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Country Policy and Information Note

Libya: Actual or perceived supporters of former President Gaddafi

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. 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 policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country information

The COI within this note 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 our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

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. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

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/

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Policy guidance

Updated: 15 March 2017

1. Introduction

1.1 Basis of claim

1.1.1 Fear of persecution or serious harm by state and non-state actors because of the person's actual or perceived association with, membership of, or support for, the previous Gaddafi regime or the Gaddafi family.

1.2 Points to note

1.2.1 The number of non-state actors, including armed gangs and militia brigades active in Libya is estimated to be almost 2,000. They can be categorised into non-Jihadist groups, Islamist/Jihadist groups, and pro-government forces. The majority of these are anti-Gaddafi.

1.2.2 For further information, see the Country Policy and Information Note on Libya: Security & humanitarian situation

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum Instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

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2.2 Convention reason

2.2.1 Claims based on actual or perceived support for the previous Gaddafi regime is due to their actual or perceived political opinion.

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2.3 Exclusion

2.3.1 There have been numerous reports of atrocities including unlawful killings, torture and mass rape carried out by Gaddafi loyalists during the conflict. Parties on all sides of the conflict have reportedly been responsible for numerous serious human rights abuses (see Acts perpetrated by Gaddafi loyalists and Attacks against former Gaddafi supporters since 2011).

2.3.2 If there are serious reasons for considering that the person has been involved in such activities then decision makers must consider whether one of the exclusion clauses is applicable.

2.3.3 For further guidance on the exclusion clauses, humanitarian protection and restricted leave, see the Asylum Instruction on Exclusion (Article 1F) and Article 33(2) of the Refugee Convention, Humanitarian Protection and Restricted Leave

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2.4 Assessment of risk

2.4.1 In the country guidance case of FA (Libya: art 15(c)) Libya CG [2016] UKUT 00413 (IAC) (7 September 2016) (hearing date 22 August 2016) the Upper Tribunal ('the Tribunal') replaced the previous country guidance case on Article 15 (c) of AT and Others, which held there was no general Article 15(c) risk in Libya, in the light of changing country conditions, including such factors as a lack of direct flights to Libya from the UK, the ebb and flow of fighting, and the rise of Daesh (para 11).

2.4.2 The Tribunal held that 'the question of whether a person is at Article 15(c) risk in Libya should, until further Country Guidance, be determined on the basis of the individual evidence in the case (para 1).

2.4.3 The country guidance case of AT and Others (Article 15c; risk categories) (CG) [2014] UKUT 318 (IAC) (14 July 2014) (heard 18-22 November 2013) remains valid in all other respects.

2.4.4 In AT and Others, the Tribunal 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 215(1)).

2.4.5 In AT and Others, the Tribunal 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:

- Former high ranking officials within the intelligence services; and
- Others with an association at senior level within the regime (para 215 (3));
- 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. 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 (para 215 (8 and 9)).

2.4.6 The Tribunal also found that 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 215(4)). While the majority of the population of

Libya 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 215(5)).

2.4.7 The Tribunal found that in general, family members of former high ranking officials in the intelligence services or persons with an association at senior level with the regime 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 215(6)).

2.4.8 While there has been some regrouping of support for Gaddafi with the establishment of pro-Gaddafi political parties, the country situation has not changed significantly since 2013. There remains a generalised attitude of resentment towards perceived Gaddafi supporters and fighters. Given that they have been subject to serious ill-treatment, including assassination committed with impunity, it is likely that a person who was closely associated with the Gaddafi regime – particularly at a senior level, such as ministers, officials and diplomats – will be at risk of persecution or serious harm. Persons who had a low level role in the regime and family members of persons associated with the regime, even at a senior level, are in general unlikely to be at risk of persecution (see Treatment of Gaddafi loyalists).

2.4.9 Each case must be considered on its specific facts, with the onus on the person to demonstrate that they are at risk of persecution or serious harm.

2.4.10 For further information on assessing risk, see: Asylum Instruction on Assessing Credibility and Refugee Status.

2.4.11 For guidance and information on the security situation and treatment of ethnic groups perceived to support Gaddafi, see the Country Policy and Information Notes on Libya: Ethnic minority groups and Libya: Security and humanitarian situation.

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2.5 Protection

2.5.1 Where a person can demonstrate that they are at risk of persecution or serious harm due to their actual or perceived association with, membership of, or support for, the previous Gaddafi regime or the Gaddafi family, they are unlikely to be able to avail themselves of the protection of the authorities.

2.5.2 The Libyan authorities rely largely on unregulated, armed militias to provide security and law enforcement and the rule of law is largely absent. The internationally recognised government of Libya based near Tripoli is therefore unable to provide a reasonable level of protection to a person who can demonstrate a real risk of persecution or serious harm.

2.5.3 For further guidance on assessing the availability or lack of state protection, see the Asylum Instruction on Assessing Credibility & Refugee Status.

2.5.4 For information and guidance on the general security situation, see the Country Policy and Information Note on Libya: Security & Humanitarian Situation.

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2.6 Internal relocation

2.6.1 Internal relocation is not possible or reasonable for persons who are or are perceived to have been closely involved with the Gaddafi regime at a high level, or closely related to him.

2.6.2 For others, travel within Libya is hampered by violence and on-going conflict between various armed militias and pro-government troops in most of the populated parts of the country. This is compounded by road blocks and control points manned by conflicting militias, including terrorist groups. The south of the country is subject to checkpoints and roadblocks operated by the Government and by various militias (see Freedom of Movement).

2.6.3 Return to an area that is not the person's home may be reasonable in some cases. Decision makers must give careful consideration to the relevance and reasonableness of internal relocation on a case-by-case basis taking full account of the individual circumstances of the particular person, including where they originate from in Libya and where they will be returning to.

2.6.4 See also the Country Policy and Information Note on Libya: Security & humanitarian situation (in particular the 'security situation – general' and 'freedom of movement' sections in the country information). For women, see also the Country Policy and Information Note on Libya: Women.

2.6.5 For further information on internal relocation, see: Asylum Instruction on Assessing Credibility and Refugee Status

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2.7 Certification

2.7.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

2.7.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims)

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3. Policy summary

3.1.1 A person who was a former high-ranking official within the intelligence services of the Gaddafi regime, or is perceived to have been closely involved with the Gaddafi regime, or was closely related to him, is likely to be at risk of persecution or serious harm from state and non state actors.

3.1.2 Members of the Tawurga/Tawergha, Tuareg and Mashashiya ethnic or tribal groups are likely to be able to establish the need for international protection based on their perceived support of the Gaddafi regime.

3.1.3 Exclusion must be considered where there are serious reasons to consider that a person may have committed serious crimes.

3.1.4 A family member of someone associated with the Gaddafi regime at a senior level is not generally likely to be at risk of persecution or serious harm, although each case will need to be considered on its specific facts.

3.1.5 A person who was linked to the Gaddafi regime at a low level is unlikely to be at risk of persecution or serious harm, although each case must be considered on its specific facts.

3.1.6 State protection is unlikely to be available to persons who are able to demonstrate a real risk of persecution or serious harm.

3.1.7 Internal relocation is unlikely to be possible or reasonable for persons who are perceived to have been closely involved with the Gaddafi regime, or closely related to him. It may be possible for others, depending on their personal circumstances.

