

**Flygtningenævnets baggrundsmateriale**

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# **Country Information and Guidance**

Libya: Violence Against Women

8 October 2014

# Preface

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

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

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

## Country Information

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

## Feedback

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

## Independent Advisory Group on Country Information

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

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

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# Contents

|                                                                                                      |                   |
|------------------------------------------------------------------------------------------------------|-------------------|
| <b>Preface</b>                                                                                       |                   |
|                                                                                                      | <b>Paragraphs</b> |
| <b>Guidance</b>                                                                                      |                   |
| Basis of claim                                                                                       | <b>3.1</b>        |
| Summary of issues                                                                                    | <b>3.1.1</b>      |
| Consideration of issues: risks of persecution                                                        | <b>3.1.4</b>      |
| <b>Information</b>                                                                                   |                   |
| Overview                                                                                             | <b>3.2</b>        |
| Violence against women                                                                               | <b>3.2.1</b>      |
| Domestic violence                                                                                    | <b>3.2.2</b>      |
| "Honour" crimes                                                                                      | <b>3.2.8</b>      |
| Rape during the civil war                                                                            | <b>3.2.13</b>     |
| Fear of killing due to previous sexual violence                                                      | <b>3.2.17</b>     |
| "Social rehabilitation" facilities                                                                   | <b>3.2.19</b>     |
| Shelters and assistance for women.                                                                   | <b>3.2.20</b>     |
| <b>Context</b>                                                                                       |                   |
| <b>Annex A: Map</b>                                                                                  |                   |
| <b>Annex B: Caselaw</b>                                                                              |                   |
| <u><b>AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 (IAC) (14 July 2014)</b></u> |                   |

# 1. Guidance

Updated 8 October 2014

## 1.1. Basis of claim

1.1.1 Fear of sexual violence or gender-based persecution.

See Asylum Instruction: [Gender issues in the asylum claim](#)

## 1.2. Summary of issues

- Is the person's account a credible one?
- Do women in Libya constitute a particular social group (PSG)?
- Are women in Libya at risk of sexual violence or gender-based persecution?
- Are those at risk able to seek effective state protection?
- Are those at risk able to internally relocate within Libya to escape that risk?

See Asylum Instruction - [Considering the asylum claim and assessing credibility](#).

See [Actors of protection](#) and [Internal relocation](#)

## 1.3. Consideration of issues: risk of persecution

### Is the person's account a credible one?

- 1.3.1 Decision makers must consider whether the person's account of their nationality and of their experiences in Libya is reasonably detailed, internally consistent and credible as well as being externally credible (i.e. consistent with generally known facts and the country information).
- 1.3.2 Decision makers must establish precisely where in Libya the person comes from, where they would return to and what the latest country information says about the present position in that place.

See Asylum Instruction - [Considering the asylum claim and assessing credibility](#) and also the process guidance on [interviewing/assessing the claim](#)

See country information on [women](#)

### Do women in Libya form a particular social group (PSG)?

- 1.3.3 Women in Libya constitute a particular social group (PSG) within the meaning of the 1951 UN Refugee Convention because they share a common characteristic that cannot be changed – their gender – and based on an assessment of the country information, they have a distinct identity in Libya which is perceived as being different by the surrounding society.
- 1.3.4 Although women in Libya form a PSG, this does not mean that establishing such membership will be sufficient to make out a case to be recognised as a refugee. The question to be addressed in each case will be whether the particular person will face a real risk of persecution on account of their membership of such a group.

See [Considering the asylum claim and assessing credibility](#) (in particular paras 6.6-6.11) and the country information on [women](#)

## Are women in Libya at risk of sexual violence or gender-based persecution?

### General

1.3.5 In the country guidance case of [AT and Others \(Article 15c; risk categories\) \(CG\) \[2014\] UKUT 318 \(IAC\) \(14 July 2014\)](#), the Upper Tribunal held that whilst Libya is a male-dominated society and there is evidence of discrimination and violence against women and poor recognition of women's rights, being female does not per se establish a risk on return.

See [Actors of protection](#)

1.3.6 However, taking into account all the circumstances, including a woman's age, health, level of education and economic status, one or more of the following characteristics or factors are likely, depending on the circumstances, to be significant in relation to the assessment of risk on return for a woman:

(a) African ethnicity;

(b) Being a victim of sexual violence, including having been raped by soldiers loyal to the [Gaddafi] regime or by other combatants;

(c) Being a woman accused or suspected of sexual misdemeanours or offences against family honour.

