Libyen (67) (44)

30/6-03

General official report on Libya / return

November 2002

Directorate of Movement of Persons, Migration and Aliens Affairs
Department of Asylum and Migration Affairs

20 November 2002

Contents *Page*

1 Introduction

This general official report describes the present situation in Libya, insofar as this is of importance to reaching decisions about the return of rejected Libyan asylum seekers.

The report is partly based on information from public sources. The compiler has used information from various United Nations organisations, various non-governmental organisations, specialist literature and media reporting. A summary of the public sources consulted is given in the bibliography.

In addition, confidential reports of the Dutch mission in Tripoli have been used as a basis for this report. The report frequently refers to the public sources consulted. Where such sources are mentioned, the text is in many cases also based on information obtained on a confidential basis.

Section Two examines the political and human rights situation.

Section Three deals with returns, policies of a number of other European countries on asylum seekers from Libya and the work of international organisations, including the position of UNHCR.

A full summary follows in Section Four.

2 Country information

2.1 Political situation

The Great Libyan Arab Socialist People's Jamahiriyya[1] [2] (abbreviated to Libya) is a strictly controlled state under its 'Leader of the Great Revolution of 1 September', Colonel Muammar Al-Qadhafi. It tolerates no political dissent and takes systematic action against opponents of the regime.

---

[1] In Arabic: Al-Jamahiriyya Al-Arabiyya Al-Libiyya Ash-Shaabiyya Al-Ishtirakkiyya Al-Ozma.
[2] Jamahiriyya means republic.

After the fall of the monarchy in 1969, in a coup headed by Qadhafi, in 1977 Qadhafi declared the 'Jamahiriyya' and democracy in the terms of his 'Green Book'.[3] According to his thoughts, the people are the rulers. Libya has no parliament, political parties or government in the western sense. It consists of a pyramid-like system of committees. The people determines its wishes in a large number of basic people's congresses. Deputies of these basic people's congresses submit their decisions for co-ordination and decision to the General People's Congress[4], which meets several times a year. The General People's Congress chooses the members (ministers) of the General People's Committee[5] (the cabinet).

Actual power in Libya rests with Qadhafi and a few revolutionary faithful. Qadhafi is the leader of the revolution and also supreme commander of the armed forces. Qadhafi has consolidated his position over the years, not least by forming revolutionary committees[6] which control daily life on his behalf.

Libyan law prohibits opposition to the present regime. Even party-political activities are banned. The Libyan authorities are alert to opposition to the regime, especially Muslim fundamentalism.[7]

Qadhafi takes tough action against (presumed) opposition groupings. The opposition, both in Libya and abroad,[8] seem too scattered to be able to form a front against the authorities. They often pursue contradictory aims, and criticise each other's motives and agendas.[9] Internal opposition to the regime has often been religiously inspired, and has occurred above all in Cyrenaica (north-east Libya). In the past, opponents of the regime have been executed, including by public hanging. There is no recent information about the enforcement of the death penalty. The last officially admitted execution took place in

---

[3] The 'Green Book' records the thoughts of the Libyan leader, Qadhafi.
[4] In Arabic: Moutamar Ash-Shaab Al-Aam.
[5] In Arabic: Al-Lagna Ash-Shaabiyya Al-Asma.
[6] In Arabic: Al Ligan Ath-tauriyya.
[7] Libya, Impressions from a fact-finding trip to Libya and Malta, 31 May - 11 June 2002, Swedish Migration Board, Stockholm, 10 July 2002.
[8] Reportedly, the opposition groupings are located mainly in Egypt and the United Kingdom.
[9] Libya: Country Profile 2002, Economist Intelligence Unit, London, 2002.

1997. 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.

As a consequence of the Lockerbie affair (1988), when a Pan Am aircraft was brought down by an explosion over the Scottish town of Lockerbie, and the downing of a UTA aircraft in Niger (1989), efforts by Qadhafi to break Libya's isolation by moderating his foreign policy have come to nothing. Following Libya's non-cooperation in the handover of suspects in connection with the attack on the Pan Am aircraft, the UN Security Council passed three resolutions in 1992 and 1993. Resolution 748 led to an air embargo on Libya.