3.1.8 Where a claim is refused, it is unlikely to be certifiable.

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Country information

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4. Political context

4.1 Gaddafi's overthrow and the aftermath

4.1.1 The Australian Department of Foreign Affairs and Trade (DFAT) Country Information Report on Libya, published on 4 April 2016, stated:

'For the majority of his rule, effective opposition to Gaddafi inside Libya was minimal. The government operated a substantial internal intelligence network to detect even minor dissent. However, in early 2011, unchecked protests in the eastern city of Benghazi carried out at the time of the wider Arab Spring quickly led to an ideologically disparate range of dissident groups taking up arms against the Gaddafi regime. Aided by NATO air support sanctioned by the UN Security Council, and the defection of key members of Gaddafi's political and security elite, the rebels quickly gained control of large amounts of territory. The last major pro-Gaddafi city, Sirte, fell to the rebels in October 2011 and Gaddafi himself was captured and killed by militants while attempting to flee Libya. On 23 October 2011, the head of the largest opposition group, the Transitional National Council (TNC), declared Libya to be 'officially' liberated.'[1]

4.1.2 The 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya (detailed findings) published on 15 February 2016 stated:

'...The International Commission of Inquiry for Libya described how the Gaddafi period was characterised by decades of corruption, sustained repression to any opposition, and the perpetration of serious human rights violations, often by the very State agencies with the responsibility to uphold and protect those rights.

' In 2011, an armed conflict developed after the Gaddafi regime used force against protestors in a reaction to Libyan citizens' attempts to exercise democratic freedoms. The situation escalated into an armed conflict between opposition armed groups and the Gaddafi regime. The North Atlantic Treaty Organization (NATO) intervened under a mandate provided by Security Council resolution 1973 (2011) to take all necessary measures to protect civilians and civilian populated areas. In October 2011, the National Transitional Council declared victory for the opposition armed groups.

'While the Gaddafi regime had been toppled, substantial challenges were left for a country with little trust in State institutions, no independent institutions, nor political parties, nor a judiciary able to provide justice and redress...

'In the period from 2011 to 2013, Libya experienced political volatility and a precarious security situation. Little progress was made in relation to

[1] Australian Government, Department of Foreign Affairs and Trade (DFAT) Country information report Libya, 4 April 2016, page 5, copy available upon request. Date accessed 3 February 2017

integrating “revolutionary” armed groups into an effective national army or police force.

‘2014 and 2015 saw a dramatic decline in the political and security situation in Libya, with the outbreak of hostilities in the east, west and south of Libya. In addition, groups pledging allegiance to ISIL further emerged as a force, particularly in Derna, Sirte, and Benghazi...’’[2]

4.1.3 The United States Institute of Peace summarised the situation of Libya in the aftermath of the death of Moammar Gaddafi, in a fact sheet published on 16 May 2016:

‘Five years after Libya’s dictator Moammar Gaddafi was deposed in a popular revolution, the country remains trapped in a spiral of deteriorating security, economic crisis, and political deadlock. Trust in the nation’s weak government institutions has fallen to an all-time low as political elites, unable to agree on even a governmental structure, deploy armed militias to control territory and economic assets. An additional challenge comes from ISIS and other violent extremists exploiting the situation to expand operations in Libya.’[3]

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4.2 Acts perpetrated by Gaddafi loyalists

4.2.1 On 25 February 2011 the Human Rights Council held an emergency session to look at and investigate alleged violations of international human rights law in Libya. The report of the investigation stated, in its summary:

‘The Commission conducted its investigations applying the international legal regimes dictated by the situation. It concluded that international crimes, specifically crimes against humanity and war crimes, were committed by Gaddafi forces in Libya. Acts of murder, enforced disappearance, and torture were perpetrated within the context of a widespread or systematic attack against a civilian population. The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape...’[4]

4.2.2 On 30 August 2011, the Telegraph reported on crimes perpetrated by Gaddafi and his supporters. The newspaper obtained detailed information from the NGO Physicians for Human Rights (PHR), who had interviewed dozens of survivors of the siege of Misrata which took place in June 2011. The report stated:

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[2] Human Rights Council: ‘Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings ‘ A/HRC/31/CRP.3 date of issue 15 February 2016 paragraph 31 – 33, http://www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf, Date accessed: 3 February 2017

[3] The United States Institute of Peace: ‘The Current Situation in Libya’ published 16 May 2016 http://www.usip.org/publications/the-current-situation-in-libya Date accessed 27 October 2016

[4] Human Rights Council: ‘Report of the International Commission of Inquiry on Libya’ [A/HCR/19/68] Dated 2 March 2012 http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_93_Report_International_Commission_of_Inquiry.pdf Date accessed: 12 January 2017

‘Libyan troops loyal to Muammar Gaddafi forced civilians to act as human shields, perching children on tanks to deter NATO attacks, human rights investigators have said.

‘Physicians for Human Rights (PHR) were able to get a team of interviewers into the embattled city of Misrata from June 5-12, just after Libyan rebel forces expelled Gaddafi's loyalists.

‘Interviewing dozens of survivors of the two-month siege, the Boston-based PHR found widespread evidence of crimes against humanity and war crimes, including summary slayings, hostage-taking, rapes, beatings, and use of mosques, schools and marketplaces as weapons depots. "Four eyewitnesses reported that (Gaddafi) troops forcibly detained 107 civilians and used them as human shields to guard military munitions from NATO attacks south of Misrata," said the report.

‘PHR obtained copies of military orders as evidence that Gaddafi ordered his troops to starve civilians in Misrata, while pillaging food caches and barring locals from receiving humanitarian aid. Rape was also "a weapon of war," Richard Sollom, the lead author of PHR's report, told the Associated Press. While he said no one has evidence to prove that rape was widespread, the fear of it certainly was, he said.

‘And it had deadly consequences in the form of "honour killings" of rape victims by their shamed family members. "One witness reported that (Gaddafi) forces transformed an elementary school into a detention site where they reportedly raped women and girls as young as 14 years old," the PHR report said.[5]

4.2.3 The report published by the International Commission of Inquiry on Libya stated that persons were raped ‘because of their allegiance to the thuwar and others were assaulted for no known reason. Of those targeted, rape appeared to be used as a means to punish, terrorize, and send a message to those who supported the revolution’.[6]

4.2.4 The same report stated that:

‘The Commission finds that Qadhafi 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.

‘The Commission finds that the Qadhafi forces executed and tortured to death large numbers of prisoners in detention centres.

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[5] The Telegraph: Libya: ‘Gaddafi forces accused of multiple war crimes’ published 30 August 2011 http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/8730134/Libya-Gaddafi-forces-accused-of-multiple-war-crimes.html Date accessed 12 January 2017

[6] Human Rights Council: ‘Report of the International Commission of Inquiry on Libya’ [A/HCR/19/68] Dated 2 March 2012 http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_93_Report_International_Commission_of_Inquiry.pdf paragraph 66 Date accessed: 9 February 2017

'The Commission concludes that Qadhafi's forces arbitrarily detained persons it suspected were supporting thuwar.

