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OPERATIONAL GUIDANCE NOTE

Libya

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1. Introduction

- 1.1** This document provides UKBA case owners 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *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 case owners 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.homeoffice.gov.uk/rds/country_reports.html

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners 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** Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the

population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** 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://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/human-rights-report-2009>

- 2.3** Case owners are reminded that any country information and specific country policy guidance contained within this document is based upon information available at the time of publication. Due to the continuing conflict prevailing within Libya, and the volatile nature of events there, case owners must consider the latest available COI Service bulletins and other COI products before determining asylum claims. Any questions about the handling of a particular case should be referred to a senior case worker. For additional queries relating to country specific policy, contact the CSL Team.

- 2.4** ***Actors of protection.*** Caseowners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Caseowners should also 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. 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, for example, by 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.

- 2.5** There are no fully functioning governmental or civil authorities in Libya at the present time, however, the UK Government and other members of the international community have recently recognised the National Transitional Council as the sole governing authority in Libya. It remains unclear whether or not they are yet capable of providing reasonable protection to vulnerable persons, or of taking steps to prevent harm to vulnerable people. Col. Gaddafi and those members of his regime who have remained loyal are currently embattled, and unable to exercise control over large parts of the military and security forces, or of the country generally. In Tripoli and the surrounding areas, where Col. Gaddafi and his regime remain the nominal authority, they have been experiencing a sustained NATO air bombardment since March 2011, and are unable to ensure the safety of citizens loyal to the regime. There is increasing evidence to indicate that the Gaddafi regime has less control of some western towns, i.e. Misrata and Yefren since the NATO air strikes began, however fighting continues in these towns.¹ In June, the BBC Correspondent in Tripoli reported that according to opposition activists, the level of anti-Gaddafi opposition in Tripoli is extensive throughout the city, but that people are suffering intimidation and violence from forces loyal to Gaddafi. Consequently, open opposition is minimal as people (according to reports) are too afraid to speak out.²

- 2.6** In the areas currently being fought for by the rebels, the situation remains volatile. In western areas particularly Misrata and Zlitan, all towns bordering Tunisia, and also the landlocked Nafousa mountains, there has been heavy fighting and shelling, and there is no functioning civil authority. However, William Hague (UK Foreign Secretary) stated that steady progress is occurring, particularly around Misrata, Brega and Jebel Nafousa where

¹ Reuters Newsdesk 3 June 2011: [Gaddafi losing control of western towns](#)

² BBC News - Libya Crisis: [Anti-Gaddafi activists speak out in Tripoli](#)

the opposition is driving Gaddafi's forces back.³ The situation is more stable in Benghazi, in eastern Libya. There, the National Transitional Council (NTC) has gained control, and despite shortages of essential supplies, conditions are relatively safe. The NTC comprise many different strands, including defected ex-Gaddafi loyalists. A spokesperson for the NTC indicated that there is still uncertainty between the different elements, but that evidence suggests there is a tendency towards the majority of people losing faith in Gaddafi and turning to the rebel side.⁴ The NTC have been visited in Benghazi by a number of representatives of foreign governments, and there are ongoing discussions aimed at assisting the NTC in setting up a new government and infrastructure following resolution of the current crisis. Most of the international community have expressed support and encouragement for the NTC, whilst emphasising the need for Col. Gaddafi to step down.⁵

- 2.7** In July 2011, US officials held talks with representatives of Col. Gaddafi's government, reportedly in Tunisia. According to US representatives, the meeting repeated demands for Col. Gaddafi to step down, and no negotiations took place. A spokesman for the Libyan government (Mr Moussa Ibrahim) said they supported dialogue with the US, providing it was free from any preconditions. Mr Ibrahim stated that they would "discuss anything", but the Libyan people must decide their own future.⁶ On 27 July, Foreign Secretary William Hague announced that the UK Government will recognise and deal with the NTC as the focal point and sole governmental authority in Libya. He referred to the increasing legitimacy, competence and success of the NTC and its commitment to an inclusive political process.⁷
- 2.8** Due to the prevailing situation of civil war and violence in Libya, some applicants may seek to establish a claim to protection due to serious and individual threat to their life (as a civilian) or person by reason of indiscriminate violence in situations of international or internal armed conflict, under paragraph 339C of the Immigration Rules (Article 15(c) of the Qualification Directive). Case owners are advised to consider such claims according to the legal test set out in *Elgafaji* (below) and further clarified by QD (*Iraq*) below.
- 2.9** **Internal relocation.** Caseowners must refer to the Asylum Instructions on both internal relocation and gender issues in the asylum claim and 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 place in the country of return where the person would not face a real risk of serious harm and they can reasonably be expected to stay there, then they will not be eligible for a grant of asylum or 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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.10** Objective evidence suggests that eastern parts of the country and particularly the city of Benghazi are becoming increasingly stable, and are considered to be generally safe. Some rural areas and smaller towns (primarily in the eastern part of the country) have also remained relatively safe. Benghazi is held by the National Transitional Council (NTC) and although it is suffering shortages of essential supplies, everyday life is continuing with relative normality. Large numbers of international NGOs, as well as European leaders and government representatives have visited Benghazi in recent weeks and reports suggest that in general, law and order prevails there. There is no longer a situation of conflict in the city, which has a functioning international airport despite damage sustained earlier in the year.⁸ Therefore, case owners are advised that internal relocation may be viable in

³ FCO 27 July 2011 [Libyan Charge D'Affaires to be expelled from UK](#)

⁴ TheAtlantic.com: [Libya's rebels fear infiltration by Gaddafi loyalists](#)

⁵ The Independent: [UK welcomes Libya mission extension](#)

⁶ BBC News: Libya Conflict - [US Officials met Gaddafi envoys](#)

⁷ FCO 27 July 2011 [Libyan Charge D'Affaires to be expelled from UK](#)

⁸ FT.com/Middle East [Libyan rebels vow to open up Libya to investment](#)

individual cases. Case owners should consider such cases in light of the particular circumstances of the case and the latest available country of origin information.

2.11 Fighting between forces loyal to Col. Gaddafi and those of the NTC is ongoing, and the country situation continues to be fluid. It is not therefore possible at present to confirm particular routes of return, points of entry, and onward routes of travel, or to identify whether individuals would need to cross frontlines in order to reach such areas by land. However this need not prevent consideration of the immigration decision. Routes and entry points will be readily identifiable once the current practical obstacles to return resolve and returnees will have an opportunity to raise any concerns about the route of return at a later stage. As established in case law (*HH* & others below), the Tribunal need only consider and determine any challenge to the safety of the route or method of return where it can be shown either directly or by implication what route and method of return is envisaged.