In 1999 Libya met one of the UN Security Council's requests by handing over two suspects in connection with the attack on the Pan Am aircraft to justice before a Scottish court in the Netherlands. Most UN sanctions against Libya were then lifted. Since then, links with Europe have been renewed.[10] Thus most EU Member States, including the Netherlands, have meanwhile restored full diplomatic relations with Libya. Various European heads of government and ministers have visited the country. In January 2001 one of the suspects in the Lockerbie trial was found guilty. The other was acquitted. The judgment was upheld on appeal in 2002.

2.2 Human rights situation

Respect for human rights in Libya leaves much to be desired. The basic conditions of limited government do not exist: there is neither freedom of expression in our freedom of association and meeting, and there are no elections. Political parties are not permitted. There are reports of maltreatment and torture during detention.[11] The UN Committee against Torture expressed concern about Libya in its latest "Concluding Observations"[12]

---

[10] Libya: Country Profile 2001, Economist Intelligence Unit, London 2001

[11] Amnesty International, annual report 2001, Amnesty International, London, 2001.

[12] Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriya, A/54/44, paras. 176-189). 11 May 1999.

in 1999: "prolonged incommunicado detention, in spite of the legal provisions regulating it, still seems to create conditions that may lead to violation of the Convention" and "... allegations of torture in the State party continued to be received by the Committee".

Libya is not a signatory to the 1951 Convention on the Status of Refugees and the 1967 protocol. However, Libya did sign the OAU Convention on Refugees in 1969.[13] Libya is also party to a number of international treaties in the field of human rights, but there is concern about the implementation of these treaties.

In June 1998 Amnesty International (AI) expressed great concern at a wave of arrests in a number of towns, including Benghazi in Northeast Libya. It warned that those held incommunicado are at risk of being tortured. Most arrestees, especially university teachers, engineers, doctors and civil servants are said to be suspected of supporting or sympathising with the Muslim Brotherhood.[14] [15] AI described[16] this grouping as an underground Islamist movement not hitherto known to have used violence or advocated its use.

In September 2002 Amnesty International announced that dozens of political and possible political prisoners had been freed.[17] AI described this event as a positive step, but at the same time expressed its concern at the remaining political prisoners. One year earlier, Amnesty International made it known that dozens of political prisoners had been released.[18] Reportedly, in 2000, small groups of political prisoners were released.[19] On the other hand, according to reports,[20] on 16 February 2002 two leaders of the banned

---

[13] Organisation of African Unity Convention on Refugees.
[14] The English name is Muslim brotherhood. The group is also known under the name Libyan Islamic Group (in Arabic: Al-Jama'a al-Islamiyya al-Libiyya).
[15] Amnesty Canada's concerns regarding returning asylum seekers to Libya. Amnesty International Canada, Vanier, July 2000.
[16] Amnesty International, Annual Report 1999, Amnesty International, London, 1999.
[17] Amnesty International Online, Libya: the Release of Prisoners: a Positive Step. AI Index MDE 19/003/2002, website, 3 September 2002.
[18] Amnesty International Online, Libya: Releases positive but not enough. AI Index MDE 19/002/2001, website, 31 August 2001.
[19] Yearbook 2001, Amnesty International, Amsterdam, 30 May 2001.
[20] Agence France Presse, 17 February 2002; Amnesty International, urgent action, AI Index MDE 19/002/2002, 20 February 2002.

Muslim organisation Moslem Brotherhood, arrested in 1998, were sentenced to death by a court in Tripoli. Those concerned appealed against the judgment and the penalty was subsequently not executed. At the same trial, others received sentences ranging from ten years to life imprisonment.[21]

The Libyan Government prohibits the establishment of independent international human rights organisations in Libya. It is also prohibited to set up independent local human rights organisations. Two Amnesty International envoys were present at the 29th Ordinary Session of the African Commission on Human and People's Rights, held in Tripoli in April 2001.[22] They had meetings with Libyan government officials and members of civil institutions. AI received no answer from the Libyan authorities to repeated requests to be able to send observers to court proceedings.

3 Return

3.1 Background

Since suspension of the UN air embargo in April 1999, international air traffic has returned to Libya. Hence the possibilities for direct (forced) return of Libyans resident abroad to Libya have increased.

