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OPERATIONAL GUIDANCE NOTE

LIBYA

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1. Introduction

1.1 This document provides Home Office caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of Libya, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

1.3 Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a

person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.

- 1.4** If, following consideration, a claim is to be refused, caseworkers should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of protection

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** The executive summary in a report by International Crisis Group dated 14 September 2012, analysed the security situation post conflict it stated that: 'Until now, central authorities have acted chiefly as bystanders, in effect subcontracting security to largely autonomous armed groups. The army and police were in disarray, suffering from a deficit in personnel and equipment. Officers and soldiers had either defected, fled, been killed or jailed and the rebels who rose up against Gaddafi were much better armed and unwilling to either surrender their autonomy or come under state control. It would be wrong, however, to see the parallel military and police forces that emerged as having done so against the central authorities' wishes. The Libyan Shield Forces and Supreme Security Committee – the former operating parallel to the army, the latter to the police – were authorised and encouraged to take action by the ruling National Transitional Council, which viewed them as auxiliary forces without which the state simply could not secure the country.¹

¹ International Crisis Group, Divided we stand: Libya's enduring conflicts, 14 September 2012.
<http://www.crisisgroup.org/en/regions/middle-east-north-africa/north-africa/libya/130-divided-we-stand-libyas-enduring-conflicts.aspx>

- 2.2.3** Libya continued in its efforts to form national security services. On 15 February 2012, Libya's chief of staff Yousef al-Manqush said that 5,000 militiamen had signed up for the new national army and encouraged more to do so. Additionally, about 400 former fighters finished their training to join the police services. On 4 March 2012, the first class of former rebel fighters absorbed into the national army graduated in Tripoli. The number of existing security forces is unclear due to conflicting information from different officials. On 10 March 2012, Libya's Interior Minister Fawzi Abdel Al said that the police force numbered 25,000 and was able to provide security. Both France and Sudan have offered support to Libya to develop and train its security forces.²
- 2.2.4** The first batch of former revolutionaries who have joined the local police force took part in a graduation ceremony on 9 March 2013, in Benghazi. Attending the ceremony at the city's National Security Directorate and watching the 400 men be commissioned were Deputy Prime Minister Awad Barasi and Interior Minister Ashour Shuwail. The scheme has been piloted to integrate revolutionaries into the standard security systems of the state. The new recruits had at spent 45 days at the city's Police Training Institute. There were 400 graduating on 9 March, but they were just the first of the 7,000 who had signed up to join Benghazi's police force.³
- 2.2.5** While the government is gradually integrating various militias into government security forces, it faces many obstacles and the progress is not advancing according to the expectations of the general population. Centrally-controlled security forces are also finding it more difficult to assert their authority in peripheral regions that are further from urban centres such as Tripoli, Misrata and Benghazi. In such areas it is often revolutionary forces that are in charge of security situation.⁴
- 2.2.6** Despite some positive steps, the interim authorities struggled to establish a functioning military and police that could enforce and maintain law and order. Many of the armed groups that came into existence to fight Gaddafi refused to disarm and filled the security void. Some cooperated with the government and provided security services. Others operated without state sanction; the state proved unable to confront these well-armed groups.⁵
- 2.2.7** The authorities' failure to demobilize the armed groups contributed to an escalation of violence in the Nafusa Mountains, in northwestern Libya, in the southern towns of Kufra and Sebah, and in the towns of Sirte and Bani Walid. As of October 2012, an array of government and militia forces from Misrata had surrounded Bani Walid and enforced a partial siege, demanding the arrest of wanted persons suspected to be in the town.⁶
- 2.2.8** Libya's national military deployed in the south after tribal clashes between Arabs and Tabu over border control, land rights, and trafficking routes. Spread thin, the army at times served as an intermediary between clashing regions and tribes.⁷

² International Institute for Strategic Studies, Armed Conflict Database, Military and Security Developments April-June 2012. Accessed 5 September 2012. Subscription site, hard copy available on request to COIS.

³ Libya Herald, Benghazi police recruits graduate, 9 March 2013 <http://www.libyaherald.com/2013/03/09/benghazi-police-recruits-graduate/>

⁴ International Institute for Strategic Studies, Armed Conflict Database, Military and Security Developments April-June 2012. Accessed 5 September 2012. Subscription site, hard copy available on request to COIS.

⁵ Human Rights Watch, World Report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

⁶ Human Rights Watch, World Report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

⁷ Human Rights Watch, World Report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

- 2.2.9** The police force remained weak, and depended largely on the Supreme Security Committee (SSC) for ensuring law and order—a quasi-official body of former anti-Gaddafi fighters that is cooperating with the Interior Ministry—for ensuring law and order. The SSC's lack of vetting criteria and scant training contributed to abuse by its members.⁸
- 2.2.10** On 9 April 2013 Libya's national assembly approved a law criminalising torture and abductions as the government seeks to stamp its authority on a country awash with weapons where militias often have more power on the ground than state security forces. Since the end of the 2011 uprising that toppled Muammar Gaddafi, Libya's new rulers have struggled to control a myriad of former rebel groups who refuse to lay down their arms and often take the law into their own hands and detain people. At the beginning of April 2013 an armed group controlling a Tripoli prison stormed the justice ministry, an attack the justice minister said took place after the government ordered the group to hand control of the jail over to the authorities. "Under this transitional justice law, it is a crime to torture prisoners, kidnap people and hold them in illegal detention centres," said an official from the general national congress' media office. "This law aims to strengthen personal freedoms in the country."⁹
- 2.2.11** The judicial system remained weak, especially in its ability to pursue criminals affiliated with anti-Gaddafi militias. Threats and physical attacks on prosecutors and judges further inhibited the rule of law.¹⁰
- 2.2.12** The roles of the judiciary and Supreme Court remain unclear without an official constitution. The court system has begun to recuperate, with some functioning courts in city centres trying ordinary cases. However, investigations into a large number of cases involving torture and extrajudicial executions before and during the civil conflict, including that of Gaddafi, have made little progress, and an estimated 9,000 individuals remain in government or militia custody without any formal trial or sentencing. Among these detainees are high-profile suspects like Saif al-Islam al-Gaddafi and former Gaddafi intelligence chief Abdullah al-Senoussi, who was extradited from Mauritania in September 2012.¹¹ Amnesty International noted that trying the former military intelligence chief, al-Senoussi in Libya, where the justice system remains weak and fair trials are still out of reach, undermines the right of victims to see justice and reparation. Instead, it considers that he should face the ICC's charges of crimes against humanity in fair proceedings.¹²
- 2.2.13** Corruption has long been pervasive in both the private sector and the government in Libya, which was ranked 160 out of 176 countries surveyed in Transparency International's 2012 Corruption Perceptions Index. The fall of the Gaddafi regime raised some hopes that the level of graft would decline, but oil interests, foreign governments, smuggling groups, and armed militias often still wield undue influence, especially in the south, and opportunities for corruption abound in the

[chapters/libya?page=1](#)

⁸ Human Rights Watch, World Report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

⁹ Reuters, Libyan parliament criminalises torture and kidnapping, 9 April 2013, <http://uk.reuters.com/article/2013/04/09/uk-libya-law-idUKBRE9380WU20130409>

¹⁰ Human Rights Watch, World Report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=2>

¹¹ Freedom House, Freedom in the world 2013; Libya, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/libya>

¹² Amnesty International, Libya must seek justice not revenge in case of former al-Gaddafi intelligence chief, 18 October 2012 <http://www.unhcr.org/refworld/docid/508656492.html>

absence of effective fiscal, judicial, and commercial institutions.¹³

- 2.2.14** On 2 May 2012, the NTC passed Law 38, which granted amnesty to those who committed crimes if their actions were aimed at “promoting or protecting the revolution” against Gaddafi. At the beginning of 2013, no one had been charged or arrested for the apparent execution of 53 Gaddafi supporters in Sirte in October 2011, or for the apparent execution of Gaddafi and his son Muatassim. An NTC-formed commission to look at Gaddafi’s death released no results. In contrast, the judicial authorities began proceedings against several former Gaddafi officials. Detained officials complained that they did not have access to a lawyer and did not know the charges against them. Abuzaid Dorda, the former prime minister and head of foreign intelligence, was injured after jumping from a two-story building while detained by a militia. Dorda said he jumped in order to avoid abuse.¹⁴
- 2.2.15** The FCO reported in December 2012 that despite a weak and under-resourced system, there were a number of improvements in the last few months when dealing with post-conflict related crimes, for example, the courts were able to deal with electoral disputes in July and minor felonies were dealt with. Individuals generally had access to lawyers, either state or privately funded, and were processed within reasonable time frames. However, there was little progress on dealing with conflict related detainees. The two month deadline for prosecution of conflict-related detainees introduced in July had not been met. In addition, high profile cases were typically adjourned rather than dealt with.¹⁵
- 2.2.16** Some progress was made in the reactivation of the Libyan judicial system. Almost all judges and prosecutors have reported back to duty. In most parts of the country, however, court sessions are not held regularly, except for family and civil law cases. In Benghazi and Darnah, incidents were reported in which brigades physically attacked court personnel and damaged court buildings. Prosecutors and judges continue to face threats and intimidation from brigades and, occasionally, from former regime loyalists. UNSMIL has promoted the reactivation of the court system and provided training to judges in electoral dispute resolution.¹⁶
- 2.2.17** The current limitations of Libya’s legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm mean that in general claimants would not always be able to access effective protection. Each case must however be considered on its individual facts and the assessment of whether effective protection is available should be considered in relation to the particular circumstances and profile of the claimant and the latest country of origin information.

