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OPERATIONAL GUIDANCE NOTE

LIBYA

CONTENTS

1. Introduction

1.1 This document summarises the general, political and human rights situation in Libya and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with any COI Service Libya Country of Origin information at:

http://www.homeoffice.gov.uk/rds/country_reports.html

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Membership of a Particular Social Group
API on Gender Issues in the Asylum Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights
API on Article 8 ECHR

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims. 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 API on Article 8 ECHR.

Source documents

1.4 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

2.1 Muammar Al Qadhafi came to power in a coup on 1 September 1969 which toppled the monarchy of King Idris. The ideological basis of Qadhafi's regime is Qadhafi's own political philosophy, the Third Universal Theory, set out in his Green Book. Drawing heavily on Islam, socialism and Bedouin tradition, the Third Universal Theory calls for a system of direct rule by the people through a series of committees. It is intended as an alternative to capitalism and communism, and is applicable to all countries. In March 1979 Qadhafi renounced virtually all his positions in government and thereafter became known only by the title "Leader of the Revolution and Supreme Commander of the Armed Forces." There have been at least six coup plots during Qadhafi's period in power.[1]

2.2 The General People's Congress (GPC) is constitutionally responsible for formulating policy and passing laws in accordance with the decisions of the many local and regional People's Congresses. The GPC Congress meets annually and comprises delegates from the Basic People's Congresses and Sha'abiyat (regional level) Popular Committees. Representatives from the trade unions and professional organisations also attend.[2]

2.3 The GPC provides a forum for debate and criticism and has on occasion obstructed policies proposed, but it can follow strong direction from the leadership. At its meeting in February/March 2000 the Congress devolved significant responsibility for local services (notably health, education and transport) to the 26 administrative regions, or Sha'abiyat powers. Central government is made up of Secretariats that cover the core national issues: Foreign affairs, Finance, Justice, Public Security, Economy and Trade, Workforce and Training, Planning and Tourism, Energy, etc. Members hold the equivalent of Ministerial rank and act as a link between the Popular Committees and the Executive. The Congress Secretary for Foreign Affairs acts to some extent as an alternate Foreign Minister.[3]

2.4 Colonel Qadhafi, as Supreme Commander of the Armed Forces, exercises control over the defence establishment and security services. All male Libyans should complete two year's conscription in the armed forces. The EU arms embargo on Libya was lifted on 11 October 2004.[4]

2.5 There are numerous small groups opposed to the regime, the vast majority of which are based outside Libya. The National Front for the Salvation of Libya (NFSL), the Libyan National Army (LNA) and the Libyan Islamic Fighting Group (LIFG) are perhaps the best known groups in the external opposition The LIFG is proscribed in the UK.[5]

2.6 In March 2004 a cabinet reshuffle took place and the Secretariat of the General People's Committee for Justice and Public Security was divided into two separate entities, one for Justice and the other for Public Security. In April 2004 Qadhafi called for a number of legal and institutional reforms. These included the abolition of the People's Court, a special court known to try political cases, and the transfer of its jurisdiction to ordinary criminal courts; a more stringent application of Libyan law; and a reduction in the scope

[1] FCO Country Profile 15 June 2006 & BBC Country profile & timeline July & Sept 2006
[2] FCO 2006 & BBC Profile & timeline 2006
[3] FCO 2006 & BBC Profile & timeline 2006
[4] FCO 2006 & BBC Profile & timeline 2006
[5] FCO 2006 & BBC Profile & timeline 2006

of the death penalty to cover only the most serious crimes.[6] A further cabinet reshuffle was announced in March 2006 when the Prime Minister was replaced and seven new ministries created.[7]

2.7 Libya's relations with the USA and other Western countries continued to improve in 2005. In October 2005 Libya and the UK signed a Memorandum of Understanding formalising the procedure for seeking assurances regarding the future treatment of people being deported from Libya to the UK or from the UK to Libya. In September the USA waived some defence export restrictions on Libya to allow US companies to participate in destroying Tripoli's chemical weapons' stockpile and to refurbish eight transport planes.[8]