2.12 Caselaw.

HH (Somalia) & Others [2010] EWCA Civ 426

This judgment provides general guidance on the issues of enforced return of individuals with no independent right to be or remain in the United Kingdom to a war-torn country (Somalia) where their safety is or may be in serious doubt. Some of the findings made in *HH* have a general application. The Court of Appeal considered the cases of *HH*, *AM*, *J* and *MA* concerning return to Somalia and made the following findings:

- ***HH*** - The AIT had made errors in its application of Article 15c Qualification Directive but these errors were not material and accordingly the appeal of *HH* was rejected. The decision that it is safe to return *HH* is now obsolete in light of the later conditions described in *AM* and *AM* and should not be relied on.
- ***MA*** - This appeal was upheld but turned on its individual facts and does not have wider application.
- ***AM* and *J*** - These individuals' arguments were that the AIT failed to consider the safety of the route and return to the areas of Somalia where they were considered to be safe. They argued not only that (1) where the route and manner of return are known or can be implied, the First Tier Tribunal must consider whether the applicant would be put at risk if returned by that route (as in their cases), but further argued that (2) the Qualification and Procedures Directives read together require that issues of safety during return should always be considered as part of the decision on entitlement to protection made by the SSHD.
- The Court agreed with submission (1). Its finding of general application which is now binding in UK law is that **in any case in which it can be shown either directly or by implication what route and method of return is envisaged, the First Tier Tribunal is required by law to consider and determine any challenge to the safety of that route or method.** In the present cases, the route and method of return was known, and so should have been considered. The appeals were therefore allowed.
- The Court did not consider it necessary to make a definitive ruling on submission (2), but did express the view that *AM* and *J* were right that the Directives read together required that the issues of safety during return (as opposed to technical obstacles to return such as documentation issues/availability of flights) should be considered as part of the decision on entitlement to protection. In the Court's view, the Tribunal must always consider that question whenever the applicant puts it in issue. However this is not a binding statement and the possibility of future argument on this point (including to the ECJ) is left open.
- *AM* was remitted to the Tribunal for it to be re-evaluated in light of the law as it now stands. This will mean taking into account safety issues arising from the implicit method of return, and also the current interpretation of Article 15(c) set out by the European Court of Justice and Court of Appeal in *Elgafaji* and *QD* respectively.

The 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?” 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. The reference to ‘threat’ does not dilute the need for there to be a real risk. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence which reaches the level described in *Elgafaji*. 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*.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Libya. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. 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 or other forms of serious harm. 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.
- 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 on considering the protection (asylum) claim and assessing credibility).
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on 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/>

3.5 Credibility

3.5.1 This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners 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 Home Office 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 matched 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.

3.6 Claims relating to the general security and humanitarian situation

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

3.6.2 *Treatment.* Since the outbreak of hostilities between Col. Gaddafi's troops and the rebels in February 2011, conditions on the ground have become steadily worse for civilians, both citizens and foreign nationals. Following the arrest of Fathi Terbil, a prominent and outspoken government critic in February 2011, hundreds of anti-government protesters took to the streets, protesting against the regime of Col. Gaddafi and calling for democracy. Terbil was subsequently released, but protests continued, mainly in Benghazi. Dozens of people were hurt during the protests, which continued over several days. Political dissent is illegal in Libya, and the authorities reacted to the protests in Benghazi (and to those in Zlitan, Beyida and others) with increasing and excessive force.⁹

3.6.3 Since February 2011, the protests grew in size and significance, spreading to other parts of Libya. The situation escalated rapidly, as troops loyal to Col. Gaddafi sought to subdue the militarily untrained rebels. Government forces used aircraft to attack protestors, with consequent loss of civilian lives. This prompted several Libyan diplomats around the world to resign in protest. To date, Col. Gaddafi has consistently refused to step down, and remains at least nominally in control of Tripoli and other areas, although some parts of the country, particularly Benghazi in the east are now in rebel hands.¹⁰ Due to the increasing danger to civilians, the UN Security Council authorised a no-fly zone over Libya on 17th March, and also airstrikes to protect civilians. NATO took command of these airstrikes, while in March 2011, several major world powers including the European Union, the United States of America and the Arab League called on Col. Gaddafi to step down.¹¹ The rebels were initially enabled to take control of large areas of territory, under the protection of NATO airstrikes, but were subsequently forced back from some areas by Col. Gaddafi's better armed and trained soldiers.

3.6.4 In March, the Libyan Foreign Minister, Moussa Koussa flew to Britain in protest at continuing attacks on the rebels. Many other senior figures have also defected in recent months.¹² In response to repeated calls for help by the rebels, including requests for armaments, NATO increased military activity in Libya, with the intention of protecting civilians and encouraging Col. Gaddafi to leave office. On May 27th the UK Prime Minister, David Cameron, authorised the use of Apache fighter helicopters in Libya, while France authorised the use of Gazelle attack helicopters.¹³

3.6.5 In May 2011, Luis Moreno Ocampo, Prosecutor of the International Criminal Court announced he was applying for arrest warrants for Col. Gaddafi and two other senior figures including his son, Saif al-Islam Gaddafi, for crimes against humanity following "widespread and systematic attacks" on civilians. Since then, the United Nations have accused Col. Gaddafi and his supporters of crimes against humanity and war crimes.

⁹ COI Service: Information Request 06/11-017 War Crimes by Government and Opposition Forces

¹⁰ BBC News Timeline: Libya: [Timeline](#)

¹¹ BBC News Timeline: Libya: [Timeline](#)

¹² BBC News Timeline: Libya: [Timeline](#)

¹³ BBC News – Libya: [UK Apache helicopters used in Libya](#)

These include: murder, imprisonment, torture, persecution, enforced disappearance and sexual abuse, which the UN report stated were committed by Government forces “as part of a widespread or systematic attack against a civilian population”. There have been a number of allegations of the systematic use of rape as a weapon of war by Col. Gaddafi’s forces.¹⁴ The UN Commission said it had received, but was unable to verify, individual accounts of rape. “It notes, however, that sufficient information was received to justify further investigation to ascertain the extent of sexual violence, including whether cases were linked to incitement by the command of either side”. The Commission also found evidence of certain acts which would constitute war crimes carried out by opposition forces, although these were fewer in number and variety.¹⁵

- 3.6.6** Since the anti-government protests began in February 2011, the situation in Libya has become increasingly volatile.¹⁶ Security conditions for civilians, particularly women and children are unpredictable and dangerous in many of the larger cities, due to fighting between troops loyal to Col. Gaddafi, and the opposition rebel forces. In Tripoli and other western towns, people are reported to be living in fear of violent repression, including air bombardment, by Col. Gaddafi’s forces.¹⁷ The lifting of the siege of Misrata revealed the disappearance of hundreds of people, many of them suspected victims of snatch squads loyal to the Gaddafi regime, according to relatives and human rights workers (30 May).¹⁸ Large numbers of people have been killed or injured in Libya as a result of the hostilities; this includes civilians and other non-combatants, in addition to Col. Gaddafi’s security forces, and rebels engaged in fighting against the regime. Thousands of people, including foreign nationals, have fled across Libya’s borders since the conflict began, in addition to large numbers leaving by boat for Italy. These include hundreds of foreign nationals from other African countries.¹⁹ Objective information and reliable statistics detailing the number of dead and injured is difficult to obtain. The Gaddafi regime has refused to release numbers of those killed and injured. The NTC have stated that many have died on either side of the divide, but all available statistics are estimated. The US Ambassador to Libya estimated in April 2011 that the total death toll could be as high as 30,000; however other stake holders have estimated a figure closer to 10,000.²⁰
- 3.6.7** The UNHCR update for June 2011 confirmed that Tripoli, Misrata and other western towns are suffering acute shortages of essential supplies, resulting from the combination of the conflict and trade sanctions. It noted a total of 74,000 displaced persons in conflict zones south and east of Tripoli, with a further 25,000 displaced persons in Misrata, most of whom are staying with relatives, or occupying schools and other buildings. The UNHCR have stated that more than 970,000 people have fled Libya, of which 407,000 are Libyans.²¹
- 3.6.8** The rebel leaders have called themselves the National Transitional Council (NTC) but recently announced a change of name of their military wing, to the National Liberation Army. They remain poorly equipped and trained in comparison with Gaddafi’s forces, but have so far held their ground in various parts of the country, notably Benghazi, Ajdabiya, and other eastern towns. In the west, the Nafousa Mountains and Misrata continue to hold out against Gaddafi: the mountain areas are in a state of siege. Col. Gaddafi has reportedly become increasingly reclusive, clinging to power despite diminishing Libyan support, more defections from his government, and a sustained NATO bombing campaign.²² On 1 June 2011, NATO agreed to extend its air operations over Libya for a further 90 days,²³ aiming to increase the scope and intensity of its UN-mandated campaign to protect civilians.²⁴ Thousands of strike sorties have since taken place, damaging Col.

