



# OPERATIONAL GUIDANCE NOTE

## Libya

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## 1. Introduction

**1.1** This document provides UK Border Agency caseowners with guidance on the nature and handling of the most common types of claims received from nationals/residents of Libya including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

**1.2** Caseowners must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseowners must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the internet at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

**1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following

consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

**2.1** Caseowners should refer to the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

**2.2** An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://centralcontent.fco.gov.uk/resources/en/pdf/human-rights-reports/accessible-hrd-report-2010>

The situation in Libya is evolving and volatile. Claims should be considered with the most up-to-date and relevant country of origin information. A Country of Origin Information request should be submitted to the Country of Origin Information Service if more information is required.

## **2.3 Actors of protection**

**2.3.1** Case owners must refer to the Asylum Policy Instruction on 'considering the protection (asylum) claim' and 'assessing credibility'. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.

**2.3.2** The UK Government and other members of the international community recognised the National Transitional Council (TNC) as the sole governing authority in Libya in July 2011.<sup>1</sup> The interim Prime Minister Mr. Abdurrahim al-Keib, was elected by the TNC in October 2011, and named his new transitional cabinet in November 2011. He has given ministerial posts to a wide range of tribal and military leaders, in hope of unifying and stabilising the country. The interim government has yet to successfully centralise the various political and military powers, but needs to do so in order for democratic elections to take place, and a new constitution to be

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<sup>1</sup> The Guardian, [Britain recognises Libyan rebels and expels Gaddafi's London embassy staff](#), 27 July 2011

drafted.<sup>2</sup> The TNC have remained determined that their commitment to elect a National Congress by late June 2012 be respected, and this objective was accepted by most militia and tribal leaders.<sup>3</sup> In January 2012, the interim government scrapped a 1972 law which made the formation of a political party a criminal act, and also legalised political parties.<sup>4</sup>

### 2.3.3 The March 2012 report from the UN Secretary General stated that

“The Ministry of the Interior faces multiple challenges in building national security structures and restoring basic policing capability, including the complex issue of integration of revolutionary fighters; the need for training, basic equipment and functional facilities; and the challenges of border control and illegal migration, particularly in the south”.<sup>5</sup>

**2.3.4** Despite the stated intentions of the TNC and the interim government to respect the human rights of all Libyans including pro-Gaddafi detainees, the new authorities have so far failed to re-establish law and order, and a climate of impunity prevails. Evidence from a variety of sources has confirmed that throughout Libya, prisoners are being ill-treated and in some cases tortured to death in detention.<sup>6</sup> Reports of prisoners being severely ill-treated in a prison in Misrata were dismissed by the Misrata military council, despite available evidence to the contrary.<sup>7</sup> The UN Human Rights Office estimated in October 2011 that approximately 7,000 people were being held in detention in Libya. Conditions for detainees were described as being “a recipe for abuse” by Mona Rishmawi, Chief of Rule of Law Branch at the UN Human Rights Office. Currently, there is still no screening process in place for prisoners, and prison authorities are trying to operate under a justice system which is not yet functioning.<sup>8</sup> Very few judges are working, and few detainees in criminal cases have been brought before a judge. Thousands of detainees remain in custody, many without legal review or access to a lawyer.<sup>9</sup>

**2.3.5** The interim government is struggling to constitute replacement security forces, agencies and organisations. In January 2012 it was reported that 24 hours after the Libyan police force opened its doors to allow the thousands of militia members to join its ranks, only 100 had signed up.<sup>10</sup> The new Libyan army, (numbering only a few thousand men) comprises many soldiers who previously deserted from Gaddafi’s military, and is in urgent need of barracks, uniforms, vehicles and basic equipment. It is reportedly being formed by separate committees in different cities, following the model of the formation of the rebel militias, i.e. along tribal and geographic lines. The majority of the militias across Libya are now refusing to take orders from the new army. Currently, army officers and the interim authorities are trying to persuade militias to give up their heavy arms, anti-aircraft weapons and rocket launchers to the new army following the fall of the old regime.<sup>11</sup> Amnesty International (AI) report that militias in Libya are largely out of control, and enjoy blanket impunity; this encourages further abuses and perpetuates civil instability.<sup>12</sup>

<sup>2</sup> BBC News Libya, [Libya's interim PM unveils new government line-up](#), 22 November 2011

<sup>3</sup> UN News Service, [Libya facing challenging transition, but authorities striving to succeed](#), 25 January 2012

<sup>4</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 6.12

<sup>5</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March, para 24

<sup>6</sup> For further information, see section 3.9 Prison Conditions, below

<sup>7</sup> BBC News Libya: [Prisoners make new torture allegations](#), 28 January 2012

<sup>8</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 8.25

<sup>9</sup> Human Rights Watch: [Libya: Lagging Effort to Build Justice System](#), 22 January 2012

<sup>10</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 8.04-05

<sup>11</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 8.10

<sup>12</sup> Amnesty International, [Militias threaten hopes for new Libya](#), 16/02/2012, 1. Introduction.

- 2.3.6** The militias are reportedly jeopardising hopes of a new, democratic state as they use their military power as a bargaining tool for gaining influence in the new Libya.<sup>13</sup> The Reuters news-agency quoted a member of the current military police, who stated that the revolutionaries do not want to join an organised military, since they prefer to keep their weapons, wielding power over local areas. The chairman of the TNC warned that recurring local turf wars among rival militias risk sparking a civil war, following the deaths of four militants in Tripoli.<sup>14</sup> In Benghazi, some local leaders have declared the eastern area of Libya to be the semi-autonomous 'State of Cyrenaica', urging a return to the federal system in place in the 1950s, with Libya divided into three main regions. The chairman of the TNC, Mustafa Jalil, is deeply opposed to this, calling for a unified Libya and threatening "the use of force if necessary".<sup>15</sup>
- 2.3.7** The interim government has struggled to provide effective protection in Libya, or to prevent harm to vulnerable people, particularly ethnic minorities. To date, they have not been able to disband or disarm the majority of the militias, and the new police force is struggling with low numbers and a dysfunctional justice system.<sup>16</sup> This leaves the TNC struggling to effectively enforce law and order. In January 2012, Human Rights Watch reported that "Libya's new interim leadership, the National Transitional Council (TNC), was struggling to control the many militias and local security forces across the country, secure unguarded weapons, and build a new Libya based on independent institutions and the rule of law. A weak criminal justice system, torture and mistreatment of detainees, and revenge attacks against Gaddafi officials and supporters were pressing concerns".<sup>17</sup>
- 2.3.8** During 2011, forces opposed to the Gaddafi regime reportedly violated human rights. Militias and their supporters (those which were not fully under the control of the TNC) committed unlawful killings, physical violence and other abuses. The main targets were actual or suspected detained Gaddafi soldiers or supporters, possible sub-Saharan African mercenaries or dark-skinned Libyans, and former members of the security forces. Disappearances, illegal detentions and imprisonment of persons on political grounds occurred. Vulnerable civilian populations (including those belonging to ethnic minorities) faced discrimination and violence, both during the conflict, and after the fall of Gaddafi.<sup>18</sup>
- 2.3.9** Elections took place in Libya on 7 July 2012, the first since 1964. After a number of delays and recounts, the Libyan Election Commission announced that the politically centrist National Forces Alliance, led by Mahmoud Jibril had won the majority of the seats, gaining 41 seats compared with the Justice and Construction party's 17 seats. The new parliament is fragmented, as Jibril has just over half of the 80 seats reserved for political parties. A further 120 seats in the 200-seat parliament have been allocated to candidates running as individuals. Many of these represent various regional and tribal factions.<sup>19</sup>
- 2.3.10** Due to the continuing situation of violence arising from the presence of rival militia groups in Libya, some applicants may seek to establish a claim to protection due to serious and individual threat to their life (as a civilian) or person by reason of

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<sup>13</sup> Reuters: [Libya must rein in 'out of control' militias: Amnesty](#), 16 February 2012

<sup>14</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 8.11

<sup>15</sup> BBC News Libya: [Benghazi's bid for Cyrenaica autonomy divides Libyans](#), 9 March 2012

<sup>16</sup> Country of Origin Information Report: [COI Report: Libya March 7 2012](#) paragraph 11.10

<sup>17</sup> Human Rights Watch, [World Report 2012](#), 22 January 2012.