2.8 Human rights conditions in Libya improved slightly in 2005 as the country continued its slow international reintegration, but serious problems remain. The government severely curtails freedom of expression and association, banning political parties and independent organisations. It continues to imprison individuals for criticising Libya's unique political system, the government, or its leader Col. Qadhafi. Due process violations and torture remain concerns, as do disappearances from past years.[9]

2.9 The following human rights problems were reported in 2005: inability of citizens to change the government; torture; poor prison conditions; impunity; arbitrary arrest and incommunicado detention; lengthy political detention; denial of fair public trial; infringement of privacy rights; severe restriction of civil liberties - freedom of speech, press, assembly, and association; restriction of freedom of religion; corruption and lack of government transparency; societal discrimination against women, ethnic minorities, and foreign workers; trafficking in persons and restriction of labour rights.[10] In 2005, the authorities maintained strict controls on freedom of expression and there were no independent domestic human rights organisations. The state-owned media was closely controlled and legislation continued to prohibit the formation of independent newspapers outside the existing political system. Journalists and writers who criticised the authorities were arrested or otherwise harassed.[11]

2.10 While the government initiated some important reforms in 2005, promises of change lagged behind implementation. In January 2005, the government abolished the People's Court, a body that had tried most political cases without adequate due process guarantees. The cases before the court at the time of closure were transferred to the regular courts, but many of the people already imprisoned by the People's Court remain in prison.[12]

2.11 Throughout 2005, the government reviewed many Libyan laws and, according to the secretary of justice, there is an "ambitious plan to reform legislation to bring it into line with international human rights standards." Legal experts drafted a new penal code and code of criminal procedure, and officials said the main legislative body, the General People's Congress, would review the drafts by the end of 2005. The goal of the new penal code, the secretary of justice said, is to reduce both the death penalty and imprisonment as a punishment. The death penalty would remain, he said, for the "most dangerous crimes" and for "terrorism." The most recent version of the penal code draft is unknown, but a review of a 2004 draft suggests the government will accept a very broad

[6] FCO 2006, Amnesty International Annual Report covering 2005, Freedom House (FH) – Countries at the crossroads 2005 & BBC Profile & timeline 2006
[7] BBC 'Libya's reforming PM sacked' 6 March 2006
[8] AI 2005, FCO 2006, & BBC Profile & timeline 2006
[9] Human Rights Watch World (HRW) Report covering 2005
[10] US Department of State Human Rights Report (USSD) for Libya covering 2005
[11] AI 2005
[12] USSD 2005 (Introduction & Section 1) & HRW 2005

definition of terrorism, which it might then use to imprison people who are expressing peaceful political views. The government used to imprison opponents because of their "anti-revolutionary behavior," but the government continues to use the rhetoric of anti-terrorism to silence dissent.[13]

2.12 In 2005, the government pledged itself to examine some human rights abuses of the past, notably the 1996 deaths of prisoners in Abu Selim prison at the hands of guards. The government says that guards responded properly to a revolt and attempted escape. Former prisoners and Libyan human rights groups abroad say the guards executed hundreds of prisoners after they had regained control of the prison. In 2005, the government said it had established a committee to investigate the incident, but it remains unclear how the committee will conduct its work or when it will produce its findings.[14] In March 2006, AI and HRW reported that the Libyan authorities had announced the release of 132 political prisoners. The move was welcomed as a further improvement in Libya's human rights situation.[15]

2.13 Libya periodically opened itself to scrutiny from human rights groups in 2005 after years of denying them entry. Physicians for Human Rights sent a doctor in February 2005 to examine the political prisoner Fathi al-Jahmi. In April-May 2005, Human Rights Watch conducted research in the country for the first time, including the deaths in June 1996 of up to 1,200 prisoners in Abu Selim prison.[16] In May 2006, Fathi al-Jahmi's case and imminent trial was again the source of much media coverage.[17]

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 API 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. 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 APIs, 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 claimant 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 API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant 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.

[13] USSD 2005 (Introduction & Section 1), AI 2005 & HRW 2005
[14] USSD 2005 (Introduction & Section 1), AI 2005 & HRW 2005 &
[15] AI & HRW 2 March 2006
[16] USSD 2005 (Introduction & Section 1) & HRW 2005 & 28 June 2006
[17] BBC 5 May 2006

3.4 This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the API on Assessing the Claim)

3.5 All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6 Political / Islamic opposition groups

3.6.1 Most claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to their membership of, involvement with, or perceived involvement with a political or Islamic opposition group.