See [Internal relocation](#)

[para.125 (10) of determination]

### Discrimination

1.3.7 There is widespread discrimination against women in Libya, both societal and governmental, which is manifested in accessing employment and at the workplace, and restrictions on women's mobility and personal freedom. Such societal discrimination does not amount to persecution, when considered in isolation. However, in combination with any of the above risk categories set out in AT & Others, it is likely to increase the risk to individual women.

See Asylum Instruction - [Considering the asylum claim and assessing credibility.](#)

### Domestic & Societal Violence

1.3.8 There are high levels of domestic violence in Libya, and no reliable statistics on the extent of the practice. There is a high level of societal acceptance of domestic violence towards women, and a lack of effective legal remedy.

See [Country Information](#)

### Shame/Dishonour/Fear of Sexual Violence

1.3.9 Militias and extremists use violence and intimidation against women whom they consider to be in violation of religious law and cultural norms. This can include, for example, failing to

wear a headscarf, or travelling alone, even locally.

## Rape as a Weapon of War

1.3.10 Soldiers loyal to Gaddafi or other combatants also widely perpetrated sexual violence including rape. The country evidence suggests that even where the rape victim's father or husband does not attach personal blame to the victim (in contrast to 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. 'Honour crimes' are persistent forms of violence against women in Libya.

[See Country Information](#)

1.3.11 Evidence indicates that rape was used extensively as a weapon of war by pro-Gaddafi fighters against rebel forces and civilians during the conflict.

### Is there effective protection?

1.3.12 Although the current Libyan government has enacted legislation aimed at the protection of women, it is not enforced effectively. Women's recourse to justice is extremely limited and fear of shame, disgrace and social stigma prevent women from seeking protection.

1.3.13 Social and cultural norms and expectations, including police and judicial reluctance to act, limited legal provisions, inadequate implementation of existing laws and no support services, all contribute to a lack of effective protection. Lone women without the support and protection of a husband and/or a family, are at significantly greater risk of gender-based ill-treatment.

1.3.14 The severe structural weakness of the security services, the absence of the rule of law and the lack of a judicial system with the capacity to deal with civil remedies for human rights violations and the reliance on - and impunity of - militia groups throughout Libya means that women are unable to access effective state protection.

### Are those at risk able to internally relocate within Libya to escape that risk?

1.3.15 Social and cultural norms mean that women in Libya are restricted in their freedom of movement with the majority unable to leave their house without permission. This has been compounded by the continuing insecurity of the country situation, and the many gangs of armed militias exacerbated by post-revolution security concerns. In rural areas societal discrimination restricts women's movements, even to local destinations. Other factors, such as the risk of sexual violence, and the stigma of travelling without a male escort, are likely to compound this.

| 1.3.16 In [AT & Others](#), the Upper Tribunal concluded that (para.125 (22-23):

- In relation to the possibility for a woman to relocate internally, taking into account the position of women in society in Libya, the difficulty for women of accessing accommodation if alone, and the rarity of a woman arriving in a community without knowing any person there, internal relocation would not be reasonable and would be unduly harsh unless in the prospective area of relocation the woman has a close family or significant other connection, aside from merely a tribal connection.
- In addition, bearing in mind the above factors, a woman is likely to be more conspicuous with the result that her presence may more easily be discovered by the prospective persecutor.

## Policy summary

- **Sexual and gender based violence is a serious and widespread problem in Libya. However, the courts have found that being female does not on its own establish a need for international protection.**
- **Factors to be taken into account when assessing risk on return for a woman include the woman's age, health; level of education and economic status. A woman's marital/family situation is significant, as lone women are at greater risk of harm in Libya.**
- **One or more of the following characteristics or factors are likely, depending on the circumstances, to also put a person at heightened risk:**
  - (a) African ethnicity;
  - (b) Being a victim of sexual violence, including having been raped by soldiers loyal to the Gaddafi regime or by other combatants;
  - (c) Being a woman accused or suspected of sexual misdemeanours or offences against family honour.
- **Effective state protection is not available and internal relocation to avoid risk from sexual or gender based violence is unlikely to be viable or reasonable.**
- **Women in Libya form a particular social group within the meaning of the 1951 UN Refugee Convention. A woman who demonstrates a real risk or reasonable likelihood of continuing ill-treatment on return to Libya on account of her gender and who is also able to show that she is unable to relocate elsewhere in Libya to escape that risk, will normally qualify for asylum.**
- **Where a claim based on sexual and gender based violence is**