In July 2000 an Amnesty International Canada report[23] expressed concern at cases of forced return to Libya. AI reported[24] that, in a number of cases, a person forced to return had been detained and that there were reports of some suffering serious human rights abuses, including torture. In its report, AI Canada mentioned the forced return in 1998 of at least thirty-one Libyans (men, women and children) from Saudi Arabia. These people had been arrested in Saudi Arabia after the attack on the training centre of the Saudi National Guard in Riyadh. After arrival in Libya, they were arrested. The forced return of the Libyans coincided with signature of a security agreement between ministers of internal affairs and justice of the Arab countries. The agreement encouraged the handover

---

[21] Amnesty International, urgent action, AI Index MDE 19/002/2002, 20 February 2002.
[22] Report 2002: Libya, Amnesty International, website.
[23] Amnesty International Canada's Concerns Regarding Returning Asylum Seekers to Libya, Amnesty International, Vanier, July 2000

of suspected 'terrorists'.[25] Then the report mentioned the arrest in Saudi Arabia of a Libyan family recognised as refugees in the UK. In 1998 this family and other Libyans were deported to Libya. Once in Libya, the family was detained. The mother and children were released, but the father remained in detention without charge or trial, allegedly because of Islamic oppositionist activities.[26]

Based on information from Amnesty International, in October 2000 UNHCR recommended caution in returning rejected asylum seekers to Libya.[27] UNHCR further referred to an incident in March 2000 relating to the deportation by Jordan to Libya of seven Libyans, of whom at least three were killed on arrival at Tripoli Airport.[28] [29] AI reported[30] that the people killed had been suspected sympathisers of Islamist[31] groupings.

In July 2000 four Libyans suspected of Islamist sympathies were forcibly deported from Pakistan to Libya.[32] The asylum requests of two of them were still being processed, while the other two are said to have been living and working legally in Pakistan. Their location after return to Libya was unknown. Amnesty emphasises that '... follow-up of forcibly returned persons in Libya is very difficult.'[33] The above reports and incidents raise the question what the situation now is concerning return. The following paragraph deals with this.

3.2 Procedure on return

A memorandum of the Libyan Ministry of Justice and Public Security states that, by virtue of a decree of the Libyan People's Congress of 23 April 2001, measures must be

---

[24] Amnesty International Report 2001, Amnesty International, London, 2001.
[25] Amnesty International Annual Report 1999, Amnesty International, London, 1999.
[26] Amnesty International Annual Report 2000, Amnesty International, London 2000.
[27] Libya: enforced removal of failed asylum seekers, British Home Office (CIPU, bulletin I/2001), 11 May 2001.
[28] Ibid
[29] No further details of the incident were given.
[30] AI urgent action, Amnesty International, MDE/19/01/00, Amsterdam, 7 March 2000.
[31] The word Islamist means a Moslem fundamentalist ideology. The word Islamist is a collective term referring to the religion and culture of Moslems.
[32] Amnesty International, Annual Report, 2001, Amnesty International, London, 2001.
[33] Amnesty International Canada's Concerns Regarding Returning Asylum Seekers to Libya, Amnesty International, Vanier, July 2000.

taken to facilitate travel. Thus the memorandum says that 'unjustified restrictions which impede citizens must be abolished. In this connection, Libyan citizens must not be hindered by confiscation of their passports or detention and interviews, regardless of how long they have been outside Libya. This will increase citizens' trust that they can return to their own country without reservations." According to this memorandum, this measure is a consequence of the Leader of the Revolution's great concern for the inalienable right to residence, work, freedom of travel and immigration. Hence, on 23 January 2001, Qadhafi instructed the People's Congress to remove all restrictions preventing citizens from exercising the above rights. He ordered measures to be taken to simplify travel and residence by Libyan citizens worldwide.

In practice, people leaving Libya are subject to very strict controls. This seems to apply to all travellers, but to Libyans in particular. Strict controls are also applied to people coming in to Libya. Reportedly, frontier control officials consult lists of names. It is not known on what grounds people are placed on these lists. In addition to border police and customs, there are also representatives of the security services of the Ministry of Justice and Public Security in attendance at frontiers.

Until autumn 2001, all Libyans who had stayed longer than six months abroad were interviewed about their activities and contacts abroad on their return to Libya. Since then the Libyan authorities have ceased in principle to apply this six-month period, but all those who have stayed abroad for longer[34] periods will be interviewed by the Libyan security services on their return. This not only applies to rejected asylum seekers, but all who are repatriated. There is no basis in Libyan law for this procedure, but it is widespread practice on the part of the Libyan authorities.

The officials responsible for border controls in Libya decide who to interview from stamps on travel documents of returning Libyans. The length of stay abroad is an important excuse to subject returning Libyans to interview by the Libyan security services.