<sup>18</sup> US State Department: [Libya: Human Rights Report 2011](#)

<sup>19</sup> The Guardian: [Mahmoud Jibril's centrist party dominates Libyan election](#) 17 July 2012

indiscriminate violence in situations of international or internal armed conflict, under paragraph 339C of the Immigration Rules (Article 15(c) of the Qualification Directive). Case owners are advised to consider such claims according to the legal test set out in *Elgafaji* (below) and further clarified by QD (*Iraq*) below.

## **2.4 Internal relocation.**

- 2.4.1** Caseowners must refer to the Asylum Policy Instructions on both internal relocation and Gender Issues in the asylum claim and apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.4.2** Since the fall of the regime, freedom of movement in or out of the country is impeded by numerous militias operating checkpoints throughout the country. Land border crossing points frequently close without notice. The road to the Egyptian land border is open but is controlled by numerous checkpoints; there have been reports of violent incidents along this road. Access to the Tunisian land border is sometimes restricted without notice; there are frequently long queues to enter Tunisia.<sup>20</sup>
- 2.4.3** Officially, women do have freedom of movement, and are not required to seek permission for foreign travel. However, due to the social, religious and cultural norms prevailing in Libya, most women do not travel unless accompanied by a husband or male relative. Women do not walk freely in their local area, unless accompanied by another female, their husband, or a male relative.<sup>21</sup> In the aftermath of the fall of Gaddafi, the prevalence of militia gangs is a further risk factor for women.
- 2.4.4** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.

## **2.5 Country guidance caselaw**

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<sup>20</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 26.01-02

<sup>21</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 22.22

### **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 express opinions. 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. 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.

### **HH (Somalia) & Others [2010] EWCA Civ 426 (23 April 2010)**

This judgment provides general guidance on the issues of enforced return of individuals with no independent right to be or remain in the United Kingdom to a war-torn country (Somalia) where their safety is or may be in serious doubt. Some of the findings made in *HH* have a general application. The Court of Appeal considered the cases of *HH*, *AM*, *J* and *MA* concerning return to Somalia and reached the following conclusions:

122. It has been sufficient for the purposes of resolving the issues before us to confirm, as this court has said on previous occasions (albeit only *obiter*) that where the route and manner of return are known or can be implied, the first tier tribunal must consider whether the applicant would be put at risk if returned by that route. We have not found it necessary to resolve the wider question whether that tribunal must always consider that question whenever the applicant puts it in issue, although our strong provisional view is that it must. If that is right, it will inevitably have important consequences for the status of the applicant pending directions finally being issued to secure his removal or deportation. We have not had directly to address that issue but it is bound to arise in the near future. Conceivably it might require a reference to the ECJ in due course, but that is not necessary in this case and no-one has suggested it.
123. Of the four cases dealt with in this judgment, the first, that of *HH*, involves only the application to the known facts of the law decided by the court in *QD (Iraq)*. We have dismissed that appeal.
124. In the second and third appeals, those of *AM* and *J*, we have held that where the point of return and any route to the safe haven are known or ascertainable, these form part of the material immigration decision and so are appealable. We have upheld the appeals in both cases.
125. The fourth appeal, that of *MA*, establishes that even a mendacious appellant is entitled to protection from refoulement if objective evidence shows a real risk that return will place his life and limb in jeopardy. We have upheld the appeal in that case.

### **European Court of Justice: (Elgafaji [2009] EUECJ C-465-07) 17 February 2009**

The ECJ in this case found that “Article 15(c) of Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country

nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, in conjunction with Article 2(e) thereof must be interpreted as meaning that:

- the existence of serious and individual threat to the life or person of an applicant for subsidiary protection is not subject to the condition that that applicant adduce evidence that he is specifically targeted by reason of factors particular to his personal circumstances;
- the existence of such a threat can exceptionally be considered to be established where the degree of indiscriminate violence characterising the armed conflict taking place – assessed by the competent national authorities before which an application for subsidiary protection is made, or by the courts of a Member State to which a decision refusing such an application is referred – reaches such a high level that substantial grounds are shown for believing that a civilian returned to the relevant country or as the case may be, to the relevant region, would, solely on account of his presence on the territory of that country or region, face a real risk of being subject to that threat.” (Paragraph 45)

### **QD (Iraq) v Secretary of State for the Home Department [2009] EWCA Civ620 (24 June 2009)**

The Court of Appeal provided further domestic guidance on *Elgafaji* and the test to be applied:

*“Is there in a country of a material part of it such a high level of indiscriminate violence that substantial grounds exist for believing that an applicant, solely by being present there, faces a real risk which threatens his life or person?”* By “material part” we mean the applicant’s home area, or if otherwise appropriate, any potential place of internal relocation [para 40].

The Court of Appeal also clarified that the word “exceptional” is used by the ECJ to stress that not every armed conflict or violent situation will attract the protection of Article 15c but only one where the level of violence is such that, without anything to render them a particular target, civilians face real risks to their life or personal safety [para 25]. The reference to ‘threat’ does not dilute the need for there to be a real risk [para 29]. The phrase “situations of international or internal armed conflict” is broad enough to include any situation of indiscriminate violence whether caused by one or more armed factions or by a state, which reaches the level described in *Elgafaji* [para 35]. There is no requirement that the armed conflict itself must be “exceptional” but there must be an intensity of indiscriminate violence sufficient to meet the test in *Elgafaji* [para 36].

### **3. Main categories of claims**

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in Libya. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out

in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in Karanakaran should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction on 'considering the protection (Asylum) claim' and 'assessing credibility').
- 3.3** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

### **3.5 Credibility**

- 3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'establishing the facts of the claim (material and non-material facts)' in the Asylum Instruction 'considering the protection (asylum) claim' and 'assessing credibility'. Case owners must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to anon-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

### **3.6 Claims relating to the general security and humanitarian situation**

- 3.6.1** Many applicants will make an asylum/human rights claim based upon the security situation in Libya, and the prevailing general humanitarian conditions.
- 3.6.2 Treatment:** Since the anti-government protests began in eastern Libya in February 2011, the situation in Libya has been volatile and unpredictable. The protests rapidly escalated into full-scale civil war, as the country united to overthrow the Gaddafi regime. In March 2011, the UN Security Council authorised a no-fly zone over Libya, and also the use of air strikes to protect civilians. In July 2011, the International Contact Group on Libya formally recognised the main Libyan opposition group, the National Transitional Council (TNC) as the legitimate government of Libya. By September 2011, the African Union had joined 60 other countries recognising the legitimacy of the TNC. Col. Gaddafi was killed by a rebel

militia group on 20 October 2011, and three days later the TNC declared that Libya was officially liberated. They announced their intention to hold democratic elections within eight months.<sup>22</sup>

**3.6.3** Libya emerged from months of intense conflict lacking many of the institutions of a strong civil society.<sup>23</sup> Ian Martin, the UN envoy to Libya said in January 2012, that

“...The former regime may have been toppled, but the harsh reality is that the Libyan people continue to have to live with its deep-rooted legacy; weak, at times absent, state institutions, coupled with the long absence of political parties and civil society organisations, which render the country’s transition more difficult.”<sup>24</sup>