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

**refused, it is unlikely to be certifiable as ‘clearly unfounded’ under section 94 of the Nationality, Immigration and Asylum Act 2002.**

## 2. Information

### 2.1. Overview

2.1.1 The Constitutional Declaration of Libya (enacted by the Libyan Transitional Government as the basis of the country's governance until a new government and Constitution could be established)<sup>1</sup> contains clear references to equal rights, and states that all citizens are equal before the law in enjoying civil and political rights, equal opportunities, and the duties of citizenship without discrimination based on religion, sect, language, wealth, sex, descent, political views, social status, or regional, family, or tribal affiliations. On April 9, the GNC adopted a law mandating punishment of not less than one year's imprisonment for anyone guilty of discrimination on the basis of class, group, region, gender, or colour. The current interim government enforces neither the prohibitions nor the punishments effectively, particularly with regard to women and minorities. Women face widespread discrimination. Militias and extremists use violence and intimidation against women whom they considered to be in violation of religious law and cultural norms.<sup>2</sup>

2.1.2 Human Rights Watch, in their 'World Report 2013 – Libya' noted that:

"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. 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, 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.

2.1.3 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. 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."<sup>3</sup>

2.1.4 The U.S. Department of State further notes that "In rural areas societal discrimination restricted women's movements, even to local destinations, and impaired their ability to play an active role in the workplace. The increasing weight of sharia drove increasing societal discrimination and affected women in urban life as well".<sup>4</sup> Reporting on the obstacles women in Libya face to their full participation in the country's transitional processes, Human Rights Watch noted that women "generally have inferior access to information, they experience higher rates of illiteracy than men, they face discrimination

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<sup>1</sup> World Intellectual Property Organization, Libya, Constitutional Declaration, 3 August 2011, accessed 9 May 2014 <http://www.wipo.int/wipolex/en/details.jsp?id=11248>

<sup>2</sup> US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

<sup>3</sup> Human Rights Watch: World Report: 2013 – Libya 31 January 2013 accessed 11 September 2014 <http://www.hrw.org/world-report/2013/country-chapters/libya>

<sup>4</sup> US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

in both accessing employment and at the workplace, they have restricted mobility, and they are liable to sexual harassment and assault. Furthermore they live in a society where men's control over women's decision-making is entrenched and which prioritizes women's role as that of mothers and wives".<sup>5</sup>

## 2.2. Violence against women

- 2.2.1 The Bertelsmann Stiftung [Foundation] 'Transformation Index (BTI) 2014' report, covering the period January 2011 – January 2013, notes that "The situation for women worsened significantly in terms of sexual harassment and religion-based restrictions on personal freedom" following the revolution.<sup>6</sup> A research request response from the Research Directorate of the Canadian Immigration and Refugee Board reported that "According to the founder and president of the NGO 'Voice of Libyan Women', since the end of the Libyan conflict in October 2011, domestic violence and other gender-based violence has "been exacerbated" due to a decrease in law and order and a "lack of accountability" for such violence".<sup>7</sup> The U.S. Department of State noted that the law criminalizes rape but does not address spousal rape. The Constitutional Declaration prohibits domestic violence, but there is scant information on the penalties for violence against women.<sup>8</sup>
- 2.2.2 The same report further notes that in 2013 "The law criminalizes sexual harassment, but there were no reports on how or whether it was enforced. According to civil society organizations, there was widespread harassment and increasing intimidation of women by militias and extremists, especially when they accused women of acting in an "un-Islamic" manner. In response several groups supporting women's rights have emerged that catalogue incidents of harassment both to deter them and eventually to seek stronger legislation."<sup>9</sup>
- 2.2.3 The U.S. Department of State noted that "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 stopped. However, a research request response from the Research Directorate of the Canadian Immigration and Refugee Board found that the practice of being forced to marry a rapist in order to avoid social stigma continued to be a reported practice in 2012 and 2013.<sup>10</sup> In previous years rape victims who failed to meet high evidentiary standards could face charges of adultery. In August 2013 the Ministry of Justice submitted a draft law supporting victims of sexual violence which at year's end remained under the GNC's consideration."<sup>11</sup>