---

[34] The term 'longer periods' cannot be defined

The interest of the Libyan security services focuses especially on any opposition activities, criticism of the Libyan political system and/or contacts with opponents of the Libyan regime abroad. Apparently an asylum application abroad is, in itself, no reason for special interest by the Libyan authorities. The Libyan Government has many security and information services at home and abroad. The members of these services often have a good insight into the activities and contacts of Libyans abroad.

Rejected asylum seekers, most of whom have spent a long time out of Libya anyway, are highly likely to be held for a few days for interview. Rejected asylum seekers who were removed with an escort are certain to be arrested, temporarily detained and interviewed. It may also happen that rejected asylum seekers returning to Libya are just interviewed briefly.

As far as is known, the practice of the Libyan authorities has no repercussions on staying in Libya. Examples are known of removed reject asylum seekers who, since their forced return, have resumed living in Libya unhindered.

There is an essential difference between the treatment of people suspected of opposition activities in or outside Libya and people who are not suspected of these. Suspicion of opposition activities is enough for longer detention and will often lead to sentencing. Association with an opponent of the government is already sufficient excuse to detain and interview someone for a longer period. If a rejected asylum seeker is detained on return to Libya, maltreatment or torture during custody cannot be ruled out.

3.3 Other countries' policies

In 2001 most Libyan asylum applications were submitted in the United Kingdom (140), Germany (116) and Switzerland (about 100). The Netherlands and Norway were next, with 62 and 62 asylum applications respectively. Numbers were lower in Belgium (17), Denmark (5) and Italy (3). In 2001 the Netherlands expelled 38 Libyans, 16 of whom were rejected asylum seekers and 22 non-asylum.

United Kingdom

Based on information from Amnesty International,[35] Amnesty International Canada,[36] UNHCR and the British Foreign Office, and other sources, in April 2001 the UK changed its policy on returning rejected Libyan asylum seekers to Libya. The general import of the information was that it was unsafe to remove rejected asylum seekers to Libya, because their safety could not be guaranteed. From April 2001 the UK applied a limited exceptional leave policy to rejected Libyan asylum seekers, which in practice meant that they were routinely granted subsidiary status ('exceptional leave to remain'). This was valid for six months, and renewable.

On 7 October 2002 the British Home Secretary announced the end of the country-specific 'exceptional leave to remain' (ELR) policy. From that date, ELR was no longer routinely granted to rejected Libyan asylum seekers. In all cases of rejected Libyan asylum seekers, it has to be examined, on an individual basis, whether to grant ELR under the EVRM or for other 'compelling, compassionate or humanitarian reasons."[37] In cases where the asylum application has been rejected and no ELR has been granted, 'appropriate enforcement measures will be considered' by the British authorities.[38]

Germany

Germany has no specific policy on Libyan asylum seekers. In 2001 101 Libyan asylum applications were ruled on. In fifteen cases, asylum was granted. One Libyan asylum seeker was found to be in danger of his life, or his living or freedom were at risk, if he were returned, so that he has not yet been deported. Sixty-three asylum applications were rejected. The other twenty-two were handled otherwise (e.g. withdrawal of the asylum application).

---

[35] AI protested to the British authorities in April 2000 at the arrest and detention of an asylum seeker rejected and removed by the UK.

[36] Amnesty International Canada's Concerns Regarding Returning Asylum Seekers to Libya, Amnesty International, Vanier, July 2000.

[37] Libya Bulletin 1/2002, British Home Office (CIPU), 7 October 2002.

[38] Further details of the implementation practice are not yet known.

In 2000 nine actual removals to Libya took place, eight of them accompanied. In 2001 the figure was five, one being accompanied. In January to May 2002, two people were removed to Libya. Removals in principle took place to Tripoli.

In 2001 the German authorities decided to handle actual removals of rejected asylum seekers to Libya with caution. This meant a careful examination in each individual case whether the person concerned could expect a specific threat to his life, living or freedom on return to Libya. The reason for this was that two Libyans returned from Germany had been caught and taken away by the Libyan security service immediately on arrival in Libya. It was not known whether this had been purely for interview and the persons concerned had then been allowed to leave unhindered.

There is no stop on removals of certain categories of people. Actual removal is not carried out, at least provisionally, if the rejected asylum seeker originates from eastern Libya. The German authorities think that there may possibly be a special risk to removed people from Eastern Libya (Benghazi and Tobruk), as this area is seen as a region where more opposition to the regime exists than elsewhere in Libya.