¹⁴ BBC News – Libya Crisis: [Soldiers forced to rape women](#)

¹⁵ COI Service: Information Request 06/11-017 War Crimes by Government and Opposition Forces

¹⁶ UN News Service: June 2011 [Ban calls for continued aid to Libyan civilians](#)

¹⁷ BBC News – Libya Crisis: [Anti-Gaddafi activists speak out in Tripoli](#)

¹⁸ COI Service Country Bullet Brief 9 June 2011

¹⁹ US Government April 2011 Humanitarian Assistance: [Response to Libya Crisis](#)

²⁰ CBS News: 27 April 2011 [Libya Death Toll](#)

²¹ UNHCR Monthly Updates: [UN teams find displaced people](#)

²² COI Service: Information Request 06/11-017 War Crimes by Government and Opposition Forces

²³ BBC News - Libya Crisis: [NATO meets to review air campaign](#)

²⁴ The Independent: [UK welcomes Libya mission extension](#)

Gaddafi's military assets.²⁵ Rebel fighters in the west of Libya are making slow but steady progress towards Misrata.²⁶

- 3.6.9** In Tripoli and other areas still controlled by Col. Gaddafi and his forces, supplies of food, medicine and fuel are running low. Fuel shortages are a particular problem, causing public anger at petrol queues. United Nations relief efforts in Libya have attempted to address the shortages to some degree, but Panos Moumtzis, Co-ordinator of UN relief work in Libya, described the situation as “a bit of a time bomb” and stated that it was a matter of weeks before the country “reaches a critical situation”.²⁷ The US and other members of the international community are providing significant levels of humanitarian aid to Libya, including food, shelter, water and sanitation, and medical aid, including provision for casualties of war.²⁸ The Italian Foreign Minister Francisco Frattini has called for an immediate ceasefire to allow the provision of greater supplies of humanitarian aid to the Libyan people.²⁹
- 3.6.10** On 29 July 2011 the BBC reported that the head of the Libyan rebel armed forces, General Abdel Fatah Younes, had been shot and killed by unknown assailants. An arrest was reportedly carried out, but no names or motives have been made public.³⁰ The name of Colonel Khalifa Hifter has been named as a possible successor; the two were previously rivals within the rebel chain of command.³¹ The killing of General Younes has been condemned by the international community, including the UK Government. The Foreign Office Minister Alistair Burt welcomed an announcement by the NTC that a thorough investigation would be carried out, and those responsible would be brought to justice through proper judicial processes.³² It remains to be seen what, if any, impact the killing of General Younes may have on conditions in Libya generally, or in Benghazi in particular.
- 3.6.11** Access to adequate and appropriate medical care and treatment has become increasingly limited, due to worsening shortages of medical and technical personnel, and medical supplies and equipment. By April, hospitals were struggling to cope with the numbers of war casualties, particularly in rebel held areas.³³ The conflict has had a ‘knock-on’ effect on other medical services, and the availability of treatment for long-term and chronic illness has lessened rapidly.³⁴ For further information, see Chapter 4.4 on Medical Treatment.
- 3.6.12 See also: Actors of Protection
Internal Relocation**
- 3.6.13 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. Case owners should also refer to the Gender Asylum Policy Instruction where appropriate.
- 3.6.14** There is a situation of internal armed conflict in large parts of Libya but it is not at such a level, 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. In Tripoli, which is currently subject to heavy air bombardment by NATO, it is military and government installations which are being targeted.³⁵ The civilian population is not being targeted, and normal life is continuing to a limited extent, despite severe shortages of essential supplies. Many towns in western Libya, particularly Misrata, Zawiya and the towns bordering Tunisia are being shelled and subject to attack by pro-Gaddafi forces. Current information suggests that in Benghazi, Tobruk and other towns in the east of the country,

²⁵ FCO Libya: [Global Issues Libya](#)

²⁶ BBC News - Libya Crisis: [Rebels inch towards Misrata](#)

²⁷ COI Service: Inspired Request – War Crimes by Government & Opposition Forces, 6 June 2011

²⁸ US Government Update: June 2011: [Humanitarian assistance to Libya](#)

²⁹ BBC News – Libya Crisis: [Libya Conflict](#) 23 June 2011

³⁰ BBC News – [Libya rebel killing raises loyalty questions](#) 29 July 2011

³¹ BBC News – [Libya Conflict: Younes death betrays rebel divisions](#) 30 July 2011

³² FCO Libya: 29 July 2011 [Foreign Office Minister condemns killing of Abdel Fatah Younes](#)

³³ UNHCR: Refworld – April 2011 [Benghazi hospitals](#)

³⁴ UNHCR: Refworld – May 2011 [Specialist Health Clinics](#)

³⁵ BBC News – Libya Crisis: [Could NATO mission unravel?](#)

conditions are becoming quieter and more stable. Benghazi, in particular, is functioning almost normally and there is no longer a conflict situation there.

- 3.6.15** To establish a claim under Article 15(c) of the Qualification Directive and paragraph 339C of the Immigration Rules, it will therefore be necessary for an applicant to establish that particular factors place him or her at additional risk above that which applies to the civilian population generally, such that he or she is 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.
- 3.6.16** Given the current fluidity of the situation in Libya, it is unclear what if any characteristics may place an individual in such an enhanced risk category. Each case must be considered on its individual merits. In doing so, case owners 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.
- 3.6.17** The available evidence suggests that; Benghazi is stable, and there is no longer a conflict situation there. Other eastern areas are also becoming increasingly peaceful as the situation progresses and the NTC gains ground. Each case should therefore be considered carefully on its particular facts in light of the latest country of origin information prevailing at the time the decision is made and according to the individual profile of the claimant.

3.7 Political/Islamic opposition groups

- 3.7.1** Some applicants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the state authorities due to their membership of, involvement or perceived involvement with a political or Islamic opposition group.
- 3.7.2 *Treatment.*** Libyan law continues to prohibit political opposition to Col. Gaddafi's regime. All group activities based on any political ideology not compatible with principles of the 1969 revolution are banned, and all political parties are effectively illegal.³⁶ Libya does not have a constitution, and citizens do not have the right to change their government by peaceful means. The Gaddafi regime states (in Col. Gaddafi's *Green Book*) that the political system is based on direct popular rule, and that citizens have a role in popular congresses. In reality, Col. Gaddafi and his close associates have controlled and monopolised all aspects of political decision making since Col. Gaddafi came to power in 1969.³⁷
- 3.7.3** Political opposition to the Gaddafi regime, in the form of numerous small political parties, and various collections of religious and/or political groups, human rights groups and others has existed for many years. The vast majority of these have been located outside Libya, due to the climate of repression of all political dissent during the last thirty years.³⁸ They include the National Front for the Salvation of Libya (NFSL), the Libyan National Army (LNA), the Libyan Islamic Fighting Group (LIFG), the Libyan League for Human Rights (LLHR), the Libyan Constitutional Union (LCU) and many other smaller groups. The LIFG is a proscribed organisation in the UK.
- 3.7.4** The National Conference for the Libyan Opposition (NCLO) was formed in 2005 as a loose collection of seven Libyan opposition groups. In addition to the NFSL, it includes the LCU, the LLHR, the Libyan Tmazight Congress (LTC) and others. The NCLO was a major force in organising the 'Day of Rage' in Libya. This was a key event in the ongoing rebel movement, and is mostly led by expatriate Libyans. The group is based in London. The NCLO does include representatives from Islamic groups, including the LIFG, the Militant