3.6.2 ***Treatment.*** Libyan law prohibits opposition to the present regime. Party-political activities are banned. The Libyan authorities are alert to opposition to the regime, especially Muslim fundamentalism. Since the Libyan Government eradicated certain anti-regime groups in the late 1990s, no verifiable information has been obtained about internal opposition. After September 11, 2001, the Libyan Government has tended to accuse all its opponents of membership of or conspiracy with the Al-Qa'ida organisation.[18]

3.6.3 There are numerous small groups opposed to the regime, the vast majority of which are based outside Libya. The National Front for the Salvation of Libya (NFSL), the Libyan National Army (LNA) and the Libyan Islamic Fighting Group (LIFG) are perhaps the best known groups in the external opposition. The LIFG is proscribed in the UK. The NFSL's importance reflects its financial strength. Internal opposition is repressed although there were significant disturbances in the East of the country in 1993 and 1996. Opposition groupings at home and abroad remain fragmented and have suffered at the hands of the regime's security apparatus The regime is not thought to see this opposition as an actual threat at present.[19]

3.6.4 The NFSL is the main expatriate secular opposition group. Its aim is the establishment of a democratically elected government in Libya. It operates out of the UK, also Sudan and the US. Other opposition groups in exile include the Libyan National Alliance, Libyan National Organisation, Libyan Change and Reform Movement, Libyan Constitutional Grouping and Libyan National Democratic Rally.[20]

3.6.5 Internal opposition to the regime has often been religiously inspired. There was an upsurge of Islamist opposition in the 1990s, notably in the eastern region of Cyrenaica, and Benghazi (north-east Libya). In February 1996 it was reported that militants from the Militant Islamic group (MIG) had attempted to assassinate Qadhafi. Other religious-based opposition groups such as the Islah Party of Libya have also been active against the Libyan State in the late 1990s and early 2000s.[21]

3.6.6 The MIG is believed to have links with the Algerian Armed Islamic Group (GIA). In 1996 the Islamic Martyr's Movement claimed responsibility for assassinations of high -ranking officials. The Islamic Liberation Party's platform attacks the paralysis and corruption of the state and advocates equitable redistribution of wealth. The party's endorsement of

[18] FCO 2006, FH 2005, USSD 2005 (Section 1) & Netherlands Immigration Service (NIS) Report 2002
[19] FCO 2006, FH 2005, USSD 2005 (Section 1), BBC Profile and timeline 2006 & NIS 2002
[20] FCO 2006, FH 2005, USSD 2005 (Section 1), Canada IRB November 2000 & NIS 2002
[21] FCO 2006, FH 2005, USSD 2005 (Section 1), Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004 & NIS 2002

armed resistance and the successful recruitment of students from the universities and military academies has made it an important source of opposition.[22]

3.6.7 Although long persecuted by the regime the Muslim Brotherhood has also experienced a revival. Its representative group for Libya is the LIG. Since 1998, scores of professionals and students were arrested on suspicion of political opposition activities, specifically support of or sympathy for the LIG, an underground movement that is not known to have used or advocated violence. At a trial in February 2002, 2 death sentences, 73 sentences of life imprisonment and 11 sentences of 10 years imprisonment, were imposed on these prisoners. It emerged that several of those arrested had already been killed or died in custody. The death sentences were not carried out after an appeal.[23]

3.6.8 The authorities claim that there are no longer any political prisoners. Dozens of political prisoners were released between 2001 and 2004. However Amnesty International (AI) asserts that many political prisoners arrested in previous years, including prisoners of conscience, remain in Libyan jails, such as the Abu Salim prison in Tripoli. The figure has decreased in recent years, it was previously several thousand. Organised torture of arrested or convicted individuals is reportedly rare these days. However association with an opponent of the government is already sufficient excuse to detain and interview someone for a longer period.[24] In March 2006, HRW and AI reported that 132 political prisoners were being released by the state authorities in an initial move to reform its prison system and adopt a more enlightened approach to political activists and imprisonment.[25]

3.6.9 ***Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.6.10 ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.6.11 ***Caselaw.***

HH (Libya) CG [2003] UKIAT 00202, promulgated 24 February 2004. Risk on return for failed asylum seekers. The adjudicator had had reference to Hassan [2002] UKIAT 00062. In that case it was held that anyone returned after 6 months is subject to interrogation and are imprisoned for having shown disloyalty to the state. (para 3) In deciding not to follow Hassan, the Adjudicator noted the FCO had issued a new report, which considered failed asylum seekers were not at risk of Article 3 infringement.