Switzerland

Switzerland has no specific policy on Libyan asylum seekers. Given the political situation in Libya, a relatively high percentage of the applications are approved. Thus asylum applications by members of the Islamist opposition in Libya are settled positively, almost without exception. A condition of this is that the story of their flight must be credible.

In 2001 and 2002 a total of eighteen asylum seekers were ordered to leave. Two of them were actually removed. Removals are accompanied or unaccompanied.

Norway

Norway has no specific policy on asylum seekers from Libya. In 2000 and 2001 seven and sixty-two Libyans applied for asylum in Norway, respectively. As all processed

asylum applications were accepted, no removals took place. Newly obtained information shows that the Norwegian authorities are working on a re-assessment of outstanding asylum applications. It is not yet know what the policy will be.

Belgium

Belgium has no specific policy on Libyan asylum seekers. In view of the small number of asylum applications from Libyans, there is no clear policy on decision-making practice.

In 2000 and 2001 Belgium did not remove any rejected asylum seekers to Libya. Technical problems concerning deportability play a role here. The Belgian authorities report lack of co-operation by the Libyan authorities in issuing replacement travel documents (laissez-passers).

Denmark

Denmark has no specific policy on Libyan asylum seekers. Partly because of the low number of asylum applications, no information is available on implementation policy. In Denmark in 2001, five Libyan nationals applied for asylum. One of these was granted refugee status.

Italy

Italy has no specific policy on Libyan asylum seekers. Each application is considered on its merits. At the alien's request, the local Italian aliens' service may issue a residence permit on humanitarian grounds. There is no central registration of these permits. The aliens' service should request advice from the Asylum Commission. This advice is non-binding but is almost always followed.

In 2001 three Libyans (rejected asylum seekers/illegals) were returned unaccompanied to Libya. Italy's return policy makes no distinction between illegal immigrants and rejected asylum seekers. On 31 December 2001 a further twelve Libyans were in detention as aliens. As for removals, Italy does not see Libya as a problem country.

3.4 Work of international organisations

UNHCR

Since 1 January 2002 UNHCR has had an office in Tripoli. The activities of UNHCR aim mainly to promote integration and prepare for repatriation of refugees from, in particular, Somalia, Sierra Leone and the autonomous Palestinian areas. Although Libya has not ratified the Convention on Refugees, the Libyan Government takes a co-operative attitude towards UNHCR.[39] The UNHCR mission in Libya does not carry out any activities with regard to returning Libyan asylum seekers.

In October 2000 UNHCR took the attitude that care should be used in returning rejected asylum seekers to Libya. Asked about its present standpoint on the return of rejected Libyan asylum seekers to Libya, UNHCR said it was engaged in working out its stance on the 'opportunity of responding to requests from states as to the returnability of rejected asylum seekers'. The subject is meant in a general sense, without specific reference to Libya.

Other international organisations

ICRC and IOM do not have offices in Libya. The International Federation of the Red Cross and the Red Crescent Societies (IFRC[40]) is indeed active in Libya through the national Red Crescent, but is not involved in any activities concerning refugees.

4 Summary

Libya is a secular state which has been led by Colonel Qadhafi since 1969. Respect for human rights in Libya gives serious cause for concern. The basic requirements of limited government are lacking. Libya is party to a number of international human rights conventions, but there is concern at its implementation of the treaties. Independent international human rights organisations cannot be established in Libya. It is prohibited to set up independent local human rights organisations.

---

[39] UNHCR 2002 Global Appeal, UNHCR, Geneva, November 2001.
[40] International Federation of Red Cross and Red Crescent Societies

Since suspension of the UN air embargo in 1999, the possibilities of direct (forcible) return of Libyans resident abroad have increased. All Libyans who have been abroad for longer periods will be interviewed by the Libyan authorities on their return. This does not affect all rejected Libyan asylum seekers, but it does affect those who are repatriated. Rejected asylum seekers are most likely to be held for a few days on their return to Libya for interview. Rejected asylum seekers escorted back are certain of arrest, temporary detention and interview.