2.3 Internal relocation.

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a ‘reasonable’

¹³ Freedom House, Freedom in the world 2013; Libya, January 2013 <http://www.freedomhouse.org/report/freedom-world/2013/libya>

¹⁴ Human Rights Watch, World Report 2013: [Libya](#), 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=2>

¹⁵ FCO, Human Rights and Democracy, Quarterly Updates: Libya, 31 December 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/>

¹⁶ United Nations security council, Report of the Secretary-General on the United Nations Support Mission in Libya, 30 August 2012, paragraph 30 http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_675.pdf

option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.3.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.3.3** The Constitutional Declaration recognizes freedom of movement. Law 38 gives the government powers to restrict a person's movement if they are considered a "threat to public security or stability" based on the person's "previous actions or affiliation with an official or unofficial apparatus or tool of the former regime." Affected individuals may challenge the measures before a judge.¹⁷
- 2.3.4** The interim governments generally did not restrict freedom of movement within the country. On 16 December 2012, the GNC voted to declare much of the southern part of the country a "closed military zone," covering the areas around Ghadamis, Ghat, Awbari, Al-Shati, Sebha, Murzuq, and Kufra--limiting civilian access to certain roads in an attempt to curtail illicit trafficking flows. The legislation also temporarily closed the southern border crossings. When the conflict ended, some autonomous militias and government forces imposed barriers to movement by setting up checkpoints in areas that remained strongholds for Gaddafi loyalists, such as Bani Walid, Sirte, Tawargha, and other locations.¹⁸
- 2.3.5** The FCO travel advice, updated 6 February 2013 states that the land border crossing points may close with little or no notice. The road to the Egyptian land border is open but has numerous checkpoints and may be temporarily restricted without notice. Access to the Tunisian land border may also be temporarily restricted without notice. The land borders with Chad, Niger, Sudan and Algeria have been temporarily closed.¹⁹
- 2.3.6** There is a higher threat from criminal activity in areas bordering Sudan, Chad, Niger and Algeria. With the exception of the official land border crossings to Tunisia and Egypt, visitors and residents are not permitted to travel in the interior

¹⁷ US State Department, Human Rights report 2012; Libya, 19 April 2013, Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

¹⁸ US State Department, Human Rights report 2012; Libya, 19 April 2013, Section 2d <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

¹⁹ FCO, travel advice; Libya, updated 6 February 2013 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/libya>

or to border areas without an officially sanctioned guide or specific permission from the Libyan authorities. The Libyan authorities may restrict access to the more remote parts of the country (e.g. desert areas and remote towns) at short notice.²⁰

- 2.3.7** The road to the Egyptian border is open but has numerous checkpoints and may be temporarily restricted without notice. They appear to increase in number at night and are unpredictable in terms of their frequency, location and temperament. You should exercise caution and compliance at these checkpoints and avoid all but essential travel at night.²¹
- 2.3.8** In rural areas societal discrimination restricted women's movements, even to local destinations.²² According to a 2010 Freedom House report, most women will not travel unless accompanied by a husband or male relative. Members of the elite may have more freedom in this regard, but are still expected to secure the permission of their families in order to travel abroad. In addition, travelling within Libya is difficult, as Libyan hotels generally do not rent rooms to unaccompanied women, due to cultural and traditional requirements. Women rarely walk in the street in the evenings, unless accompanied by a male family member or another woman. There are a range of related cultural and social restrictions which are generally stronger in rural areas and small towns.²³ This is supported by a SIGI report describing the same cultural and religious restrictions which further notes that it is socially unacceptable for an unmarried or divorced woman to live on their own.²⁴
- 2.3.9** Careful consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular claimant. Caseworkers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.

2.4 Country guidance 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 express opinions. 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. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or

²⁰ FCO, travel advice; Libya, updated 6 February 2013 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/libya>

²¹ FCO, travel advice; Libya, updated 6 February 2013 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/libya>

²² US State Department, Human Rights report 2011; Libya, 19 April 2013, Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

²³ Freedom House: Women's Rights in the Middle East and North Africa 2010 – Libya, 3 March 2010, *Autonomy, security, and freedom of the person* p.8 http://www.freedomhouse.org/sites/default/files/inline_images/Libya.pdf

²⁴ Social Institutions & Gender Index, undated, accessed April 2013 <http://genderindex.org/country/libya>

feign support for a regime in order to avoid persecution.

European Court of Justice: (Elgafaji [2009] EUECJ C-465-07) 17 February 2009

The ECJ in this case found that “Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.” (Paragraph 45)

QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ620 (24 June 2009) The Court of Appeal provided further domestic guidance on [Elgafaji](#) and the test to be applied:

“Is there in a country of a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person?” By “material part” we mean the applicant’s home area, or if otherwise appropriate, any potential place of internal relocation [para 40].

The Court of Appeal also clarified that the word “exceptional” is used by the ECJ to stress that not every armed conflict or violent situation will attract the protection of Article 15c but only one where the level of violence is such that, without anything to render them a particular target, civilians face real risks to their life or personal safety [para 25]. The reference to ‘threat’ does not dilute the need for there to be a real risk [para 29]. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence whether caused by one or more armed factions or by a state, which reaches the level described in [Elgafaji](#) [para 35]. There is no requirement that the armed conflict itself must be “exceptional” but there must be an intensity of indiscriminate violence sufficient to meet the test in [Elgafaji](#) [para 36].

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Libya. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is

available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters; Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and

indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

Credibility

3.8 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction' [‘Considering the asylum claim and assessing credibility’](#). Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Claims relating to the general security situation

3.9.1 Many applicants will make an asylum/human rights claim based upon the security situation in Libya, and the prevailing general humanitarian conditions.

3.9.2 Treatment. In 2011, Gaddafi's autocratic government was brought to an end by a six-month uprising and ensuing civil war. In October of that year, the main opposition group, the National Transitional Council (NTC), declared the country to be officially "liberated" and pledged to turn Libya into a pluralist, democratic state. In August 2012, the NTC handed over power to Libya's newly elected parliament, the General National Congress.²⁵

3.9.3 Libya held its first democratic elections since the ousting of Gaddafi in July 2012, but a power struggle between Libya's budding new government and a web of revolution-era militias continued to plague Libya's transition to stability after the toppling of Gaddafi in late 2011. Tens of thousands of Libyans remained displaced months after the fighting ended, afraid to return home because of lingering ethnic tensions. Clashes in southern tribal areas rocked the country in the early months of 2012; and many minorities were unsure if the revolution would finally bring them more rights. Libya's policy towards migrants, who were violently targeted in the months following the revolution, remained harsh. Many of them, along with Libyan refugees and failed asylum seekers, are still stranded on the Egyptian border.²⁶

3.9.4 In January 2013, Tarek Mitri, Special Representative of the Secretary-General and head of the UN Support Mission in Libya (UNSMIL), told the Security Council that the security situation remained "precarious," he said, while security reform gained momentum and coherence, with over 20,000 revolutionary fighters having enlisted with the Ministry of Interior's training process since security restructuring plans were announced in December 2012. Those plans have met with resistance from revolutionary brigades who were not yet ready to surrender their weapons, he said. For that purpose, UNSMIL was offering technical advice on demobilisation and reintegration, training, national security policies, legal frameworks,

²⁵ BBC News, Country profile; Libya updated 10 December 2012, <http://www.bbc.co.uk/news/world-africa-13754897>

²⁶ IRIN News, MIDDLE EAST: 2012 - a year of continuing turmoil 31 December 2012
<http://www.irinnews.org/Report/97155/MIDDLE-EAST-2012-a-year-of-continuing-turmoil>

organisational structure and budget.²⁷

- 3.9.5** Insecurity remained a major concern during 2012, with regional militias, armed Islamist groups, international actors, criminal gangs, and smugglers all contributing to the problem. In the most widely publicised incident, an armed assault on the U.S. consulate in Benghazi in September 2012 resulted in the death of the U.S. ambassador and three other Americans. Other large-scale violence included deadly bombings during the GNC elections, a series of attacks targeting government security forces in the second half of 2012, and a deadly October assault by government and militia forces on the reputed Gaddafi loyalist town of Bani Walid. The southern border areas, a common locus for arms smuggling, drug trading, and human trafficking, had become so insecure by December 2012 that the national government instated martial law in the border provinces and gave military authorities jurisdiction over provincial governments.²⁸
- 3.9.6** Libya's security forces remain weak and unable to police much of the country, despite some government efforts. Lawlessness is particularly acute in the East and South, where armed militias and criminal groups act with impunity. These groups have attacked, among others, foreign diplomatic missions as well as representatives of the United Nations and the International Committee of the Red Cross. Reining in the myriad armed groups that formed in 2011 to fight Gaddafi's forces remains a pressing and essential task, according to Human Rights Watch. These groups have refused to give up their weapons and act as a law unto themselves, and some are committing serious crimes, such as unlawful detentions and torture.²⁹
- 3.9.7** The government's lack of capacity to control the security situation has also been reflected in the rise in the number of incidents of abductions and extrajudicial killings taking place, including the assassination of the Police Director of Operations in Benghazi. The Benghazi Police station and Court house have also been subjected to attacks.³⁰
- 3.9.8** The FCO travel advice for Libya, updated in January 2013 states that violent clashes between armed groups are possible across the country, particularly at night, and even in those places that have previously avoided conflict. These often include the use of heavy weapons. In August 2012 an explosive device detonated outside the former women's police academy in Tripoli, reportedly causing two fatalities. There has also been a spate of assassinations against Libyan police officers and influential Libyans in the east of the country.³¹
- 3.9.9** In January 2013 the FCO stated that they were aware of a specific, imminent threat to Westerners in Benghazi. There is a high threat from terrorism. Attacks could be indiscriminate, including in places frequented by expatriates and foreign travellers. There is a threat of kidnapping in Libya. Following French military intervention in Mali, there is a possibility of retaliatory attacks targeting Western interests in the region.³² The Washington Post report that Western officials are

²⁷ UN News Centre, Libya: national consensus needed for building institutions, security – UN envoy, 29 January 2013 <http://www.un.org/apps/news/story.asp?NewsID=44028&Cr=libya&Cr1=>

²⁸ Freedom House, Freedom in the world 2013; Libya, January 2013, <http://www.freedomhouse.org/report/freedom-world/2013/libya>

²⁹ Human Rights Watch, Libya: Slow Pace of Reform Harms Rights, 6 February 2013 <http://www.hrw.org/news/2013/02/06/libya-slow-pace-reform-harms-rights>

³⁰ FCO, Human Rights and Democracy, Quarterly updates; Libya 31 December 2012 <http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/>

³¹ FCO, Travel advice; Libya 24 January 2013 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/middle-east-north-africa/libya>

³² FCO, Travel advice; Libya 24 January 2013 <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by->

particularly worried that the French offensive in Mali will drive Islamist militants across Algeria's porous borders and into Libya.³³