Evidence is growing that the TNC has so far been unable to provide adequate state leadership and control in Libya.<sup>25</sup> The stated aim of the TNC to move towards a secure and democratic state is being increasingly undermined by the hundreds of armed militias. The Congressional Research Service reported in December 2011 that “events in Libya remain fluid and fast-moving” and that, “security is the immediate priority, and questions remain about the ability of the Transitional National Council (TNC) to ensure order. A large number of armed groups remain active and their continued unity of purpose and endorsement of proposed TNC transition plans cannot be taken for granted”.<sup>26</sup>

**3.6.4** According to a December 2011 International Crisis Group report,

“...as the recent upsurge of violence dramatically illustrates, the militias that were decisive in ousting Gaddafi’s regime -are becoming a significant problem now that it is gone. Their number is a mystery: 100 according to some; three times that others say. Over 125,000 Libyans are said to be armed. The groups do not see themselves as serving a central authority; they have separate procedures to register members and weapons, arrest and detain suspects; they have clashed repeatedly. Rebuilding Libya requires addressing their fate, yet haste would be as perilous as apathy. The uprising was highly decentralised; although they recognise it, the local military and civilian councils are sceptical of the National Transitional Council (TNC), the largely self-appointed body leading the transition. They feel they need weapons to defend their interests and address their security fears.”<sup>27</sup>

**3.6.5** Furthermore, the report stated:

“...formation of a new cabinet was supposed to curb militia-on-militia violence as well as defiance of the National Army; it has done nothing of the kind. Instead, violence in the capital if anything has escalated, with armed clashes occurring almost nightly”.<sup>28</sup>

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<sup>22</sup> BBC News: [BBC Libya Profile](#), updated 18 March 2012

<sup>23</sup> Civil-Military Fusion Centre: [Stability in a Post-Gaddafi Libya](#), January 2012

<sup>24</sup> UN News Centre, [Libya facing challenging transition, but authorities striving to succeed – UN](#), 25 January 2011

<sup>25</sup> IRIN News: Libya: [What the analysts are saying](#), 29 February 2012

<sup>26</sup> Congressional Research Service, [Libya: Transition and U.S. Policy](#), December 2011, Assessment

<sup>27</sup> International Crisis Group, [Holding Libya Together: Security Challenges after Gaddafi](#), 14 December 2011, Executive Summary and Recommendations

<sup>28</sup> International Crisis Group, [Holding Libya Together: Security Challenges after Gaddafi](#), 14 December 2011, Executive Summary and Recommendations

The militias are running everything from detention centres to hospitals, but have also engaged in several fatal clashes, and are increasingly accused of human rights abuses. Since January 2012, reports of inter-militia conflict have increased, together with fatal tribal clashes in the south. Revenge attacks against the entire Tawergha ethnic minority have been repeated against other communities also accused of fighting on behalf of Col. Gaddafi during the war.<sup>29</sup>

- 3.6.6** The militias are reportedly entrenched in their positions; they are well organised and represent a considerable burden to the communities who are subject to discrimination and collective punishment. They are said to be bound together by a desire for power and territorial security rather than a particular political agenda.<sup>30</sup> In all the major cities, various militias control the airports, government buildings from the previous regime and most public buildings. The militias are said to feel entitled to a share of power because of their help in overthrowing the Gaddafi regime. They have held on to their power and their weapons, and the majority do not acknowledge the authority of the TNC.<sup>31</sup>
- 3.6.7** In December 2011 the BBC reported that “fierce fighting closed Tripoli international airport as rival militias battled for control of the facility in the latest upsurge of violence in Libya’s volatile capital” and that during the previous week, pro-Gaddafi gunmen had attack the central hospital.<sup>32</sup> The March 2012 report from the UN Secretary-General notes that “intermittent clashes between the brigades and other incidents continued to pose a challenge to the authorities in their efforts to contain the overall security situation and to manage the risks associated with the continued proliferation of weapons on the streets and the large number of armed brigades whose lines of command and control remained unclear. In Tripoli, the most serious of these took place on 3 January 2012 when fighting broke out between rival brigades from Misrata and the capital’s Sidi Khalifa neighbourhood, resulting in several deaths. An attempt to detain alleged supporters of the Gaddafi regime in Sabhā, located south of Tripoli led to heavy fighting between brigades from Gheryan and Al-Asab’a, in which at least six were killed and several wounded.”<sup>33</sup> On 16<sup>th</sup> March clashes at a rally calling for a semi-autonomous territory ‘Cyrenaica’ to be created in eastern Libya have left one person dead in the city of Benghazi.<sup>34</sup>
- 3.6.8** In March 2012, clashes between rival militias in the southern city of Sabha caused the deaths of at least 70 people, and wounded more than 150.<sup>35</sup> The fighting began between former rebels, and gunmen from the Toubou ethnic group, following the death of a militiaman from Sabha in a row over a car. Libyan Government forces have been sent to Sabha to try to restore calm, but the TNC is struggling to re-assert its authority. The Toubou have also begun calling for a separatist state.<sup>36</sup>
- 3.6.9** In addition to the large numbers of heavily armed militia groups throughout Libya, there is also the problem of extensive areas of contamination from landmines and explosive remnants across the country. These pose a serious threat to civilians, internally displaced persons and humanitarian workers. Large quantities of unexploded ordnance and ammunition stockpiles have been identified in residential

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<sup>29</sup> IRIN News: Libya: [What the analysts are saying](#), 29 February 2012

<sup>30</sup> IRIN News: Libya: [What the analysts are saying](#), 29 February 2012

<sup>31</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 10.07-10.08

<sup>32</sup> Guardian, [Libya: Tripoli airport closed after rogue militia attacks garrison](#), 20 December 2011

<sup>33</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March 2012 para 9

<sup>34</sup> BBC, [Libya rally on Cyrenaica autonomy plan ends in violence](#), 16 March 2012

<sup>35</sup> BBC, [‘Dozens killed’ in clashes in Libyan town of Sabha](#), 28 March 2012

<sup>36</sup> BBC News Libya: [Libyan militias clash in city of Sabha](#), 27 March 2012

areas, including near schools and hospitals. Many of these are unsecured, with only one team so far deployed on clearance projects, which operates in Tobruk.<sup>37</sup> A UN official in Tripoli said there is a need to build national institutions to replace the militias. Increasingly, many Libyans are defined by their city or region of residence, and their wartime allegiance, rather than any wider, national affiliation.<sup>38</sup>

- 3.6.10** At the peak of the crisis, Libyan medical facilities lacked staff and had run out of life-saving supplies; the water networks had broken down, affecting millions of people for prolonged periods, and minority groups were regularly assaulted. The UN Office for the Coordination of Humanitarian Affairs (OCHA) responded quickly to these and other humanitarian needs resulting from the armed conflict. As security conditions improved, OCHA moved into Benghazi, Tripoli and Misrata, remaining until the cessation of hostilities in October 2011.<sup>39</sup>
- 3.6.11** There were over 200,000 internally displaced persons (IDP) in Libya at the height of the crisis; most of these have now returned to their areas of origin. The remaining IDPs, approximately 50,000, are from minority groups and continue to be a cause for concern. They are unable or unwilling to return to their homes, due to fears of arrest, and threats to their safety due to their association with the former regime.<sup>40</sup> The UN Security Council, in a report of 22 November 2011, noted that there are serious concerns about the situation of many third country nationals in Libya, mainly migrants from sub-Saharan Africa, refugees and asylum seekers, who are very vulnerable to human rights violations and general exploitation. The TNC is actively working with various international organisations (UNHCR, International Organisation for Migration) to relieve conditions for these people, and where possible enabling them to return to their home countries.<sup>41</sup>
- 3.6.12** The TNC is working in partnership with the UN Support Mission in Libya (UNSMIL), assisting them with restoring public security and the rule of law, promoting inclusive political dialogue and national reconciliation, and also with the issue of elections, drafting the new constitution etc. UNSMIL is further mandated by the Security Council (S/2011/580) to help the Libyan government extend State authority by strengthening emerging accountable institutions, restoring public services, promoting and protecting human rights and supporting transitional justice. Local Libyan councils and volunteer groups are proving to be well resourced, mobile and able to meet many needs. They were the primary delivery method for international assistance, with effective TNC support. Basic services, such as water and power supplies, have largely been restored in most areas.<sup>42</sup>
- 3.6.13** The Institute for War and Peace Reporting noted in January 2012 that according to officials and diplomats, “The perceived inability of Libya’s transitional government to address serious economic and security problems is causing a groundswell of discontent that threatens national stability, officials and diplomats”.<sup>43</sup> It also noted that “while Libya’s oil exports are climbing, they remain below pre-revolution levels and foreign companies have proved reluctant to invest. This has undermined the local economy and left many unemployed and unable to access the public services