³⁶ US State Human Rights Report: section 1e [Libya Human Rights Report, 2010](#)

³⁷ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

³⁸ International Business Times, 28 March 2011: [Who are the real Libyan Opposition?](#)

Islamic Group (MIG) and the Muslim Brotherhood. These religiously inspired groups have historically been generally repressed by the Libyan government.³⁹

3.7.5 The Libyan opposition formed a transitional government within weeks of the start of the civil unrest in Libya. Their leader is Mahmoud Jebril; he is said to have formed an interim cabinet and is competing with the official regime for control of the country. The rebel government has since been officially recognised by some European States, notably President Sarkozy of France. In addition, the UK Foreign Secretary (William Hague) visited the Transitional National Council in Benghazi in June 2011 for discussions regarding the future of Libya.⁴⁰ On 1 June 2011, NATO extended its mission in Libya for a further 90 days, with the intention of increasing the scope and intensity of its campaign. The NATO Secretary-General has urged the international community to make preparations for a 'post-Gaddafi' Libya.⁴¹

3.7.6 Historically, all Libyan opposition activists have opposed the regime of Col. Gaddafi (the Great Socialist People's Libyan Arab Jamahiriya) established in 1969. The rebels currently fighting Col. Gaddafi's regime are the successors of the earlier dissidents and political activists in the present situation of armed conflict and international involvement. The rebels are a broad-based group representing various political and religious views. They have had discussions with a number of world leaders, and it is expected by some members of the international community that they will at some point take over the government of Libya. It is not possible to speculate on when or whether this will actually happen. Libya's rebel leaders, the NTC announced on 31 May that they have renamed their armed forces the National Liberation Army (NLA). They hope the temporary name will help better define 'the increasingly professional and disciplined military efforts to overcome the Gaddafi regime.'⁴²

3.7.7 See also: **Actors of Protection**
Internal Relocation

3.7.8 Conclusion. Case owners must assess the credibility of the applicant and the evidence they submit in accordance with the relevant Asylum Instructions (see para 3.2 – 3.5 above). The National Liberation Council is gradually gaining control over large areas of Libya, and has been recognised by a large proportion of the international community. The available objective evidence suggests that the Gaddafi regime is steadily losing power and control, despite Col. Gaddaafi's struggle for political survival. It is unlikely therefore, that political opposition activists would have a well founded fear of ill-treatment/persecution under the Convention, if returned to areas of Libya not under government control. Case owners should consider claims in this category in the light of the current situation, and the latest available country information from COI Service.

3.7.9 Case owners should note that members of several of the political and Islamic opposition groups have been responsible for numerous organized attacks and terrorist campaigns against the previous Libyan authorities, and also of serious human rights abuses, some of which amount to war crimes or crimes against humanity. In addition, the LIFG is proscribed under UK law. If it is accepted that an applicant was an active operational member or combatant for one of these groups then case owners should consider whether one of the Exclusion clauses is applicable. Case owners should refer all such cases within this category of claim to a Senior Caseworker in the first instance.

3.8 Applicants who fear being forced into military service on return

3.8.1 Many applicants may make an asylum and/or human rights claim based on a fear of being forced to fight on behalf of Col. Gaddafi, if they are returned to Libya.

³⁹ International Business Times, 28 March 2011: [Who are the real Libyan Opposition?](#)

⁴⁰ BBC News – Libyan Crisis: [William Hague inspired by Libyan rebels](#)

⁴¹ BBC News – Libyan Crisis: [NATO urges plans for post-Gaddafi Libya](#)

⁴² COI Service Country Bulletin Brief June 9 2011

- 3.8.2 *Treatment.*** Most of these claims are likely to be from Libyan nationals already in the UK on student or visit visas. The majority of these came to the UK as bona fide overseas students, undertaking college or university studies, from English as a foreign language to a variety of post-graduate studies. These students were almost universally funded and sponsored by the Gaddafi regime; they were primarily employed by the regime's national army, its police force or other security forces. A smaller number were employed by other agencies in Libya, but were generally being funded and sponsored by the Gaddafi regime.
- 3.8.3** Applicants in this category are likely to claim that they cannot return to Libya, because they will be forced to take up arms against fellow Libyans. If they were to return to their former employment, i.e. in the military or other security services, they would be required to carry out the orders of their superior officers, which would include fighting against the rebels and the National Liberation Army of the National Transitional Council. Some applicants in this category are also likely to claim that they will be forcibly conscripted into the pro-Gaddafi Libyan army if returned to Libya, even where they were not previously a member of the security forces.
- 3.8.4** Applicants in this category may further claim that in addition to being sent to the UK for study purposes, they were required to spy on members of the Libyan Diaspora in the UK. It is likely that the Gaddafi regime did require its employees to spy on fellow Libyans, and that some of these decided they could not undertake this work, having seen the development of the conflict in Libya, and the extent of Col. Gaddafi's attacks on the rebel groups.
- 3.8.5** Since February 2011, there have been a number of demonstrations outside the Libyan Embassy in London by Libyan nationals protesting against the treatment of the rebels.⁴³ Applicants may claim that having been seen and photographed⁴⁴ taking part in demonstrations against Col. Gaddafi, they are at risk of ill treatment at the hands of the Libyan government, particularly since Libyan law prohibits opposition to the Gaddafi regime.⁴⁵ Further demonstrations have since taken place, some organised by the British Libyan Solidarity Campaign, in London and Manchester.⁴⁶ Demonstrations have taken place outside the Libyan Embassy in London. Following the expulsion of the Libyan Ambassador by the UK Foreign Minister, a reduced staff remained in situ looking after the needs of Libyan nationals within the UK.⁴⁷ Following the recognition by the UK Government of the NTC as the sole governmental authority in Libya, the Libyan Charge D'Affaires at the Libyan Embassy was summoned to the Foreign Office on 27 July 2011 and formally expelled with immediate effect. This included all remaining diplomats representing the Gaddafi regime. The UK Government is inviting the NTC to appoint a new Libyan diplomatic envoy to take over the Libyan Embassy in London.⁴⁸
- 3.8.6** There have been various reports of forced conscription within Libya since the outbreak of the conflict. Prior to the uprising, the Gaddafi regime did employ forced conscription in order to provide sufficient numbers for the Libyan Army. National Service was compulsory for medically fit men between the ages of 18 and 35.5, usually for a period of two years.⁴⁹ Since the outbreak of the current conflict, there have been reports that the Gaddafi regime has forcibly recruited boys as young as 15, as Col. Gaddafi attempted to regain Misurata. The available evidence indicates that child soldiers are told they will be shot if they retreat or desert from the Libyan Army.⁵⁰ In addition, the BBC reported in May 2011, that Libyan civil servants up to the age of 40 were being forcibly conscripted, even though many of them had previously succeeded in avoiding national service prior to the conflict.⁵¹ The UN Mission investigating war crimes and crimes against humanity in Libya has found that further investigation is warranted regarding reports of the use and recruitment of child

⁴³ BBC News- Libya Crisis: [Libyans protest in London](#)

⁴⁴ BBC News – Libya Crisis: [Libya unrest: London embassy protesters 'sense change'](#)

⁴⁵ BBC News – Libya Crisis: [Rooftop demo at Libyan Embassy](#)

⁴⁶ [Libyans demonstrate in Manchester](#)

⁴⁷ The Independent: [Libyan ambassador leaves London](#)

⁴⁸ FCO Libya: [Libyan Charge D'Affaires to be expelled from UK](#)

⁴⁹ COI Service Request: 'Libya – Forced Conscription' 19 April 2011

⁵⁰ The Daily Telegraph: [Libya Crisis Gaddafi using schoolboy conscripts](#)

⁵¹ BBC News – Libya Crisis: [Tripoli witness: Tribalism and threat of conscription](#)

soldiers, amongst various other human rights abuses. To date, objective evidence is limited, but available evidence indicates that forcible conscription of adults and the use of child soldiers are taking place to some extent.