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<sup>5</sup> Human Rights Watch, *A Revolution for All: Women's Rights in the New Libya*, I. Background, 27 May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>6</sup> Bertelsmann Stiftung, *BTI 2014 — Libya Country Report, Equal opportunity*, 2014 <http://www.bti-project.de/fileadmin/Inhalte/reports/2014/pdf/BTI%202014%20Libya.pdf>

<sup>7</sup> Immigration & Refugee Board of Canada: Responses to Information Requests: LBY104667.E: Libya: Domestic violence, including legislation, state protection and support services (2011 – November 2013) published 23 November 2013: <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454962&pls=1> accessed 27 August 2014

<sup>8</sup> US Department of State, *Country Report on Human Rights Practices for 2013: Libya*, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

<sup>9</sup> US Department of State, *Country Report on Human Rights Practices for 2013: Libya*, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

<sup>10</sup> Immigration & Refugee Board of Canada: Responses to Information Requests: LBY104667.E: Libya: Domestic violence, including legislation, state protection and support services (2011 – November 2013) published 23 November 2013: <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454962&pls=1> accessed 27 August 2014

<sup>11</sup> US Department of State, *Country Report on Human Rights Practices for 2013: Libya*, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

- 2.2.4 In November 2013 Voice of America reported that sexual harassment of women is increasing in Libya, and women complain that combined with the general lawlessness in the country their daily lives are becoming more of an ordeal and increasingly perilous.<sup>12</sup>
- 2.2.5 Human Rights Watch also stated in a report published in May 2013 that “Inadequate laws and services leave female victims of violence without an effective remedy and deter them from reporting rape and domestic violence. This is compounded by Libya’s conservative society, which deters sexual abuse victims from speaking out because of stigma and the dangers that survivors may face when reporting crimes.”<sup>13</sup>
- 2.2.6 On 11 June 2014, the International Federation of Human Rights Defenders (FIDH) reported that Libya has adopted an important decree for the reparation of crimes of sexual violence perpetrated during the war. It establishes a structure tasked with identifying the victims and delivering the benefits they are entitled to.<sup>14</sup> It is unclear how far this has yet been implemented, but the Libyan authorities have made some progress in developing the new structure.<sup>15</sup>

## Domestic violence

- 2.2.7 The U.S. Department of State reported that “There were no reliable statistics on the extent of domestic violence. Social and cultural barriers, including police and judicial reluctance to act, as well as family reluctance to publicize an assault, contributed to lack of effective government enforcement. Municipalities and local organizations maintained women’s shelters in most major cities.”<sup>16</sup> A research request response from the Research Directorate of the Canadian Immigration and Refugee Board found that domestic violence is a “serious” and “significant” problem in Libya.<sup>17</sup>
- 2.2.8 According to Human Rights Watch “Libya’s only current law specifically relating to domestic violence is the Personal Status Law, No. 10 of 1984, which states that a woman “has the right to expect her husband to ... refrain from causing her physical or psychological harm.” The law provides no enforcement mechanisms, however, and therefore is not effective in combating the problem of domestic violence.”<sup>18</sup>
- 2.2.9 Human Rights Watch further stated in a May 2013 report that “The current penal code is particularly problematic with regards to violence against women. This is because it classifies sexual violence as a crime against a woman’s honour, rather than against the woman as an individual victim or as a violation of her bodily integrity.” The same report states that:

<sup>12</sup> VOA, Libya Women Report Increased Harassment, 1 November 2013, <http://www.voanews.com/content/libya-women-report-increased-harassment/1781596.html>

<sup>13</sup> Human Rights Watch, A Revolution for all- Women’s Rights in the New Libya, IV. Amending Gaddafi-era legislation, May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>14</sup> International Federation of Human Rights Defenders: Libya 11 June 2014; accessed 8 October 2014 <http://www.fidh.org/en/north-africa-middle-east/libya/15521-libya-a-new-step-towards-reparation-for-victims-of-sexual-violence>

<sup>15</sup> Peacewomen: Libya: Libya set to pay reparations to victims of rape as a war crime: 12 June 2014 accessed 8 October 2014 [http://www.peacewomen.org/news\\_article.php?id=6378&type=news](http://www.peacewomen.org/news_article.php?id=6378&type=news)

<sup>16</sup> US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 6, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

<sup>17</sup> Immigration & Refugee Board of Canada: Responses to Information Requests: LBY104667.E: Libya: Domestic violence, including legislation, state protection and support services (2011 – November 2013) published 23 November 2013: <http://www.irb-cisr.gc.ca/Eng/ResRec/RirRdi/Pages/index.aspx?doc=454962&pls=1> accessed 27 August 2014