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<sup>37</sup> 16 IRIN, [Analysis: Libya’s long road to disarmament](#), 29/12/2011

<sup>38</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 10.11

<sup>39</sup> UN OCHA: [Libya: OCHA in 2012 and 2013](#), undated, Context Analysis, The Humanitarian Situation

<sup>40</sup> UN OCHA: [Libya: OCHA in 2012 and 2013](#), undated, Context Analysis, The Humanitarian Situation

<sup>41</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 27.09

<sup>42</sup> UN OCHA: [Libya: OCHA in 2012 and 2013](#), undated, Context Analysis, The Humanitarian Situation

<sup>43</sup> Institute for War and Peace Reporting, [Libya’s Interim Government Under Pressure to Deliver](#), 25 January 2012

provided by the previous regime”.<sup>44</sup>

**3.6.14 See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)**

**3.6.15 Conclusion:** Claims based on the general security situation in Libya must be considered with reference to the Interim Asylum Instruction on Humanitarian Protection: Indiscriminate Violence. Case owners should also refer to the Gender Asylum Policy Instruction where appropriate.

**3.6.16** There continue to be outbursts of internal armed conflict in parts of Libya, but it is not at such a level, either in Libya generally or a material part of it, that substantial grounds exist for believing that any civilian would, solely by being present there, face a real risk of serious harm. The security and humanitarian situation in Libya remains fluid, and some individuals may fall into an enhanced risk category on the basis of certain characteristics. Each case must be considered on its individual merits.

**3.6.17** To establish a claim under Article 15c of the Qualification Directive it will be necessary for a claimant to establish that particular factors place him or her at real risk of serious harm from the levels of indiscriminate violence that do exist, and that internal relocation to a place where there is not a real risk of serious harm is not reasonable. In doing so, case owners must consider carefully whether the existence of such factors mean that the harm they fear is not in fact indiscriminate, but targeted, if not at them personally, at a Refugee Convention defined population to which they belong, in which case a grant of asylum is likely to be more appropriate.

**3.7 Perceived Gaddafi clan members/loyalists fearing government authorities or armed militia**

**3.7.1** A number of applicants may make asylum and/or human rights claims based on a fear of mistreatment at the hands of armed gangs and militia brigades allied to the National Transitional Council and the authorities of the Interim Government.

**3.7.2 Treatment:** There are various reports that in many parts of Libya, armed groups allied to the National Transitional Council have detained people suspected of supporting or fighting on behalf of Col. Gaddafi and his regime. Torture is being carried out by officially recognized military and security entities as well as by a multitude of armed militias operating outside any legal framework during interrogation and detention. Several detainees have died in the custody of armed militias in and around Tripoli and Misratah in circumstances that suggest torture.<sup>45</sup>

**3.7.3** The United Nations-mandated commission of inquiry concluded in March 2012 that “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

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<sup>44</sup> Institute for War and Peace Reporting, [Libya's Interim Government Under Pressure to Deliver](#), 25 January 2012

<sup>45</sup> Amnesty International, [Libya: Deaths of detainees amid widespread torture](#), 26 January 2012

torture and ill-treatment, attacks on civilians, and rape”.<sup>46</sup> The Commission further concluded that “the *thumar* (anti-Gaddafi forces) committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report. The Commission found these violations to include unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate attacks, and pillage. It found in particular that the *thumar* are targeting the Tawergha and other communities”.<sup>47</sup>

- 3.7.4** Human Rights Watch (HRW), investigating in Libya during April and May 2011, found that significant numbers of suspected Gaddafi supporters had been arbitrarily detained by opposition authorities. They also found that at least ten former Gaddafi security officials and Revolutionary Committee members had been killed in eastern Libya. A small number of deaths were linked with the use of ill-treatment and/or torture. HRW visited and interviewed detainees and the opposition officials holding them, in Benghazi, Misrata and Zintan. They were allowed unrestricted access including private meetings with detainees, many of whom were civilians. They found then, that detainees were uniformly denied access to lawyers, but that the majority made no complaints of mistreatment during detention.<sup>48</sup> A few days after the death of Col. Gaddafi, HRW reported that 53 bodies (or 65, according to Amnesty Report<sup>49</sup> of (apparent) Gaddafi supporters had been found outside the Mahari Hotel in Sirte, where armed militias from Misrata had been based. Many of the victims were bound, and all appeared to have been shot at that location.<sup>50</sup>
- 3.7.5** Medecin sans Frontieres (MSF) reported numerous cases of torture in detention at the hands of militias in Misrata, and lodged formal complaints with the Misrata Military Council and other local bodies; to date, no action has been taken. Since January, several of the patients returned to interrogation centres have even been tortured again. MSF have since suspended their medical activities in Misrata detention centres in protest.<sup>51</sup> HRW have also reported numerous cases of ill-treatment, torture and death in custody of individuals known or perceived to have been pro-Gaddafi, or to have fought for the regime. These cases have been spread throughout eastern and western areas of Libya. HRW noted that despite public promises by the TNC to respect the laws of war, cooperate with the International Criminal Court, and their repeated condemnations of revenge attacks, abuses have continued and increased in number.<sup>52</sup>
- 3.7.6** During August 2011, anti-Gaddafi militias from Misrata attacked and drove out the entire population of Tawargha from the town. The Tawarghan residents are of sub-Saharan African ethnicity, and were reportedly loyal to the Gaddafi regime. The attacks, combined with looting and burning of property, continued throughout September 2011. Homes and infrastructure are reported to have been systematically destroyed, making it impossible for the people to return. Militias from Misrata have continued to hunt down and terrorise displaced residents of Tawergha all over Libya.<sup>53</sup> The majority of displaced sub-Saharan and black Libyans are currently living in makeshift settlements. Conditions at such camps are described as ‘reprehensible’, particularly for women, who are at constant risk of sexual

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<sup>46</sup> UN Human Rights Council, [Report of the International Commission of Inquiry on Libya](#), 2 March 2012 *Summary*

<sup>47</sup> UN Human Rights Council, [Report of the International Commission of Inquiry on Libya](#), 2 March 2012 *Summary*

<sup>48</sup> Human Rights Watch: [Libya: Opposition arbitrarily detaining suspected Gaddafi loyalists](#), 5 June 2011

<sup>49</sup> [Document - Libya: Militias threaten hopes for new Libya | Amnesty International](#)

<sup>50</sup> Human Rights Watch: [World Report 2012 - Libya](#), 22 January 2012, *The Armed Conflict*

<sup>51</sup> MSF: [Detainees tortured and denied medical care](#), 26 January 2012

<sup>52</sup> Human Rights Watch: [World Report 2012 - Libya](#), 22 January 2012, *The Armed Conflict*

<sup>53</sup> [Document - Libya: Militias threaten hopes for new Libya | Amnesty International](#)

harassment and abuse, violence, and unsafe, insanitary conditions.<sup>54</sup>

**3.7.7** HRW has also reported that:

“revenge attacks against populations deemed to have supported Gaddafi also grew in September and October. In particular, militias from Misrata prevented about 30,000 people from returning to their homes in Tawergha, a town near Misrata, because they accused them of having committed atrocities in Misrata together with Gaddafi forces. Displaced Tawerghans were subject to arbitrary arrests and torture in detention, in some cases leading to death. Members of the Mesheshiya tribe in the western mountains, accused of past loyalty to Gaddafi, also reported harassment and revenge attacks”.<sup>55</sup>