3.8.7 **See also: Actors of Protection Internal Relocation**

3.8.8 *Conclusion.* It is acknowledged that many Libyan applicants are present in the UK for educational purposes at the behest of the Gaddafi regime, and that they were being funded and supported by that regime. However, it is unlikely that many will be able to demonstrate a need for international protection in the light of developments there. Available evidence indicates that the Gaddaafi regime is steadily losing power. The National Transitional Council controls most of eastern Libya. The National Liberation Army is progressing steadily westwards towards Tripoli, under the protection of NATO, and it is possible that the NTC will form a national governing authority in the near future. Libyan nationals who claim to have spied for Libyan government representatives in the UK are unlikely to be at potential risk of harm, given the expulsion of the most senior diplomatic staff.

3.8.9 Some applicants may be able to demonstrate a well founded fear of Col. Gaddafi's regime; in some these cases, a grant of asylum may be appropriate. However, given the extreme fluidity of the situation in Libya, it may be that at the time of consideration the Gaddafi regime has fallen. The NTC has been recognised as the sole governing authority by much of the international community including the UK. Therefore, each case should be carefully considered on its individual facts in light of the latest available country of origin information, and according to the individual profile of the applicant.

3.8.10 Case owners should note that members of Col. 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, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should seek advice from a Senior Caseworker if they consider that an applicant in this category may have been responsible for crimes against humanity.

3.9 **Loyalists and Members of Col. Gaddafi's clan, who fear the rebels**

3.9.1 A number of applicants may make asylum and/or human rights claims based on a fear of mistreatment at the hands of the National Liberation Army/rebel army, or of members of the National Transitional Council.

3.9.2 *Treatment.* The National Liberation Army is composed of various elements, including civilians, long-term opposition activists and many ex-members of Col. Gaddafi's security forces. In some cases, entire military units have defected to the opposition, and are helping to bring greater professionalism to the rebels. In most cases, ex-Gaddafi supporters have been able to integrate with the National Liberation Army and the NTC, and are actively assisting efforts to advance into Tripoli. A General who had served in the Libyan army for thirty two years, and is now a member of the NTC's Military Council, stated that "no one in the military, from Masa'ad to Brega, wants Gaddafi".⁵²

3.9.3 There are a number of reports stating that in some areas, opposition authorities are detaining dozens of civilians suspected of supporting Col. Gaddafi and his regime. In a small number of cases, evidence has emerged of opposition authorities and volunteer security forces using excessive force, and employing severe ill-treatment during interrogation and detention. A number of unexplained deaths in custody have already taken place.⁵³

⁵² TheAtlantic.com [Libya's rebels fear infiltration by Qaddafi Loyalists](#)

⁵³ COI Service: Information Request 06/11-017 War Crimes by Government and Opposition Forces

- 3.9.4** The UN Chief Ban Ki-Moon announced in March 2011 that he would send a special envoy to Libya to investigate reports of violence; he confirmed that civilians were bearing the brunt of the violence, and that all abuses would be fully investigated. The Investigating Panel has found so far that human rights abuses in Libya have been committed by both Government forces and the opposition during the weeks of fighting following the uprising against the regime of Colonel Muammar al-Gaddafi. However, evidence indicates that the majority of abuses have been committed by Government forces.⁵⁴
- 3.9.5** Human Rights Watch (HRW), investigating in Libya during April and May 2011, found that significant numbers of suspected Gaddafi supporters have been arbitrarily detained by opposition authorities. Many of these were civilians. They also found that at least ten former Gaddafi security officials and Revolutionary Committee members have been killed in eastern Libya. A small number of deaths have been linked with the use of ill-treatment and/or torture.
- 3.9.6** HRW visited and interviewed detainees and the opposition officials holding them, in Benghazi, Misrata and Zintan. They were allowed unrestricted access including private meetings with detainees, many of whom were civilians. They found that detainees were uniformly denied access to lawyers, but that the majority made no complaints of mistreatment during detention.⁵⁵ Senior members of the NTC have stated that they are aware of the incidences of abuse, and are committed to resolving the problem and preventing further abuses. They acknowledged that there are many unregulated volunteer security groups, and that their intention is to bring all the various groups together under a new 'Ministry of the Interior' when proper procedures have been established. On 25 March, the NTC formally pledged to uphold international humanitarian law, particularly in relation to detainees.⁵⁶ Increasingly, there are indications that in areas controlled by the NTC, the security situation is improving and humanitarian conditions stabilising.
- 3.9.7** Col. Gaddafi is known to have empowered certain tribes, including his own Qadhadhfa tribe and the Warfalla and Maqarha tribes by incorporating them into his power structure, giving them prominent roles and key jobs etc. These favoured tribes are located in and around Tripoli and western parts of Libya, with the Warfalla numbering approximately 1 million in an estimated total population of 6 million. The tribal system is ingrained in Libyan society, and acquired even greater prominence due to the Gaddafi regime banning all civil societies, from political parties to parent-teacher associations and non-profit organisations.⁵⁷ Some Libyan commentators have reported that of the tribes historically supportive of Gaddafi, they include various factions, some of whom have declared their allegiance to the regime. Others have openly stated their allegiance to the rebel cause, while many tribal sub-groups have refrained from admitting any allegiance to either side.⁵⁸ Further to this, a Libyan commentator at the London School of Economics said that while many members of the Warfalla and other western Libyan tribes may be avoiding joining the opposition through fear of the regime, others "will be gravely implicated in the excesses of the regime".⁵⁹
- 3.9.8** On 29 July 2011 the BBC reported that the head of the Libyan rebel armed forces, General Abdel Fatah Younes, a member of the Obeidi tribe, had been shot and killed by unknown assailants. An arrest was reportedly carried out, but no names or motives have been made public.⁶⁰ However, there are reports that General Younes was killed by an Islamist militia linked to the NTC; Ali Tarhouni (a rebel minister) announced on 30 July that this was the case.⁶¹ General Younes had defected to the rebel side following forty years of close friendship with Col. Gaddafi, and was the highest profile defector to the rebel council in Benghazi. There were rumours that he retained some ties to the Gaddafi regime, and even

⁵⁴ COI Service: Information Request 06/11-017 War Crimes by Government and Opposition Forces

⁵⁵ Human Rights Watch: [Libya: Opposition arbitrarily detaining suspected Gaddafi loyalists](#)

⁵⁶ Human Rights Watch: [Libya: Opposition arbitrarily detaining suspected Gaddafi loyalists](#)

⁵⁷ Msnbc.com News: [Gaddafi, rebels vie for loyalty of Libyan tribes](#)

⁵⁸ COI Service: Libya – Situation in Benghazi 19 May 2011

⁵⁹ Msnbc.com News: [Gaddafi, rebels vie for loyalty of Libyan tribes](#)

⁶⁰ BBC News - [Libya rebel killing raises loyalty questions](#) 29 July 2011

⁶¹ BBC News: [Islamist militia 'shot Libya rebel Abdel Fattah Younes'](#)

unverified reports that he was effectively operating as a double agent. His death has caused anger within his own tribe, and may indicate a resurgence of tribal divisions.⁶² It remains to be seen what, if any, impact the killing of General Younes may have on conditions in Libya generally, or in Benghazi in particular.