<sup>18</sup> Human Rights Watch, Priorities for Legislative Reform - A Human Rights Roadmap for a New Libya, IX. Violence and Discrimination against Women, 21 January 2014, [http://www.hrw.org/sites/default/files/reports/libya0114ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0114ForUpload_0.pdf)

‘all forms of sexual assault should be considered fundamentally as a crime against the individual rather than a crime against norms or values.’<sup>19</sup> By focusing on a victim’s honour, this law perpetuates the notion that a rape survivor has lost her honour, and thereby may serve to undermine justice by leading courts to focus on examining a woman’s sexual history rather than the alleged violence committed against her by the accused.’<sup>20</sup>

2.2.10 The International Foundation for Electoral Systems (IFES) stated that survey findings on opinions and attitudes toward domestic violence from their September 2013 survey on the status of Libyan women, are concerning. The report concludes that “They indicate a relatively high level of acceptance of domestic violence in Libyan society by both women and men, but men to a higher extent. This calls for raising awareness about women’s rights to safety and security in the household and enacting laws that protect women from this type of violence.”<sup>21</sup>

2.2.11 Human Rights Watch reported in January 2014 that “Violence against women and girls, particularly domestic violence, remains a significant problem in Libya. The country’s 1951 constitution and laws scarcely address this issue, or do so in discriminatory ways. Survivors of sexual and domestic violence have limited recourse in Libya; inadequate laws and services leave female victims of violence without an effective remedy. Fear of shame and disgrace deter them from reporting rape and domestic violence.”<sup>22</sup>

2.2.12 In their World Report 2014, Human Rights Watch reported that Libya’s Supreme Court lifted restrictions on polygamy, (February 2014) enabling a man to marry up to four wives without the prior consent of his first wife. In April, the Ministry of Social Affairs suspended issuing marriage licenses for Libyan women marrying foreigners after a call by Grand Mufti al-Sadeq al-Ghariani to avoid spreading “other” religions in Libya. In the absence of a Personal Status Law, the law Concerning the Specific Provisions on Marriage and Divorce and their Consequences, Law No. 10 of 1984 is the only current legislation dealing with domestic violence, but enforcement remains weak.<sup>23</sup>

## “Honour” crimes

2.2.13 In May 2013, Human Rights Watch highlighted that “The penal code has less severe criminal sentencing provisions for perpetrators of so-called honour crimes than perpetrators of the same crimes where honour cannot be cited as a basis for mitigation. According to article 375 of Libya’s penal code, the maximum penalty for a man who immediately kills his wife, mother, daughter, or sister after witnessing them engaging in extramarital sexual relations is imprisonment for an unspecified period. By contrast, the usual punishment for a non-premeditated but deliberate homicide of a family member or a spouse under the penal code is life imprisonment unless the crime was connected to another serious crime, in which case the punishment is death. Premeditated homicides

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<sup>19</sup> Human Rights Watch, A Revolution for all- Women’s Rights in the New Libya, IV. Amending Gaddafi-era legislation, May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>20</sup> Human Rights Watch, A Revolution for all- Women’s Rights in the New Libya, IV. Amending Gaddafi-era legislation, May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>21</sup> International foundation for electoral systems, Libya Status of Women Survey 2013, Freedom of Movement and Freedom of Harassment and Violence Conclusion, September 2013, [http://www.ifes.org/-/media/Files/Publications/Survey/2013/Libya%20Status%20of%20Women%20Survey%20Report\\_final2.pdf](http://www.ifes.org/-/media/Files/Publications/Survey/2013/Libya%20Status%20of%20Women%20Survey%20Report_final2.pdf)

<sup>22</sup> Human Rights Watch, Priorities for Legislative Reform - A Human Rights Roadmap for a New Libya, IX. Violence and Discrimination against Women, 21 January 2014, [http://www.hrw.org/sites/default/files/reports/libya0114ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0114ForUpload_0.pdf)

<sup>23</sup> Human Rights Watch World Report: Libya: 2014 accessed 8 October 2014 <http://www.hrw.org/world-report/2014/country-chapters/libya?page=3>

usually incur the death penalty under the penal code. Also under article 375, a man whose honour-motivated violence results in “grave or serious injuries” to his wife or female relative may be imprisoned for no more than two years, whereas the same violence could result in a 7.5-year maximum prison sentence if the attack was not deemed to have been motivated by honour.”<sup>24</sup>