**3.7.8** In March 2012, Human Rights Watch reported that “nearly a month after militias raided a Tawergha camp in Janzur, shooting dead one man, three women, and three children, that camp and others still lack adequate protection”.<sup>56</sup> Authorities in and around Misrata are also preventing thousands of people from returning to the villages of Tomina and Kararim and have failed to stop local militias from looting and burning homes there.<sup>57</sup> Officials in Misrata have sought to justify the violations to Human Rights Watch, contending that people from Tomina, Kararim, and Tawergha fought with Gaddafi forces and committed atrocities against Misratans during the 2011 conflict.<sup>58</sup>

**3.7.9** Delegates of Amnesty International reported meeting detainees (in January 2012) showing extensive injuries indicating the use of torture. They also saw medical reports on several detainees who had died in custody; the medical evidence was consistent with the use of torture.<sup>59</sup> They reported that the majority of detainees being targeted for inhumane treatment were those Libyans believed to have remained loyal to Col. Gaddafi during the conflict, particularly dark-skinned Libyans e.g. the Tawerghans. Foreign nationals have also been targeted, primarily sub-Saharan Africans because of their irregular legal status, and because they are believed (often erroneously) to have been employed as mercenaries for Col. Gaddafi’s forces.<sup>60</sup> According to a March 2012 report from the UN Secretary-General, ‘revolutionary brigades’ continue to arrest and interrogate “alleged former regime supporters”, including at undisclosed locations.<sup>61</sup>

**3.7.10** Amnesty International reported in February 2012 that “Militias took captive thousands of suspected al-Gaddafi loyalists, soldiers and alleged foreign ‘mercenaries’, many of whom were tortured or ill-treated in custody, in some cases leading to death” and that “militias also continue to seize and detain people, outside any legal framework, and hold them in secret detention centres before handing them over to other facilities run by officially or semi-officially recognized military or security entities”.<sup>62</sup> The UN Secretary-General further reported in March 2010 that,

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<sup>54</sup> Refugees International: [Blog | 16 Days: In Libya, the Fight Continues - for Women's Rights | Refugees International](#), 6 December 2011

<sup>55</sup> Human Rights Watch: [Libya: Opposition arbitrarily detaining suspected Gaddafi loyalists](#), 5 June 2011

<sup>56</sup> Human Rights Watch, [Libya: Bolster Security at Tawergha Camps](#), 05 March 2012

<sup>57</sup> Human Rights Watch, [Libya: Displaced People Barred from Homes](#), 21 February 2012

<sup>58</sup> Human Rights Watch, [Libya: Displaced People Barred from Homes](#), 21 February 2012

<sup>59</sup> [Document - Libya: Militias threaten hopes for new Libya | Amnesty International](#)

<sup>60</sup> Amnesty International 26 Jan 2012: [Deaths of detainees amid widespread torture](#), 26 January 2012

<sup>61</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March 2012 para 24

<sup>62</sup> Amnesty International, [Militias threaten hopes for new Libya 16 February 2012](#), section 1. Introduction

“an estimated 65,000 to 80,000 people remain internally displaced, mainly Tawergha, other minorities and people associated with the former regime, owing to fears of reprisals in their areas of origin”.<sup>63</sup> In December 2011, demonstrators in Benghazi and Derna took to the streets protesting National Transitional Council comments about a possible amnesty for some former Gaddafi fighters and regime officials. There were calls also for former regime supporters to be barred from the political process and purged from State institutions.<sup>64</sup>

**3.7.11** The UN High Commissioner for Human Rights has expressed her extreme concern at conditions of detention and treatment of detainees held by various militia brigades. She noted that the ICRC had visited more than 8,500 detainees between March and October 2011, the majority of whom are accused of being loyalists of Col. Gaddafi. These included large numbers of people of sub-Saharan African ethnicity.<sup>65</sup> The chairman of the TNC, Mustafa Abdel-Jalil, recently warned of the possibility of ‘civil war’ in Libya, if the hundreds of militias are not brought under control. The militias are reportedly reluctant to relinquish their weapons until they consider the country is stable and safe.<sup>66</sup> The interim Prime Minister Abdurrahim al-Keib has said that he understands their concerns, and wants to show them the gratitude and respect due to them.<sup>67</sup> The Libyan interim government has made several statements of intent to rein in the militias, persuade them to disarm and to create an environment conducive to human rights. However, to date the TNC-led transitional government has not achieved this, and appears to lack sufficient authority or political will to confront the militia leaders.<sup>68</sup>

**3.7.12 See also: [Actors of protection](#) (section 2.3 above)**

**[Internal relocation](#) (section 2.4 above)**

**[Caselaw](#) (section 2.5 above)**

**3.7.13 Conclusion:** Given the generalised attitude of resentment towards perceived Col. Gaddafi supporters and fighters, and the force with which the Gaddafi regime previously sought to subdue the opposition, it is likely that some applicants in this category will be able to show a need for international protection. Perceived supporters of Gaddafi and his regime are at risk of arbitrary detention, torture, ill-treatment and death both by authorities of the Interim Government or its armed affiliates, as well as by armed militias operating without government control.

**3.7.14** Consideration should be given to the particular circumstances of the individual, including ethnicity, age, and the nature and degree of the perceived relationship to Col. Gaddafi’s regime. Where it is accepted that an individual applicant was closely involved with Col. Gaddafi and the regime, or his particular circumstances indicate a likely risk of attracting the adverse interest of militia brigades allied to the TNC, a grant of asylum will generally be appropriate, subject to any exclusion considerations under Article 1F of the Refugee Convention.

**3.7.15** Case owners should consider whether the individual could internally relocate in order to escape persecution/ill treatment and, if so, whether it would be unduly

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<sup>63</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March 2012 para 49

<sup>64</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March 2012 para 7

<sup>65</sup> UN News Service: [Libya facing challenging transition, but authorities striving to succeed](#), 25 January 2012

<sup>66</sup> BBC News: [Libya’s ex-rebels reluctant to down arms](#), 6 January 2012

<sup>67</sup> BBC News: [Libya’s rebels without a cause](#), 15 December 2011

<sup>68</sup> [Document - Libya: Militias threaten hopes for new Libya | Amnesty International](#)

harsh for them to do so. However, given that those perceived to be supporters of the Gaddafi regime cannot access effective protection from the interim government and that torture is being carried out by officially recognized military and security entities, it is unlikely that a claimant of this profile will be able to internally relocate in order to escape the risk of persecution.

**3.7.16** Case owners should note that members of Col. 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. If it is accepted that an applicant was an active operational member of the security forces, case owners should consider whether one of the Exclusion clauses is applicable. Case owners should seek advice from a Senior Caseworker if they consider that an applicant in this category may have been responsible for crimes against humanity.

### **3.8 Women: Rape as a weapon of war, domestic ill-treatment**

**3.8.1** Some Libyan female applicants may make an asylum and/or human rights claim based on a claim of having been sexually assaulted and/or raped by pro-Gaddafi soldiers during the civil war in Libya. Such claims may also involve a fear of mistreatment or death at the hands of their family, due to being perceived as having been raped, or of transgressing accepted moral codes/family values.