3.9.9 See also: Actors of Protection Internal Relocation

3.9.10 Conclusion. Given the generalised attitude of resentment towards Col. Gaddafi's closest associates and supporters, and the force with which the Gaddafi regime have sought to subdue the opposition, it is likely that some applicants in this category will be able to show a need for international protection. However, applicants who simply cite previous membership of the Libyan Army or Police Force, or membership of one of the clans promoted by Col. Gaddafi, are unlikely to encounter particular ill-treatment on return, since the NTC and the National Liberation Army have large numbers of these individuals already integrated within their ranks.

3.9.11 Consideration should be given to the particular circumstances of the individual, including the nature and degree of the relationship to Col. Gaddafi, previous activities within the security/military services, and whether there is any close familial relationship. This consideration should extend to activities in the years prior to the outbreak of the conflict in February 2011. Where it is accepted that an individual applicant was closely involved with Col. Gaddafi and/or the regime, and his particular circumstances indicate a likely risk of attracting the adverse interest of the NTC authorities, a grant of asylum may be appropriate in some cases, subject to any exclusion considerations under Article 1F of the Refugee Convention. Internal relocation to escape local difficulties may be possible in individual cases.

3.9.12 Case owners should note that members of Col. 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, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should seek advice from a Senior Caseworker if they consider that an applicant in this category may have been responsible for crimes against humanity.

3.10 Women: Rape as a weapon of war, domestic ill-treatment and/or 'social rehabilitation' of women

3.10.1 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, based on aspects of the category of claim below (**3.10.2**).

3.10.2 Some female applicants may make an asylum and/or human rights claim based on a fear of persecution and at worst, fear of being killed at the hands of their family, as the result of having had an extra-marital affair, having been raped or suspected of transgressing moral codes/family values generally. Claims may also involve, or be made on the basis of, a fear of punitive detention (commonly referred to as social rehabilitation) by the state authorities.

3.10.3 Treatment. There have been a number of allegations that pro-Gaddafi soldiers have been ordered to rape women as a weapon of war against the rebels.⁶³ It is not yet clear whether there is sufficient objective evidence to support the allegations, but the claim is being taken seriously by the International Criminal Court (ICC). The Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, has said there is evidence that Col. Gaddafi ordered

⁶² BBC News: [Libya conflict: younes death betrays rebel divisions](#)

⁶³ BBC News: Libya Crisis [Soldiers forced to rape women](#)

the rape of hundreds of Libyan women as a weapon of war against rebel-held areas.⁶⁴ The ICC issued arrest warrants for Col. Gaddafi and two of his close associates on May 16 2011. Objective evidence to support claims that such rapes did take place is slowly accumulating; this includes evidence of the acquisition of large quantities of 'Viagra' by the Gaddafi regime, and distribution of this to the security forces.⁶⁵

- 3.10.4** A spokesperson for the UNHCR (Arafat Jamal) stated that in Libya, the issue of rape is so culturally sensitive that "In Libya when rape occurs, it seems to be a whole village or town which is seen to be dishonoured".⁶⁶ An 'honour' killing may therefore be seen to restore the honour of the village. Some Libyan charities have stated they received reports of women and girls being raped in front of their male relatives, particularly in the western parts of the country. World for Libya (a local NGO) is a group of volunteers and charity workers offering to pay for women who have become pregnant as a result of rape to receive abortions, and to receive HIV testing, while their pregnancy may still be disguised. The NGO stated that many fathers would kill their daughters if they discovered them to have been raped. Hana Elgadi, a spokesperson for World for Libya, stated that the fathers of raped women will kill them in the belief that they are saving their daughter's honour; i.e. "It is killing done with love".⁶⁷ To date, no evidence has been found to suggest that men have been victims of rape as a weapon of war. However, 'Save the Children' and other NGOs have reported the rape of female children in Libya since the outbreak of the conflict.⁶⁸
- 3.10.5** The particular cultural norms of Libyan society mean that rape that occurs outside the home is rarely reported to the authorities, and is not discussed in society. Problems are dealt with within the family, as the majority of families wish to conceal any violation of "honour". Due to the shame associated with sexual violence/abuse, there is no national or state provision of support for victims. Women are frequently expected to marry their attacker, since a refusal is likely to result in her being socially ostracised, or at risk of 'honour killing'.⁶⁹
- 3.10.6** Domestic violence is prohibited in law, but very little information is available regarding its prevalence or provision of penalties under the law.⁷⁰ There is widespread societal denial of violence against women, and relevant laws and services are reported to be inadequate, leaving women without an effective remedy and deterring women from reporting rapes.⁷¹ The law criminalises rape; a convicted rapist must marry the victim (with her agreement) or serve a prison term of up to twenty five years. Women who allege rape face very high evidentiary standards, and can face adultery charges if these are not met. The criminalisation of extra-marital sexual relations further undermines the ability of rape victims to seek justice. According to Article 375 of the penal code, if a man kills his wife, mother, daughter or sister whom he suspects of having an extra-marital affair, he will benefit from a reduction in penalty if found guilty.⁷²
- 3.10.7** Sexual violence is considered to be a crime against a woman's 'honour'. Women who report being the victim of a sexual crime are frequently made to leave their home, and placed in a 'social welfare home', i.e. a social rehabilitation centre. Punishments for dishonouring the family may be punished in arbitrary and oppressive ways, for example: indefinite detention without being convicted, or without the right to challenge the detention before the courts.⁷³ Such detention is generally in 'social rehabilitation' facilities; sometimes women and girls are placed in these facilities because they have been the victims of rape, and ostracised by their families. Most women are transferred to these facilities against their will; those who go of their own accord do so because there is no other type of government shelter for survivors of sexual violence.⁷⁴

⁶⁴ BBC News - Libya Crisis: [Rape used as a weapon of war](#)

⁶⁵ Reuters Newsdesk: [Evidence of rape and use of 'Viagra'](#)

⁶⁶ WHO News: [In Libya rape victims...](#)

⁶⁷ BBC News: Libya Crisis [Libya rape victims face honour killings](#)

⁶⁸ Reuters Newsdesk: [savethechildren.org.uk/en/15432.htm](#)

⁶⁹ UNHCR Refworld: [Women's rights in Libya](#)

⁷⁰ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁷¹ Human Rights Watch: [Libya 2006: A Threat to Society?](#)

⁷² Human Rights Watch: [Libya 2006: A Threat to Society?](#)

⁷³ Human Rights Watch: [Libya 2006: A Threat to Society?](#)