The Tribunal looked at the Dutch report on returnees of 2002, which stated that since 2002 the authorities no longer applied the six-month rule. The report also found that even if they were held it was only for a few days for interview. Those who are suspected of or involved in opposition activities are treated less well. Length of absence abroad was not a determinative factor. The FCO report and the UNHCR advice both which no longer advised a blanket ban on removal. (paras 8-9) The Tribunal held that the evidence only supported a finding of a real risk in respect of returnees who are perceived by the authorities to have a profile of political opposition, which would lead to ill-treatment. However, for those who have no political profile the evidence indicates that they would not be able to demonstrate a real risk of ill-treatment. (para 10) 'We would add that the decision we have reached in this case accords with that reached by a Tribunal chaired by the President sitting in October 2003. In this case - E (Libya) [2003] 00200, having considered the Dutch report and the relevant materials, including an Amnesty International letter of September 2003, the Tribunal concluded that it was only in relation to returnees perceived to have been or

[22] FCO 2006, FH 2005, Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004
[23] FCO 2006, FH 2005, Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004
[24] FCO 2006, FH 2005, USSD 2005 (Section 1) & NIS 2002
[25] HRW & AI 2 March 2006

to be involved in, or at least seriously suspected of being involved in, oppositionist political activity or who are perceived as radical Islamic supporters, that there is a real risk of treatment contrary to Article 3.' (para 12). See also KK (Libya) CG [2004] UKIAT 00151 promulgated 27 May 2004.

ME (Libya) CG [2003] UKIAT 00200, promulgated 17 December 2003. Political opposition group involvement not sufficient. The Tribunal distinguished the case of Hassan (Libya) [2002] UKIAT 00062 in paras 7 and 20. The Tribunal found that "It is plain that people who are suspected of serious involvement with anti-Libyan political groups are at risk in the event of their return…The examples of people being seriously ill-treated all appear to relate to those who have been involved, or at least seriously suspected of being involved, in serious political activity or are radical Islamic supporters." (para 20) "It must be the case that the bald assertion that any returned asylum seeker will be persecuted because they will be perceived as someone taking a stance against the Government is wrong." (para 21)

MA (Libya) [2004] UKIAT 00252, promulgated 14 September 2004. Risk from any political activity. The Tribunal reinforced the findings of ME with a clarification over para 20 which used the phrase 'in serious political activity'. In relation to this the evidence of Alison Pargeter was considered. Her evidence was accepted as being given in good faith with the benefit of her experience as an academic. The Tribunal also concluded that it was not inconsistent with other material before them. Tribunal find that just because seeking asylum abroad is viewed with disfavour does not mean that every person known to have claimed asylum abroad risks persecution. (para 12 &13) Case of ME, was never intended to suggest that only those involved in high degree activities would be at risk. Each case must be considered on its own merits. (para 14)

3.6.12 ***Conclusion.*** The Libyan government continues to be repressive of any dissent and opposition political activists and opposition Islamic activists are generally not allowed to operate on any substantial scale within the country. If it is accepted that the claimant has in the past been involved in opposition political activity or is a radical Islamic activist for one of the opposition political or Islamic groups mentioned above then there is a real risk they will encounter state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate.