'The Commission found that Qadhafi forces committed torture and ill-treatment in a widespread and systematic manner.'[7]

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4.3 Political situation in 2016/17

4.3.1 A May 2016 guide produced by the European Council on Foreign Relations (ECFR) noted: 'Since the summer of 2014, political power has been split between two rival governments in Tripoli and in Tobruk, with the latter having been recognised by the international community before the creation of the Presidential Council – the body that acts collectively as head of state and supreme commander of the armed forces – in December 2015. Several types of actors scramble for power in today's Libya: armed groups; "city-states", particularly in western and southern Libya; and tribes, which are particularly relevant in central and eastern Libya.'[8]

4.3.2 Freedom House, in their 'Freedom in the World – Libya' report for 2016 noted: 'Throughout 2015, political life in Libya was suspended in the gridlock of competing eastern and western governments trapped in zero-sum politics. However, representatives from a number of political parties participated in the UN-facilitated dialogue process. Former Gaddafi regime members were notably absent from the talks.'[9]

4.3.3 The May 2016 guide further noted: 'In Libya there are very few truly national actors. The vast majority are local players, some of whom are relevant at the national level while representing the interests of their region, or in most cases, their city. Many important actors, particularly outside of the largest cities, also have tribal allegiances...'[10]

4.3.4 The ECFR described the key political power bases currently in Libya:

'At the moment [May 2016] Libya has three centres of power. The first is the Presidential Council (PC), which has been located in the Abu Sittah navy base, a stone's throw from central Tripoli, since 30 March 2016. The PC is headed by Fayez al-Sarraj – a former member of the Tobruk Parliament, where he represented a Tripoli constituency – and it was borne out of the signing of the UN-brokered Libyan Political Agreement (LPA) in December 2015. According to this agreement, the PC presides over the Government of National Accord (GNA) also based in Tripoli...

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[7] Human Rights Council: 'Report of the International Commission of Inquiry on Libya' [A/HCR/19/68] Dated 2 March 2012 http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/libya/Libya_93_Report_International_Commission_of_Inquiry.pdf pages 7-11 Date accessed: 9 February 2017

[8] The European Council on Foreign Relations, A quick guide to Libya, published 19 May 2016 http://www.ecfr.eu/mena/mapping_libya_conflict Date accessed 28 October 2016

[9] Freedom House 'Freedom in the World 2016 – Libya published 10 May 2016 https://freedomhouse.org/report/freedom-world/2016/libya Date accessed 24 November 2016

[10] The European Council on Foreign Relations:' A quick guide to Libya' published 19 May 2016 http://www.ecfr.eu/mena/mapping_libya_conflict Date accessed 28 October 2016

'The rival Government of National Salvation headed by Prime Minister Khalifa Ghwell - resting on the authority of a rump of the General National Congress (GNC), the resurrected parliament originally elected in 2012 - is also based in Tripoli, although it no longer controls any relevant institutions. The vast majority of the members of the GNC (also known as the "Tripoli Parliament") have been moved across to the State Council, a consultative body created under the LPA which convenes in Tripoli and is headed by Abdul Rahman Swehli, a Misratan politician...

'The third centre of power is made up of the authorities based in Tobruk and al-Bayda, which were also supposed to work under the LPA. The House of Representatives (HoR) in Tobruk would become the legitimate legislative authority under the LPA but it has so far failed to pass a valid constitutional amendment to enshrine itself as an authoritative institution. Instead the HoR has endorsed the rival government of Abdullah al-Thinni which operates from the eastern Libyan city of al-Bayda. The Tobruk and al-Bayda authorities are under the control of Egypt-aligned, self-described anti-Islamist general Khalifa Haftar, who leads the Libyan National Army (LNA)...'[11]

4.3.5 Human Rights Watch, in their World Report on Libya covering events in 2016 noted:

'The United Nations-backed, internationally recognized Government of National Accord (GNA) struggled in 2016 to assert itself in the capital Tripoli, as two authorities− one also based in Tripoli and another in eastern Libya− continued to compete for legitimacy and control over resources and infrastructure.

'Forces aligned with all governments and dozens of militias continued to clash, exacerbating a humanitarian crisis with close to half-a-million internally displaced people...

'Militias and armed forces affiliated with the two governments engaged in arbitrary detentions, torture, unlawful killings, indiscriminate attacks, abductions, and forcible disappearances. Criminal gangs and militias abducted politicians, journalists, and civilians—including children—for political and monetary gain.

'The domestic criminal justice system remained dysfunctional, offering no prospects for accountability, while the International Criminal Court, despite having jurisdiction over Libya provided by the UN Security Council, failed to open any new investigation into ongoing crimes.'[12]

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[11] The European Council on Foreign Relations:' A quick guide to Libya' published 19 May 2016 http://www.ecfr.eu/mena/mapping_libya_conflict Date accessed 4 November 2016

[12] Human Rights Watch: World Report – Libya – 2017, p403, page 403 published 12 January 2017 https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf Date accessed 17 January 2017

5. Security situation

5.1 Militia Groups

5.1.1 The European Council on Foreign Relations have produced a map of armed militia groups in their 'A quick guide to Libya' published 19 May 2016.[13]

5.1.2 In September 2016, the BBC published an analysis of the security situation in Libya. The article referred to the power wielded by 'myriad armed militias':

'They were united in their hatred for Gaddafi - but nothing more. There was no single group in charge of the rebellion. Militias were based in different cities, fighting their own battles.

'They are also ideologically divided - some of them are militant or moderate Islamists, others are secessionists or monarchists and yet others are liberals. Furthermore, the militias are split along regional, ethnic and local lines, making it a combustible mix. And after more than four decades of authoritarian rule, they had little understanding of democracy. So, they were unable to forge compromises and build a new state based on the rule of law.'[14]

5.1.3 In Libya, it is very difficult to distinguish between state and non-state entities, due to the fragmented nature of State institutions and the varied links between authorities and armed groups, as noted by the 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings'.[15]

5.1.4 For further information on the security and humanitarian situation, please refer to the Country Policy and Information Note on Libya: Security and humanitarian situation.

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6. Treatment of Gaddafi loyalists

6.1 Legal context and Political Isolation Law

6.1.1 The United States Institute of Peace explains in an August 2016 report:

'In May 2013, the passage of the Political Isolation Law provoked further confusion and disruption to policing (along with many other state institutions). Passed by the GNC under threat of violence from armed groups, it was in essence a lustration law aimed at preventing members of the former Gadhafi regime from holding public office during the country's transition. The law decreed the removal of individuals who had held senior positions under Gadhafi from state institutions but provided little guidance on what ranks qualified as a senior position and on how to remove individuals

[13] The European Council on Foreign Relations:' A quick guide to Libya' published 19 May 2016 http://www.ecfr.eu/mena/mapping_libya_conflict Date accessed 10 March 2017
[14] BBC News: 'Why is Libya so lawless?' published 14 September 2016 http://www.bbc.co.uk/news/world-africa-24472322 Date accessed 2 February 2017
[15] Human Rights Council: Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings A/HRC/31/CRP.3 published 15 February 2017 http://www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf Date accessed 3 February 2017

from office. Significantly, it did not take into account the role played by numerous officials who had defected during the revolution, including senior police who brought their knowledge and security training to bear in ousting the regime. Some of these officials had briefly been able to use their revolutionary standing to extend legitimacy to local police departments but the Political Isolation Law undermined this, field interviews reveal, painting with the same brush everyone who had occupied a government post under Gadhafi. In a country where the government had been the largest employer for decades, fingerpointing and even trigger-pulling became commonplace.'[16]

6.1.2 The International Commission of Jurists (ICJ) published a study on the challenges facing Libyan judges, in July 2016. This stated that:

'Actions undertaken thus far aimed at holding judges and other public officials accountable for collaboration with the corruption and human rights violations committed during the rule of Colonel Gaddafi, have been inadequate and not in conformity with international standards. The legislation providing for vetting of Gaddafi era public officials, known as the 'Political Isolation Law', failed to provide for clear criteria for those being vetted, or for a case-by-case analysis of each individual affected, and failed to ensure that due process standards would be applied to vetting proceedings.

