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Country Information and Guidance

Libya: Actual or perceived Gaddafi clan members/loyalists

19 August 2014

Preface

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

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

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

Country Information

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

Feedback

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

Independent Advisory Group on Country Information

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

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

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1. Guidance

Updated August 2014

1.1. Basis of claim

- 1.1.1 Fear of ill-treatment at the hands of armed gangs and militia brigades allied to the National Transitional Council and the authorities of the current Interim Government for being (or perceived as being) a Gaddafi clan member and/or Gaddafi loyalist.

1.2. Summary of Issues

- Is the person's account a credible one?
- Are Gaddafi clan members/loyalists (or those perceived as being) at risk of persecution from government authorities or armed militias?
- Is the person likely to be perceived or recognised as a Gaddafi clan member, loyalist or supporter?
- Are there serious reasons for considering that the person has been involved in the armed conflict?
- Are those at risk able to seek effective protection?
- Is the person able to internally relocate to escape that risk?

1.3. Consideration of Issues

Is the person's account a credible one?

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

Are perceived Gaddafi clan members/loyalists at risk of persecution from government authorities or armed militias?

- 1.3.3 Libyan society is founded on the basis of family, clan, tribe and ethnicity. The family, clan and tribal affiliations of a person, together with their regional origin, will generally be identifiable to other Libyans. Consequently, the likelihood of a person being perceived or known as a supporter of Gaddafi will vary according to the individual profile.
- 1.3.4 In order to determine whether the person is likely to be perceived or recognised as a Gaddafi clan member, loyalist or supporter, decision makers must establish and consider the

See [Asylum Instructions Considering Asylum Claims and Assessing Credibility and Asylum Interviews](#)

See caselaw

See [country information](#)

particular circumstances of the person, including:

- their precise place of origin in Libya;
- their ethnic origin;
- their age; and
- the nature and degree of the (perceived) relationship to the Gaddafi regime.

See [country information](#)

1.3.5 The country guidance case of [AT and Others \(Article 15c; risk categories\) \(CG\) \[2014\] UKUT 318 \(IAC\) \(14 July 2014\)](#) held that in the aftermath of the armed revolution that brought about the fall of the dictatorial and repressive regime of Colonel Gaddafi, the central government in Libya has relied on various militias to undertake security and policing functions. Those militias and the many others that operate within Libya, often have their own interests, loyalties and priorities which may or may not coincide with the interests of the central government. (para.125(1).

1.3.6 The Upper Tribunal in [AT & others](#) also held that having regard to the generally hostile attitude of society to the former regime, the following are, in general, at real risk of persecution or Article 3 ill-treatment on return to Libya (para. 215 (3):

- Former high ranking officials within the intelligence services or that regime;
- Others with an association at senior level with that regime;

See [Caselaw](#)

1.3.7 As a general matter, the closer an individual was to the centre of power within the former regime, the more likely that the individual will be able to establish a risk of persecution or Article 3 ill-treatment on return. (para.125(4).

1.3.8 The majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Gaddafi regime. Such employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.(para.125(5).

1.3.9 In general, family members of those described in (3) and (4) above are not at risk of persecution or a breach of their protected rights on return. It is possible, however, that an individual will be able to establish such a risk but this will need to be demonstrated by specific evidence relating to the individual's circumstances. Mere assertion of risk by association as a family member would not be sufficient without fact-specific evidence of the risk to that particular family member. (para.125(6).

See [country information](#)

1.3.10 Given the generalised attitude of resentment towards perceived Gaddafi supporters and fighters and the fact that they have been subject to serious ill-treatment committed with impunity, it is likely that persons who were closely associated with the Gaddafi regime, particularly at a senior level, will be at risk of serious harm/mistreatment.

See [Asylum Instruction Considering Asylum Claims and Assessing Credibility](#)

1.3.11 The decision maker must take into account that the Supreme Court in the case of [RT \(Zimbabwe\)](#) held that a person cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

Are there serious reasons for considering that the person has been involved in the armed conflict?

1.3.12 Decision makers should note that members of Gaddafi's security forces have been responsible for serious human rights abuses and acts of terrorism against the Libyan people and the international community. Some of these amount to crimes against humanity.