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

3.7 Berbers

3.7.1 Some claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to them being a member of the Berber minority group.

3.7.2 ***Treatment.*** The principal ethnic minorities in Libya are Berbers (or Amazighs) and sub-Saharan Africans. The Berbers are an indigenous North African tribe found in Morocco, Algeria, Tunisia, Egypt, Mali, Niger, Burkina Faso, Mauritania and Libya. In Libya, the largest Berber population is in the north-west of the country, in the Jabal Nafusah escarpment, and in the cities of Zuwarah and Ghudamis. Currently there are six Berber groups in Libya, including the Tamacheq people who reside in the south of the country. In 2005, Arabic-speaking Muslims of mixed Arab-Amazigh ancestry constituted 97% of

the population. There were frequent allegations of discrimination based on tribal status, particularly against Amazighs in the interior and Tuaregs in the South.[26]

3.7.3 Although they possess their own language and culture, most Berbers in Libya are to a certain degree influenced by Arab culture and language, except those who reside in Jabal Nafusa. Jabal Nafusa houses the largest Libyan community of Berbers who have successfully preserved and maintained their culture, and who as a consequence, are least likely to marry out of their community.[27]

3.7.4 The Berbers in Libya are weaker and fewer in number than their cousins in Algeria and Morocco. Following Libya's independence in 1951, the Berber community was optimistic about having its language and culture officially recognised on an equal standing with the Arabic language and culture, but this optimism was short-lived due to a rise in Arab nationalism leading up to and since the 1969 coup. Today's Berbers continue to live a completely separate life from the rest of the Libyan population, and maintain their very different culture with a sense of pride.[28]

3.7.5 Following the consideration of Libya's periodic report, submitted to the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination, in March 2004, the United Nations Committee on the Elimination of Racial Discrimination noted that "there was no recognition of Amazigh language and culture in Libya and Amazighs were impeded from preserving and expressing their cultural and linguistic identity". The Libyan government maintained control over ethnic and tribal minorities, including the Berber community in 2004 and 2005, [29] however there continues to be no evidence that Berbers are deliberately targeted for mistreatment by the state authorities.

3.7.6 ***Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.7.7 ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.7.8 ***Conclusion.*** Though the Libyan authorities maintain control over all ethnic and tribal minorities in the country, membership of the Berber group and expressions of Berber culture do not cause any problems for those involved. Those who simply cite membership of the Berber group as the sole basis of their claim are therefore unlikely to encounter state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is not likely to be appropriate.

3.8 Returning failed asylum seekers

3.8.1 Some claimants will make an asylum and/or human rights claim based on mistreatment at the hands of the state authorities due to them returning to Libya having claimed asylum in another country.

3.8.2 ***Treatment.*** Rejected asylum seekers, most of whom have spent a long time out of Libya anyway, may be held for a few days for interview. It may also happen that rejected asylum seekers returning to Libya are just interviewed briefly. As far as is known, the

[26] FCO 2006, USSD 2005 (Section 5), FH 2005 & Canadian IRB: 13 April 2004
[27] Canadian IRB: 13 April 2004
[28] Canadian IRB: 13 April 2004
[29] USSD 2005 (Section 5) & Canadian IRB: 13 April 2004

practice of the Libyan authorities has no repercussions on staying in Libya. Examples are known of removed rejected asylum seekers who, since their forced return, have resumed living in Libya unhindered.[30]

3.8.3 The Libyan authorities have also given assurances to the UK Foreign and Commonwealth Office that "economic migrants and those that had committed crimes" were unlikely to be people of any significance to the Libyan security authorities. On that basis, they would not face difficulties. Indeed, they might not even be questioned on their return.[31] There has been no evidence since late 2002 to indicate that the Libyan authorities have changed their attitude or approach to returning Libyan nationals who may have claimed asylum in another country.

3.8.4 ***Sufficiency of protection.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.5 ***Internal relocation.*** As this category of claimants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.8.6 ***Caselaw.***

HH (Libya) CG [2003] UKIAT 00202, promulgated 24 February 2004. Risk on return for failed asylum seekers. The adjudicator had had reference to Hassan [2002] UKIAT 00062. In that case it was held that anyone returned after 6 months is subject to interrogation and are imprisoned for having shown disloyalty to the state. (para 3) In deciding not to follow Hassan, the Adjudicator noted the FCO had issued a new report, which considered failed asylum seekers were not at risk of Article 3 infringement.