'As a result, many individuals were unfairly removed from their positions and statutorily excluded from holding public office for ten years from the date of their exclusion. The extension of the 'Political Isolation Law' to the judiciary in 2013 was met with protests and challenges in Court and the GNC reportedly repealed the law in early 2014. However, given the complicated political and legislative situation in Libya, its status in law is currently unclear, with a challenge in the Constitutional Court pending.'[17]

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6.2 Attacks against former Gaddafi supporters since 2011

6.2.1 The DFAT Libya Country Information Report, published 4 April 2016, stated:

'Hatred and resentment against Gaddafi, and those perceived to be associated with his regime, is widespread throughout Libya (see also 'Black Libyans'). This animosity is based in particular on the conduct of the regime following the outbreak of conflict in 2011. Between February and August 2011, when Tripoli fell, pro-Gaddafi forces committed serious violations of human rights law and the laws of war. Gaddafi's forces repeatedly launched indiscriminate attacks using mortars, artillery and rockets into civilian areas, and laid tens of thousands of anti-personnel and anti-vehicle mines.

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[16] United States Institute of Peace, Policing Libya: Form And Function Of Policing Since The 2011 Revolution, 25 August 2016 p.9 https://www.usip.org/publications/2016/08/policing-libya-form-and-function-policing-2011-revolution date accessed 3 March 2017

[17] International Commission of Jurists:' Challenges for the Libyan Judiciary: Ensuring Independence, Accountability and Gender Equality' date issued July 2016 http://www.refworld.org/cgi-bin/texis/vtx/rwmain?page=search&docid=57ee8f9f4&skip=0&query=Gaddafi%20supporters%202016&coi=LBY Date accessed: 25 November 2016

Thousands of Libyans perceived to be against the regime were detained without charge, and were often subjected to torture and mistreatment in detention.

'After the fall of the Gaddafi regime, the Ministry of Interior (under the control of the NTC) issued Decree 388 (2011) which granted local Supreme Security Committees the right to arrest, detain and interrogate suspects. This decree provided a legal basis for the arrest and detention of suspects by committees created by civilian or military councils and militias at the local level. The 2012 report of the UN Commission of Inquiry on Libya concluded militias executed and tortured to death perceived Gaddafi loyalists, and were liable for charges of the war crime of murder or arbitrary deprivation of life. As of the date of publication, there were no known prosecutions related to killings by militias.'[18]

6.2.2 The DFAT Report also stated:

'DFAT assesses that those who were, or are perceived to have been, high-ranking officials in the Gaddafi regime (such as ministers, senior bureaucrats, military personnel or diplomats), or who had close associations with the Gaddafi family, or those who were associated with the Libyan security forces during the 2011 conflict, face a high risk of both societal and official discrimination throughout Libya. This may include being illegally detained, beaten or tortured; having death threats made against themselves or their families; or being killed. However, DFAT assesses that it is unlikely that a Libyan who was employed by the government at a low level unrelated to the security establishment would face discrimination as a result'.[19]

6.2.3 A joint UNSMIL/UNOHCHR document ('Torture and deaths in detention in Libya') reporting on torture and deaths in custody, published in October 2013 stated:

'Those arrested are taken from their homes, workplaces, streets or checkpoints. Detainees are frequently moved from one makeshift place of detention (some may even be officially recognized as being under a specific ministry) to another before being transferred for longer periods to proper prisons. They 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, Tawergha, 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.'[20]

6.2.4 The UNHCR 'Position on Returns to Libya, published in October 2015, stated:

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[18] Australian Government DFAT Country Information Report – Libya paragraphs 3.62 – 3.64 published 4 April 2016 Copy available on request. Date accessed 2 February 2017

[19] Australian Government DFAT Country Information Report – Libya paragraph 3.68 published 4 April 2016. Copy available upon request. Date accessed 2 February 2017

[20] UNSMIL/OHCHR: 'TORTURE AND DEATHS IN DETENTION IN LIBYA' published October 2013 http://www.ohchr.org/Documents/Countries/LY/TortureDeathsDetentionLibya.pdf Date accessed 15 February 2017

'Claims for international protection of persons having been directly affected by developments since 2011 may need to be given particular attention, including, inter alia, members of tribes/families or individuals perceived to be in support of one of the conflict parties or the former Gaddafi regime.'[21]

6.2.5 The February 2015 Special report of the Secretary-General on the strategic assessment of the United Nations presence in Libya noted that:

'Benghazi has been plagued by a wave of assassinations of former regime officials and members of the judiciary, as well as armed and security forces and activists.'[22]

6.2.6 The Human Rights Council Investigation (A/HRC/31/CRP.3) dated 15 February 2016, noted:

'Revolutionary armed groups have a significant distrust of any security apparatus or personnel who were active in the Qadhafi regime, and have been quick to act, including through the use of force, when they have felt excluded from the decision-making process or otherwise disgruntled.

'In addition to the difficulties internally displaced persons generally encounter in enjoying their rights, groups perceived as having supported the Qadhafi regime during 2011 are at particular ongoing risk. OHCHR has received particular complaints of violations and abuses from members of the Tawergha community whose experience of mass displacement goes back to August 2011.

'...Most major groupings of armed actors have carried out unlawful killings, in particular executions of individuals taken captive or detained, and the assassination of those voicing dissent.

