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OPERATIONAL GUIDANCE NOTE

LIBYA

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.13
3. Main categories of claims	3.1 – 3.5
Political / Islamic opposition groups	3.6
Berbers	3.7
Family mistreatment and/or 'social rehabilitation' of women	3.8
Prison conditions	3.9
4. Discretionary Leave	4.1 – 4.2
Minors claiming in their own right	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.2
6. List of source documents	

1. Introduction

1.1 This document evaluates the general, political and human rights situation in Libya and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

1.2 This guidance must also be read in conjunction with any COI Service Libya Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site 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, caseowners 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.

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 of the death penalty to cover only the most serious crimes.⁶ A further cabinet reshuffle

¹ FCO Country profile & BBC Country profile & timeline

² FCO Country profile & BBC Profile & timeline

³ FCO Country profile & BBC Profile & timeline

⁴ FCO Country profile & BBC Profile & timeline

⁵ FCO Country profile & BBC Profile & timeline

⁶ FCO Country profile, Amnesty International (AI) 2005, Freedom House (FH) – Countries at the crossroads 2005 & BBC Profile & timeline

was announced in March 2006 when the Prime Minister was replaced and seven new ministries created.⁷

- 2.7** Libya continued to slowly improve its relations the United States and European governments in 2006. In addition to renouncing weapons of mass destruction in 2003, Libya maintained its cooperation in the global “war on terror” and provided valuable intelligence on militant Islamic individuals and groups. Libya has also signed the International Atomic Energy Agency Additional Protocol and has become a State Party to the Chemical Weapons Convention. In return for Libya’s cooperation, on 30 June 2006 the US rescinded Libya’s designation as a state sponsor of terrorism.⁸
- 2.8** In May 2006 the US and Libya resumed full diplomatic relations, and both countries upgraded their diplomatic offices to embassies (although neither country has yet appointed an ambassador). Despite warmer relations, the US government occasionally criticised human rights violations in Libya, saying “the Government continued to commit numerous, serious abuses.” Libya’s relations with the European Union progressed more slowly, largely due to the ongoing Benghazi HIV case. Cooperation continued in controlling illegal migration from Libya to southern Europe, often without adequate regard for the rights of migrants or the need to protect refugees and others at risk of abuse on return to their home countries.⁹
- 2.9** Human rights conditions in Libya improved somewhat in 2006 as the country continued its slow international reintegration, but serious violations remain. The government still restricts freedom of expression; political parties are banned and organisations have to be officially approved. It continues to imprison individuals for criticizing Libya’s political system, the government, or its leader Muammar al-Qadhafi. Due process violations and torture remain concerns, as do disappearances unresolved from past years.¹⁰
- 2.10** In 2006, the government continued to restrict civil liberties and freedoms of speech, press, assembly, and association, and did not fully protect the rights of migrants, asylum seekers, and refugees. Citizens did not have the right to change their government and reported torture, arbitrary arrest, and incommunicado detention remained problems. Other problems included poor prison conditions; impunity for government officials; lengthy political detention; denial of fair public trial; infringement of privacy rights; restrictions of freedom of religion; corruption and lack of transparency; societal discrimination against women, ethnic minorities, and foreign workers; trafficking in persons; and restriction of labour rights. The government took a positive step during 2006 when on 2 March it announced the release of 132 political prisoners, including 86 members of the Muslim Brotherhood held since 1988 and journalist Abd Al-Raziq Al-Mansuri.¹¹
- 2.11** During 2006, the government continued its long-standing review of many Libyan laws, including proposals for a new penal code and code of criminal procedure. Under the new penal code, the secretary of justice told Human Rights Watch in 2005, the death penalty would remain only for the “most dangerous crimes” and for “terrorism.” At time of writing, however, the government had presented neither the draft penal code nor the code of criminal procedure to Libya’s main legislative body, the General People’s Congress. While the most recent version of the penal code draft is unknown, a review of a 2004 draft suggests the government will accept a very broad definition of terrorism, which it might then use to criminalise people who are expressing peaceful political views.¹²

⁷ BBC ‘Libya’s reforming PM sacked’ 6 March 2006

⁸ HRW 2006

⁹ HRW 2006, FCO Country profile, & BBC Profile & timeline

¹⁰ HRW 2006

¹¹ US Department of State Human Rights Report (USSD) for Libya covering 2006

¹² HRW 2006 & USSD 2006 (Introduction & Section 1)

- 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.¹³ 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.¹⁴
- 2.13** Numerous charitable associations approved by the government operated in the country in 2006; however, the government has prohibited the establishment of independent human rights organisations. Individuals wishing to carry out human rights work were forced to operate abroad. The government body known as the Libyan Arab Human Rights Committee did not release any public reports. The Libyan Society for Human Rights, operating under the sponsorship of the semi-official Qaddafi International Development Foundation, followed government policy priorities rather than operating an independent entity. The government slowly began to allow foreign nongovernmental organisations greater access. In April 2006, a National Democratic Institute delegation visited for the first time to assess its political system and to gather information on the state of civil society and RSF conducted a fact-finding mission in September 2006. The government permitted a three-week visit by Human Rights Watch in May 2005 and a PHR delegation in March 2005. In 2004 Amnesty International visited after a 15-year absence.¹⁵