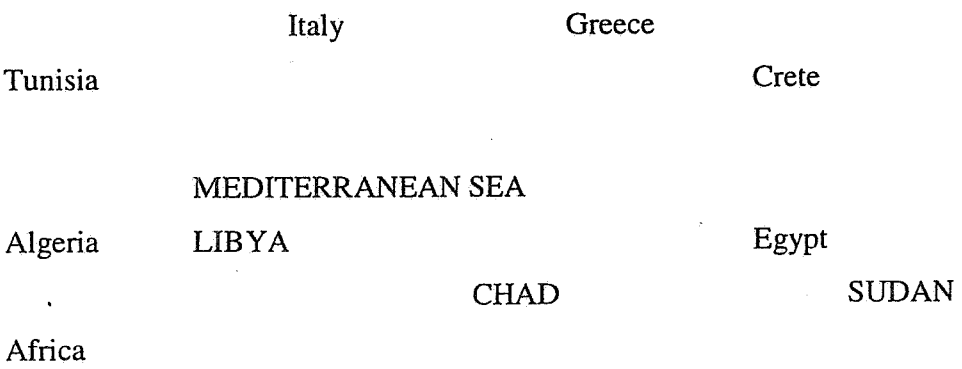
Apparently an asylum application abroad is not in itself cause for special interest on the part of the Libyan authorities. However, any opposition activities, criticism of the political system and/or contacts with opponents of the regime abroad do give rise to special interest by the Libyan authorities.

There is an essential difference between the treatment of people who are suspected of opposition activities and of people who are not thus suspected. If a rejected asylum seeker is detained on return to Libya, mistreatment or torture during custody cannot be ruled out.

Of the European countries, Germany, Italy and Switzerland in principle do return rejected Libyan asylum seekers forcibly, though the numbers involved in 2001 were limited. The United Kingdom considers 'appropriate enforcement action' in Libyan cases where asylum is rejected and no exceptional leave to remain is granted. As for Belgium, Denmark and Norway, for various reasons there is no clear picture of the implementation policy pursued.

Annexe I

Map of Libya



This map has been drawn for public information and is not an official document. No rights can be derived from this map.

Annexe II

Bibliography

In addition to the sources mentioned in the introduction, the following sources and publications have been used:

AFP (Agence France Presse)

Amnesty International, urgent action Libya/Jordan, AI Index MDE 19/01/00 (Amsterdam, 7 March 2000)

Amnesty International Canada, Amnesty International Canada's concerns regarding returning asylum seekers to Libya (Vanier, July 2000)

Amnesty International, 2001 Yearbook (Amsterdam, 30 May 2001)

Amnesty International Online, Libya: Releases positive but not enough. AI Index MDE 19/002/2001, website, 31 August 2001 (www.web.amnesty.org/ai.nsf/print/MDE190022001)

Amnesty International, The wire - October 2001 Libya, website (www.web.amnesty.org/web/wire.nsf/October2001print/Libya)

Amnesty International Netherlands, Political prisoners released in Libya, website (Amsterdam, 15 November 2001)

Amnesty International, urgent action Libya, AI Index MDE 19/002/2002 (Amsterdam 20 February 2002)

Amnesty International, Report 2002: Libya, website (www.amnesty.org)

Amnesty International, Libya: the release of prisoners, a positive step, website, 3 September 2002 (www.amnesty.org/ai.nsf/print/MDE190032002)

British Home Office: Libya: enforced removal of failed asylum seekers, CIPU bulletin 1/2001, 11 May 2001

British Home Office, Libya bulletin 1/2002, CIPU bulletin 1/2002, 7 October 2002

Economist Intelligence Unit, Country Profile 2001: Libya (London 2001)

Europa Publications Limited, The Middle East and North Africa 2002 , 48th edition (London, October 2001)

Human Rights Watch, World Report 2002, Middle East and North Africa Overview (New York, 2002)

ICRC, Annual Report 2000 (Geneva, June 2001)

ICRC, Overview of the ICRC's Operations in 2002: Middle East and North Africa, website (Geneva, 19 December 2001)

www.icrc.org/icrceng.nsf/

Swedish Migration Board, Libya, Impressions from a fact-finding trip to Libya and Malta, 31 May - 11 June 2002 (Stockholm, 10 July 2002)

Systemen Keesing, Keesing's historical archive (Amsterdam)

UN, Concluding Observations of the Committee against Torture: Libyan Arab Jamahiriyya, A/54/44, paras. 176 - 189 (11 May 1999)

UNHCR, UNHCR Global Appeal 2001 (Geneva, December 2000)

UNHCR, UNHCR Global Appeal 2002 (Geneva, November 2001)

USCR, Country Report: Libya (1997) website

www.refugees.org/world/countryrpt/africa/libya.htm