1.3.13 If there are serious reasons for considering that a person was involved in the security forces or was closely involved with Gaddafi and the regime, decision makers must consider whether one of the exclusion clauses is applicable, seeking advice from a Senior Caseworker if necessary.

Are those at risk able to seek effective protection?

1.3.14 The severe structural weakness of the police and other security services, the absence of the rule of law and the lack of a judicial system with the capacity to deal with civil remedies for human rights violations; and the reliance on - and impunity of - militia groups throughout Libya means that a person in general would be unable to access effective state protection. Those perceived to have been closely allied with, or high ranking officials with the Gaddafi regime cannot access effective protection from the current interim government.

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

1.3.15 The Upper Tribunal in [AT & others](#) concluded that a person at risk on account of their actual or perceived association with the Gaddafi regime would not, in general, have available to them the option of internal relocation. [para 215(18)]

1.3.16 Hatred and resentment against Gaddafi, and all those associated with his regime, is widespread throughout the country. Country information suggests that persons suspected or known to have closely supported Gaddafi, his forces and/or his regime have been taken captive from the streets and at checkpoints. It is unlikely that a person of this profile will be able to internally relocate in order to escape the risk of persecution.

See Asylum Instruction
[Exclusion: Article 1F of the Refugee Convention](#)

See [country information](#)

See Asylum Instruction
on [Internal Relocation](#)

Policy summary

There continues to be violence in Libya with militias and armed groups operating outside government control arbitrarily detaining, torturing and assassinating actual or perceived Gaddafi clan members and loyalists.

Those who were/are perceived to have been, high-ranking officials in the Gaddafi regime, or associated at a high level with the previous regime, are at risk of persecution, torture and ill treatment and are unable to access state protection and/or internally relocate. Where this is the case, a grant of asylum is likely to be appropriate unless they are excluded from the benefits of the 1951 Refugee Convention.

Decision makers must be aware that some of Gaddafi's loyalists/supporters were involved in serious human rights abuses during the conflict and as such, there may be serious reasons for considering that Article 1F applies.

Where a claim based on the person being an actual or perceived Gaddafi clan member, loyalist or supporter is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

[See Asylum Instruction Exclusion: Article 1F of the Refugee Convention](#)

[See Asylum Instruction Non Suspensive Appeals \(NSA\) Certification under Section 94 of the NIA Act 2002](#)

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2. Information

2.1. Overview of Libyan conflict

2.1.1 Human Rights Watch reported on 17 October 2012 that opposition forces fighting against Gaddafi in Libya's 2011 civil war were loosely organised and often did not fall under the centralized control of the National Transitional Council (NTC), the interim opposition body that was founded on 27 February 2011 in Benghazi and that ultimately succeeded the Gaddafi government. Hundreds of individual militias sprung up to fight against Gaddafi, organised around informal networks such as individual towns, companies, schools, former military units (in the case of defectors), or religious institutions to which members of the militia belonged. In almost every city and town across Libya, the primary loyalty of the city or town's militias was to their place of origin: hence, the myriad of militias became mostly identified with their place of origin, and loosely coordinated their activities along those lines.¹

2.1.2 Opposition forces also committed human rights abuses and violations of the laws of war, including some extrajudicial executions, arbitrary arrests and torture against detainees, revenge attacks against towns that were seen as supportive of Gaddafi, and widespread attacks against Sub-Saharan African migrant workers they accused of being mercenaries for Gaddafi.² The final March 2012 report of the International Commission of Inquiry on Libya similarly concluded with regards to the Thuwar ["Revolutionaries"] treatment of perceived Gaddafi loyalists that they "have executed and tortured to death perceived Qadhafi loyalists and suspected mercenaries. [...] Furthermore it concluded that "Thuwar have been involved in arbitrary arrest and enforced disappearance of perceived Qadhafi loyalists, security officers and members of the former government".³