'The assassination of perceived opponents to those exercising power have been frequent, particularly in Benghazi. In most cases the assassinations were attributed by interviewees to Ansar al-Sharia. Those targeted included political figures, human rights defenders, journalists, judicial actors, religious leaders, and alleged Gaddafi supporters...'[23]

6.2.7 The Human Rights Watch report (Libya: Stop revenge crimes against displaced persons) referred to a UN Security Council resolution 2095:

'On March 14, 2013, the UN Security Council passed resolution 2095[24], which expressed grave concern about "reprisals, arbitrary detentions without access to due process, wrongful imprisonment, mistreatment, torture and extrajudicial executions" in Libya and called on the government to

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[21] UNHCR:' Position on Returns to Libya' published October 2015 http://www.refworld.org/docid/561cd8804.html Date accessed 15 February 2017

[22] UN Security Council, Special report of the Secretary-General on the strategic assessment of the United Nations presence in Libya, 13 February 2015, paragraph 10 http://www.ecoi.net/file_upload/1226_1424873650_n1504114libya.pdf Date accessed 3 March 2017

[23] Human Rights Council: 'Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings ' A/HRC/31/CRP.3 date of issue 15 February 2016 http://www.refworld.org/pdfid/56d00d0f4.pdf Date accessed 25 November 2016

[24] UN Security Council: Libya: Security Resolution 2095 published 14 March 2013 https://documents-dds-ny.un.org/doc/UNDOC/GEN/N13/259/38/PDF/N1325938.pdf?OpenElement Date accessed 10 February 2017

"accelerate the judicial process, transfer detainees to state authority and prevent and investigate violations and abuses of human rights." The resolution underscored the government's primary responsibility for the protection of Libya's population.'[25] In its annual report covering events in 2016, Human Rights Watch provided the following update:

''In what amounts to a crime against humanity, militias and authorities in Misrata continued to prevent 40,000 residents of Tawergha, Tomina, and Karareem from returning to their homes in relation for alleged crimes during the 2011 revolution attributed to people from those cities against anti-Gaddafi activists and fighters..'[26]

6.2.8 The U.S. Department of State explains in its annual report for 2015 that:

'There were numerous reports government forces, rebel groups, and some tribes committed arbitrary and unlawful killings of civilians. Primary targets of killings included political opponents; members of police, internal security apparatus, and military intelligence; and also judges, political activists, members of civil society, journalists, religious leaders, and Qadhafi-affiliated officials and soldiers.'[27]

6.2.9 Human Rights Watch's annual report covering events in 2015 noted that

'On July 28 [2015], Tripoli's Court of Assize convicted 32 former Gaddafi officials on charges of alleged crimes committed during the 2011 uprising. The court sentenced Saif al-Islam Gaddafi in absentia and eight other defendants to death, including former intelligence chief Abdullah Sanussi, and former Gaddafi-era prime ministers, al-Baghdadi al-Mahmoudi and Abuzaid Dorda. Serious due process violations, including denial of access to legal counsel for defendants, undermined the trial.'[28]

6.2.10 Freedom House reports that 'In August [2015], several dozen Qadhafi supporters staged a rally in Benghazi, which was broken up when opponents fired guns at the crowd.'[29]

6.2.11 Human Rights Watch recorded that:

'In June [2016], unidentified armed groups killed 12 detainees upon their conditional release from al-Baraka prison in Tripoli. All 12 were members of the former Gaddafi government and had been accused of taking part in the violence against anti-government protesters in 2011. According to the

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[25] Human Rights Watch, 'Libya: Stop Revenge Crimes Against Displaced Persons', published 20 March 2013 http://www.refworld.org/docid/514c56572.html Date accessed 12 January 2017
[26] Human Rights Watch: World Report – Libya – 2017, p403, published 12 January 2017 https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf Date accessed 17 January 2017
[27] United States State Department Country Reports on Human Rights Practices – Libya – 2015 section 1 g. Use of Excessive Force and Other Abuses in Internal Conflicts published 13 April 2016 https://www.state.gov/documents/organization/253149.pdf Date accessed: 10 February 2017
[28] Human Rights Watch World Report 2016 – Libya published 26 January 2016 https://www.hrw.org/world-report/2016/country-chapters/libya Date accessed 25 November 2016
[29] Freedom House: Freedom in the World 2016 – Libya published 8 September 2016 https://freedomhouse.org/report/freedom-world/2016/libya Date accessed: 10 February 2017

families, the bodies were found in various locations around Tripoli. At time of writing, no investigation had been conducted into these crimes.'[30]

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6.3 Treatment of Gaddafi's sons

6.3.1 Human Rights Watch reported that:

''Authorities failed to surrender Saif al-Islam Gaddafi to the International Criminal Court (ICC); he is wanted there for crimes against humanity related to the 2011 uprising that overthrew his father, Muammar.'[31]

6.3.2 Amnesty International also reported on the abuse in detention of al-Saadi Gaddafi in their report on Libya for 2015-2016:

"Torture and other ill-treatment remained common in prisons and detention centres throughout Libya, under the internationally recognized government and the Tripoli authorities, as well as militias, and led in some cases to death.

"In August, a video circulated on social media apparently showed officials torturing As-Saadi al-Gaddafi and other detainees at al-Hadba Prison in Tripoli. Later videos showed officials threatening to torture As-Saadi al-Gaddafi. The prison director said he had suspended those responsible but it was unclear whether an investigation by the General Prosecutor resulted in prosecutions. The authorities informed UNSMIL that arrests had been carried out without providing further details. There were reports that those responsible went into hiding..."[32]

6.3.3 Human Rights Watch reported, in their World Report, Libya, 2016 that:

'In August [2015], an online news site leaked video tapes in which officials and guards at al-Hadba Prison in Tripoli seemed to ill-treat several detainees, including al-Saadi Gaddafi, one of the sons of former leader Muammar Gaddafi. The General Prosecutor's Office announced an investigation into the incident.[33]

6.3.4 In July 2016, The Telegraph reported that Saif al-Islam Gaddafi, who in 2015 had been sentenced to death in Libya after being found guilty of war crimes, was set free. The report stated that he had been set free under amnesty law in April 2016.[34]

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[30] Human Rights Watch: World Report – Libya – 2017, p403, published 12 January 2017 https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf Date accessed 17 January 2017

[31] Human Rights Watch World Report 2016 – Libya published 26 January 2016 https://www.hrw.org/world-report/2016/country-chapters/libya Date accessed 25 November 2016

[32] Amnesty International: Annual Report: Libya 2015-2016 published https://www.amnesty.org/en/countries/middle-east-and-north-africa/libya/report-libya Date accessed 12 January 2017

[33] Human Rights Watch: World Report 2016: Libya – published 27 January 2016 https://www.hrw.org/world-report/2016/country-chapters/libya Date accessed 24 February 2017

[34] The Telegraph: 'Gaddafi's son Saif al-Islam at large in Libya after being released from death row, lawyer says' published 7 July 2016 http://www.telegraph.co.uk/news/2016/07/07/gaddafis-son-saif-al-islam-released-from-death-row-in-libya/ Date accessed 9 November 2016

6.4 Ethnic minority groups perceived to support Gaddafi

6.4.1 Members of various ethnic minority groups are targeted because of their actual or perceived support of the previous Gaddafi regime, before and during the conflict of 2011.[35]

6.4.2 Human Rights Watch reported in March 2013 that

'The Libyan government should take urgent steps to stop serious and ongoing human rights violations against inhabitants of the town of Tawergha, who are widely viewed as having supported Muammar Gaddafi. The forced displacement of roughly 40,000 people, arbitrary detentions, torture, and killings are widespread, systematic, and sufficiently organized to be crimes against humanity and should be condemned by the United Nations Security Council.