- 3.9.10** Security remains a key issue in Libya. A number of armed rebel groups continue to operate throughout the country, as demonstrated by attacks during the past months around Tripoli and Benghazi and in Bani Walid, the south and the east. A related issue is the disarmament, demobilisation and reintegration of armed groups, which continues to pose challenges.³⁴
- 3.9.11** While there has been progress in terms of long-term defence-sector reform, challenges remain in addressing pressing security issues. There is a need for the adoption of interim security measures while the new national defence and police forces are being built. This includes the development of an arms control programme to address concerns about border security and arms being trafficked from Libya to fuel other crises in the region such as those in the Sahel and Syria.³⁵
- 3.9.12** The killing of US ambassador Christopher Stevens in September 2012, along with three other Americans, prompted authorities in Libya to take action against the militias that stand as the country's most important security threat. Made up of former rebels who fought against the Gaddafi regime - and many others who joined when the war was finished - these organisations number into the mid to low hundreds. While many have shown a sincere interest in providing security in the regions they control, others act according to their own rules.³⁶
- 3.9.13** Anxious to promote a violent understanding of jihad and believed by some to be responsible for Mr Stevens's death, Ansar al-Sharia is only one example of militia lawlessness. There are others, driven by a desire for revenge, who have carried out torture against individuals and communities suspected of being loyal Gaddafi. And then there are the groups seeking to control the flow of petrol, illegal migrants and drugs along the border areas, a struggle fixated on profits and one that has provoked fighting between rival organisations. The result is that Libya has become a patchwork of factions whose continued presence - one that appears to be empowering warlords over elected officials - makes it difficult to ensure the establishment and maintenance of a single body of law that can apply equally and to all.³⁷
- 3.9.14** Three months after the 11 September attack on the US consulate in Benghazi, US officials investigating the attack have suggested that Libya is reluctant to move against Islamist extremist suspects who belong to militia groups. A decision has not yet been made on whether to try suspects connected with the attack in Libyan or American courts.³⁸
- 3.9.15** The security situation is strained by heavily armed militias, most of them remnants of the revolutionary brigades that fought against Gaddafi's forces, that now operate across Libya as a law unto themselves. Parts of Libya, especially the east and south, have also become safe havens for Islamist militants. "Gaddafi did

[country/middle-east-north-africa/libya](#)

³³ The Washington Times, France to host meeting on Libya security worries, 5 February 2013

<http://www.washingtontimes.com/news/2013/feb/5/france-host-meeting-libya-security-worries/?page=all>

³⁴ Security council report, January 2013 monthly forecast; Libya, 21 December 2012

http://www.securitycouncilreport.org/monthly-forecast/2013-01/libya_2.php

³⁵ Security council report, January 2013 monthly forecast; Libya, 21 December 2012

http://www.securitycouncilreport.org/monthly-forecast/2013-01/libya_2.php

³⁶ BBC News, Disarming Libya's militias, 28 September 2012 <http://www.bbc.co.uk/news/world-africa-19744593>

³⁷ BBC News, Disarming Libya's militias, 28 September 2012 <http://www.bbc.co.uk/news/world-africa-19744593>

³⁸ Security council report, January 2013 monthly forecast; Libya, 21 December 2012

http://www.securitycouncilreport.org/monthly-forecast/2013-01/libya_2.php

many bad things, but one good thing he did was to keep a lid on all these problems,” said Karim Mezran, senior fellow at the Atlantic Council’s Rafik Hariri Center for the Middle East. “Plus, he hated the Islamists. Since the fall of the regime, Libya has become an open space for everyone and parts of the country are now a safe haven for militants.”³⁹

- 3.9.16** The United Nations Support Mission in Libya (UNSMIL) is tasked by the Security Council with assisting the Libyan authorities in promoting the rule of law, strengthening human rights, and helping restore public security. At the same time, the mission helps counter illicit arms proliferation, coordinate international assistance, and build government capacity. UNSMIL has contributed to drafting a new constitution and laying the foundation for the country’s first democratic elections in half a century, in July 2012, when millions of Libyans cast their ballots.⁴⁰ In March 2013, the Security Council extended UNSMIL’s mandate for 12 months.⁴¹ The Resolution expressed concern at an escalating series of security incidents, in particular in the east of Libya and along its southern borders.⁴²
- 3.9.17** A report in the Tripoli Post dated 2 February 2013 stated that the Libyan Interior Minister Ashour Shuwail has said that security cameras will be introduced to major Libyan cities such as Tripoli, Benghazi and Sebha as well as to border crossings within a month. A technical team is working on speeding up the process and these cameras will soon begin operating. The increase of terrorist incidents in North Africa and Sahel regions is compelling the new Libyan government to take measures. Another step that indicates the improvement of security in Libya, the Interior Ministry has lifted all restrictions and travel ban imposed by the former regime on all Libyans. A passport data base for the first time has come under the passports authority after being under the control of Gaddafi oppressive intelligence apparatus.⁴³
- 3.9.18** The February 2013 report of the UN Secretary-General, notes that the security situation remains precarious and continues to be the predominant concern for the Libyan authorities and people. The need to restore security to enable effective governance, establish democratic institutions and promote national development has been reiterated in numerous statements of the General National Congress and the Government, as well as civil society. The Government has identified a number of national security priorities, including the need to enhance border security in the south, resolve security problems in Benghazi and integrate revolutionary fighters into the security forces or reintegrate them into civilian life. Central to the Government’s ability to address these challenges in the immediate and longer term is the establishment of proper national security coordination mechanisms and the effective reform and development of the Libyan Armed Forces and the Libyan Police Service and the development of capable institutions responsible for their democratic management, accountability and oversight.⁴⁴

³⁹ The Washington Times, France to host meeting on Libya security worries, 5 February 2013

<http://www.washingtontimes.com/news/2013/feb/5/france-host-meeting-libya-security-worries/?page=all>

⁴⁰ United Nations, Department of Political Affairs, Libya, undated

http://www.un.org/wcm/content/site/undpa/main/activities_by_region/africa/libya

⁴¹ UN Security Council, Security Council Extends Mandate of United Nations Support Mission in Libya for Twelve Months, Unanimously Adopting Resolution 2095 (2013), 14 March 2013

<http://www.un.org/News/Press/docs/2013/sc10939.doc.htm>

⁴² UN Security Council, Security Council Extends Mandate of United Nations Support Mission in Libya for Twelve Months, Unanimously Adopting Resolution 2095 (2013), 14 March 2013

<http://www.un.org/News/Press/docs/2013/sc10939.doc.htm>

⁴³ The Tripoli Post, Analysis: Libya Security Situation Improving Despite Negative Media Reporting, 2 February 2013

<http://www.tripolipost.com/articledetail.asp?c=1&i=9849>

⁴⁴ UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 21 February 2013, paragraph 38 http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/104

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

- 3.9.19 Conclusion:** Claims based on the general security situation in Libya must be considered with reference to the Interim Asylum Instruction on Humanitarian Protection: Indiscriminate Violence. Caseworkers should also refer to the Gender Asylum Policy Instruction where appropriate.
- 3.9.20** There continue to be outbursts of internal armed conflict in parts of Libya, but it is not at such a level, either in Libya generally or a material part of it, that substantial grounds exist for believing that any civilian would, solely by being present there, face a real risk of serious harm. The security and humanitarian situation in Libya remains fluid, and some individuals may fall into an enhanced risk category on the basis of certain characteristics. Each case must be considered on its individual merits.
- 3.9.21** To establish a claim under Article 15c of the Qualification Directive it will be necessary for a claimant to establish that particular factors place him or her at real risk of serious harm from the levels of indiscriminate violence that do exist, and that internal relocation to a place where there is not a real risk of serious harm is not reasonable. In doing so, caseworkers must consider carefully whether the existence of such factors mean that the harm they fear is not in fact indiscriminate, but targeted, if not at them personally, at a Refugee Convention defined population to which they belong, in which case a grant of asylum is likely to be more appropriate.
- 3.10 Perceived Gaddafi clan members/loyalists fearing government authorities or armed militia**
- 3.10.1** A number of applicants may make asylum and/or human rights claims based on a fear of mistreatment at the hands of armed gangs and militia brigades allied to the National Transitional Council and the authorities of the Interim Government.
- 3.10.2 Treatment.** The opposition forces fighting against Gaddafi in Libya's 2011 civil war were loosely organised and often did not fall under the centralized control of the NTC, the interim opposition body that was founded on February 27 2011 in Benghazi and that ultimately succeeded the Gaddafi government. Hundreds of individual militias sprung up to fight against Gaddafi, organised around informal networks such as individual towns, companies, schools, former military units (in the case of defectors), or religious institutions to which members of the militia belonged. In almost every city and town across Libya, the primary loyalty of the city or town's militias was to their place of origin: hence, the myriad of militias became mostly identified with their place of origin, and loosely coordinated their activities along those lines.⁴⁵
- 3.10.3** Between February and August 2011, when Tripoli fell, pro-Gaddafi forces committed serious violations of human rights law and the laws of war. They detained thousands without charge, and often subjected them to torture and mistreatment in detention. Gaddafi's forces repeatedly launched indiscriminate

⁴⁵ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

attacks using mortars, artillery, and Grad rockets into civilian areas, and indiscriminately laid tens of thousands of anti-personnel and anti-vehicle mines. Human Rights Watch documented 20 cases of gang rape and sexual assault of men and women by pro-Gaddafi forces, although the overall extent of such abuses remains unknown. Gaddafi's forces also executed prisoners in their custody, most notably just before the fall of Tripoli, when at least 45 detainees were executed in a warehouse located adjacent to the base of the Khamis Brigade, run by Gaddafi's son Khamis. Opposition forces also committed human rights abuses and violations of the laws of war, including some extrajudicial executions, arbitrary arrests and torture against detainees, revenge attacks against towns that were seen as supportive of Gaddafi, and widespread attacks against Sub-Saharan African migrant workers they accused of being mercenaries for Gaddafi.⁴⁶

- 3.10.4** Sweeping arrests by armed militias, acting independently or through local military councils or security committees, mostly took place when territories first came under the control of forces supporting the NTC. Decree 388 by the Ministry of Interior issued in December 2011 granted local Supreme Security Committees the right to arrest, detain and interrogate suspects. This provided a legal basis for the arrest and detention of suspects by the plethora of committees created by civilian or military councils and militias at the local level. In addition to taking captive individual suspects, armed militias target entire communities accused of having supported al-Gaddafi forces and committed crimes during the conflict. Particularly vulnerable to such arrests are people from Tawargha (for more information on Tawargha's please see section 3.12) at the hands of Misratah militias and people from Mashashiya at the hands of Zintan militias.⁴⁷
- 3.10.5** Amnesty International reports that militias take persons suspected of having supported Gaddafi forces and committed crimes during the conflict captive from the streets or at checkpoints. Easily identifiable targets, such as black Tawarghas or Sub-Saharan African nationals, are particularly vulnerable to such practices, severely impeding their freedom of movement.⁴⁸
- 3.10.6** Militias continue to seize people outside the framework of the law and hold them in secret detention facilities, albeit on a significantly reduced scale. Public criticism of the *thuwwar* (revolutionaries), who are widely hailed as heroes, is uncommon. Even officials, activists, journalists, lawyers and victims of human rights violations who privately acknowledge the prevailing lawlessness and abuses committed by the *thuwwar* do not raise their concerns in public, fearing reprisals. Their fears are justified. Outspoken individuals have been dubbed the "fifth column", as alleged al-Gaddafi loyalists are commonly called, and faced threats and intimidation – entrenching the climate of self-censorship.⁴⁹
- 3.10.7** Some of the militias from Misrata have earned a reputation for brutality since overcoming the siege of Misrata. Most visibly, militias from Misrata continue as of October 2012 to prevent about 30,000 people from returning to their homes in Tawargha, a town south of Misrata, because they accuse them of having committed atrocities against the people of Misrata, in collaboration with Gaddafi