2.1.3 More recently, the Reuter's News-agency reported that:

"A U.N. delegation was holding talks in Tripoli on Friday to try to broker a ceasefire between armed factions who have turned the Libyan capital into a battleground after the worst fighting since the fall of Muammar Gaddafi. The delegation, led by a representative of the United Nations mission in Libya, known as UNSMIL, aims to end the violence, help displaced residents and alleviate food and gasoline shortages, UNSMIL said in a statement on its website. "UNSMIL is working closely with the international community in a joint effort to achieve a durable and sustainable ceasefire," it said... Three years after the fall of Gaddafi, Libya's fragile government is unable to impose authority on groups of former rebels who refuse to disband and are allied with competing political factions battling over post-war dominance."⁴

2.1.4 The BBC reported in July 2014 that Libya is in a state of lawlessness, with over 1700 different militia groups, all with various goals and agendas, but with money and power as the common denominators. The report stated that:

¹ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

² Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

³ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, 8 March 2012, paragraphs 36 and 43: <http://www.ohchr.org/mwg-internal/de5fs23hu73ds/progress?id=v8bu1/Zhff&dl>

⁴ Reuter's Newsagency: 'U.N. delegation holds talks in Tripoli to broker militia ceasefire' 8 August 2014 <http://uk.reuters.com/article/2014/08/08/uk-libya-security-idUKKBN0G815820140808>

“Many of them (Libyans) live in fear - and have to move to safe places when fighting breaks out... ‘But the situation in Libya is far more anarchic - that is because the army disintegrated after Col Gaddafi’s fall, unlike in Egypt... ‘So, the government is at the mercy of the militias. In fact, it pays many of the militiamen, hoping they will switch loyalties and help build a new national army but there is little evidence of that happening.”⁵

Acts perpetrated by Gaddafi loyalists

2.1.5 Between February and August 2011, when Tripoli fell, pro-Gaddafi forces committed serious violations of human rights law and the laws of war. They detained thousands without charge, and often subjected them to torture and mistreatment in detention. Gaddafi’s forces repeatedly launched indiscriminate attacks using mortars, artillery, and Grad rockets into civilian areas, and indiscriminately laid tens of thousands of anti-personnel and anti-vehicle mines. Human Rights Watch documented 20 cases of gang rape and sexual assault of men and women by pro-Gaddafi forces, although the overall extent of such abuses remains unknown. Gaddafi’s forces also executed prisoners in their custody, most notably just before the fall of Tripoli, when at least 45 detainees were executed in a warehouse located adjacent to the base of the Khamis Brigade, run by Gaddafi’s son Khamis.⁶

2.1.6 With regards to the conduct of Gaddafi’s security forces during the armed conflict, the final March 2012 report of the International Commission of Inquiry on Libya concluded that:

‘Gaddafi forces engaged in excessive use of force against demonstrators in the early days of the protests, leading to significant deaths and injuries. The nature of the injuries indicates an intention to kill; the level of violence suggests a central policy of violent repression. These actions breach international human rights law as an arbitrary deprivation of life’.⁷

2.1.7 It also found that:

‘...the Gaddafi forces executed and tortured to death large numbers of prisoners in detention centres. Executions tended to occur immediately prior to retreats. During the armed conflict, this amounts to a war crime. Insofar as many of the detainees were part of the civilian population rather than captured fighters, the systematic and widespread executions constitute a crime against humanity’.⁸

2.1.8 Furthermore, the Commission concluded that Gaddafi forces unlawfully detained persons it suspected were supporting Thuwar (revolutionaries) and that “Gaddafi forces committed torture and ill -treatment in a widespread and systematic manner”. It also noted that “the Gaddafi forces launched sustained shelling on many towns and cities across Libya during the conflict. Some of these towns, such as Misrata, still contained

⁵ BBC News: Libya: ‘Why is Libya Lawless?’ 15 July 2014

<http://www.bbc.co.uk/news/world-africa-24472322>

⁶ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, I. Background

http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

⁷ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, 8 March 2012, paragraph 22, <http://www.ohchr.org/mwq-internal/de5fs23hu73ds/progress?id=v8bu1/Zhff&dl>

⁸ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, 8 March 2012, paragraph 35

<http://www.ohchr.org/mwq-internal/de5fs23hu73ds/progress?id=fsOWf0dCi7&dl>

civilians. The use of unguided weapons in these cases constituted an indiscriminate attack”.⁹