## Rape during the Civil War

2.2.14 BBC News reported that “During the revolution, the International Criminal Court said it had collected evidence that Col Gaddafi had ordered the rape of women as a weapon against rebel forces.”<sup>25</sup> On 9 June 2011, Time Magazine reported in detail on the scale and brutality of this crime against civilians and any women perceived to be allied to rebel forces.<sup>26</sup>

2.2.15 In a report ‘Witness to War Crimes’ by Physicians for Human Rights, Libyan medical workers and other interviewees detailed instances of sexual violence and other war crimes in Misrata and the surrounding region in August 2011.<sup>27</sup>

2.2.16 According to reporting by the International Federation for Human Rights (FIDH) “A draft law, recognising victims of rape during the conflict as victims of war crimes, was circulated by the Libyan Ministry of Justice in June 2013 and has been approved by the Justice Commission. The bill is now awaiting consideration by the General National Congress but has yet to be placed on the parliamentary body’s agenda.” FIDH President Karim Lahidji stated that: “The adoption of this law would be a ground-breaking step towards recognizing victims of rape as war victims on an equal footing with victims of torture and other war crimes.”<sup>28</sup>

2.2.17 The text provides for victims of rape during the conflict to receive appropriate forms of reparation. Under the draft law, victims would receive compensation and health care. They would also be granted training, education and employment opportunities and access to housing. The bill would provide for the state to establish shelters for those who have been rejected by their families and for victims to receive legal support in bringing perpetrators to justice. Benefits are also to be provided to the families of victims and children born following rape. A Committee will be tasked to determine the beneficiaries of the law. The law will require adjustments to ensure effective implementation but its adoption would contribute to breaking the silence surrounding crimes of sexual violence in Libya.<sup>29</sup>

2.2.18 The International Commission of Inquiry on Libya found 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

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<sup>24</sup> Human Rights Watch, A Revolution for all- Women’s Rights in the New Libya, IV. Amending Gaddafi-era legislation, May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>25</sup> BBC News, Libya Gaddafi rape victims to be compensated, 20 February 2014 <http://www.bbc.co.uk/news/world-africa-26270890>

<sup>26</sup> Time Magazine, Rape in Libya: The crime that dare not speak its name: 9 June 2011 <http://www.time.com/time/world/article/0,8599,2076775,00.html>

<sup>27</sup> Physicians for Human Rights: Witness to War Crimes: Evidence from Misrata, Libya, published August 2011: <http://physiciansforhumanrights.org/library/reports/witness-to-war-crimes.html> accessed 27 August 2014

<sup>28</sup> International Federation for Human Rights, Libya: Parliament must support justice for rape victims, 28 November 2013 <http://www.fidh.org/en/north-africa-middle-east/libya/14290-libya-parliament-must-support-justice-for-rape-victims>

<sup>29</sup> International Federation for Human Rights, Libya: Parliament must support justice for rape victims, 28 November 2013 <http://www.fidh.org/en/north-africa-middle-east/libya/14290-libya-parliament-must-support-justice-for-rape-victims>

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.”<sup>30</sup>

## Fear of Killing due to previous sexual Violence

2.2.19 Human Rights Watch reports that “So-called crimes of honour are a persistent form of violence against women in Libya.”<sup>31</sup> A June 2011 article by the BBC highlighted that Libyan women and girls who became pregnant through rape during the uprising “risk being murdered by their families in so-called ‘honour killings’, according to Libyan aid workers”.<sup>32</sup> The International Commission of Inquiry on Libya found that “the entire honour of the family is tarnished if a girl or unmarried woman loses her virginity outside of marriage. Some female victims of rape have been ostracized, divorced, disowned, forced to flee the country, have committed suicide, and some have allegedly been killed by their relatives because of the shame and dishonour that rape brings to the family and even the tribe”.<sup>33</sup>