⁴⁶ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

⁴⁷ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, Arbitrary arrests <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

⁴⁸ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, Arbitrary arrests <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

⁴⁹ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, 1. Introduction <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

forces. Displaced Tawerghans have been subjected to arbitrary arrest and torture in detention, in some cases leading to death. Human Rights Watch wrote to the Misrata Local and Military Councils on April 8, 2012, raising concern about the level of abuses committed by Misrata-based militias and emphasizing that the political and military leadership of the city could be held accountable for failing to prevent or punish such crimes.⁵⁰

- 3.10.8** The abusive behaviour of some Misrata-based militias has caused a strong reaction from Benghazi-based militias that are under the more direct control of the NTC (which first established itself in Benghazi), who saw the abuses committed by some Misrata-based militias as undermining the legitimacy of their revolution and of the NTC. Following the attacks by Misrata militias against displaced Tawerghans, Benghazi militias intervened and brought thousands of displaced Tawerghans to a camp nearby Benghazi, where they could be more easily protected.⁵¹
- 3.10.9** Apparently targeted killings occurred throughout 2012, particularly of former members of Gaddafi's intelligence and security services. As of January 2013, at least 15 former officers were killed in seemingly targeted attacks in Benghazi. The authorities did not announce any investigations into these killings, or arrest any suspects.⁵²
- 3.10.10** Thousands of detainees accused of having supported or fought for the toppled al-Gaddafi government remain in detention - most without charge or trial, in some cases for 18 months or longer. Many have complained of torture or other ill-treatment, and have been forced to sign "confessions" under torture or other duress.⁵³
- 3.10.11** During a fact-finding visit to Libya in September 2012, Amnesty International met prosecutors, police, criminal investigators and other staff in the judicial sector, as well as lawyers who highlighted difficulties and threats they face in carrying out their duties in light of the prevailing security situation and the de facto authority exerted by armed militias. Very few lawyers are willing to represent alleged "Gaddafi loyalists", either for ideological reasons or out of fear of reprisals.⁵⁴
- 3.10.12** Such fears are justified, as Amnesty International has documented several instances of violence, threats and harassment against lawyers defending alleged al-Gaddafi supporters. Relatives of individuals accused of having supported the former government complained that they were either unable to find lawyers willing to represent their relatives or were asked for exorbitant fees.⁵⁵
- 3.10.13** Serious doubts were also cast over Libya's ability and willingness genuinely to grant fair trials to former al-Gaddafi government figures in June 2012, when an International Criminal Court (ICC) legal team was arrested and detained while in the country to interview the former ruler's son Saif al-Islam al-Gaddafi. Amnesty International considers that trying the former military intelligence chief, al-Senussi

⁵⁰ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

⁵¹ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

⁵² Human Rights Watch, World Report 2013:Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=2>

⁵³ Amnesty International, Libya must seek justice not revenge in case of former al-Gaddafi intelligence chief, 18 October 2012 <http://www.unhcr.org/refworld/docid/508656492.html>

⁵⁴ Amnesty International, Libya must seek justice not revenge in case of former al-Gaddafi intelligence chief, 18 October 2012 <http://www.unhcr.org/refworld/docid/508656492.html>

⁵⁵ Amnesty International, Libya must seek justice not revenge in case of former al-Gaddafi intelligence chief, 18 October 2012 <http://www.unhcr.org/refworld/docid/508656492.html>

in Libya, where the justice system remains weak and fair trials are still out of reach, undermines the right of victims to see justice and reparation. Instead, it considers that he should face the ICC's charges of crimes against humanity in fair proceedings. Amnesty International believes that al-Senussi and other perceived loyalists of the former government face a real risk of torture or other ill-treatment in custody.⁵⁶

3.10.14 Thousands of detainees continue to be held across Libya on suspicion of having fought for or supported the former government. An estimated 7,000 are detained; although the exact number is unknown. Very few have been charged with any crime. With rare exceptions, detainees have no access to lawyers or the possibility to challenge the legality of their detention.⁵⁷

3.10.15 In January 2013 Human Rights Watch reported that a draft law being prepared in Libya to bar Gaddafi-era officials from holding public office and senior posts should exclude only those who held carefully defined senior positions, or who are alleged to have committed specific acts. Anyone accused of past wrongdoing should be allowed a fair chance to rebut the charges. "After decades of dictatorship and corruption, Libyans understandably want to ensure that their new leaders do not include people who were involved in past abuse," said Fred Abrahams, special adviser at Human Rights Watch. "But bans on public office and senior positions should be based on provable misdeeds, and not a general association with the former regime." Any new law should define explicitly which positions under Gaddafi and which past acts warrant exclusion from public office, and for how long, Human Rights Watch said. Vague terminology, if used, will open the door to using the law for partisan political purposes. Anyone accused of past human rights abuses or misconduct should be able to see the evidence against them and have a fair opportunity to refute the charges. Those who face accusations under the law should have the right to challenge a ban in a timely manner before an independent body. If the new "political isolation law" fails to meet these standards, it would violate Libya's constitutional law. Article 6 of Libya's Constituent Covenant affords all Libyans "equal civil and political rights" and "the same opportunity" without distinction on grounds of "religion, belief, language, wealth, sex, kinship, political opinions or social status; or on tribal, regional or personal association."⁵⁸

3.10.16 The February 2013 Report of the Secretary-General notes that "The decision by the General National Congress to authorize the use of force against elements alleged to be loyal to the former regime in Bani Walid refocused attention on the city, whose troubled relationship with the nascent Libyan State following the end of the conflict in 2011 continued to be a major source of discontent for the General National Congress and the Government".⁵⁹ During the conflict in Bani Walid in October 2012, human rights violations and other abuses, including indiscriminate shelling, arbitrary arrests and detentions, looting, burning of homes and the mistreatment of prisoners in custody, were perpetrated.⁶⁰

⁵⁶ Amnesty International, Libya must seek justice not revenge in case of former al-Gaddafi intelligence chief, 18 October 2012 <http://www.unhcr.org/refworld/docid/508656492.html>

⁵⁷ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, 2. Abusive and flawed justice system <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

⁵⁸ Human Rights Watch, Libya: Ensure 'Political Isolation Law' Respects Rights, 22 January 2013 <http://www.unhcr.org/refworld/docid/510261022.html>

⁵⁹ UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 21 February 2013, paragraph 7 http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/104

⁶⁰ UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 21 February 2013, paragraph 31 http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/104

3.10.17 Some minority groups and tribes associated with the Gaddafi regime remain internally displaced and have been targeted by rival groups, such as former residents of Tawergha, members of the Mashasha tribe, and the Tuareg and Tebu ethnic groups.⁶¹ The International Federation for Human Rights reports on targeted abuse against sub-Saharan Africans who were collectively accused of being “mercenaries” supporting Gaddafi, reviving latent racist sentiments.⁶²

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.10.18 Conclusion Given the generalised attitude of resentment towards perceived Col. Gaddafi supporters and fighters, and the force with which the Gaddafi regime previously sought to subdue the opposition, it is likely that applicants in this category will be able to show a need for international protection. Perceived supporters of Gaddafi and his regime are at risk of extra-judicial execution, arbitrary detention, torture, ill-treatment and death in detention, both by authorities of the Interim Government or its armed affiliates, as well as by armed militias operating without government control. Communities perceived to be loyal to Gaddafi have also experienced forced displacement, indiscriminate shelling, looting and the burning of homes

3.10.19 Consideration should be given to the particular circumstances of the individual, including ethnicity, age, and the nature and degree of the perceived relationship to the Gaddafi’s regime. Where it is accepted that an individual applicant was closely involved with Gaddafi and the regime, or his particular circumstances indicate a likely risk of attracting the adverse interest of militia brigades allied to the Libyan authorities, a grant of asylum will generally be appropriate, subject to any exclusion considerations under Article 1F of the Refugee Convention.

3.10.20 Caseworkers should consider whether the individual could internally relocate in order to escape persecution/ill treatment and, if so, whether it would be unduly harsh for them to do so. However, given that those perceived to be supporters of the Gaddafi regime cannot access effective protection from the interim government, that torture is being carried out by officially recognized military and security entities and persons suspected of having supported Gaddafi forces are taken captive from the streets and at checkpoints, it is unlikely that a claimant of this profile will be able to internally relocate in order to escape the risk of persecution.

3.10.21 Caseworkers should note that members of Gaddafi’s security forces have been responsible for serious human rights abuses and acts of terrorism against the Libyan people, and the international community; some of these amount to crimes against humanity. If it is accepted that an applicant was an active operational member of the security forces, caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should seek advice from a Senior Caseworker if they consider that an applicant in this category may have been responsible for crimes against humanity.

⁶¹ Congressional Research Service, Libya: Transition and U.S. Policy, 18 October 2012, *Security and Human Rights Challenges* p.19 <http://fpc.state.gov/documents/organization/200057.pdf>

⁶² International Federation for Human Rights, Libya: The Hounding of Migrants Must Stop, October 2012, p.22 <http://www.fidh.org/IMG/pdf/libyemignantsuk-ld.pdf>