2.2. Attacks against former Gaddafi supporters following 2011 uprising

Arrests and ill treatment

2.2.1 Amnesty International reported that:

“..sweeping arrests by armed militias, acting independently or through local military councils or security committees, mostly took place when territories first came under the control of forces supporting the NTC. Decree 388 by the Ministry of Interior issued in December 2011 granted local Supreme Security Committees the right to arrest, detain and interrogate suspects. This provided a legal basis for the arrest and detention of suspects by the plethora of committees created by civilian or military councils and militias at the local level. In addition to taking captive individual suspects, armed militias target entire communities accused of having supported Gaddafi forces and committed crimes during the conflict. Particularly vulnerable to such arrests are people from Tawargha at the hands of Misratah militias and people from Mashashiya at the hands of Zintan militias”.¹⁰

2.2.2 Amnesty International reported that:

“..militias take persons suspected of having supported Gaddafi forces and committed crimes during the conflict captive from their homes, their workplace, the streets or at checkpoints. Easily identifiable targets, such as black Tawarghas or Sub-Saharan African nationals, are particularly vulnerable to such practices, severely impeding their freedom of movement.”¹¹

2.2.3 The UN Support Mission in Libya reports that “Detainees include individuals suspected of having fought on the side of or otherwise having supported Qadhafi’s regime, and their family members. Some have been detained apparently on the basis of belonging to certain tribal or ethnic groups, including Warfalla, Tawargha, and Mashashia, as these groups are collectively perceived by some as having supported the former regime. Given the arbitrary nature of the arrests and lack of judicial oversight, cases of personal score-settling are not uncommon”.¹²

2.2.4 An October 2012 Human Rights Watch report presents evidence that “Misrata-based militias, after capturing and disarming members of the Gaddafi convoy and bringing them under their total control, subjected them to brutal beatings before apparently executing dozens of them. One year later, Libyan authorities have neither investigated nor held

⁹ UN Human Rights Council, Report of the International Commission of Inquiry on Libya, 8 March 2012, paragraphs 42, 52 and 81,

<http://www.ohchr.org/mwq-internal/de5fs23hu73ds/progress?id=fsOWf0dCi7&dl>

¹⁰ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, Arbitrary arrests <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

¹¹ Amnesty International, Libya: Rule of Law or Rule of Militias?, 5 July 2012, Arbitrary arrests <http://www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf>

¹² United Nations Support Mission in Libya and Office of the United Nations High Commissioner for Human Rights, Torture and deaths in detention in Libya, October 2013, Torture and other ill-treatment <http://unsmil.unmissions.org/Portals/unsmil/Documents/Torture%20Report%20Libya%20En%2001Oct2013.pdf>

accountable those who committed these crimes". The same source further notes that "these killings apparently comprise the largest documented execution of detainees committed by anti-Gaddafi forces during the eight-month conflict in Libya. The execution of persons in custody is a war crime".¹³

- 2.2.5 As revolutionary groups gained control after the fall of Gaddafi, militias reportedly entered private homes and seized or stole belongings. In particular press reports suggested thefts by regional militias targeted Gaddafi supporters. In the absence of an effective judicial system for property restitution, individuals sought to regain disputed property by threat or violence. Although the interim government was not responsible for collective punishment of relatives of Gaddafi loyalists, it was unable to deter militia groups from attacking or discriminating against such persons.¹⁴
- 2.2.6 In an April 2013 report on the Libyan justice system, the International Crisis Group observes that "Gaddafi-era victims, distrusting an apparatus they view as a relic, take matters in their hands; some armed groups, sceptical of the state's ability to carry out justice, arbitrarily detain, torture or assassinate presumed Gaddafi loyalists". The report continues "the mere possession of pro-Gaddafi songs or photographs saved on a mobile telephone often justified immediate detention, as did hailing from a town or community accused of siding with Gaddafi forces during the war. In many cases presumed ties to the former regime appear to have been little more than pretexts to retaliate against people against whom the armed brigades held personal or professional grudges or as a means of extorting a ransom". The International Crisis Group report further notes that the government is unable to control armed groups from exacting justice against former Gaddafi supporters.¹⁵
- 2.2.7 A senior executive from the Cairo-based NGO Libyan Foundation for Human Rights similarly reported to IRIN in May 2013 that "There is a persistent desire inside Libya now for taking revenge on whoever took sides with Gaddafi against the revolutionaries, even if these people who took sides with Gaddafi were not influential people or fighters themselves."¹⁶