The Tribunal looked at the Dutch report on returnees of 2002, which stated that since 2002 the authorities no longer applied the six-month rule. The report also found that even if they were held it was only for a few days for interview. Those who are suspected of or involved in opposition activities are treated less well. Length of absence abroad was not a determinative factor. The FCO report and the UNHCR advice both which no longer advised a blanket ban on removal. (paras 8-9) The Tribunal held that the evidence only supported a finding of a real risk in respect of returnees who are perceived by the authorities to have a profile of political opposition, which would lead to ill-treatment. However, for those who have no political profile the evidence indicates that they would not be able to demonstrate a real risk of ill-treatment. (para 10) 'We would add that the decision we have reached in this case accords with that reached by a Tribunal chaired by the President sitting in October 2003. In this case - E (Libya) [2003] 00200, having considered the Dutch report and the relevant materials, including an Amnesty International letter of September 2003, the Tribunal concluded that it was only in relation to returnees perceived to have been or to be involved in, or at least seriously suspected of being involved in, oppositionist political activity or who are perceived as radical Islamic supporters, that there is a real risk of treatment contrary to Article 3.' (para 12). See also KK (Libya) CG [2004] UKIAT 00151 promulgated 27 May 2004.

MA (Libya) [2004] UKIAT 00252, promulgated 14 September 2004. Risk from any political activity. The Tribunal reinforced the findings of ME with two clarifications: the first concern was over para 20 that used the phrase 'in serious political activity'. In relation to this the evidence of Alison Pargeter was considered. Her evidence was accepted as being given in good faith with the benefit of her experience as an academic. The Tribunal also concluded that it was not inconsistent with other material before them. Tribunal find that just because seeking asylum abroad is viewed with disfavour does not mean that every person known to have claimed asylum abroad risks persecution. (para 12 &13) Case of ME, was never intended to suggest that only those involved in high degree activities would be at risk. Each case must be considered on its own merits. (para 14)

[30] NIS 2002
[31] FCO letter 15 June 2002

The second point concerned risk to returned asylum seekers due to suspicion from the Authorities. Ms Pargeter's report was considered. Tribunal concludes that there is no real risk of an unsuccessful asylum seeker being persecuted on some future occasion because he claimed asylum abroad and then returned to Libya. No objective evidence to show a risk, yet objective evidence to show able to continue lives unhindered. (para 15). Concluded at para 16, 'We do not accept that there is, generally, a real risk to people who have returned to Libya just because they are known to have claimed asylum in the United Kingdom. (para 16)

3.8.7 ***Conclusion.*** There is no evidence to suggest that individuals who have been absent from Libya for any period of time or who are returning failed asylum seekers are liable for adverse treatment by the authorities solely for these reasons. Moreover, there is no evidence that an application for asylum abroad, should the authorities become aware that one had been made, will in itself put a Libyan national at risk of state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

3.9 Family mistreatment and/or 'social rehabilitation' of women

3.9.1 An increasing number of Libyan female claimants make asylum and/or human rights claims based on mistreatment, and at worse fear of being killed, at the hands of their family as the result of them having had an extra-marital affair, having been raped or suspected of transgressing moral codes/family values more generally. Claims may also involve, or be made on the basis of, a fear of punitive detention (more commonly referred to as 'social rehabilitation') by the state authorities.

3.9.2 ***Treatment.*** The law prohibits domestic violence, but there is no reliable information on the penalties for punishment. There is little detailed information regarding the extent of violence against women; however, it reportedly remained a problem in 2005. Abuse within the family is rarely discussed publicly. The law prohibits rape. The convicted rapist of a girl must marry the girl, with her agreement, or serve a prison term of up to 25 years.[32]

3.9.3 The 1969 Constitutional Proclamation granted women total equality; however, traditional attitudes and practices continued to discriminate against women. Shari'a governs inheritance, divorce, and the right to own property. Women and girls suspected of violating moral codes reportedly were detained indefinitely in "social rehabilitation" homes. Many detained in these facilities had been raped and ostracised by their families. A woman or girl may be released if a male relative takes custody of her or if she consents to marriage.[33]