3.11 Women: Rape as a weapon of war, domestic ill-treatment

- 3.11.1** Some Libyan female applicants may make an asylum and/or human rights claim based on a claim of having been sexually assaulted and/or raped by pro-Gaddafi soldiers during the civil war in Libya. Such claims may also involve a fear of mistreatment or death at the hands of their family, due to being perceived as having been raped, or of transgressing accepted moral codes/family values.
- 3.11.2 Treatment.** The law criminalizes rape but does not address spousal rape. A convicted rapist must marry the victim, with her agreement, or serve a prison term of up to 25 years. According to local contacts and NGOs, the forced marriage of victims to rape perpetrators as a way to avoid criminal proceedings has reportedly stopped. In previous years rape victims who failed to meet high evidentiary standards could face charges of adultery. The Constitutional Declaration prohibits domestic violence, but there was scant information on the penalties for violence against women.⁶³ Libya's penal code considers sexual violence to be a crime against a woman's "honour" rather than against the individual. The code's provisions permits a reduction in sentence for a man who kills a wife, mother, daughter, or sister whom he suspects is engaged in extramarital sexual relations. The law does not specifically prohibit domestic violence and there are no voluntary shelters for victims of violence.⁶⁴ Militias and extremists used violence and intimidation against women they considered in violation of religious law and cultural norms.⁶⁵
- 3.11.3** Hundreds of victims have failed to report their rapes due to the stigma and the burden of shame. Libyan culture is such that the identity of female rape victims must be kept hidden for fear that their own family members might kill them, or even encourage the victims to kill themselves. Indeed, the tragedy of rape in Libya is magnified by tribal codes of honour that take precedent over laws. The alternative to death is that the victim marry her rapist to preserve her honour and that of her family. The absence of a state structure to address sexual violence exacerbates the situation.⁶⁶
- 3.11.4** When the Libyan unrest began, Gaddafi gave orders to crush the peaceful protesters by any means, ordering his soldiers to go from house to house. This was a direct command, in encrypted military language, to start raping innocent citizens. What followed, according to evidence gathered by the International Criminal Court, was a major rape operation against anyone--man or woman—who rebelled against the former Gaddafi regime. Women were reportedly abducted from their homes, cars, and streets, and raped in unknown places. According to Margot Wallström, special UN representative on sexual violence in conflict, men were raped in detention centres, such as Abu Salim prison and Salah-al-Din.⁶⁷
- 3.11.5** During the Libyan revolution, Gaddafi ordered his soldiers to "rape the women." He targeted the families of the Freedom Fighters. Gaddafi's goal was to break society apart. Today, many families are suffering with more than 8,000 rape victims during

⁶³ US State Department, Human Rights Report 2012; Libya, 19 April 2013, Section 6

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

⁶⁴ Human Rights Watch, World Report 2013:Libya, 31 January 2013, <http://www.hrw.org/world-report/2013/country-chapters/libya?page=3>

⁶⁵ US State Department, Human Rights Report 2012; Libya, 19 April 2013, Section 6

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

⁶⁶ The Daily Beast, Libya Struggles With Mass Gaddafi-Era Rape Crimes, 20 February 2012

<http://www.thedailybeast.com/articles/2012/02/15/libya-struggles-with-mass-gaddafi-era-rape-crimes.html>

⁶⁷ The Daily Beast, Libya Struggles With Mass Gaddafi-Era Rape Crimes, 20 February 2012

<http://www.thedailybeast.com/articles/2012/02/15/libya-struggles-with-mass-gaddafi-era-rape-crimes.html>

the war.⁶⁸

- 3.11.6** Investigators for a UN panel in early June 2011 said they had found evidence that Gaddafi government forces had committed murder, torture and sexual abuses. Media reports by the BBC and others have highlighted Gaddafi's use of rape in war. Susan Rice, the US Ambassador to the UN, reportedly told the Security Council in 2011 of evidence of widespread raping of women within the opposition by Libyan forces.⁶⁹ The May 2012 Report of the International Commission of Inquiry on Libya reported with regard to sexual violence that "The prevailing culture of silence, the lack of reliable statistics, the evident use of torture to extract confessions, and the political sensitivity of the issue combine to make this issue the most difficult one for the Commission to investigate. The Commission found that sexual violence occurred in Libya and played a significant role in provoking fear in various communities. The Commission established that sexual torture was used as a means to extract information from and to humiliate detainees."⁷⁰
- 3.11.7** In one instance reported by the BBC, two captured Libyan soldiers said they bust through the front door of a home, shot each family member in the leg before tying them up, and then took four women upstairs and raped them repeatedly. One of the soldiers said the women had already been attacked by as many as 20 soldiers who had stopped at the same house before. The soldiers said they were ordered and paid to rape the women.⁷¹
- 3.11.8** Rape is a completely taboo phenomenon in a socially conservative country as Libya and widespread rape over a prolonged period could create a large population of women who would probably never marry, experts say. Rape brings such shame to its victims within the Libyan culture that it can tear apart families, and even communities. It is nearly impossible to tell how widespread the problem is, in part because few women confess to an attack as it brings them such shame. In 2011 between 300 and 500 cases had been reported by women's groups. Many more are likely to have occurred.⁷²
- 3.11.9** In November 2011, approximately 100 women took part in a march in Tripoli, demonstrating their support for victims of rape during the civil war. The women were guarded by armed militia men who acted as security guards as they distributed fliers. They met with Prime Minister Abdurrahim El-Keib to request help and support for such women, and he agreed their issues were a priority for the new government.⁷³ A spokesperson for a new women's group (Phoenix) Amira Nayad, noted that wounded men are being properly cared for and even sent abroad for specialist treatment. She stated that women who suffered sexual violence during the conflict should also be cared for, and given physical and psychological support rather than being ignored. She called for awareness programmes, and for such women to be regarded as victims of a crime.⁷⁴ Activist Sara Shukri reported that she heard that in November 2011 alone 36 women committed suicide because of the shame of being raped. There are various calls

⁶⁸ The Milla Project, Rape in Libya, 6 January 2013 <http://millaproject.org/rape-in-libya/>

⁶⁹ United State Institute of Peace, Libyan Forces Use Rape as Weapon of War, Experts Say, 9 June 2011, <http://www.usip.org/publications/libyan-forces-use-rape-weapon-war>

⁷⁰ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, 8 March 2012 paragraph 70 <http://www.unhcr.org/refworld/docid/4ffd19532.html>

⁷¹ United State Institute of Peace, Libyan Forces Use Rape as Weapon of War, Experts Say, 9 June 2011, <http://www.usip.org/publications/libyan-forces-use-rape-weapon-war>

⁷² United State Institute of Peace, Libyan Forces Use Rape as Weapon of War, Experts Say, 9 June 2011, <http://www.usip.org/publications/libyan-forces-use-rape-weapon-war>

⁷³ Reuters: Libyan women demand support for war rape victims, 16 November 2011 <http://www.reuters.com/article/2011/11/26/us-libya-rape-idUSTRE7AP0F020111126>

⁷⁴ BBC News, Libya: [Libyan women battle for empowerment](#), 13 December 2011

for Libyan rape victims to be considered as wounded combatants, and veterans of war rather than stigmatised as bringing shame on their families.⁷⁵

- 3.11.10** In May 2012, the UN Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict issued a report highlighting the limited availability of support and services to victims of sexual violence in Libya, assessing the scope and scale of conflict-related sexual violence in Libya between February and October 2011, and underscoring other challenges, including the need for continued monitoring of sexual violence and to ensure accountability, reparations and redress for survivors.⁷⁶ In February 2013, the Report of the Secretary-General on the UN Support Mission in Libya noted that “The near-total absence of services for survivors of sexual violence presents a significant challenge”.⁷⁷
- 3.11.11** In November 2012 Reuters reported that Gaddafi's former prime minister had gone on trial in November 2012 charged with corruption and ordering mass rape during the war that toppled the Libyan dictator.⁷⁸
- 3.11.12** Libya will be among 18 countries to receive a grant from the UN Trust Fund to End Violence Against Women (UN Trust Fund) that is administered by the UN Entity for Gender Equality and the Empowerment of Women (UN Women). This will be the first time Libya receives the grant that is dedicated to ending all forms of violence against women and girls. The fund will specifically be used to support a programme by International Medical Corps to “reduce stigma against survivors of gender-based violence”. The war took a devastating toll on women and girls, who were victims of rape by regime fighters. Recently, Benghazi's permanent military court found eight men guilty of human rights violations committed during the revolution including rape. The ICC's new chief prosecutor Fatou Bensouda, is currently collecting evidence on war crimes, for a potential new case that involves allegations of rape and sexual violence that targeted both women and men.⁷⁹
- 3.11.13** According to a 2010 Freedom House report, most women will not travel unless accompanied by a husband or male relative. Members of the elite may have more freedom in this regard, but are still expected to secure the permission of their families in order to travel abroad. In addition, travelling within Libya is difficult, as Libyan hotels generally do not rent rooms to unaccompanied women, due to cultural and traditional requirements. Women rarely walk in the street in the evenings, unless accompanied by a male family member or another woman. There are a range of related cultural and social restrictions which are generally stronger in rural areas and small towns.⁸⁰ This is supported by a SIGI report describing the same cultural and religious restrictions which further notes that it is socially unacceptable for an unmarried or divorced woman to live on her own.⁸¹

See also: [Actors of protection](#) (section 2.3 above)

⁷⁵ The National Law Journal: [Hidden deaths of Libyan rape survivors](#), 9 January 2012

⁷⁶ United Nations security council, Report of the Secretary-General on the United Nations Support Mission in Libya, 30 August 2012, paragraph 34 http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_675.pdf

⁷⁷ UN, Report of the Secretary-General on the United Nations Support Mission in Libya, 21 February 2013, paragraph 37 http://www.un.org/ga/search/view_doc.asp?symbol=S/2013/104

⁷⁸ Reuters Canada, Gaddafi's ex-PM on trial in Libya over mass rape, graft, 12 November 2012 <http://ca.reuters.com/article/topNews/idCABRE8AB0KQ20121112?pageNumber=1&virtualBrandChannel=0>

⁷⁹ Libya Herald, Libya to receive UN Women grant for the first time, 12 November 2012 <http://www.libyaherald.com/2012/11/12/libya-to-receive-un-women-grant-for-the-first-time/>

⁸⁰ Freedom House: Women's Rights in the Middle East and North Africa 2010 – Libya, 3 March 2010, Autonomy, security and freedom of the person, p.8 http://www.freedomhouse.org/sites/default/files/inline_images/Libya.pdf

⁸¹ Social Institutions & Gender Index, undated, accessed April 2013 <http://genderindex.org/country/libya>

Internal relocation (section 2.4 above)

Caselaw (section 2.5 above)

- 3.11.14 Conclusion.** If the applicant's fear is of ill-treatment or persecution by non-state agents (eg family members), the Libyan authorities are not able to provide adequate protection from sexual and gender-based violence, and there is a near-total absence of services for survivors of sexual violence and no voluntary shelters. The inability of the Interim Government to provide adequate protection in such circumstances is further compounded by the continuing insecurity of the country situation, and the many gangs of armed militias.
- 3.11.15** Given the generalised discrimination towards women in Libya, and the inability of the current Government to provide protection against harm, it is likely that some women and especially particular sub-categories of women (e.g. women of African ethnicity, victims of sexual violence, and women perceived to have been allied to the Gaddafi regime) will be able to demonstrate a need for international protection. All relevant factors should be taken into account, including the age, health, educational and economic status, and the individual circumstances of the applicant. Female applicants able to show they are at real risk of persecution because they are accused of sexual 'misdemeanours' or offences against family honour are likely to be able to show that they fall into the category of a particular social group (PSG).
- 3.11.16** Given the circumstances and cultural factors set out above, female applicants who have been raped by soldiers loyal to Gaddafi or other combatants are also likely to be able to show that they are at real risk as members of a PSG. Evidence suggests that even where the rape victim's father or husband does not attach personal blame to her, as is the case with other categories of sexual dishonour, she is still at risk of being the subject of an 'honour' killing, in order to save her and her family from dishonour.