**3.8.2 Treatment:** There have been credible reports that pro-Gaddafi soldiers were ordered to rape women as a weapon of war against the rebels.<sup>69</sup> The Prosecutor of the International Criminal Court, Luis Moreno-Ocampo, has said there is evidence that Col. Gaddafi ordered the rape of hundreds of Libyan women as a weapon of war against rebel-held areas.<sup>70</sup> The ICC issued arrest warrants for Col. Gaddafi and two of his close associates on May 16 2011.<sup>71</sup>

**3.8.3** In November 2011, approximately 100 women took part in a march in Tripoli, demonstrating their support for victims of rape during the civil war. The women were guarded by armed militia men who acted as security guards as they distributed fliers. They met with Prime Minister Abdurrahim El-Keib to request help and support for such women, and he agreed their issues were a priority for the new government.<sup>72</sup> A spokesperson for a new women's group (Phoenix) Amira Nayad, noted that wounded men are being properly cared for and even sent abroad for specialist treatment. She stated that women who suffered sexual violence during the conflict should also be cared for, and given physical and psychological support rather than being ignored. She called for awareness programmes, and for such women to be regarded as victims of a crime.<sup>73</sup> Activist Sara Shukri reported that she heard that in November 2011 alone 36 women committed suicide because of the shame of being raped. There are various calls for Libyan rape victims to be considered as wounded combatants, and veterans of war rather than stigmatised as bringing shame on their families.<sup>74</sup>

**3.8.4** The particular cultural norms of Libyan society mean that rape that occurs outside

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<sup>69</sup> BBC News: Libya Crisis [Soldiers forced to rape women](#), 23 May 2011

<sup>70</sup> BBC News - Libya Crisis: [Rape used as a weapon of war](#), 8 June 2011

<sup>71</sup> BBC News, [Libya: ICC prosecutor seeks warrant for Gaddafi](#), 16/05/2011

<sup>72</sup> Reuters: [Libyan women demand support for war rape victims](#), 16 November 2011

<sup>73</sup> BBC News, Libya: [Libyan women battle for empowerment](#), 13 December 2011

<sup>74</sup> The National Law Journal: [Hidden deaths of Libyan rape survivors](#), 9 January 2012

the home is rarely reported to the authorities, and is not discussed in society. Problems are dealt with within the family, as the majority of families wish to conceal any violation of “honour”. Due to the shame associated with sexual violence/abuse, there is no national or state provision of support for victims. Women are frequently expected to marry their attacker, since a refusal is likely to result in her being socially ostracised, or at risk of being the victim of an ‘honour killing’.<sup>75</sup>

- 3.8.5** A spokesperson for the UNHCR (Arafat Jamal) stated that in Libya, the issue of rape is so culturally sensitive that “In Libya when rape occurs, it seems to be a whole village or town which is seen to be dishonored”.<sup>76</sup> An ‘honour’ killing may therefore be seen to restore the honour of the village. Some Libyan charities have stated they received reports of women and girls being raped in front of their male relatives, particularly in the western parts of the country. World for Libya (a local NGO) is a group of volunteers and charity workers offering to pay for women who have become pregnant as a result of rape to receive abortions, and to receive HIV testing, while their pregnancy may still be disguised. The NGO stated that many fathers would kill their daughters if they discovered them to have been raped. Hana Elgadi, a spokesperson for World for Libya, stated that the fathers of raped women will kill them in the belief that they are saving their daughter’s honour; i.e. “It is killing done with love”.<sup>77</sup>
- 3.8.6** The Report of the UN Secretary General on conflict-related sexual violence notes that “the preliminary findings from the initial phase of monitoring confirm that both women and men were subjected to rape and other forms of sexual violence. Women were reportedly abducted from their homes, from cars or from the streets and raped in places unknown to the victim, while men were raped in prisons and places of detention. Rape was reportedly used as a form of punishment against those who rebelled against the former Gaddafi regime”.<sup>78</sup> The report further notes that “The absence of State structures to address sexual violence exacerbates the situation and strengthens the silence of victims and witnesses”.<sup>79</sup> ‘Save the Children’ and other NGOs have reported the rape of female children in Libya since the outbreak of the conflict.<sup>80</sup>
- 3.8.7** Because sexual violence is considered to be a crime against women’s honour, women who reported being the victim of a sexual crime before the civil war were frequently made to leave their home, and placed in a ‘social welfare home’, i.e. a social rehabilitation centre.<sup>81</sup> Such detention was generally in ‘social rehabilitation’ facilities; sometimes women and girls were placed in these facilities because they had been the victims of rape, and were ostracised by their families. Most women were transferred to these facilities against their will; those who went of their own accord did so because there was no other type of government shelter for survivors of sexual violence.<sup>82</sup> Women detained in social rehabilitation facilities reportedly suffered routine human rights violations, including violations of due process, freedom of movement, personal dignity, and privacy. Medical services providers

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<sup>75</sup>Freedom House: [Women's rights in Libya](#), 14 October 2005

<sup>76</sup>BBC News: Libya Crisis [Libya rape victims face honour killings](#), 14 June 2011

<sup>77</sup>BBC News: Libya Crisis [Libya rape victims face honour killings](#), 14 June 2011

<sup>78</sup>UN General Assembly, [Report of the UN Secretary-General on conflict-related sexual violence, 13 January 2012](#) Para 36

<sup>79</sup>UN General Assembly, [Report of the UN Secretary-General on conflict-related sexual violence, 13 January 2012](#) Para 36

<sup>80</sup>Save the Children, [Save the Children receives reports of child rape in Libya](#), 23 April 2011

<sup>81</sup>Human Rights Watch: [A Threat to Society?](#) 28 February 2006

<sup>82</sup>US Department of State Report: 2010 Libya Human Rights Report, 08/04/2011, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons, Women

were said to regularly conduct 'virginity testing' via invasive examinations, despite the lack of medical accuracy or objectivity associated with such examinations.<sup>83</sup>

- 3.8.8** High-ranking officers in the Libyan Revolution's Military Council confirmed that rebel fighters found cell-phone pictures and videos of rape in the tanks and uniform pockets of captured Gaddafi loyalists. Sexual violence and exploitation is reported to have been 'systematic' and adopted by Gaddafi's troops on a massive scale, as a strategic weapon of war.<sup>84</sup> Evidence relating to current provision for women who have been raped or otherwise sexually abused, whether as victims of war or in other circumstances, is limited due to the prevailing social, cultural and religious values, and the consequent reluctance of women to report such crimes. It is reported that many Libyan people, including many of the victims themselves, believe that such women must be killed to preserve their honour. There are reports that women have committed suicide, or requested their families kill them, because of the stigma.<sup>85 86</sup>
- 3.8.9** The Interim Government is making efforts to stabilise and secure the country. However, large numbers of rebel brigades and militias continue to roam the country, reluctant to relinquish their weapons and acting autonomously, despite their apparent ties to the new government. Despite TNC rhetoric, thousands of black Libyans, sub-Saharan Africans, and other suspected Gaddafi loyalists remain vulnerable to harassment, arbitrary detention and arrest, and violence by rebel brigades. And for women, these threats include sexual and gender-based attacks.
- 3.8.10** According to a Freedom House report, most women will not travel unless accompanied by a husband or male relative. Those who do choose to travel alone or with other women are generally members of the elite, and are still expected to secure the permission of their families in order to travel. In addition, travelling within Libya is difficult, as Libyan hotels generally do not rent rooms to unaccompanied women, due to cultural and traditional requirements. Women rarely walk in the street in the evenings, unless accompanied by a male family member or another woman. There are a range of related cultural and social restrictions which are generally stronger in rural areas and small towns.<sup>87</sup> This is supported by a SIGI report describing the same cultural and religious restrictions (see footnote).<sup>88</sup>
- 3.8.11** Notwithstanding the fall of the Gaddafi regime in October 2011, the situation in Libya has continued to be volatile and unpredictable in most areas. Security conditions for civilians, particularly women and children are unpredictable and dangerous in many parts of the country. There is a dearth of information relating to the routes and modes of travel, and the new Libyan authorities have not yet gained control over all the various armed militias. Consequently, it is not yet possible to state whether or not a viable internal relocation option exists at present.