'Human Rights Watch called on the UN Security Council to condemn crimes against humanity against Tawerghans and to request the Libyan government to report back in three months on how it is fulfilling its responsibility to protect its population from mass atrocities. The Security Council should also impose sanctions against officials and militia commanders who ordered or failed to prevent these crimes, Human Rights Watch said'. [36]

6.4.3 The US State Department, in their Country Report on Human Rights Practices – Libya, 2016, stated:

'Ethnic minorities faced instances of societal discrimination and violence. Racial discrimination existed against dark-skinned citizens, including those of sub-Saharan heritage. Government officials and journalists often distinguished between "loyal" and "foreign" populations of Tebu and Tuareg in the south and advocated expulsion of minority groups affiliated with political rivals on the basis they were not truly "Libyan." A number of Tebu and Tuareg communities received substandard or no services from municipalities, lacked national identity numbers (and thus access to employment), and faced widespread social discrimination.[37]

6.4.4 Freedom House, in their World Report, Libya, 2016, stated:

'Libyans from certain tribes and communities—often those perceived as pro-Qadhafi—have faced discrimination, violence, and displacement since 2011. Migrant workers from sub-Saharan Africa have also been subject to discrimination and mistreatment, particularly at the hands of armed groups. There are reports of discrimination against the Tebu and Tuareg minorities in the south, particularly in employment, housing, education, and other services.'[38]

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[35] Freedom House: Freedom in the World 2016 – Libya published 8 September 2016 https://freedomhouse.org/report/freedom-world/2016/libya Date accessed: 10 February 2017

[36] Human Rights Watch, 'Libya: Stop Revenge Crimes Against Displaced Persons', published 20 March 2013 http://www.refworld.org/docid/514c56572.html Date accessed 12 January 2017

[37] US State Department Country Report on Human Rights Practices 2016 – Libya, published 3rd March 2017 – Section 6 https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265510.htm Date accessed 14 March 2017

[38] Freedom House: Freedom in the World 2016 – Libya published 8 September 2016 https://freedomhouse.org/report/freedom-world/2016/libya Date accessed: 10 February 2017

6.4.5 For further information on the treatment of ethnic minority groups, including those perceived to support the previous Gaddafi regime, please refer to the Country Policy and Information Note on Libya: Ethnic minority groups.

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7. Protection

7.1 Judiciary and penal system

7.1.1 The Australian DFAT country information report on Libya summarised the judicial system in Libya:

'Libya has a four-stage court system. The Supreme Court, based in Tripoli, is Libya's highest court, and considers the constitutionality of laws and regulations. It has the task of ensuring that laws are applied equally across the country, and it has appellate jurisdiction over all lower courts. Courts of Appeal are the second highest court level, and are courts of first instance for matters concerning high crime and felony. Their decisions can be challenged through the Supreme Court. Primary Courts are the courts of first instance for civil and commercial disputes which are valued at 1,000 Libyan dinars (AUD1,000) or higher. They also deal with personal and religious cases, where they apply sharia law. Primary Courts do not hear criminal cases. Summary/ District Courts have jurisdiction over small civil, commercial, administrative disputes valued up to 1,000 Libyan dinars (AUD1,000), and low level criminal cases (misdemeanours).

'The Constitutional Declaration provides for an independent judiciary and free passage to a court of law. In practice, however, the rule of law in Libya is almost absent, and many Libyans lack options for protection or a just judicial process if they have been subjected to threats or violence. The criminal justice system has proven itself unable to handle most of the ordinary criminal cases in the years following the removal of Gaddafi. Access to justice in general has become difficult for Libyans, with many Libyan judicial systems either collapsing or not fully functioning. Many courts have closed in recent times due to instability, forcing people seeking justice to revert to still-functioning courts in other regions. The last Primary Court in Benghazi, for example, closed in May 2014. Courts in Tripoli effectively stopped working in mid-July 2014, due to violent attacks and heavy shelling of courts and judicial offices. It is unclear to what extent courts in Tripoli have been able to function properly since that time.

'Protection and access to justice in Libya are closely linked to personal identity and connection to societal structures such as tribes and communities, as well as to regional background and/or political affiliation. Libyans living outside protection spheres, such as minorities and internally displaced persons, are therefore often blocked from seeking justice and left unprotected by security systems. In areas where tribe-related militias are dominant, such as Misrata, these groups are sometimes discriminated against or targeted, particularly groups who have been forcibly displaced.[39]

[39] Australian Government DFAT Country Information Report – Libya paragraphs 5.15 – 5.17 published 4 April 2016 Copy available on request. Date accessed 2 February 2017

7.1.2 The Freedom House 'Freedom in the World' Libya report for 2016 stated:

'The role of the judiciary remains unclear without a permanent constitution. Its functioning is severely hampered by ongoing fighting and insecurity, as well as by politicization. Criminal justice mechanisms are fragmented or non-operational, leaving victims with few avenues for recourse. In some cases, non-state dispute mechanisms have filled the void. Judges, prosecutors, and police officers have faced threats and attacks.

'Investigations into a large number of cases involving torture and extrajudicial executions before and during the 2011 revolution, including the killing of Qadhafi, have made little progress. Thousands of individuals remain in the custody of militia or government groups despite the absence of any formal trial or sentencing...'[40]

7.1.3 Human Rights Watch noted in their World Report for Libya covering the situation in 2016 that:

'Ongoing insecurity led to the collapse of the criminal justice system in Libya. Courts in the east remained mostly shut, while elsewhere they operated at a reduced level. The Supreme Court failed to issue judgments on all cases that were heard before it due to political divisions. [41]

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7.2 Detentions

7.2.1 The U.S. Department of State explains in its annual report for 2015 that:

'The law gives the government power to detain persons for up to two months if considered a "threat to public security or stability" based on their "previous actions or affiliation with an official or unofficial apparatus or tool of the former regime." Affected individuals may challenge the measures before a judge.

'Both government and militia forces, some of which were nominally under government authority, held persons on political grounds, particularly former Qadhafi officials, internal security organization members, and others accused of subverting the 2011 revolution in a variety of temporary facilities.'[42]

7.2.2 The US Department of State stated in its annual report for 2016, that:

'Following the 2011 revolution and attendant breakdown of judicial institutions and process, the government and nonstate militia forces continued to detain and hold persons arbitrarily in authorized and unauthorized facilities, including unknown locations, for extended periods without legal charges or legal authority.

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[40] Freedom House 'Freedom in the World 2016 – Libya – 10 May 2016 https://freedomhouse.org/report/freedom-world/2016/libya Date accessed 24 November 2016

[41] Human Rights Watch World Report 2017 – Libya (events of 2016) published 12 January 2017 https://www.hrw.org/sites/default/files/world_report_download/wr2017-web.pdf Date accessed 10 February 2017

[42] United States State Department Country Reports on Human Rights Practices – Libya – 2015 section 1d Arbitrary Arrest or Detention published 13 April 2016 https://www.state.gov/documents/organization/253149.pdf Date accessed: 10 February 2017

'The prerevolutionary criminal code remains in effect. It establishes procedures for pretrial detention and prohibits arbitrary arrest and detention, but both government and nonstate forces often disregarded these provisions. Throughout the year the government had little control over police and regional militias providing internal security, and armed groups carried out illegal and arbitrary detentions unimpededly. The lack of international monitoring meant that there were no reliable statistics on the number of arbitrary detainees.

7.2.3 A December 2015 Human Rights Watch report on Long-Term Arbitrary Detentions and Torture in Western Libya found that:

'Based on visits in September 2015 to four detention facilities in Tripoli and Misrata and interviews with 120 detainees—most in pre-charge detention—this report finds that 1.975 out of 2.479 detainees have languished in prisons for up to four years without being brought before a judge, receiving any form of judicial review or being charged with an offence, and without any apparent legal basis for their detention. Prolonged detention without judicial reviews is a grave violation of international law and may amount to a crime against humanity.