3.12 Ethnic groups

- 3.12.1** Applicants may make asylum and/or human rights claims based on a fear of mistreatment by either state or non-state actors due to their membership of an ethnic group.
- 3.12.2 Treatment.** Arabic-speaking Muslims of mixed Arab-Amazigh ancestry constituted 97 percent of the citizenry. The principal minorities were Amazigh, Tuareg, and Tebou. These minority groups were predominantly Sunni Muslim but identified with their respective cultural and linguistic heritage rather than with Arab traditions. Several nomadic groups lived in areas along the country's desert borders, including Tuareg and Tebou.⁸²
- 3.12.3** Under Gaddafi, Arabic was declared the only official language, and the regime denied the existence of non-Arab citizens. Amazigh people faced discrimination, including limitations on the use of their native language, Tamazight. At year's end, however, the Amazigh used their language publicly, publishing journals written in Tamazight and using their language on public signs and on the radio. They encouraged the new government to make Tamazight one of the official languages.⁸³

⁸² US State Department, Human Rights Report 2012; Libya, 19 April 2013, Section 6 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204373>

⁸³ US State Department, Human Rights Report 2012; Libya, 19 April 2013, Section 6

- 3.12.4** There was societal discrimination and violence originating in ethnic differences. Racial discrimination existed against dark-skinned Libyans, including those of originally sub-Saharan descent, in part due to allegations that Gaddafi used African mercenaries during the conflict. There were reports of dark-skinned Libyans as well as Tuaregs being removed from their homes in Tripoli and held in detention centres and prisons.⁸⁴
- 3.12.5** Two years on from the start of the Libyan revolution, one major humanitarian issue awaits resolution: the internal displacement of around 60,000 Libyans accused of close ties to the Gaddafi regime and committing abuses during the nine-month conflict.⁸⁵
- 3.12.6** According to rights groups, rebel fighters killed and detained black Libyans and sub-Saharan African migrant workers, claiming they were pro-Gaddafi mercenaries. However, allegations that Gaddafi employed many Africans from neighbouring countries such as Chad, Nigeria and Sudan as mercenaries appeared to be heavily exaggerated. Many Africans worked in civilian jobs. There have been reports of harassment and violence towards sub-Saharan African migrant workers from rebel fighters and civilians alike, and security missions have allegedly turned into persecution of Africans based on their skin colour. During a field mission in September 2011, Human Rights Watch (HRW) reported that Africans held in Libyan prisons were in overcrowded cells with appalling hygiene standards and no access to clean drinking water. In addition, many sub-Saharan Africans have been displaced by the fighting and for fear of reprisals; the largest group of displaced Africans was in the port of Janzur between Tripoli and Zawya, housed in camps with poor hygiene and sanitation conditions. Residents of the camp complained to HRW that armed Libyans frequently entered the camp to harass them and rape women.⁸⁶
- 3.12.7** In November 2011, a report by UN Secretary-General Ban Ki-Moon expressed concerns over alleged war crimes committed by rebels, particularly against black Libyans and Sub-Saharan Africans. The report said many of the 7,000 African detainees, including women, had been beaten and tortured.⁸⁷ In 2012, Amnesty International reported that militias take persons suspected of having supported Gaddafi forces and committed crimes during the conflict captive from the streets or at checkpoints. Easily identifiable targets, such as black Tawerghas or Sub-Saharan African nationals, are particularly vulnerable to such practices, severely impeding their freedom of movement.⁸⁸
- 3.12.8** After Tripoli's fall on 20 August 2011, most towns in areas that had not risen up against the regime pragmatically acquiesced to the new order. The bulk of the western revolutionary brigades, led primarily by Zintanis and Misratans, had little desire to forcefully enter neighbouring towns and communities, many of which had armed themselves in anticipation of further conflict. Civilians in both Gaddafi and rebel-controlled territory had been acquiring weapons and organising local

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204373>

⁸⁴ US State Department, Human Rights Report 2012; Libya, 19 April 2013, Section 6

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dld=204373>

⁸⁵ IRIN News, Libya's displaced Tawergha threaten unilateral return, 19 February 2013

<http://www.irinnews.org/Report/97504/Libya-s-displaced-Tawergha-threaten-unilateral-return>

⁸⁶ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 – Libya, 28 June 2012 <http://www.unhcr.org/refworld/topic,45a5fb512,46556af43,4fedb3f7c,0,,,LBY.html>

⁸⁷ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 – Libya, 28 June 2012 <http://www.unhcr.org/refworld/topic,45a5fb512,46556af43,4fedb3f7c,0,,,LBY.html>

⁸⁸ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, *Arbitrary arrests*

<http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

defence forces to prepare themselves for any violent contingency. Many noted with horror how revolutionary brigades had exacted revenge against largely unarmed Mashashya (near neighbouring Zintan) and Tawergha (near neighbouring Misrata) two communities that had largely backed Gaddafi in the conflict. Indeed, although Misratan brigades proved effective, neutral ceasefire implementers in other contexts, they continued well into 2012 to harass the Tawergha, displacing former neighbours wherever they found them and using that community's former homes for target practice. Likewise, Zintanis, peacemakers elsewhere, have remained in continuous hot-or-cold conflict with the Mashashya.⁸⁹

3.12.9 At the end of August 2012, the number of internally displaced persons (IDPs) in Libya remained somewhere between 65,000 and 80,000, a population composed mostly of minorities, such as the Tawerghas, who are unwilling or unable to return to their areas of origin for fear of reprisals.⁹⁰ While some of the people displaced during the 2011 conflict have returned, the escalation of ethnic and tribal tensions and sporadic fighting in areas such as Ghadamis, Kufra, the Nafusa mountains and Sabha have resulted in fresh displacements of more than 25,000 persons, albeit mostly of a short-term and temporary nature.⁹¹

3.12.10 Thousands of non-Arabs like Tuaregs have no official documentation attesting to their citizenship. In Libya, the main proof of citizenship is the family booklet, in which all members of the family are listed and which is presented when applying for jobs, university studies and scholarships, or when taking out a loan from the bank. Tuaregs who have been in Libya for 100 years have managed to obtain these documents, but those who settled in the country 40 or 50 years ago were denied a family booklet and possess neither Libyan nor any other citizenship.⁹²

Tawergha

3.12.11 During the Libyan revolution, government forces attacking Misrata were partly based in the town of Tawergha, east of Tripoli. Following Gaddafi's fall, Misrata rebels have been accused of serious abuses against unarmed Tawerghans, including arbitrary arrests, beatings and torture. This forced many Tawerghans to abandon Tawergha, which is now described as a ghost town. The UN High Commissioner for Refugees (UNHCR) said that Tawerghans fled mostly to the Jufra region, south of Misrata. An estimated 15,000 people were displaced, and 4,000 Tawerghans sought refuge in three refugee camps. Others have moved to Benghazi, Tripoli, or to southern Libya. Forcing all residents of Tawergha to resettle permanently as a form of collective punishment would constitute a crime against humanity for deportation or forced transfer, HRW said in March 2011.⁹³

3.12.12 The town of Tawergha and its population of around 35,000 were attacked by anti-Gaddafi brigades during the 2011 conflict, mainly from the nearby town of Misrata, 40km to the north. An estimated 550,000 people were displaced by the fighting in Libya, according to UNHCR, though most have now returned. But the Tawergha remain displaced. They live in camps and with host families, though some are held

⁸⁹ International Crisis Group (ICG), *Divided We Stand: Libyas Enduring Conflicts*, 14 September 2012, Middle East/North Africa Report N°130, II. Background: Libya's Communal Conflicts, page 2

<http://www.unhcr.org/refworld/docid/505341132.html>

⁹⁰ UNHCR, 2013 UNHCR country operations profile – Libya, <http://www.unhcr.org/pages/49e485f36.html>

⁹¹ United Nations security council, Report of the Secretary-General on the United Nations Support Mission in Libya, 30 August 2012, paragraph 59 http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2012_675.pdf

⁹² IRIN News, Analysis: Libyan minority rights at a crossroads, 24 May 2012

<http://www.irinnews.org/Report/95524/Analysis-Libyan-minority-rights-at-a-crossroads>

⁹³ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 – Libya, 28 June 2012 <http://www.unhcr.org/refworld/topic.45a5fb512.46556af43.4fedb3f7c.0...LBY.html>

in detention, often still under the authority of local militias. The generally dark-skinned Tawergha were accused by the brigades of siding with Gaddafi and of killing and raping residents of Misrata during the revolution.⁹⁴

- 3.12.13** Approximately 35,000 people from the town of Tawergha are still displaced around Libya and prevented from going back to their homes. The Tawerghans are accused of siding with Muammar Gaddafi's forces during the 2011 conflict and of having committed serious crimes, including rape and torture, against residents of nearby Misrata. Militias from Misrata have harassed, beaten, arrested, and killed Tawerghans in custody.⁹⁵
- 3.12.14** As part of a roadmap for a return, Tawergha community leaders issued an official apology to the residents of Misrata and the nation in February 2012 and say they will surrender anyone accused of committing abuses, and help the judicial authorities.⁹⁶
- 3.12.15** The displaced Tawerghans are now spread throughout Libya and unable to return. According to Tawergha community leaders, about 18,000 people are in Benghazi, 13,000 in Tripoli, and 7,000 in and around Sebha, in the south. Smaller numbers are in Tarhuna, Khoms, Sirte, Ajdabiya, and a few other places. In Tripoli, the community is based mostly in four camps: at the Naval Academy in Janzur, near Airport Road, in the al-Fallah neighborhood, and in the Sarraj neighbourhood. Basic humanitarian assistance comes mostly from LibAid, a Libyan government agency. Security has improved over time at the Tripoli camps, with fewer raids by Misrata militias who claim they are searching for wanted men. On February 6, 2012, militias from Misrata raided the camp in Janzur and shot dead one man, three women, and three children.⁹⁷
- 3.12.16** Civil and military authorities in Misrata say that Tawerghans committed serious crimes against them during the 2011 conflict, including torture and rape. They blame the national government for failing to arrest and prosecute these Tawerghans. Authorities in and around Misrata are also preventing thousands of people from returning to the nearby villages of Tomina and Kararim, also accusing them of siding with Gaddafi during the 2011 conflict. These authorities have failed to stop local militias from looting and burning homes in the two towns, Human Rights Watch said.⁹⁸
- 3.12.17** About 1,300 people from Tawergha are detained, missing, or dead, according to Human Rights Watch, which said in early February 2013 that crimes committed against the Tawerghans "may amount to crimes against humanity and could be prosecuted by the ICC".⁹⁹