- 3.8.12 See also: [Actors of protection](#) (section 2.3 above)  
[Internal relocation](#) (section 2.4 above)  
[Caselaw](#) (section 2.5 above)**

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<sup>83</sup> US Department of State Report: 2010 Libya Human Rights Report, 08/04/2011, Section 6 Discrimination, Societal Abuses, and Trafficking in Persons, Women

<sup>84</sup> The National Law Journal: [Hidden deaths of Libyan rape survivors](#), 9 January 2012

<sup>85</sup> The National Law Journal : [Hidden deaths of Libyan rape survivors](#), 9 January 2012

<sup>86</sup> BBC News, Libya: [Libyan women battle for empowerment](#), 13 December 2011

<sup>87</sup> Freedom House: [Women's Rights in the Middle East and North Africa 2010 – Libya](#), 3 March 2010

<sup>88</sup> Social Institutions & Gender Index: [genderindex.org/country/libya](#) undated, accessed July 2011

- 3.8.13 Conclusion:** If the applicant's fear is of ill-treatment or persecution by non-state agents, e.g. family members, the Libyan authorities are not able to provide adequate protection, since the system of 'social rehabilitation' that prevailed under the previous regime amounted to punitive imprisonment, rather than protection or refuge. The inability of the Interim Government to provide adequate protection in such circumstances is further compounded by the continuing insecurity of the country situation, and the many gangs of armed militias.
- 3.8.14** Given the generalised discrimination towards women in Libya, and the inability of the Interim Government to provide protection against harm, it is likely that some women and especially particular sub-categories of women (e.g. women of African ethnicity, victims of sexual violence, and women perceived to have been allied to the Gaddafi regime) will be able to demonstrate a need for international protection. All relevant factors should be taken into account, including the age, health, educational and economic status, and the individual circumstances of the applicant. Female applicants able to show they are accused of sexual 'misdemeanours' or offences against family honour may be able to show that they fall into the category of a Particular Social Group (PSG).
- 3.8.15** Given the circumstances and cultural factors set out above, female applicants who can show that they have been raped by soldiers loyal to Col. Gaddafi or other combatants may be able to show that they are members of a PSG. Evidence suggests that even where the rape victim's father or husband does not attach personal blame to her, as is the case with other categories of sexual dishonour, she is still at risk of being the subject of an 'honour' killing, in order to save her and her family from dishonour.

### **3.9 Prison conditions**

- 3.9.1** Applicants may claim that they cannot return to Libya due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in Libya are so poor as to amount to torture or inhuman treatment or punishment.
- 3.9.2** The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.
- 3.9.3 Consideration of prison conditions:** Prior to the fall of the Gaddafi regime, there were effectively two prison systems operating in Libya: one administered by the Ministry of Justice (MOJ) and the other administered by the security force. In addition, a network of immigration detention centres provided for the detention of large numbers of foreign nationals considered to be in the country illegally. The US State Department Human Rights report (USSDHR) for 2011 described prison and detention centre conditions throughout the country as being generally poor. The (then) Libyan Government did not allow independent monitoring of prison conditions by independent NGOs, the media or international human rights groups. Throughout the prison systems, prison directors were unable to provide population estimates of

their own prisons, and centralised records were not kept.<sup>89</sup>

- 3.9.4** Although prohibited in law, security personnel under the Gaddafi regime were reported to have routinely tortured and abused detainees and prisoners during interrogations or as punishment.<sup>90</sup> Libya retains the death penalty for a wide range of crimes, including political offences. In 2010, *Cerene*, a newspaper closely affiliated with Saif al-Islam al-Gaddafi, reported the execution by firing-squad of 18 people, including nationals of Chad, Egypt and Nigeria, after being convicted of premeditated murder. *Cerene* further reported that more than 200 people were on death row.<sup>91</sup> There are no official statistics available on the number of individuals sentenced to death, or actually executed.
- 3.9.5** Since the declaration of independence by the TNC on 23 October 2011, all prisons and detention centres are officially under the control of the National Transitional Council. However, the TNC Information Minister Mahmoud Shammam reported in November that many prisons are in fact under the control of various semi-autonomous groups of fighters, rather than the Interim Government, stating that “we have a lot of problems in the prisons”.<sup>92</sup> In March 2012, the UN Secretary General reported that “the transfer of conflict-related detainees to the custody of the Ministry of Justice continues to be a major challenge. The majority of their files remain unprocessed; only a few of these detainees have been released. While the Government has stated its intention to bring prisons and other detention centres under the control of the judicial police, progress has been slow, partly owing to an insufficient number of judicial police. The latest figures provided by the Ministry of Justice indicate that 23 detention centres are currently under Government control, holding a total of 2,382 detainees. The Ministry of Justice has not been able to confirm the number of detainees held by the “brigades” but UNSMIL estimates place the number between 5,000 and 6,000. The judicial process itself continues to be hindered by the prevailing security situation, the reluctance of prosecutors and judges to return to work and slow progress in reforming and activating the judiciary, among other factor.<sup>93</sup> A number of credible reports allege that prisoners and detainees are being mistreated, some seriously, by former rebel fighters.
- 3.9.6** The humanitarian organisation Medecins sans Frontieres (MSF) reported in January 2012 that since beginning work in Misrata’s detention centres in August 2011, their doctors were increasingly confronted with patients suffering injuries caused by torture during interrogation. MSF reported they had treated 115 patients with torture-related wounds in Misrata, and that since January 2012, several had been returned to interrogation centres and tortured again. Formal complaints were lodged by MSF with the Misrata Military Council and other local bodies, but no concrete action was taken and torture continued. MSF have since suspended their medical activities in Misrata detention centres in protest.<sup>94</sup>
- 3.9.7** Amnesty International reported in January 2012 that several detainees have died after being subjected to torture in Libya in recent weeks and months amid widespread torture and ill-treatment of suspected pro-al-Gaddafi fighters and loyalists. It is reported that the torture is carried out by officially recognised military

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<sup>89</sup> US State Department Human Rights Report: [Libya 2011](#) section 1C

<sup>90</sup> US State Department Human Rights Report: [Libya 2011](#) section 1C

<sup>91</sup> Amnesty International, [Libya Executes 18 by Firing Squad](#), 1 June 2010

<sup>92</sup> Huffington Post: [Libya: Pro-Gaddafi Prisoners Allegedly Mistreated](#), 3 November 2011

<sup>93</sup> UN Security Council, [Report of the Secretary-General on the United Nations Support Mission in Libya](#), 1 March 2012 para 23

<sup>94</sup> MSF: [Detainees tortured and denied medical care](#), 26 January 2012

and security entities, as well as various armed militias operating outside any legal framework. As yet, there is no indication of any investigations into cases of torture or death in detention, or any evidence that survivors or relatives of the deceased have had any recourse to justice for their suffering.<sup>95</sup> The majority of detainees being targeted are Libyans believed to have remained loyal to Col. Gaddafi during the conflict, or to have been working on his behalf.<sup>96</sup> For example, the intelligence chief of the former regime, Abuzed Omar Dorda sustained a broken hip whilst being detained and interrogated by a revolutionary brigade in October 2011.<sup>97</sup> A former Libyan diplomat, Dr Omar Brebesh, was detained in January 2012, and is reported to have died of torture in detention.<sup>98</sup> In addition, many sub-Saharan Africans including Libyan citizens and foreign nationals have been detained and ill-treated in detention centres and prisons, because they are perceived to have been pro-Gaddafi.<sup>99 100</sup>

**3.9.8** Human Rights Watch (HRW) have documented numerous cases of death and injury due to torture perpetrated in prisons and makeshift detention centres by brigades and militia groups aligned to the TNC.<sup>101</sup> A HRW Report (September 2011) stated that the most obvious problems in Libyan prisons and detention centres are severe overcrowding and insufficient food. Some detention places have barely sufficient floor space for detainees to sleep. Cells holding detainees of sub-Saharan African ethnicity were reported to have less bedding than those for Libyan detainees. Lack of ventilation and stifling heat are significant problems, in many cases compounded by guards refusing to allow prisoners and detainees access to outdoor exercise areas. In many centres, toilet and washing facilities are insanitary.<sup>102</sup>

**3.9.9 Conclusion:** Prison and detention centre conditions in Libya are generally poor; overcrowding, lengthy pre-trial incarceration, torture and deaths in custody are particular problems. The Transitional National Council has stated its intention to establish the rule of law in Libya, and to regularise the justice system. However, they have yet to gain authority over the hundreds of militias currently holding over 5,000 detainees outside any legal jurisdiction.<sup>103</sup>

**3.9.10** There is evidence of security personnel/members of militia groups acting with impunity with regard to inhuman and degrading treatment. Reports indicate that those perceived to have been pro-Gaddafi loyalists, and those perceived to have been working or fighting on his behalf, particularly those of African ethnicity are at particular risk of ill treatment. In such cases the risk of mistreatment will be sufficient to make removal a breach of Article 3.