'Detainees, including children, in all of the facilities visited provided credible and consistent accounts of ill-treatment, in some cases apparently visible to researchers, such as beatings on the soles of the feet with plastic pipe, electrical cable, chains, sticks, fists, and even horsewhips; suspension from doors or ceilings for hours; electrical shocks; and being held in solitary confinement for up to seven weeks, which may amount to torture in certain circumstances. During interviews, detainees referred to other detention facilities in western Libya, including in Tripoli and Misrata, where they said they had recently suffered tortured or ill-treatment.

'Most detainees interviewed by Human Rights Watch were suspected sympathizers, volunteer fighters, and members of Gaddafi's security forces, according to the authorities….'[43]

7.2.4 The World Organisation Against Torture (OMCT) submitted to the Universal Periodic Review in 2015 that 'since the revolution, torture had become more widespread, grotesque, and accepted. The predominant pattern was that victims were subject to torture based on presumptions of belonging to or supporting the former regime. OMCT reported that it had documented 15 cases of death in custody. In 11 of these cases, victims had been tortured to death within the first 72 hours after arrest.'[44]

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[43] Human Rights Watch, The Endless Wait: Long-Term Arbitrary Detentions and Torture in Western Libya, 2 December 2015 p.1-2 https://www.hrw.org/report/2015/12/02/endless-wait/long-term-arbitrary-detentions-and-torture-western-libya date accessed 3 March 2017

[44] UN Human Rights Council, Summary prepared by the Office of the United Nations High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1 and paragraph 5 of the annex to Council resolution 16/21, 23 February 2015, paragraph 35 http://www.ecoi.net/file_upload/1930_1453302677_g1503174.pdf date accessed 3 March 2017

7.2.5 On 21 July 2016, Amnesty International reported on conditions in Benghazi for those held captive under fire in Benghazi:

'Airstrikes by the Libyan National Army are endangering the lives of scores of detainees who are being held captive in Benghazi, said Amnesty International.

"Scores of people who were abducted and are being held captive in Benghazi are trapped under fire with no way out.

'...Amnesty International reported the allegations that some 150 detainees were abducted from the Bouhdima military prison in 2014. The majority was accused of being pro-Gaddafi soldiers or volunteers and had been held without charge or trial since the end of 2011. Since then, activists have told Amnesty International that the actual number is closer to 130 abducted detainees.

'The organization visited Bouhdima military prison in 2012 and also visited a group of the detainees in April 2013 following their temporary transfer to the Kuwafiah military prison in Benghazi. At the time, many were cleared for release by the military prosecution due to the lack of evidence, but continued to be held due to pressure from militias and families of victims of Colonel al-Gaddafi's past human rights abuses...'[45]

7.2.6 Human Rights Watch reported, in their World Report (Libya) 2016:

'Human Rights Watch gained rare access in April [2015] to detainees in facilities controlled by the military and Interior and Justice ministries in eastern Libya and in September (2015) interviewed detainees in prisons run by the Justice Ministry of the self-proclaimed government in Tripoli and Misrata. Although conditions varied, in most facilities, detainees reported torture and other ill-treatment, and in some, deaths in custody caused by abuse.'[46]

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7.3 Convictions

7.3.1 On 28 July 2015, the BBC reported that a court in Libya had sentenced Saif al-Islam Gaddafi to death by shooting. He was tried in absentia, being held in a prison almost a hundred miles away in Zintan. The presiding judge also sentenced a number of other previously high-ranking and powerful men at the same time, eight of them to death and others to life imprisonment. Four of the men were acquitted.[47]

7.3.2 Amnesty International reported on the trial, stating that:

'Among the former officials sentenced to death were Prime Minister Al-Baghdadi al-Mahmoudi, head of the Revolutionary Guard, Mansour Daw,

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[45] Amnesty International: 'Libya: Lives of captives trapped under fire in Benghazi in danger' published 21 July 2016 http://www.ecoi.net/local_link/328110/455366_en.html Date accessed: 25 November 2016

[46] Human Rights Watch: World Report 2016: Libya – published 27 January 2016 https://www.hrw.org/world-report/2016/country-chapters/libya Date accessed 4 November 2016

[47] BBC News: 'In court as Gaddafi's son sentenced to death' published 28 July 2015 http://www.bbc.co.uk/news/world-33698053 Date accessed 24 November 2016

head of External Security Abu Zeid Dorda, head of the Tripoli branch of Internal Security Milad Salman Daman, Brigadier-General Mondher Mukhtar al-Gheneimi, Colonel in the Military Intelligence Department Abdel Hamid Ammar Awheida Amer and University of Tripoli Faculty of Law member Awaidat Ghandur Abu Sufa. A further 23 were given sentences ranging from five years in prison to life imprisonment. Four were acquitted and one was referred to a mental health clinic, without being sentenced. Those convicted are expected to appeal to the cassation chamber of Libya's Supreme Court.

'The proceedings against the nine men were deeply flawed during the investigation phase and at trial. In particular, the authorities failed to ensure the defendants' due process rights, including the right to legal counsel, to remain silent, to be promptly informed of the charges against them and to be present at trial. In some cases, detainees were held in unofficial detention places and detained incommunicado for extended periods. The authorities also failed to investigate defence lawyers' allegations that the men had been tortured and otherwise ill-treated.'[48]

7.3.3 In their report on the trial of the same 37 former members of the Gaddafi regime, UNSIL and OHCHR considered that:

'this opportunity for justice and truth was undermined by serious due process concerns during the pre-trial phase and the trial proceedings. UNSMIL and OHCHR find that the proceedings in the trial of Case 630/2012 fell short of international standards for fair trial as well as Libyan law in some respects. These concerns also illustrate major flaws in the criminal justice system that need to be addressed through legislative and institutional reform.'[49]

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8. Pro Gaddafi groups

8.1 Switching allegiances

8.1.1 The December 2016 Report of the Secretary-General on the United Nations Support Mission in Libya noted with regards to the situation in the south of the country that 'the Libyan National Army attempted to expand its influence in the south, and military elements affiliated with the former regime tried to reorganize. Tensions increased in Sabha on 9 October, when a force affiliated with the Libyan National Army entered the city. In Kufrah, there were continued tensions between members of the Tebu community and armed elements from Zway.'[50]

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[48] Amnesty International: 'Urgent Action – Death sentences for Al-Gaddafi officials' published 31 July 2015 http://www.ecoi.net/file_upload/1226_1438579274_mde1921912015english.pdf Date accessed 24 November 2016

[49] UNSMIL - United Nations Support Mission in Libya; OHCHR - Office of the United Nations High Commissioner for Human Right, Report on the trial of 37 former members of the Qadhafi regime (Case 630/2012), 21 February 2017 p.2 http://www.ecoi.net/file_upload/1226_1487837296_trial37formermembersqadhafiregime-en.pdf date accessed 3 March 2017

[50] UN Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, 1 December 2016, paragraph 21 http://www.ecoi.net/file_upload/1226_1481105747_n1639140.pdf date accessed 3 March 2017

8.1.2 There are reports that in some cases, individual commanders and soldiers who previously fought on the side of Gaddafi have regrouped, fighting alongside the Western-backed anti-ISIL coalition. In May 2016, the Telegraph reported that former pro-Gaddafi supporters had enlisted to help drive out ISIL from Sirte:

'Commanders who fought on Gaddafi's side during the revolution in 2011 have signed up to a coalition now gearing up to push Islamic State of Iraq and the Levant (Isil) from his home city of Sirte.