Detentions and due process

- 2.2.8 Amnesty International reports that thousands of conflict detainees remain held in detention centres across the country with varying levels of government control. Law 29/2013 on Transitional Justice requires the authorities to charge or release all detainees "affiliated to the former regime" by 2 March 2014 but Amnesty International believes that this deadline has not been fully met. State-affiliated militias still arbitrarily detain individuals in ordinary criminal cases or following clashes. Libyan courts have faced difficulties in processing cases of conflict detainees due to public and militia pressure. Prosecutors, judges and lawyers defending perceived Gaddafi loyalists face intimidation, threats and violence. Ahmad Ibrahim, a former education minister, was sentenced to death in 2013 on charges of incitement to discord and civil war, and incitement to

¹³ Human Rights Watch, Death of a Dictator, Bloody Vengeance in Sirte, 17 October 2012, Summary http://www.hrw.org/sites/default/files/reports/libya1012webwcover_0_0.pdf

¹⁴ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1f, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dld=220366>

¹⁵ International Crisis Group, Trial by Error: Justice in Post-Gaddafi Libya, 17 April 2013, B. Collapse of the State Security Apparatus, [http://www.crisisgroup.org/~media/Files/Middle%20East%20North%20Africa/North%20Africa/libya/140-trial-by-error-justice-in-post-qadhafi-libya.pdf](http://www.crisisgroup.org/~/media/Files/Middle%20East%20North%20Africa/North%20Africa/libya/140-trial-by-error-justice-in-post-qadhafi-libya.pdf)

¹⁶ IRIN, Libyans in North Africa scared to return home, 16 May 2013 <http://www.irinnews.org/report/98045/libyans-in-north-africa-scared-to-return-home>

abduction and murder, following a trial deemed unfair by Amnesty International and other international commentators. His lawyers were harassed, threatened and denied the right to see him in private. Ahmad Ibrahim was interrogated without the presence of his lawyer; his defence was not allowed to examine witnesses. In October 2013 the Pre-Trial Chamber of the International Criminal Court (ICC) decided that Abdallah al-Senussi, the former chief of Military Intelligence, can be tried in Libya, raising concern (according to an Amnesty International Public Statement) that he may face an unfair trial, which may further result in the death penalty.¹⁷

2.2.9 Libya has failed to grant basic due process rights to Saif al-Islam Gaddafi and other detained former officials of the Gaddafi government. On January 23, 2014, Human Rights Watch interviewed Gaddafi in an office at a base in the town of Zintan. They also visited the former military intelligence chief Abdullah Sanussi and former Prime Ministers al-Baghdadi al-Mahmoudi and Abuzaid Dorda, in Al-Hadba Corrections Facility in Tripoli on 23 January. Gaddafi and Sanussi said they do not have a lawyer, while Dorda and al-Mahmoudi said they have been denied adequate access to their legal counsel. All four detainees said that they did not have lawyers present during interrogations, the right to remain silent and to know their interrogators' identity, or an opportunity to review the evidence submitted against them in relation to crimes they allegedly committed during the 2011 uprising. Gaddafi and Sanussi said they have been held without access to legal counsel throughout their detention in Libya; Al-Mahmoudi and Dorda said they have had access to their lawyers but were unable to meet with them in private to prepare their defence. Al-Mahmoudi and Dorda said their lawyers had no access to court documents, witness statements, or the evidence against them. All four described multiple interrogation sessions without legal counsel with people who seemed to be both official and unofficial interrogators.¹⁸ Human Rights Watch reported that the trial of 37 mostly Gaddafi-era officials accused of serious crimes during Libya's 2011 uprising, which resumed in April 2014, continues to raise serious due process concerns, with some charges carrying the death penalty.¹⁹