**3.9.11** Where applicants can demonstrate a real risk of imprisonment on return to Libya, a grant of Humanitarian Protection is likely to be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors include the likely type of detention facility, the reasons for detention, with particular regard to the individual's political profile, and the individual's age, gender, ethnicity and state of health.

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<sup>95</sup> Amnesty International: [Deaths of Detainees amid widespread torture](#), 26 January 2012

<sup>96</sup> Amnesty International: [Deaths of Detainees amid widespread torture](#), 26 January 2012

<sup>97</sup> Washington Post: [Gaddafi loyalist injured in custody of revolutionaries](#), 27 October 2011

<sup>98</sup> Human Rights Watch: [Libya: Diplomat dies in Militia Custody](#), 3 February 2012

<sup>99</sup> UNHCR: [UNHCR concerned as sub-Saharan Africans targeted in Libya](#), 26 August 2011

<sup>100</sup> BBC News Libya: [Plight of sub-Saharan Africans in Libya](#), 2 September 2011

<sup>101</sup> Human Rights Watch: [Cease arbitrary arrests, abuse of detainees](#), 30 September 2011

<sup>102</sup> Human Rights Watch: [Cease arbitrary arrests, abuse of detainees](#), 3 September 2011

<sup>103</sup> Human Rights Watch: [Building the Rule of Law](#), 30 December 2011

## **4. Discretionary Leave**

**4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.

**4.2** With particular reference to Libya the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and the Asylum Instructions on Article 8 ECHR.

### **4.3 Minors claiming in their own right**

**4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in Libya. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.

### **4.4 Medical treatment**

**4.4.1** Applicants may claim they cannot return to Libya due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

**4.4.2** On 9 June 2011, both Western and Arab countries pledged money in a new funding mechanism for the (then) rebel government. This was to assist with payment of salaries, and restoration of infrastructure, food and medical supplies.<sup>104</sup> Medical facilities and treatments in Libya have been severely constrained by the ongoing conflict. Since February 2011, UNHCR, World Health Organisation (WHO) and other agencies have been responding to a worsening humanitarian situation, particularly in the cities of Benghazi and Misrata. This was primarily due to heavy fighting, and many hospitals being shelled.<sup>105</sup> WHO and other agencies have reported a lack of medicines, medical equipment, food, and technical/medical staff in hospitals in several areas of Libya, including northwest Libya, and areas of the Nafousa Mountains in western Libya.<sup>106</sup>

**4.4.3** Access to adequate and appropriate medical care and treatment became increasingly limited, due to worsening shortages of medical and technical personnel, and medical supplies and equipment. By April 2011, hospitals were

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<sup>104</sup> BBC News: Libya Crisis: [Allies step up funding to rebels](#), 9 June 2011

<sup>105</sup> World Health Organisation: [Situation Report No. 17- Libya 12 May 2011](#), Libyan Arab Jamahir, Health Situation

<sup>106</sup> World Health Organisation: [Situation Report No. 17- Libya 12 May 2011](#), Libyan Arab Jamahir, Health Situation

struggling to cope with the numbers of war casualties, particularly in rebel held areas.<sup>107</sup> The conflict has since had a knock-on effect on other medical services, and the availability of treatment for long-term and chronic illness has lessened rapidly.<sup>108</sup>

- 4.4.4** The TNC asked the UN Secretary-General for assistance in releasing frozen funds to purchase food and medical supplies for the whole of Libya.<sup>109</sup> The medical and healthcare infrastructure has suffered catastrophic damage during the conflict, and the ability of hospitals and medical facilities to provide sufficient care and treatment is extremely limited. In addition, it is reported that prior to the rebellion and conflict, the healthcare system was ridden with corruption and nepotism. The newly appointed minister for health, Dr Fatima Hamroush, stated that she has inherited a healthcare system that is “very corrupt”, and that the sheer extent of corruption was a colossal task that could take generations to rectify.<sup>110</sup>
- 4.4.5** At the present time, access to medical treatment and healthcare is limited in all parts of Libya, and most healthcare provision currently prioritises the severely wounded. Many healthcare facilities have sustained extensive bomb damage, and this, combined with the mass exodus of migrant healthcare workers, and acute shortages of medicines and supplies, has caused the primary healthcare system to collapse.<sup>111</sup> People are seeking basic healthcare from secondary or tertiary level health facilities, placing an even greater burden on hospitals already struggling to cope.<sup>112</sup> However, it is anticipated that with the resolution of the crisis, the availability of medical treatment will gradually improve to pre-crisis standards. The European Commission for Humanitarian Aid and Civil Protection is providing quantities of humanitarian aid during 2012, with the emphasis on medicines, medical supplies, blankets and other essential supplies.<sup>113</sup>
- 4.4.6** In October 2011, WHO reported that health was gradually improving in areas where fighting had ceased. The main health priority is conflict-related injuries, followed by non-communicable diseases, due to a lack of health staff, medicines and medical supplies. Mental health is also a priority, in part due to the large numbers of civilians directly or indirectly exposed to the conflict, and in urgent need of psychosocial support.<sup>114</sup> The Libyan Ministry of Health has established a Committee of Health Care Management for refugees and internally displaced persons, supported by the WHO. The Mental Health Working Group conducted a preliminary assessment on internally displaced persons in camps in Benghazi. Throughout Libya, it is reported that there are gaps in the provision of mental health and psychosocial support for wounded patients, health staff, soldiers and civilians.<sup>115</sup>
- 4.4.7** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for

<sup>107</sup> IRIN, [Libya: Benghazi hospitals struggle to treat war-wounded](#), 13/04/2011

<sup>108</sup> IRIN, [Libya: Specialist health clinics in Benghazi desperate for support](#), 03/05/2011

<sup>109</sup> World Health Organisation: [Libya situation report no.23](#), Updated, Overview

<sup>110</sup> Washington Post: [Doctor sets out to heal Libya's health care system](#), 30/11/2011

<sup>111</sup> World Health Organisation: February 2012: [Rebuilding the Libyan health system, post revolution](#)

<sup>112</sup> World Health Organisation: February 2012: [Rebuilding the Libyan health system, post revolution](#)

<sup>113</sup> European Commission on Humanitarian Aid & Civil Protection: Libya: [Humanitarian Assistance](#)

<sup>114</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 25.06

<sup>115</sup> UKBA/COI Service, Libya: [COI Report 7 March 2012](#) paragraph 25.07

consideration prior to a grant of Discretionary Leave.

## **5. Returns**

- 5.1** There is no policy which precludes the enforced return to Libya of failed asylum seekers who have no legal basis of stay in the United Kingdom.
- 5.2** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.
- 5.3** Libyan nationals may return voluntarily to any region of Libya at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Border Agency, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in Libya. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Libyan nationals wishing to avail themselves of this opportunity for assisted return to Libya should be put in contact with Refugee Action Details can be found on Refugee Action's web site at:

[www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

Country Specific Litigation Team  
Strategy & Intelligence Directorate  
UK Border Agency  
7 September 2012