'The commanders - some of whom fled Libya after the revolution - see the move as a chance to redeem themselves in the eyes of their fellow countrymen. In joining the anti-Isil coalition, which is made up of different Libyan militias, they will be fighting on the same side as SAS teams sent to help behind the scenes'[51]

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8.2 Renewed support for 'green' ideology

8.2.1 In December 2016, the hijacker of a Libyan passenger plane that diverted an internal flight and forced it to land in Valetta, Malta stated that he was the leader of the 'New Al-Fateh.' The Reuters news agency reported this, stating:

'One of the men who hijacked a Libyan internal flight and diverted it to Malta told Libyan TV on Friday that he was the head of a party supporting late leader Muammar Gaddafi.

'The man, who gave his name as Moussa Shaha, told Libya's Channel TV station by phone that he was the head of Al-Fateh Al-Jadeed, or The New Al-Fateh. Al-Fateh is the name that Gaddafi gave to September, the month he staged a coup in 1969, and the word came to signify his coming to power.

'A Libyan lawmaker who spoke to one of the passengers also said the two hijackers were demanding the creation of a pro-Gaddafi party. Images circulating in the media appeared to show a hijacker stepping out of the plane with a green flag similar to those used by Gaddafi supporters.'[52]

8.2.2 The Telegraph, reporting on the hijacking in Malta, stated:

'A Libyan MP who spoke to a passenger on board Flight 8U209 said the men were demanding the creation of a pro-Gaddafi party. One of the hijackers told Libyan television that he is the head of a pro-Gaddafi political party. A minister said the hijackers, who forced the aircraft to land at 10.30am GMT, were asking for asylum in Malta.

'Ashraf al-Tulty, a spokesman for the UN-brokered government in Libya, said a Libyan lawmaker, Abdel-Salam al-Marabet, was on the diverted flight...

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[51] The Telegraph: 'Gaddafi loyalists join West in battle to push Islamic State from Libya' published 7 May 2016 http://www.telegraph.co.uk/news/2016/05/07/gaddafi-loyalists-join-west-in-battle-to-push-islamic-state-from Date accessed 15 February 2017

[52] Reuters news agency: 'Hijacker of Libyan plane tells Libyan TV he is head of pro-Gaddafi party' published 23 December 2016 http://uk.reuters.com/article/uk-libya-airplane-hijackers-idUKKBN14C1KN Date accessed 6 January 2017

'Another Libyan lawmaker from Sabha, Youssef Kalikori, said that he had been talking by phone to al-Marabet, who said the hijackers are demanding "asylum in a European country where they can establish a political party named al-Fateh that represents the old (Libyan) regime."[53]

8.2.3 A Libyan journalist for the Libyan newspaper, al-Monitor, writing about the conviction, subsequent release and increasing political influence of Saif al-Gaddafi, reported on 22 July 2016:

'In 2015, one of Saif's regular visitors told Al-Monitor on condition of anonymity that the only obstacle for his release is his safety once he leaves prison. Keeping him in Libya requires "huge security arrangements, and taking him abroad will mean that he will have little influence on events inside the country," the source said.

'His release was legally based on the general amnesty law passed by the internationally recognized Libyan government and enacted by the Zintan court. His defence team announced July 6 that he had been released April 12 and that for security reasons the news had not been made public. It was decided that it would be in Saif's best interest to remain in Zintan, which pledged to protect him as long as he stayed in town. Karim Khan, who led Saif's defence team, announced that his team of lawyers will ask the ICC to drop the case against Saif, since he has already been tried in Libya for the same crimes and thus cannot be tried again.'

'Now that Seif has been released, the question is what role he could play in the war-torn country. Sources close to him have informed Al-Monitor that he has already started contacting people inside Libya and abroad who are supporting him, trying to come up with his own plan to salvage the country. He is positioned to play a role within the tribal structure in Libya.[54]

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9. Freedom of movement

9.1.1 According to the US State Department country report on human rights practices, (Libya, 2016):

'The Constitutional Declaration recognizes freedom of movement, including foreign travel, emigration, and repatriation, although the government has the ability to restrict freedom of movement. The law provides the government with the power to restrict a person's movement if it views that person as a "threat to public security or stability" based on the person's "previous actions or affiliation with an official or unofficial apparatus or tool of the former regime."

[53] The Telegraph: 'Libyan plane hijackers seeking asylum in Europe 'to establish pro-Gaddafi party ' surrender after releasing passengers in Malta' published 23 December 2016 http://www.telegraph.co.uk/news/2016/12/23/flight-diverted-malta-amid-potential-hijack-situation Date accessed 9 February 2017

[54] Al-Monitor: 'Will Gaddafi's son be Libya's next leader?' published 22 July 2016 http://www.al-monitor.com/pulse/originals/2016/07/libya-saif-al-islam-son-gadhafi-release-political-role.html Date accessed 17 January 2017

9.1.2 'The government did not exercise control over in-country movement, although the LNA established checkpoints targeting extremist movements around Benghazi and Derna.

'Militias effectively controlled regional movements through armed checkpoints. Militia checkpoints and those imposed by Da'esh, Ansar al-Sharia, and other extremist organizations impeded movement within the country and, in some areas, prohibited women from moving freely without a male escort.

'There were also multiple reports of women who could not depart from western Libyan airports controlled by pro-GNA militias due to a lack of a "male guardian," which is not a legal requirement in the country.[55]

9.1.3 Freedom House, in their Country Report for Libya, 2016 stated:

'The 2011 constitutional declaration guarantees freedom of movement, but violence has disrupted normal activity in major cities. Airports in Benghazi, Tripoli, Sabha, and Misrata have been attacked and destroyed, severely limiting access to air travel. As of September 2015, UNHCR estimated that 435,000 people were internally displaced in Libya, and hundreds of thousands have reportedly sought safety in neighboring Tunisia and Egypt. Government and militia checkpoints also restrict movement within Libya, while poor security conditions more generally affect movement as well as access to work and education.'[56]

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[55] US State Department Country Reports on Human Rights Practices – Libya – 2016 https://www.state.gov/documents/organization/265722.pdf section 2d Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons published 3rd March 2017

[56] Freedom House: Freedom in the World 2016: Libya Date published 10 May 2016 file:///G:\C%20P%20I%20T%20Country%20reports\Libya\Libya%20-%20Gaddadfi%20-%20Feb%202017%20-%20v1%205.doc Date accessed 7 March 2017

Version control and contacts

Contacts

If you have any questions about this note and your line manager, senior caseworker or technical specialist cannot help you, or you think that this note has factual errors then email the Country Policy and Information Team.

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Clearance

Below is information on when this note was cleared:

- version **2.0**
- valid from **16 March 2017**

Changes from last version of this note

Updated country information, minor refresh (but no change) of policy guidance.

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