2.2.10 To the extent that they controlled security forces, the government and various militias held persons, particularly former Gaddafi officials, internal security organization members, and others accused of subverting the revolution, in a variety of temporary facilities on political grounds. Since most detainees were held for more than a year without being brought before a judge and were denied access to a lawyer, it was not possible to evaluate whether they were political detainees and prisoners. In view of the sweeping nature of retaliation against former regime adherents, it was likely that a number were political detainees.²⁰ The January 2014 Report of the United Nations High Commissioner for Human Rights notes that "Prosecutors and judges are frequently subjected to intimidation and assaults. Prosecutors ordering the release of former regime members or the arrest of members of armed brigades are the primary target of such attacks and threats".²¹

¹⁷ Amnesty International, Libya: Teetering on the edge: Ongoing human rights violations and abuses in Libya, 3 March 2014, <http://www.amnesty.org/en/library/asset/MDE19/001/2014/en/b2710a1c-e9cc-4e48-90bd-b58776135d89/mde190012014en.html>

¹⁸ Human Rights Watch, Libya: Gaddafi Son, Ex-Officials, Held Without Due Process, 13 February 2014, <http://www.hrw.org/news/2014/02/13/libya-gaddafi-son-ex-officials-held-without-due-process>

¹⁹ Human Rights Watch, Libya: Fair Trial Concerns for Ex-Officials, 14 April 2014 <http://www.hrw.org/news/2014/04/14/libya-fair-trial-concerns-ex-officials>

²⁰ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Section 1e, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

²¹ UN Human Rights Council, Technical assistance for Libya in the field of human rights, Report of the United Nations High Commissioner for Human Rights, 13 January 2014, paragraph 30

Convictions

2.2.11 Following the death sentence of the former Gaddafi regime Education Minister, Ahmad Ibrahim, Amnesty International reported that hundreds of former soldiers and supporters of the former dictator are at increased risk of the death penalty. The Misurata Court of Appeals sentenced Ahmad Ibrahim to death on 31 July 2013 along with five other men who were charged with incitement to discord and civil war and undermining state security during the conflict. Ahmad Ibrahim is the first senior official under the previous government to be sentenced to death. Amnesty International said that:

“...thousands of detainees are being held in relation to the 2011 conflict, including members of Gaddafi’s former security forces and others perceived as loyalists. It said that many are in danger of receiving similar sentences as courts process their cases in the coming months.²² On 4 October 2014, Human Rights Watch recommended that Libya suspend death sentences issued in 2012 and 2013 against a number of previous supporters of Gaddafi.²³ By the end of 2013, there was no indication that the National Transitional Council had carried out these sentences, although unlawful killings were carried out by groups outside government control.²⁴

Recent action against those considered to be pro Gaddafi

2.2.12 The U.S. Department of State reports that during 2013, “There were numerous killings, sometimes by militia forces committed under the orders of militia commanders under the nominal authority of the Ministries of Interior or Defence. Arbitrary and unlawful killings were carried out most frequently by militias acting in pursuit of tribally and ethnically based agendas”. Primary targets included Qadhafi-affiliated officials and soldiers, amongst other profiles. It also reported that the first half of 2013 saw the continuation of a spate of apparently politically motivated killings of members of the police, internal security apparatus, and military intelligence, largely occurring in the eastern regions, and particularly centered in Benghazi and Derna. According to a Human Rights Watch (HRW) report on August 8, there were at least 51 such political killings since Qadhafi’s ousting, many of the victims associated with the former regime.²⁵

2.2.13 In February 2014 Amnesty International expressed concern over the decree passed to punish Libyan students and state employees abroad who engaged in “activities hostile to the ‘17 February Revolution’” by withdrawing their scholarships, salaries and bonuses. The decree also instructs embassies and relevant authorities to submit names to the General Prosecution for interrogation. Amnesty International fears that the broad and vague provision included in the decree may be used to prosecute Libyan individuals who

http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A_HRC_25_42_ENG.DOC

²² Amnesty International Libya: “al-Gaddafi loyalists at risk of ‘revenge’ death sentences” 2 August 2013 <https://www.amnesty.org/en/for-media/press-releases/libya-al-gaddafi-loyalists-risk-revenge-death-sentences-2013-08-02>