3.9.4 The government is arbitrarily detaining women and girls in "social rehabilitation" facilities for suspected transgressions of moral codes, locking them up indefinitely without due process. Portrayed as "protective" homes for wayward women and girls or those whose families rejected them, these facilities are de facto prisons. Human Rights Watch visited two social rehabilitation facilities in April and May 2005. Some of the women and girls interviewed were confined because they were accused—but not criminally convicted—of having had extra-marital sex. Others had served prison sentences for engaging in extramarital sex, and were transferred to the facilities because no male family member would take custody of them. Many had been raped, and then evicted from their homes by their families.[34]

[32] USSD 2005 (Section 5)
[33] USSD 2005 (Section 5)
[34] HRW 27-28 February 2006

3.9.5 ***Sufficiency of protection.*** If this category of claimants' fear is of ill treatment/persecution by the state authorities – i.e. fear of 'social rehabilitation' - they cannot apply to these authorities for protection.

3.9.6 If the claimants' fear is of non-state agents such as family members, the Libyan authorities are not able to provide adequate protection as its system of 'social rehabilitation' for such women is tantamount to punitive imprisonment, rather than a protective refuge. [35]

3.9.7 ***Internal relocation.*** If this category of claimants' fear is of ill treatment/persecution by the state authorities – i.e. fear of 'social rehabilitation' - they cannot internally relocate to escape this threat.

3.9.8 In cases where the claimants' fear is of non-state agents such as family members, 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 did not restrict the freedom of movement within the country in 2005.[36]

3.9.9 It would therefore be possible for a claimant to escape the threat of mistreatment by non-state agents by relocating withing Libya. Taking into account all relevant factors including age, health, educational background and financial circumstances, it would not be unduly harsh for urban, educated, financially-independent claimants to internally relocate to another locality or region of Libya in order to escape this threat. However, for claimants from a rural background, without formal education and who are financially dependent on their families, internal relocation to another region to escape this threat would not be unduly harsh.

3.9.10 ***Conclusion.*** Given the widespread discrimination against women in Libya and the State's unwillingness to protect women from harm, it is likely that 'women' or sub-categories of women (e.g. "women who are suspected of committing adultery') will be able to show that they are members a particular social group. See the API on Membership of a Particular Social Group for further guidance on the definition of a particular social group. Where it is accepted that the claimant will face persecution on account of her membership of a PSG and internal relocation is not a viable option a grant of asylum will be appropriate.

3.9.11 Claimants who fear mistreatment or disownment by non-state agents, such as family members, for having been raped, having had an extra-marital affair or other 'moral transgression', form part of a PSG within the terms of the 1951 Convention and there is no adequate state protection available for such individuals. Where it is accepted that the claimant has encountered mistreatment that reaches the level of persecution and is of urban, educated and/or financially-independent background, internal relocation to another region to escape this threat would not be unduly harsh. The grant of asylum in such cases is therefore not likely to be appropriate. Where it is accepted that the claimant has encountered mistreatment that reaches the level of persecution and is of rural, uneducated and/or financially-dependent background, internal relocation to another region to escape this threat would not be unduly harsh. The grant of asylum in such cases is therefore likely to be appropriate.

3.10 Prison conditions

[35] HRW 27-28 February 2006
[36] USSD 2005 (Section 2d)

3.10.1 Claimants 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 the Libya are so poor as to amount to torture or inhuman treatment or punishment.

3.10.2 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.

3.10.3 ***Consideration.*** According to foreign diplomats and international organisations, prison conditions in 2005 ranged from poor to adequate. Pre-trial detainees and convicts were held together in the same facilities. Reportedly more than half of the prisoners in the country were pre-trial detainees. Prison officials frequently held pretrial detainees for long periods in 2005.[37]

3.10.4 In February 2004 the government permitted Amnesty International (AI) to visit some prisons and speak with inmates that AI considered "prisoners of conscience." During its visit, AI raised concerns with the government about the health of 86 Muslim Brotherhood prisoners in Abu Salim prison who undertook a 7-day hunger strike to protest lengthy delays in their appeal process. On 24 March 2005, the government also allowed PHR representatives to examine a limited number of detention facilities.For 3 weeks in May 2005 Human Rights Watch (HRW) visited the country after a 15-year absence and received access to police stations, prisons, and approximately 24 prisoners.[38]