⁷⁴ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

- 3.10.8** Women detained in social rehabilitation facilities are reported to suffer routine human rights violations, including violations of due process, freedom of movement, personal dignity, and privacy. Medical services providers are said to regularly conduct ‘virginity testing’ via invasive examinations, despite the lack of medical accuracy or objectivity associated with such examinations.⁷⁵
- 3.10.9** Despite the 1969 Constitutional Proclamation granting women equality under the law, there is widespread discrimination towards women in Libya. This is reinforced by cultural and religious values, and the primacy of Sharia law in matters affecting women and the family.⁷⁶ The fear of social stigma attached to any kind of perceived sexual transgression (and equally to the victims of sexual assault) inhibits many women from reporting such crimes, particularly as the state authorities appear unwilling to provide protection to women.⁷⁷
- 3.10.10** The Freedom Reinforcement Law stipulates that “each citizen, during the time of peace, may move freely, choose the place where he or she wishes to live, and may return to the country and leave whenever he or she chooses”. The law on travel documents guarantees these rights, and the government generally does not restrict the freedom of movement within the country.⁷⁸ In practice, many women do not enjoy such freedom,⁷⁹ and in the current situation, it is even less likely that women in general may exercise this freedom.
- 3.10.11** According to a Freedom House report, most women will not travel unless accompanied by a husband or male relative. Those who do choose to travel alone or with other women are generally members of the elite, and are still expected to secure the permission of their families in order to travel. 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 (see footnote).⁸¹
- 3.10.12** Since anti-government protests began in February 2011, the situation in Libya has become increasingly volatile and violent. Security conditions for civilians, particularly women and children are unpredictable and dangerous in many parts of the country. There is a dearth of objective information relating to the routes and modes of travel. It is difficult to quantify the level of security provided by the NTC and whether there is a functioning government authority, or to identify particular areas which may be safe for women. Consequently, it is not possible to state whether or not a viable internal relocation option exists at present.
- 3.10.13 Conclusion.** Where this category of applicants’ fear is of ill-treatment or persecution by the state authorities, e.g. a fear of ‘social rehabilitation’, they cannot apply to these authorities for protection.
- 3.10.14** If the applicant’s fear is of ill-treatment or persecution by non-state agents, e.g. family members, the Libyan authorities are not able to provide adequate protection, since the system of ‘social rehabilitation’ for such women amounts to punitive imprisonment, rather than protection or refuge. The inability to provide adequate protection in such circumstances is further compounded by the volatile country situation.
- 3.10.15** Given the generalised discrimination towards women in Libya, and the unwillingness of the State to provide protection against harm, it is likely that some women and especially particular sub-categories of women (e.g. women who are suspected of conducting extra-marital relationships) will be able to demonstrate a need for international protection. All

⁷⁵ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁷⁶ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁷⁷ Human Rights Watch: [Libya 2006: A Threat to Society?](#)

⁷⁸ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁷⁹ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁸⁰ Freedom House: freedomhouse.org/template.cfm?page=177 accessed July 2011

⁸¹ Social Institutions & Gender Index: genderindex.org/country/libya accessed July 2011

relevant factors should be taken into account, including the age, health, educational and economic status, and the individual circumstances of the applicant. Applicants from a rural background, and lacking formal education or financial independence are at greater risk of harm, however, female applicants who can show that they are accused of sexual 'misdemeanours' or offences against family honour may be able to show that they fall into the category of a Particular Social Group (PSG).

3.10.16 Given the circumstances and cultural factors set out above, female applicants who can show that they have been raped by soldiers loyal to Col. Gaddafi or other combatants may be able to show that they are members of a PSG. Objective 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.

3.10.17 Case owners should give consideration to whether internal flight may be an option for the individual applicant. There are strong cultural and religious taboos which make independent or lone travel difficult for a large proportion of women. Nevertheless, it may be possible in some cases for a woman to avail herself of an internal flight option, particularly where she is educated, financially secure and likely to be accompanied by other women.

3.11 Prison conditions

3.11.1 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.

3.11.2 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

3.11.3 *Treatment/Consideration of prison conditions.* There are effectively two prison systems operating in Libya: one administered by the Ministry of Justice (MOJ) and the other administered by security forces. In addition, a network of immigration detention centres provide for the detention of large numbers of foreign nationals considered to be in the country illegally. The US State Department Human Rights report (USSDHR) for 2010 described prison and detention centre conditions throughout the country as being generally poor. The Libyan Government did not allow independent monitoring of prison conditions by independent NGOs, the media or international human rights groups. Throughout the prison systems, prison directors were unable to provide population estimates of their own prisons, and centralised records were not kept.⁸²

3.11.4 Diplomats and foreign observers were denied access to prisons run by the security services.⁸³ According to the Human Rights Society of Libya, approximately 500 prisoners were being held in two particular prisons run by security services in 2010. Within these, the Internal Security Agency (ISA) subjected prisoners to cruel, inhuman and degrading conditions and denied them adequate medical care. The ISA also operate other, unrecognised detention centres which are beyond the reach of any judicial authority.⁸⁴ Prisoners had no access to visitors, and there was no credible system for submitting complaints, or for these to be investigated.⁸⁵

⁸² US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁸³ Kings College London: International Centre for Prison Studies: [Report on Libyan Prisons 2009](#)

⁸⁴ Amnesty International: Libya, 2010, page 10 [Libya of Tomorrow: What Hope for Human Rights?](#)

⁸⁵ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

- 3.11.5** Although prohibited in law, security personnel were reported to have routinely tortured and abused detainees and prisoners during interrogations or as punishment. The methods of torture reported were: electric shocks applied to the body; applying corkscrews to the back; burning with cigarettes; pouring lemon juice in open wounds; breaking fingers and then withholding medical treatment, amongst others.⁸⁶ An NGO founded and chaired by Col. Gaddafi's son, Saif-al-Islam al-Gaddafi reported "a large number of complaints" of torture during imprisonment, and called for the government to waive immunity from prosecution for officials accused of torture. In July 2010, Saif-al-Islam publicly conceded that acts of torture and excessive violence did take place in Libyan prisons.⁸⁷
- 3.11.6** The Penal Code and other laws stipulate severe punishments for activities that amount to the peaceful exercise of the rights to freedom of expression and association. These 'offences' primarily relate to criticism of Col. Gaddafi, and political opposition to him or the Government.⁸⁸ Fathi el-Jahmi, a prominent political activist imprisoned and severely ill-treated for lengthy periods of time since 2002, was eventually transferred from Tripoli to the Arab Medical Centre in Amman, Jordan in May 2009. He died there within days, reportedly due to years of ill-treatment while in detention in Libya.⁸⁹
- 3.11.7** Libya retains the death penalty for a wide range of crimes, including political offences. There were estimated to be over 200 prisoners on death row in May 2010 by some estimates; of these, it is reported that foreign nationals are disproportionately represented. On 30 May 2010, 18 people were executed, and of these, 14 were foreign nationals.⁹⁰ There are no official statistics available on the number of individuals sentenced to death, or actually executed. Amnesty International visited Libya in 2009 and was informed by Brig. Belkacem Abdesalam Gargoum that 506 prisoners were on death row. He also confirmed that approximately half of these were foreign nationals.⁹¹
- 3.11.8** Some international NGOs were allowed periodic, limited access to some prison facilities run by the MOJ, and also to a number of detention centres for migrants during 2009 and 2010. Conditions in MOJ prisons were slightly better, in that prisoners and detainees had reasonable access to visitors, and were able to observe their religious practices. The authorities permitted prisoners to submit complaints, and these were generally investigated, although violations of these and other rights were also noted. Pre-trial detainees were held in the same facilities as convicts. Men and women were held in separate facilities.⁹²
- 3.11.9** Access to detention centres was restricted following an increase of migrants apprehended at sea from May 2010 onwards, and subsequent severe overcrowding in the detention centres. Illegally entering, remaining in or leaving the country is a criminal offence. All foreign migrants risk arbitrary arrest and prolonged detention without trial; those who are tried and sentenced are frequently re-arrested after serving their sentence. The authorities followed a policy of regular mass deportations to address over-crowding.⁹³ Various reports of ill-treatment of detainees were cited, including sexual abuse of female detainees, beatings, inadequate access to sanitation and adequate medical care, and being held incommunicado for long periods of time.⁹⁴
- 3.11.10** Women and girls suspected of violating moral codes, e.g. walking with a man unrelated to them, may be detained indefinitely without being convicted, or after having served a sentence, without any legal right to challenge their detention. They are held in 'social rehabilitation' facilities, which are effectively prisons. Women are frequently detained in these centres because they have been raped, and then ostracised by their families.