2.2.20 During the conflict, the International Federation for Human Rights (FIDH) and the Association Tunisienne des Femmes Démocrates (ATFD) interviewed many women from Libya who had sought temporary refuge in Tunisia. They reported that “victims of rape risked being killed by male family members to “wash away” family dishonour. Some men were ready to kill their wives or daughters before leaving to fight, to avoid the risk of them being raped. There is currently no accountability for these crimes and little support is made available by the State for victims of sexual violence. A few organisations, such as the Observatory for Gender in Crisis provide women with medical, psychological and legal assistance and facilitate their reintegration into society. In addition, the fear of being identified as a victim of rape means that few seek the support to which they are entitled. Libyan NGOs have called on the government to adopt tougher sentences for perpetrators as well as logistical and financial support for NGOs who provide assistance to victims, but no such measures have so far been taken.”<sup>34</sup>

2.2.21 According to a UN report “Since the end of the conflict in Libya in October 2011, the Government has made few tangible commitments to address the problem of conflict-related sexual violence. With the exception of the pending trial of former Prime Minister Al-Baghdadi al-Mahmoudi, whose charges reportedly include crimes of mass rape in Zuara during the conflict, the Government has not initiated investigations or new legislation, policies, programmes or services for survivors.”<sup>35</sup>

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<sup>30</sup> UN Human Rights Council, Report of the International Commission of Inquiry on Libya, F. Sexual Violence, paragraph 70, 2 March 2012

<http://www.ohchr.org/mwq-internal/de5fs23hu73ds/progress?id=PCjPaEWKGu&dl>

<sup>31</sup> Human Rights Watch, Priorities for Legislative Reform - A Human Rights Roadmap for a New Libya, IX. Violence and Discrimination against Women, 21 January 2014,

[http://www.hrw.org/sites/default/files/reports/libya0114ForUpload\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0114ForUpload_0.pdf)

<sup>32</sup> BBC News, Libya rape victims ‘face honour killings’, 14 June 2011

<http://www.bbc.co.uk/news/world-africa-13760895>

<sup>33</sup> UN Human Rights Council, Report of the International Commission of Inquiry on Libya, Annexes, Report of the International Commission of Inquiry on Libya, Sexual Violence, 1. 8 March 2012

<http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A.HRC.19.68.pdf>

<sup>34</sup> International Federation for Human Rights, Libya: Parliament must support justice for rape victims, 28 November 2013 <http://www.fidh.org/en/north-africa-middle-east/libya/14290-libya-parliament-must-support-justice-for-rape-victims>

<sup>35</sup> UN General Assembly, Sexual violence in conflict: Report of the Secretary-General, 14 March 2013, B. Sexual violence in post-conflict situation, II. Current and emerging concerns regarding sexual violence as it relates to international peace and security, Libya, para.97, [http://www.ecoi.net/file\\_upload/1226\\_1366188714\\_n1325944-unga.pdf](http://www.ecoi.net/file_upload/1226_1366188714_n1325944-unga.pdf)

## 2.3. “Social rehabilitation” facilities

2.3.1 Human Rights Watch commented on Libya’s social rehabilitation facilities, where some victims of gender-based violence and domestic violence are detained. Human Rights Watch visited such facilities in Libya in 2005, and interviewed women and girls who “described a situation of detention rather than voluntary shelter. The government at the time justified the use of these “homes” as a measure of “protection” for women and girls suspected of having engaged in “illicit” sex and whose families rejected them. But women and girls could not, in reality, leave these de facto prisons, and many had committed no crime, or had already served a sentence. Some were there for no other reason than that they had been raped, and were then ostracized for “staining their family’s honour.” During its visits to Libya in 2012, Human Rights Watch was unable to obtain specific information about the number of women and girls still at these facilities. The Ministry of Social Affairs confirmed that the centres were still in operation and said their occupants were young women and girls with family problems, divorcees, minors who had committed crimes and who had been diverted from prison, pregnant women out of wedlock, and others.”<sup>36</sup>

## 2.4. Shelters and assistance for women

- 2.4.1 The Freedom House, Women’s Rights 2010 report stated there are no genuinely independent women’s organizations working on the issues of women’s autonomy and security and no women’s shelters exist aside from the social rehabilitation centres.<sup>37</sup>
- 2.4.2 The UN reported that “There is a near-total absence of services, which remains a key factor in survivors of sexual violence and rape not coming forward. The Ministry of Social Affairs has acknowledged the need to provide such services but requires support in this regard.”<sup>38</sup> Human Rights Watch also reported in May 2013 that “Inadequate laws and services leave female victims of violence without an effective remedy and deter them from reporting rape and domestic violence.”
- 2.4.3 In 2013 a draft law was approved by the Justice Commission which would provide victims of rape during the conflict with appropriate forms of reparation, compensation, healthcare, training, education, employment opportunities and access to housing. Whilst this law would be a groundbreaking step towards recognising victims of rape as war victims on an equal footing with victims of torture and other war crimes, it has yet to be implemented and currently in Libya there is a near total absence of services for survivors of sexual violence and no voluntary shelters.<sup>39</sup>