3.10.5 In 2005, security forces reportedly subjected detainees to cruel, inhumane, or degrading conditions and denied adequate medical care, which led to several deaths in custody. The authorities established a committee to investigate the 1996 Abu Selim prison riot, in which a large but unknown number of prisoners died. No committee reports were released by the end of 2005.[39]

3.10.6 The government held many political detainees in 2005 for unlimited periods in unofficial detention centres controlled by members of the revolutionary committees. The government reportedly held hundreds of political detainees, many associated with banned Islamic groups, in prisons throughout the country, but mainly in the Abu Salim prison. Some human rights organisations estimated in 2005 that there were approximate 2000 political detainees, many held for years without trial. Hundreds of other detainees may have been held for periods too brief (three to four months) to permit confirmation by outside observers.[40]

3.10.7 On 12 January 2005, the government arrested journalist Abd Al-Razia Al-Mansuri and held him incommunicado for several months. According to HRW, Al-Mansuri had written approximately 50 Internet articles critical of the government and society. On 19 July 2005, according to the Libya Watch for Human Rights, Kamel Mas'ud Al-Kilani returned to the country after receiving assurance of his safety, but he was arrested and taken to an unknown destination. No further information was available at the end of 2005.[41]

3.10.8 Since March 2004 the government has held political activist Fathi Al-Jahmi incommunicado, asserting that his detention was for his own protection. In 2002 Al-Jahmi was imprisoned after calling for democratic reforms but was released in March

[37] USSD 2005 (Section 1c)
[38] USSD 2005 (Section 1c)
[39] USSD 2005 (Section 1c)
[40] USSD 2005 (Section 1d)
[41] USSD 2005 (Section 1d)

2004. The government re-detained him two weeks later after he called again for reforms in several international media interviews. HRW visited Al-Jahmi in May, and he stated that he faced three charges: trying to overthrow the government, slandering Qadhafi, and contacting foreign authorities. No charges or trial had occurred by the end of 2005.[42]

3.10.9 In December 2004 human rights activist Ashur Al-Warfalli was arrested and held incommunicado for an extended period after issuing a statement against the government's human rights policy. Al-Warfalli's statement called for the release of political detainees, amnesty for exiles and dissidents, and freedom of expression for all citizens. He was reportedly released during 2005 without being charged. In March 2006, HRW reported that 132 political prisoners were being released by the state authorities in an initial move to reform its prison system and adopt a more enlightened approach to political activists and imprisonment.[43] Women and girls suspected of violating moral codes reportedly were detained indefinitely in "social rehabilitation" homes.[44]

3.10.10 ***Conclusion.*** Whilst prison conditions in Libya are poor with lengthy pre-trial detention and mistreatment of inmates being a particular problem conditions are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Libya a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

3.10.11 Prison conditions in Libya for political prisoners are severe and taking into account the degrading treatment conditions in prisons and detention facilities in Libya are likely to reach the Article 3 threshold. Where caseworkers believe that an individual is likely to face imprisonment on return to Libya they should also consider whether the claimant's actions means they fall to be excluded by virtue of Article 1F of the Refugee Convention. Where caseworkers consider that this may be the case they should contact a senior caseworker for further guidance. Where individual claimants 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 and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API 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 API 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 API on Discretionary Leave and the API on Article 8 ECHR.

[42] USSD 2005 (Section 1d)
[43] HRW & AI 2 March 2006
[44] USSD 2005 (Section 1d)

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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

4.4.1 Claimants 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.

4.4.2 According to the latest World Health Organisation (WHO) health indicators for Libya of August 2004, 100% of the population have access to primary healthcare. Between 90 and 100% of children have received all major inocculations. Per 10,000 people in 2002 there was a total of 12.1 doctors, 1.1 pharmacists, 50 nurses, 39 hospital beds and 2.2 local clinics and healthcare centres. Measles, tuberculosis and HIV/AIDS are the main causes of death by disease.[45]

4.4.3 Where a caseworker considers that the circumstances of the individual claimant 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 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.

5.2 Libyan nationals may return voluntarily to any region of Libya at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Libya. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Libyan nationals wishing to avail themselves of this opportunity for assisted return to Libya should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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