⁸⁶ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁸⁷ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁸⁸ Amnesty International: Libya, 2010, page 33 [Libya of Tomorrow: What Hope for Human Rights?](#)

⁸⁹ Amnesty International: Libya, 2010, page 36 [Libya of Tomorrow: What Hope for Human Rights?](#)

⁹⁰ 'Hands Off Cain' [Libya 2010](#)

⁹¹ Amnesty International: Libya, 2010, page 56 [Libya of Tomorrow: What Hope for Human Rights?](#)

⁹² US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁹³ Amnesty International: Libya, 2010, page 12, 99 [Libya of Tomorrow: What Hope for Human Rights?](#)

⁹⁴ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

Women are not permitted to leave these centres unless a male relative is willing to take custody of her, or if she gets married. In many cases, it is reported that the courts coerce women into marrying their attackers.⁹⁵

3.11.11 Conclusion. Prison conditions in Libya are generally poor; overcrowding, lengthy pre-trial incarceration and a lack of independent monitoring (especially within prisons operated by the security services) are particular problems. Where applicants can demonstrate a real risk of imprisonment on return to Libya, a grant of Humanitarian Protection may be appropriate in some cases. 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 and state of health.

3.11.12 Prison conditions for political prisoners are severe. There is objective evidence of security personnel acting with impunity with regard to inhuman and degrading ill-treatment. Evidence indicates that the worst treatment is generally (but not exclusively) extended to those held in security services facilities, and that these prisoners are more likely to be political dissidents and human rights activists.⁹⁶ In many cases the mistreatment will be sufficient to make removal a breach of Article 3.⁹⁷ Where case-owners consider that this may be the case they should contact a Senior Caseworker for further guidance. Where individual applicants are able to demonstrate a real risk of imprisonment on return to Libya and exclusion is not justified, a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum, protection under Article 2 and/or 3 of the ECHR and Article 15(c) of the Qualification Directive (Humanitarian Protection) falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

4.2 With particular reference to Libya the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.

4.3 Minors claiming in their own right

4.3.1 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; or (b) there are adequate reception and care arrangements. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

4.4 Medical treatment

4.4.1 Applicants may claim they cannot return to Libya due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

⁹⁵ Human Rights Watch: [Libya 2006: A Threat to Society?](#)

⁹⁶ US State Human Rights Report: [Libya Human Rights Report, 2010](#)

⁹⁷ Amnesty International: Libya, 2010, page 41 [Libya of Tomorrow: What Hope for Human Rights?](#)

- 4.4.2** The availability of medical treatment and facilities improved in Libya in recent years.⁹⁸ In 2009, the World Health Organisation (WHO) stated that 100% of the population had access to primary healthcare, and statistics relating to the number of children immunised against childhood diseases, child nutrition, child mortality etc compared well with other North African countries.⁹⁹
- 4.4.3** Medical facilities and treatments in Libya have been severely constrained by the ongoing conflict. Since February 2011, UNHCR, WHO and other agencies have been responding to a worsening humanitarian situation, particularly in the cities of Benghazi and Misrata. This has primarily been due to heavy fighting, and many hospitals being shelled.¹⁰⁰ WHO and other agencies have reported a lack of medicines, medical equipment, technical and medical staff and food in hospitals in several areas of Libya, including eastern parts of the country, and the areas of the Nefousa Mountains in western Libya.¹⁰¹
- 4.4.4** Access to adequate and appropriate medical care and treatment is increasingly limited, due to worsening shortages of medical and technical personnel, and medical supplies and equipment. By April, hospitals were struggling to cope with the numbers of war casualties, particularly in rebel held areas.¹⁰² The conflict has had a knock-on effect on other medical services, and the availability of treatment for long-term and chronic illness has lessened rapidly.¹⁰³
- 4.4.5** As pressure has increased on Col. Gaddafi and his regime to leave Libya, the Transitional National Council based in Benghazi has received international support and encouragement. In early June 2011, the UK Foreign Secretary William Hague visited the rebels' interim government and praised them for their commitment to democracy.¹⁰⁴ On 9 June 2011, both Western and Arab countries pledged money in a new funding mechanism for the rebel government. This is to assist with payment of salaries, and restoration of infrastructure, food and medical supplies.¹⁰⁵ It is anticipated that with the resolution of the crisis, the availability of medical treatment will improve to pre-crisis standards.
- 4.4.6** Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment, making 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.

5. Returns

- 5.1** Due to the present crisis, enforced returns to Libya are suspended until further notice. The UNHCR advised on 25 February 2011 that Member States should not enforce the return of Libyan nationals.¹⁰⁶ A no-fly zone over Libyan air space was approved on 17 March 2011 by the United Nations.¹⁰⁷ It is not therefore possible at present to confirm particular routes of return, points of entry, and onward routes of travel. Previous enforced returns were via air to Tripoli; future enforced returns may involve/include another destination. Routes and entry points will be readily identifiable once the current practical obstacles to return resolve and returnees will have an opportunity to raise any concerns about the route of return at a later stage.

⁹⁸ World Health Organisation: [Country Cooperation Strategy: Libya](#)

⁹⁹ World Health Organisation: [WHO | Libyan Arab Jamahiriya](#)

¹⁰⁰ Fides Service: [Medical Facilities in Libya](#)

¹⁰¹ World Health Organisation: [Situation Report - Libya 12 May 2011](#)

¹⁰² UNHCR: Refworld – April 2011 [Benghazi hospitals](#)

¹⁰³ UNHCR: Refworld – May 2011 [Specialist Health Clinics](#)

¹⁰⁴ BBC News: Libya Crisis: [William Hague 'inspired' by Libyan rebels](#)

¹⁰⁵ BBC News: Libya Crisis: [Allies step up funding to rebels](#)

¹⁰⁶ UNHCR: [Libya: Protection considerations](#)

¹⁰⁷ The Independent: [UN approves no-fly zone](#)

- 5.2** 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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.
- 5.3** Libyan nationals without any legal basis of stay in the UK may return voluntarily to Libya. There are international airports at Tripoli and Benghazi.¹⁰⁸ Although scheduled flights to these airports are suspended at present, it is anticipated that these will resume following resolution of the current crisis. There are sea ports in Libya, notably Tripoli, Benghazi and Tobruk. Caseowners should consider the onward route of return in all individual cases, and give full consideration to potential or likely risks that may pertain.
- 5.4** 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 Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.5** From 1 April 2011 Refugee Action replaced IOM as the service provider for the delivery of AVR programmes. They 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 touch with the Refugee Action offices at:

150 Waterloo Road, London SE1 8SB; telephone number: 020 7654 7700. The AVR Programmes remain the same. Details can be found on Refugee Action's web site at: www.refugeeaction.org/ourwork/assistedvoluntaryreturn.aspx

**Country Specific Litigation Team
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5 August 2011

¹⁰⁸ Airports in Libya: [International & Internal Airports in Libya](#)