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<sup>36</sup> Human Rights Watch, A Revolution for all- Women’s Rights in the New Libya, IV. Amending Gaddafi-era legislation, May 2013 [http://www.hrw.org/sites/default/files/reports/libya0513\\_brochure\\_LOWRES\\_0.pdf](http://www.hrw.org/sites/default/files/reports/libya0513_brochure_LOWRES_0.pdf)

<sup>37</sup> Freedom House, Women’s Rights in the Middle East and North Africa 2010 – Libya, Autonomy, Security and Freedom of the Person, 3 March 2010, [http://www.freedomhouse.org/sites/default/files/inline\\_images/Libya.pdf](http://www.freedomhouse.org/sites/default/files/inline_images/Libya.pdf)

<sup>38</sup> UN General Assembly, Sexual violence in conflict: Report of the Secretary-General, 14 March 2013, B. Sexual violence in post-conflict situation, II. Current and emerging concerns regarding sexual violence as it relates to international peace and security, Libya, para.97, [http://www.ecoi.net/file\\_upload/1226\\_1366188714\\_n1325944-unga.pdf](http://www.ecoi.net/file_upload/1226_1366188714_n1325944-unga.pdf)

<sup>39</sup> The International Federation for Human Rights (FIDH): The International Federation for Human Rights (FIDH) and Lawyers for Justice in Libya (LFJL) urge the Libyan government to support justice for rape victims 25 November 2013 <http://www.libyanjustice.org/news/news/post/110-the-international-federation-for-human-rights-fidh-and-lawyers-for-justice-in-libya-lfjl-urge-the-libyan-government-to-support-justice-for-rape-victims>

# Annex A: Map

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



Map No. 3787 Rev. 8 United Nations  
March 2013

Department of Field Support  
Cartographic Section

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

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

## Annex B: Caselaw

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

The Upper Tribunal held that (see paragraph 215):

#### **Country guidance**

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

#### **Article 15(c)**

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

#### **Former regime members and associates**

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

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

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

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

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

#### **Black Libyans etc**

(7) A 'Black Libyan' is a Libyan of black African appearance, and includes a person who may not actually possess Libyan nationality but for whom Libya is their country of former habitual residence. There is endemic racism within Libyan society towards Black Libyans. However,

Black Libyans who are not Tawurga or Tuareg are not per se at risk of persecution or Article 3 ill-treatment on return, and will only be able to establish the need for international protection with reference to some additional factor particular to that individual.

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

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

## **Women**

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

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

## **Failed asylum seekers**

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

## **Risk at point of return**

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

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

## **Risk following return**

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

(15) Notwithstanding the prevalence of checkpoints manned by militias, it is possible to travel overland from Tripoli airport to other destinations without a real risk of persecution, serious harm or Article 3 ill-treatment. Land travel in general is possible and can be undertaken without giving rise to a risk of harm that requires recognition in terms of international protection. The evidence does not reveal such a level of arbitrary or irrational conduct on the part of militias at

checkpoints such as to put the ordinary traveller at real risk. A claim to international protection is unlikely to succeed simply on the basis of a claimed risk of travel to any particular area of Libya. Area specific evidence would have to be adduced which establishes such a risk.

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

### **Sufficiency of protection**

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

### **Internal relocation**

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

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

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

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

(22) In relation to the possibility for a woman to relocate internally, taking into account the position of women in society in Libya, the difficulty for women of accessing accommodation if alone, and the rarity of a woman arriving in a community without knowing any person there, internal relocation would not be reasonable and would be unduly harsh unless in the prospective area of relocation the woman has a close family or significant other connection, aside from merely a tribal connection.

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

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

[ME \(Risk, Failed Asylum Seekers, Hassan\) Libya CG \[2003\] UKIAT 00200 \(29 October 2003\)](#)  
[HH \(Risk, Failed Asylum Seekers\) Libya CG \[2003\] UKIAT 00202 \(24 February 2004\)](#) [KK](#)  
[\(Failed Asylum Seeker\) Libya CG \[2004\] UKIAT 00151 \(27 May 2004\)](#)

[Return to contents](#)