in their home area for a reason other than by reference to one of the categories set out above, for example because of a family or tribal feud, or because of hostility from a particular militia, it is possible to be able safely to travel from one part of Libya to another, depending on whether the reason for the risk is one that would give rise to further risk for that same reason, on encountering a checkpoint.

(20) A male seeking to avoid a local risk of harm such as described in (19) above, would be able in practical terms to relocate to another area of Libya, be it for example Tripoli or Benghazi, particularly if the person has tribal or family connections there. The absence of such connections would not prevent the person from establishing himself, in the sense of being able to live in the new community and find accommodation. It would not be unduly harsh for such a person to relocate internally.

(21) However, such a person may not be able to avoid a risk of harm in a new area where the person has no connections in terms of tribal or family links, but the person or group that is feared does have such links. A fact-specific enquiry is essential. An appellant's assertion that the individual or group that is feared has links to say, Tripoli or Benghazi, or another prospective place of relocation, will need to be assessed in the light of the findings in relation to overall credibility.

(22) In relation to the possibility for a woman to relocate internally, taking into account the position of women in society in Libya, the difficulty for women of accessing accommodation if

alone, and the rarity of a woman arriving in a community without knowing any person there, internal relocation would not be reasonable and would be unduly harsh unless in the prospective area of relocation the woman has a close family or significant other connection, aside from merely a tribal connection.

(23) In addition, bearing in mind the above factors, a woman is likely to be more conspicuous with the result that her presence may more easily be discovered by the prospective persecutor.

(24) The following cases are superseded by this decision and are no longer to be treated as providing country guidance:

[ME \(Risk, Failed Asylum Seekers, Hassan\) Libya CG \[2003\] UKIAT 00200 \(29 October 2003\)](#)

[HH \(Risk, Failed Asylum Seekers\) Libya CG \[2003\] UKIAT 00202 \(24 February 2004\) KK](#)

[\(Failed Asylum Seeker\) Libya CG \[2004\] UKIAT 00151 \(27 May 2004\)](#)

[Return to contents](#)