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. 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 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 Asylum Instructions 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

¹³ HRW 2006

¹⁴ AI & HRW 2 March 2006

¹⁵ USSD 2006 (Section 4)

qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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

3.5 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.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.¹⁶

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.¹⁷

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.¹⁸

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.¹⁹

¹⁶ FCO CP, FH 2005, USSD 2006 (Section 1) & Netherlands Immigration Service (NIS) Report 2002

¹⁷ FCO CP, FH 2005, USSD 2006 (Section 1), BBC Profile and timeline & NIS 2002

¹⁸ FCO CP, FH 2005, USSD 2006 (Section 1), Canada IRB November 2000 & NIS 2002

¹⁹ FCO CP, FH 2005, USSD 2006 (Section 1), Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004 & NIS 2002

- 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 armed resistance and the successful recruitment of students from the universities and military academies has made it an important source of opposition.²⁰
- 3.6.7** Although long persecuted by the regime the Muslim Brotherhood has also experienced a revival. Its representative group for Libya is the Libyan Islamic Group (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.²¹
- 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.²² 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.²³
- 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.**

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

²⁰ FCO 2006, FH 2005, Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004

²¹ FCO 2006, FH 2005, Canada IRB: February 1999, November 2000, March 2001, July 2001, May 2004

²² FCO 2006, FH 2005, USSD 2006 (Section 1) & NIS 2002

²³ HRW & AI 2 March 2006

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.²⁴

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.²⁵

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

²⁴ FCO 2006, USSD 2006 (Section 5), FH 2005 & Canadian IRB: 13 April 2004

²⁵ Canadian IRB: 13 April 2004

completely separate life from the rest of the Libyan population, and maintain their very different culture with a sense of pride.²⁶

- 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 2005,²⁷ 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 Family mistreatment and/or 'social rehabilitation' of women

- 3.8.1** 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.
- 3.8.2 *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 remains a problem. 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.²⁸
- 3.8.3** 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.²⁹

²⁶ Canadian IRB: 13 April 2004

²⁷ USSD 2006 (Section 5) & Canadian IRB: 13 April 2004

²⁸ USSD 2006 (Section 5)

²⁹ USSD 2006 (Section 5)

- 3.8.4** 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.³⁰
- 3.8.5** **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.
- 3.8.6** 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.³¹
- 3.8.7** **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.
- 3.8.8** 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 does not restrict the freedom of movement within the country.³²
- 3.8.9** It would therefore be possible for a claimant to escape the threat of mistreatment by non-state agents by relocating within 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 be unduly harsh.
- 3.8.10** **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.
- 3.8.11** 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

³⁰ HRW 27-28 February 2006

³¹ HRW 27-28 February 2006

³² USSD 2006 (Section 2d)

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 be unduly harsh. The grant of asylum in such cases is therefore likely to be appropriate.

3.9 Prison conditions

- 3.9.1** 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.
- 3.9.2** 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.
- 3.9.3** **Consideration.** According to foreign diplomats and international organisations, prison conditions in 2006 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 2006.³³
- 3.9.4** 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.³⁴
- 3.9.5** In 2006, 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 2006.³⁵
- 3.9.6** The government held many political detainees in 2006 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 2006 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.³⁶

³³ USSD 2005 (Section 1c)

³⁴ USSD 2005 (Section 1c)

³⁵ USSD 2005 (Section 1c)

³⁶ USSD 2005 (Section 1d)

- 3.9.7** In April 2006 authorities reportedly released Kamel Mas'ud Al-Kilani, who was arrested, taken to an unknown destination, and detained for 10 months, according to the Libya Watch for Human Rights. Authorities arrested Al-Kilani despite government assurances of safety upon his 2005 return to the country, but the government did not bring charges against him. At year's end authorities had not yet returned his passport. According to a December 2006 HRW report, security forces detained an outspoken regime critic, Idrees Mohammed Boufayed, on 5 November 2006. On 29 December 2006, security forces subsequently released Boufayed. Al reported that security officials detained Mahmoud Mohammed Boushima, a government critic resident in the UK since 1981, during a July 2005 trip to the country. He remained in custody at year's end. According to a September 2006 HRW report, in 2005 migrants and refugees in detention centres complained consistently of not being informed of the reason for their arrest, lengthy periods of pre-trial detention, and restricted access to a lawyer.³⁷
- 3.9.8** 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 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 2006.³⁸
- 3.9.9** 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.³⁹ Women and girls suspected of violating moral codes reportedly were detained indefinitely in "social rehabilitation" homes.⁴⁰
- 3.9.10 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.
- 3.9.11** 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 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

³⁷ USSD 2006 (Section 1c)

³⁸ HRW 2006

³⁹ HRW & AI 2 March 2006

⁴⁰ USSD 2006 (Section 1d)

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 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 as set out in the relevant Asylum Instructions.

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 inoculations. 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.⁴¹
- 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.

⁴¹ WHO Country profile 2004, Mental Health Atlas 2005 & USAIDS Country Information June 2005

- 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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