²³ Human Rights Watch: Libya: Suspend Death Sentences Against Gaddafi Loyalists: 4 October 2014 <http://www.hrw.org/news/2013/10/04/libya-suspend-death-sentences-against-gaddafi-loyalists>

²⁴ US Department of State, Country Report on Human Rights Practices for 2013: Libya, Executive Summary, 27 February 2014 <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

²⁵ US State Department, Country Report on Human Rights Practices 2013: Libya, Section 6, 27 February 2014 , 1a Arbitrary or Unlawful Deprivation of Life

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220366>

publicly expressed their opposition to the uprising and participated in protests and demonstrations supporting Colonel al-Gaddafi's rule during their time abroad.²⁶

2.2.14 Human Rights Watch reported that the 22 January 2014 decree passed by Libya's parliament banning satellite television stations critical of the government and the 2011 uprising against Gaddafi violates free speech and Libya's Provisional Constitutional Declaration. It further notes that "The ban appears intended to block satellite stations that have taken a pro-Gaddafi position in their editorial content; in particular, it appears aimed at a pro-Gaddafi station, al-Khadra Channel, and al-Jamahiriya. The government's effort to ban pro-Gaddafi media comes in the context of a difficult political and security environment. Seemingly pro-Gaddafi armed groups in southern and western Libya have engaged in pitched battles against pro-government forces, resulting in at least 154 deaths and 463 injured people according to an Agence France Presse report. In the past year (2013), armed groups and unknown assailants assassinated at least 70 Libyans associated with the Gaddafi government, mainly former members of the Gaddafi security forces, but also political opponents of Gaddafi, and judges, with virtually no arrests by the government".²⁷

2.2.15 Since mid-January 2014 the forces that remain allied with the former Jamahiriya political and economic system under the rule of Gaddafi, who was overthrown and murdered in October 2011 amid the Pentagon-NATO bombing campaign, took control of several cities and towns in the South. Sebha, a city in the area, has been the scene of fighting between two ethnic groups the Tebu and the Awlad Sulaiman. Other areas impacted by the fighting include Wirshefana south, Ajilat, Zawia and territory west of Zahra. Clashes have also been reported around the capital of Tripoli where loyalist forces have fought pitched battles with militias and military forces that are backed by the GNC regime.²⁸

2.2.16 The February 2014 report of the UN Secretary-General notes that "Fighting and kidnappings in southern Libya have increased since December 2013. Clashes between the Tabu community and the Awlad Suleiman tribe erupted on 9 January 2014, resulting in over 90 deaths. A ceasefire brokered on 13 January collapsed days later. Mediation efforts by both Government and civil society representatives remain ongoing, but progress has been limited. A complicating factor was the involvement of armed groups that are perceived to be supporters of the former regime".²⁹ Reporting on the tribal conflicts in southern Libya, the Jamestown Foundation notes in January 2014 that "simultaneous with these disputes, however, is the mysterious and oddly-timed emergence of "Qaddafist supporters" waving green flags (the symbol of the Qaddafist revolution) in several different Libyan centres, most notably in the southern oasis settlement of Sabha, where they were alleged to have seized an airbase".³⁰ It further notes that "The identity of the alleged Qaddafists remains in question. In Sabha, citizens

²⁶ Amnesty International, Libya: Three years on, Gaddafi-era laws used to clamp down on free expression, 12 February 2014 <http://www.amnesty.org/en/news/libya-three-years-qaddafi-era-laws-used-clamp-down-free-expression-2014-02-13>

²⁷ Human Rights Watch, Libya: Critical TV Bans Setback for Speech, 26 January 2014 <http://www.hrw.org/news/2014/01/26/libya-critical-tv-bans-setback-speech>

²⁸ Libya 360, Renewed Intervention Threatened After Pro-Gaddafi Forces Seize Areas in Southern Libya, 27 January 2014, <http://libya360.wordpress.com/2014/01/27/renewed-intervention-threatened-after-pro-qaddafi-forces-seize-areas-in-southern-libya/>