Tabu (Tebu, Toubou, Tubu)

- 3.12.18** While the Tebu now dominate Libya's southern desert, guarding remote checkpoints, oil fields and weapons stockpiles, before the revolution they had

⁹⁴ IRIN News, Libya's displaced Tawergha threaten unilateral return, 19 February 2013

<http://www.irinnews.org/Report/97504/Libya-s-displaced-Tawergha-threaten-unilateral-return>

⁹⁵ Human Rights Watch, World report 2013: Libya, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/libya?page=2>

⁹⁶ IRIN News, Libya's displaced Tawergha threaten unilateral return, 19 February 2013

<http://www.irinnews.org/Report/97504/Libya-s-displaced-Tawergha-threaten-unilateral-return>

⁹⁷ Human Rights Watch, Libya: Stop Revenge Crimes Against Displaced Persons, 20 March 2013,

<http://www.hrw.org/news/2013/03/20/libya-stop-revenge-crimes-against-displaced-persons>

⁹⁸ Human Rights Watch, Libya: Stop Revenge Crimes Against Displaced Persons, 20 March 2013,

<http://www.hrw.org/news/2013/03/20/libya-stop-revenge-crimes-against-displaced-persons>

⁹⁹ IRIN News, Libya's displaced Tawergha threaten unilateral return, 19 February 2013

<http://www.irinnews.org/Report/97504/Libya-s-displaced-Tawergha-threaten-unilateral-return>

been marginalised for decades under Gaddafi's "Arabisation" campaign, and the regime's divide-and-rule tactics favoured the south's Arab communities, including the Zwai, Awlad Suleiman and Warfalla tribes.¹⁰⁰

- 3.12.19** Discrimination stemmed from Libya's 1954 citizenship law, traditionally semi-nomadic tribes - such as the Tebus - lacked identification, denying them access to higher education, skilled jobs, housing and health care. Labelled "foreigners" and speaking languages other than Arabic, many Tebus with Libyan citizenship were stripped of it during Gaddafi's final years. "Gaddafi never liked the Tebu because he had a strong belief there was no place for non-Arabs in Libya," said Adam El Tibawi, the head of the Tebu National Assembly.¹⁰¹
- 3.12.20** The indigenous, semi-nomadic Tabu, marginalised by Gaddafi under his 'Arabisation' campaign, staked out a leading role during the 2011 revolution with a goal to secure their civil rights. Combining their intimate knowledge of the Sahara with a tribal network spanning both sides of the borders, they forged a successful blockade against pro-regime reinforcements. When the revolution was won, a grateful transitional government controversially awarded the Tabu commander Issa Abdel Majid Mansour oversight over vital desert crossings to the detriment of Kufra's majority Arab Zwai tribe. The Zwai, whose ties stretch over oil-rich territory to Ajdabiya, 150km south of Benghazi, previously benefited from Gaddafi's divide-and-rule tactics.¹⁰²
- 3.12.21** The Tripoli-based government has failed to address tribal and economic grievances at the heart of 2012's deadly clashes between Tabu and Arab tribes in the southern trade hubs of Kufra and Sebha, now governed by fragile ceasefires.¹⁰³
- 3.12.22** In the absence of a strong central authority, ethnic quarrels have broken out in several parts of the country, most notably in the south-eastern desert town of Kufra. Here, more than 150 people have been killed in fighting between black Toubou tribesmen and their Arab Zuwayy neighbours, leading some to wonder whether the country is already beginning to fall apart.¹⁰⁴ In January 2013, four Toubou tribesmen were killed in Kufra in clashes against Shield Libya, an army force made up of former rebels.¹⁰⁵
- 3.12.23** Amnesty International reports that the violence in the south of Libya exposes underlying racism and xenophobia against non-Arab black Libyans. Members of the Tabu and Touareg communities have long complained about discrimination, racism and the inability to renew identity documents or obtain new ones for their children. Such communities also tend to be among the poorest, and live in informal settlements with little access to services. Arab majorities counter-argue that the allegiance of these communities lies outside of Libya given their tribal links to populations in Mali, Chad and Niger, and blame them for criminal acts and

¹⁰⁰ Al-Jazeera, Libya's Tebu tribe hopes for lasting peace, 3 December 2012

<http://www.aljazeera.com/indepth/features/2012/11/20121118115735549354.html>

¹⁰¹ Al-Jazeera, Libya's Tebu tribe hopes for lasting peace, 3 December 2012

<http://www.aljazeera.com/indepth/features/2012/11/20121118115735549354.html>

¹⁰² IPS, Tribal War Simmers in Libya's Desert, 11 October 2012 <http://www.ipsnews.net/2012/10/tribal-war-simmers-in-libyas-desert/>

¹⁰³ IPS, Tribal War Simmers in Libya's Desert, 11 October 2012 <http://www.ipsnews.net/2012/10/tribal-war-simmers-in-libyas-desert/>

¹⁰⁴ The Guardian, Libya beset by ethnic tension as elections loom, 4 July 2012

<http://www.guardian.co.uk/world/2012/jul/04/libya-ethnic-tension-elections-berbers>

¹⁰⁵ Agence France Presse, Tribal clashes in Libya's Kufra kill 4: military official, 9 January 2013

<http://reliefweb.int/report/libya/tribal-clashes-libyas-kufra-kill-4-military-official>

smuggling.¹⁰⁶

Tuareg

- 3.12.24** Libya is home to a Tuareg community of roughly 100,000 people, though the former regime never recognised them as such, claiming they are only an isolated branch of the Arab race. Though some Libyan Tuareg have opposed Gaddafi, many others found employment in the Libyan regular army, together with volunteers from Mali and Niger. As a result, many Libyans tend to identify all Tuareg as regime supporters. Near the desert town of Ghadames local Tuareg were threatened by rebels seeking to expel them from the city before Algeria opened a nearby border post and began allowing the Tuareg to cross into safety on 30 August 2011.¹⁰⁷
- 3.12.25** At least 1,500 Tuareg fighters joined Muammar Gaddafi's loyalist forces (though some sources cite much larger figures) in the failed defence of his Libyan regime. Many were ex-rebels residing in Libya, while others were recruited from across the Sahel with promises of large bonuses and even Libyan citizenship.¹⁰⁸
- 3.12.26** In May 2012, sources inside the Libyan city of Ghadames told the El-Khabar news agency that the Tuareg tribes have been subjected to ethnic cleansing for the past eight months. The Ghadames tribe, which is backed by forces affiliated with the National Transitional Council, is allegedly carrying out these acts. The latter burned and destroyed hostels and stables belonging to the Tuareg tribe and expelled them from the city, forcing them to flee into Algeria.¹⁰⁹
- 3.12.27** According to the escapees, many Tuareg members were subjected to "illegal" detention in secret locations under inhumane conditions. They added that members of the Ghadames tribes are searching for Tuareg members everywhere, even in hospitals, to kill and torture them. They have also recently arrested a large number of them, including women.¹¹⁰ As of January 2013, 2,400 Tuareg who had fled Ghadames remained internally displaced in Libya.¹¹¹

Berber/Amazigh

- 3.12.28** During his 42 years in power, Gaddafi persecuted the country's minority Berber or Amazigh community, arresting its leaders, banishing its language from schools, and having protesters beaten. His vision for Libya was as a mono-Arab state. Gaddafi insisted the "traitorous" Imazighen were an ethno-linguistic fiction, even though they make up about 600,000 of Libya's 6 million population. Following Gaddafi's downfall, Amazigh culture is enjoying a revival.¹¹²
- 3.12.29** However, in March 2012, 17 people were killed after fighting erupted between Amazigh Zuwara and the neighbouring Arab towns of Riqdaleen and Al-Jamail.

¹⁰⁶ Amnesty International, Libya: Rule of law or rule of militias? 5 July 2012, 4. *Continuing and costly clashes* <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

¹⁰⁷ Jamestown Foundation, What the Tuareg Do After the Fall of Qaddafi Will Determine the Security Future of the Sahel,

16 September 2011, Terrorism Monitor Volume: 9 Issue: 35, <http://www.unhcr.org/refworld/docid/4e7861382.html>

¹⁰⁸ Jamestown Foundation, What the Tuareg Do After the Fall of Qaddafi Will Determine the Security Future of the Sahel, 16 September 2011, Terrorism Monitor Volume: 9 Issue: 35, <http://www.unhcr.org/refworld/docid/4e7861382.html>

¹⁰⁹ Al Monitor, Libyan Tuaregs Flee to Algeria Amid Reports of Ethnic Cleansing, 24 May 2012 <http://www.al-monitor.com/pulse/politics/2012/05/continuous-attacks-against-them.html>

¹¹⁰ Al Monitor, Libyan Tuaregs Flee to Algeria Amid Reports of Ethnic Cleansing, 24 May 2012 <http://www.al-monitor.com/pulse/politics/2012/05/continuous-attacks-against-them.html>

¹¹¹ Human Rights Watch, Libya: Stop Revenge Crimes Against Displaced Persons, 20 March 2013, <http://www.hrw.org/news/2013/03/20/libya-stop-revenge-crimes-against-displaced-persons>

¹¹² The Guardian, Libya beset by ethnic tension as elections loom, 4 July 2012 <http://www.guardian.co.uk/world/2012/jul/04/libya-ethnic-tension-elections-berbers>

The two sides lobbed mortars at each other. The ethnic clashes were triggered by fresh tensions over who did what during last year's revolution – with Zuwara accusing its neighbours of siding with Gaddafi – as well as smouldering disputes over land and smuggling routes.¹¹³

3.12.30 Following Gaddafi's fall, schools have begun to teach Tamazight, and a weekly Tamazight newspaper was launched. But the draft constitution outlined by the NTC only vaguely alluded to Amazigh culture and rights and Tamazight was not recognized as an official language. The cabinet of Prime Minister Abdurrahim al Keib, appointed in November 2011, also did not include Amazigh ministers and this angered Amazigh who fought against Gaddafi forces. Amazigh demands extend beyond cultural and linguistic rights to full political participation.¹¹⁴

See also: [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

[Caselaw](#) (section 2.5 above)

3.12.31 Conclusion: Ethnic minority groups suffered discrimination under the Gaddafi regime and continue to be marginalised and, in some cases, the subject of human rights abuses. Many ethnic groups have been accused of supporting, or are perceived to have supported Gaddafi during the up-rising. Perceived supporters of Gaddafi and his regime are at risk of extra-judicial killings, arbitrary detention, torture, ill-treatment and death in detention, both by authorities of the Interim Government or its armed affiliates, as well as by armed militias operating outside of government control. Communities perceived to be loyal to Gaddafi have also experienced forced displacement, indiscriminate shelling, looting and the burning of homes. Caseworkers should consider each case carefully, on its individual facts, and in light of the latest available country of origin information. Consideration should be given to the particular circumstances of the individual, including age, and the nature and degree of the perceived relationship to the Gaddafi regime. Where it is accepted that an individual applicant is likely to be perceived as supporting Gaddafi and that this places them at risk of attracting the adverse attention of militia brigades allied to the Libyan authorities, a grant of asylum will generally be appropriate, subject to any exclusion considerations under Article 1F of the Refugee Convention.