²⁹ UN Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, 26 February 2014, paragraph 23 <http://unsmil.unmissions.org/Portals/unsmil/Documents/SGReport26February2014.pdf>

³⁰ Jamestown Foundation, Tripoli Battles Shadowy Qaddafists While Tribal Rivals Fight Over Southern Libya; Terrorism Monitor Volume: 12 Issue: 2, 23 January 2014: http://www.jamestown.org/regions/africa/single/?tx_ttnews%5Btt_news%5D=41866&tx_ttnews%5BbackPid%5D=55&cHash=d112afa9444ffe2e295fda172d098f6f

became alarmed when reports began to circulate that the Qaddafists were actually “foreign troops from Chad,” prompting a formal Libyan government denial”.³¹

³¹ Jamestown Foundation, Tripoli Battles Shadowy Qaddafists While Tribal Rivals Fight Over Southern Libya; Terrorism Monitor Volume: 12 Issue: 2, 23 January 2014:
http://www.jamestown.org/regions/africa/single/?tx_ttnews%5Btt_news%5D=41866&tx_ttnews%5BbackPid%5D=55&cHash=d112afa9444ffe2e295fda172d098f6f

Annex A: Map



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

Weblinks for other maps on Libya:

ESRI/UN Cartographic Section (UNCS), Libya, September 2013

http://reliefweb.int/sites/reliefweb.int/files/resources/lby_ocha.pdf

Nations Online, Political map of Libya, Undated [Last accessed: 14/05/2014]

<http://www.nationsonline.org/oneworld/map/libya-political-map.htm>

Annex B: Caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012)

The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion.

‘Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom *not* to hold and *not* to have to express opinions’. (Paragraph 32)

‘Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution.’ (Paragraph 42).

Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

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

The Upper Tribunal held that (see paragraph 215):

Country guidance

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

Article 15(c)

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

Former regime members and associates

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

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

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

(5) The majority of the population of Libya either worked for, had some association with, or has a member of the family who worked for or had an association with the Qadhafi regime. Such

employment or association alone is not sufficient to establish a risk of persecution or Article 3 ill-treatment on return.

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

Black Libyans etc

(7) A 'Black Libyan' is a Libyan of black African appearance, and includes a person who may not actually possess Libyan nationality but for whom Libya is their country of former habitual residence. There is endemic racism within Libyan society towards Black Libyans. However, Black Libyans who are not Tawurga or Tuareg are not per se at risk of persecution or Article 3 ill-treatment on return, and will only be able to establish the need for international protection with reference to some additional factor particular to that individual.

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

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

Women

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

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

Failed asylum seekers

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

Risk at point of return

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

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

Risk following return

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

(15) Notwithstanding the prevalence of checkpoints manned by militias, it is possible to travel overland from Tripoli airport to other destinations without a real risk of persecution, serious harm or Article 3 ill-treatment. Land travel in general is possible and can be undertaken without giving rise to a risk of harm that requires recognition in terms of international protection. The evidence does not reveal such a level of arbitrary or irrational conduct on the part of militias at checkpoints such as to put the ordinary traveller at real risk. A claim to international protection is unlikely to succeed simply on the basis of a claimed risk of travel to any particular area of Libya. Area specific evidence would have to be adduced which establishes such a risk.

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

Sufficiency of protection

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

Internal relocation

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

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

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

(21) However, such a person may not be able to avoid a risk of harm in a new area where the person has no connections in terms of tribal or family links, but the person or group that is feared does have such links. A fact-specific enquiry is essential. An appellant's assertion that

the individual or group that is feared has links to say, Tripoli or Benghazi, or another prospective place of relocation, will need to be assessed in the light of the findings in relation to overall credibility.

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

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

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

[ME \(Risk, Failed Asylum Seekers, Hassan\) Libya CG \[2003\] UKIAT 00200 \(29 October 2003\)](#)

[HH \(Risk, Failed Asylum Seekers\) Libya CG \[2003\] UKIAT 00202 \(24 February 2004\) KK](#)

[\(Failed Asylum Seeker\) Libya CG \[2004\] UKIAT 00151 \(27 May 2004\)](#)

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