3.12.32 Caseworkers should consider whether the individual could internally relocate in order to escape persecution/ill treatment and, if so, whether it would be unduly harsh for them to do so. However, given that those perceived to be supporters of the Gaddafi regime cannot access effective protection from the current government, that torture is being carried out by officially recognised military and security entities and that persons suspected of having supported Gaddafi forces are taken captive from the streets and at checkpoints, it is unlikely that a claimant of this profile will be able to internally relocate in order to escape the risk of persecution.

3.12.33 Caseworkers should note that members of Gaddafi's security forces have been responsible for serious human rights abuses and acts of terrorism against the Libyan people, and the international community; some of these amount to crimes against humanity. If it is accepted that an applicant was an active operational

¹¹³ The Guardian, Libya beset by ethnic tension as elections loom, 4 July 2012

<http://www.guardian.co.uk/world/2012/jul/04/libya-ethnic-tension-elections-berbers>

¹¹⁴ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 – Libya, 28 June 2012 <http://www.unhcr.org/refworld/topic,45a5fb512,46556af43,4fedb3f7c,0,,LB,Y.html>

member of the security forces, caseworkers should consider whether one of the Exclusion clauses is applicable. Caseworkers should seek advice from a Senior Caseworker if they consider that an applicant in this category may have been responsible for crimes against humanity.

3.13 Prison conditions

- 3.13.1** Applicants may claim that they cannot return to Libya due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Libya are so poor as to amount to torture or inhuman treatment or punishment.
- 3.13.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.13.3 Consideration.** The transitional government made some progress in bringing prisons under the oversight of relevant ministries. By early June 2012, 33 prisons had been transferred to the Directorate of the Judicial Police, according to the Minister of Justice. Officials at the Ministry of Defense confirmed that the military police prison in Benghazi, holding some 380 individuals in early June, was under its control. Local Supreme Security Committees, which were brought under the umbrella of the Ministry of Interior by decree in December 2011, also oversee a number of detention facilities. The authorities still need to ensure that the transfer of prisons to central government control is accompanied by the establishment of an effective vetting mechanism to exclude any administrators and guards reasonably suspected of committing human rights abuses.¹¹⁵
- 3.13.4** Since March 2011, Amnesty International has visited over 30 places of detention in Libya, including official, semi-official and unrecognised ones. Follow-up visits in 2012 to several facilities confirmed that while treatment generally improves for longer term detainees, new arrivals continue to suffer abuse. In May and June 2012, Amnesty International found evidence of recent abuses, including torture, in 12 of 15 detention facilities where it was allowed to interview detainees in private.¹¹⁶
- 3.13.5** Detainees are particularly vulnerable to revenge beatings and vigilante-style “justice” when held by victims or relatives of victims of human rights violations perpetrated by al-Gaddafi forces or when held in cities where they allegedly committed the violations. The common practice of transferring detainees to such locations increases the risk of torture, and further undermines their right to fair trial. The most commonly reported methods of torture include suspension in contorted positions and prolonged beatings with various objects, including metal bars and chains, electric cables, wooden sticks, plastic hoses, water pipes (known locally as Tube PPR) and rifle butts. Some detainees also said they were given electric shocks, burned with cigarettes and had hot metal applied to their flesh. Since late August 2011, when al-Gaddafi forces lost control of the capital and most of the

¹¹⁵ Amnesty International, Libya: Rule of law or rule of militias? May 2012.
<http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

¹¹⁶ Amnesty International, Libya: Rule of law or rule of militias? May 2012.
<http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

country, Amnesty International has gathered detailed information about at least 20 people who died in custody after they were tortured or shot in detention by armed militias.¹¹⁷

- 3.13.6** In May 2012, the National Transitional Council adopted Law 38 requiring all detainees held outside of state control to be transferred to the Ministries of Interior or Defence, or to be prosecuted or released within 60 days. The Libyan authorities have taken steps to implement this law, but progress has been slow¹¹⁸ and as of December 2012 at least half of all detention centers were still operated by armed groups outside full government control. There was concern about the treatment of detainees who were held in detention facilities, especially those controlled by semi-official armed groups rather than government controlled forces.¹¹⁹
- 3.13.7** International NGOs continue to report on the conditions and treatment of individuals in detention facilities, and in particular the treatment of migrants in detention. Overcrowding, lack of food and medical supplies and allegations of mistreatment and torture have been reported.¹²⁰
- 3.13.8** There remain concerns about the treatment of detainees being held by revolutionary groups. On 1 May 2012 the UN Support Mission in Libya (UNSMIL) reported the deaths of three detainees as a result of torture and seven other cases of mistreatment in a detention centre in Misrata. The Transitional Government (TG) announced it would investigate the deaths. The then interim Prime Minister, al-Kib, stated that a committee had been formed to look into detainee abuse, that human rights monitors would be allowed access to monitor prison conditions and that action would be taken against those who were found to have mistreated detainees.¹²¹
- 3.13.9** Conditions in militia-run facilities varied, with detainees in some facilities reporting repeated torture and deaths in custody. Conditions in state-run facilities appeared to improve, although there continued to be cases of abuse and some deaths in custody.¹²²
- 3.13.10** Non-Libyans from sub-Saharan Africa, mainly migrant workers, are particularly vulnerable to abuse, facing harassment, arrests, ill-treatment in detention, forced labour and no regulated access to United Nations High Commissioner for Refugees (UNHCR).¹²³
- 3.13.11** As of October 2012, roughly 8,000 people were in detention. The majority of them were held for more than a year without charge or due process rights, including judicial review and access to a lawyer. The Ministry of Justice holds around 3,000 detainees, around 2,000 are held by the Ministry of Defence or Supreme Security Committee. The rest were being held illegally by various armed groups.¹²⁴

¹¹⁷ Amnesty International, Libya: Rule of law or rule of militias? May 2012.

<http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

¹¹⁸ FCO, Human Rights and Democracy, Quarterly Updates; Libya 30 September 2012

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/?showall=1>

¹¹⁹ FCO, Human Rights and Democracy, Quarterly updates; Libya 31 December 2012

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/>

¹²⁰ FCO, Human Rights and Democracy, Quarterly Updates; Libya 30 September 2012

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/?showall=1>

¹²¹ FCO, Human Rights and Democracy, Quarterly Updates; Libya 30 June 2012

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/?showall=1>

¹²² Human Rights Watch, World Report 2013; Libya, 31 January 2013, <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

¹²³ Human Rights Watch, World Report 2013; Libya, 31 January 2013, <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

¹²⁴ Human Rights Watch, World Report 2013; Libya, 31 January 2013, <http://www.hrw.org/world-report/2013/country-chapters/libya?page=1>

- 3.13.12** There was little progress on dealing with conflict related detainees. The two month deadline for prosecution of conflict-related detainees introduced in July had not been met. In addition, high profile cases were typically adjourned rather than dealt with.¹²⁵
- 3.13.13** A March 2013 Security Council Resolution expresses grave concern at continuing reports of reprisals, arbitrary detentions without access to due process, wrongful imprisonment, mistreatment, torture and extrajudicial executions in Libya, and calls upon the Libyan Government to take all steps necessary to accelerate the judicial process, transfer detainees to State authority and prevent and investigate violations and abuses of human rights.¹²⁶
- 3.13.14 Conclusion:** Prison and detention centre conditions in Libya are very poor; overcrowding, lengthy pre-trial incarceration, torture and deaths in custody are particular problems. The Libyan authorities have yet to gain authority over the hundreds of militias currently holding several thousand detainees outside any legal jurisdiction.¹²⁷
- 3.13.15** There is evidence of security personnel and members of militia groups acting with impunity with regard to inhuman and degrading treatment. Reports indicate that those perceived to have been pro-Gaddafi loyalists, and those perceived to have been working or fighting on his behalf, particularly those of African ethnicity are at particular risk of ill treatment. In such cases the risk of mistreatment will be sufficient to make removal a breach of Article 3.
- 3.13.16** Where applicants can demonstrate a real risk of imprisonment on return to Libya, a grant of Humanitarian Protection is likely to be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors include the likely type of detention facility, the reasons for detention, with particular regard to the individual's political profile, and the individual's age, gender, ethnicity and state of health.

4. Minors claiming in their own right

- 4.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to and it is appropriate for the minor to return to them; or (b) there are adequate alternative reception and care arrangements. Caseworkers should refer to the Asylum Instruction: [Processing an Asylum Application from a Child](#), which is the main guidance document on UASC return consideration.
- 4.2** Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

[chapters/libya?page=1](#)

¹²⁵ FCO, Human Rights and Democracy, Quarterly Updates: Libya, 31 December 2012

<http://fcohrdreport.readandcomment.com/human-rights-in-countries-of-concern/libya/quarterly-updates-libya/>

¹²⁶ UN Security Council, Resolution 2095 (2013), 14 March 2013

<http://unsmil.unmissions.org/LinkClick.aspx?fileticket=40wDkw-hl0%3d&tabid=3543&mid=6187&language=en-US>

¹²⁷ Human Rights Watch, Libya: Slow Pace of Reform Harms Rights, 6 February 2013

<http://www.hrw.org/news/2013/02/06/libya-slow-pace-reform-harms-rights>

- 4.3** At present there is insufficient information to be satisfied that there are adequate alternative reception, support and care arrangements in place for minors with no family in Libya. Those who cannot be returned should be considered for leave as a UASC as set out in the relevant [Asylum Instruction](#).

5. Medical treatment

- 5.1** Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).
- 5.2** The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.
- 5.3** That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.
- 5.4** The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.
- 5.5** Where a case owner considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

6. Returns

- 6.1** There is no policy which precludes the enforced return to Libya of failed asylum seekers who have no legal basis of stay in the United Kingdom.

- 6.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 6.3** Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).
- 6.4** Libyan nationals may return voluntarily to any region of Libya at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 6.5** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Libya. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Libyan nationals wishing to avail themselves of this opportunity for assisted return to Libya should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Assurance Group
Home Office
May 2013