



OPERATIONAL GUIDANCE NOTE

LIBYA

CONTENTS

1. Introduction	1.1 – 1.4
2. Country assessment	2.1 – 2.10
3. Main categories of claims	3.1 – 3.5
Political / Islamic opposition groups	3.6
Berbers	3.7
Returning failed asylum seekers	3.8
Prison conditions	3.9
4. Discretionary Leave	4.1 – 4.2
Unaccompanied minors	4.3
Medical treatment	4.4
5. Returns	5.1 – 5.2
6. Additional references	

1. Introduction

1.1 This document summarises the general, political and human rights situation in Libya and provides information on the nature and handling of claims frequently received from nationals/residents of that province. It must be read in conjunction with the COI Service Libya Country of Origin Information Bulletin of July 2005 at:

http://www.ind.homeoffice.gov.uk/ind/en/home/0/country_information/bulletins/libya_july_2005.html.

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
 API on Humanitarian Protection
 API on Discretionary Leave
 API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

Source documents

1.4 Sources listed as follows [sources 1b, 2a & 13a] refer to references and source documents in the COI Service Libya Country of Origin Information Bulletin July 2005. Additional source documents (e.g. [1a][1b]) are listed at the end of this note.

2. Country assessment

2.1 Muammar Al Qadhafi came to power in a coup on 1 September 1969 which toppled the monarchy of King Idris. The ideological basis of Qadhafi's regime is Qadhafi's own political philosophy, the Third Universal Theory, set out in his Green Book. Drawing heavily on Islam, socialism and Bedouin tradition, the Third Universal Theory calls for a system of direct rule by the people through a series of committees. It is intended as an alternative to capitalism and communism, and is applicable to all countries. In March 1979 Qadhafi renounced virtually all his positions in government and thereafter became known only by the title "Leader of the Revolution and Supreme Commander of the Armed Forces." There have been at least six coup plots during Qadhafi's period in power. [sources 1, 2c, 13a & 13b][1a]

2.2 The General People's Congress (GPC) is constitutionally responsible for formulating policy and passing laws in accordance with the decisions of the many local and regional People's Congresses. The GPC Congress meets annually and comprises delegates from the Basic People's Congresses and Sha'abiyat (regional level) Popular Committees. Representatives from the trade unions and professional organisations also attend. [sources 1, 2c, 13a & 13b][1a]

2.3 The GPC provides a forum for debate and criticism and has on occasion obstructed policies proposed, but it can follow strong direction from the leadership. At its meeting in February/March 2000 the Congress devolved significant responsibility for local services (notably health, education and transport) to the 26 administrative regions, or Sha'abiyat powers. Central government is made up of Secretariats that cover the core national issues: Foreign affairs, Finance, Justice, Public Security, Economy and Trade, Workforce and Training, Planning and Tourism, Energy, etc. Members hold the equivalent of Ministerial rank and act as a link between the Popular Committees and the Executive. The Congress Secretary for Foreign Affairs acts to some extent as an alternate Foreign Minister. [sources 1, 2c, 13a & 13b][1a]

2.4 Colonel Qadhafi, as Supreme Commander of the Armed Forces, exercises control over the defence establishment and security services. All male Libyans should complete two year's conscription in the armed forces. The EU arms embargo on Libya was lifted on 11 October 2004. [sources 1, 2c, 13a & 13b][1a]

2.5 There are numerous small groups opposed to the regime, the vast majority of which are based outside Libya. The National Front for the Salvation of Libya (NFSL), the Libyan National Army (LNA) and the Libyan Islamic Fighting Group (LIFG) are perhaps the best known groups in the external opposition. [sources 1, 2c, 13a & 13b][1a]

2.6 Libya restored diplomatic relations with the European Union (EU) and the USA following its announcement at the end of 2003 that it would dismantle its programmes for weapons of mass destruction. Normalisation of relations was also enabled by the conclusion of negotiations with Germany and France on two separate bombings: the first of the *La Belle* nightclub in Berlin, Germany, in 1986, which killed three people and wounded about 250; and the second of UTA flight 772 over Niger in 1989, which led to 170 deaths. In April 2004, in his first official trip to Europe for 15 years, Qadhafi visited the European Commission in Belgium. [sources 1, 2c, 3a, 13a & 13b][1a]

2.7 In March 2004 a cabinet reshuffle took place and the Secretariat of the General People's Committee for Justice and Public Security was divided into two separate entities, one for Justice and the other for Public Security. In April 2004 Qadhafi called for a number of legal and institutional reforms. These included the abolition of the People's Court, a special court known to try political cases, and the transfer of its jurisdiction to ordinary criminal courts; a more stringent application of Libyan law; and a reduction in the scope of the death penalty to cover only the most serious crimes. In June 2004 Libya ratified the Optional Protocol to the UN Women's Convention and in August 2004 the authorities informed Amnesty International (AI) that Libya was in the process of ratifying several other international and regional human rights treaties. [sources 1, 2c, 3a, 5b, 13a & 13b][1a]

2.8 The Government's human rights record remained poor in 2004, and the Government continued to commit numerous, serious abuses. Citizens do not have the right to change their government. Prison conditions are poor. Security forces arbitrarily arrest and detain persons, and prisoners are held incommunicado. Many political detainees have been held for years without charge or trial. The Government controls the judiciary, and citizens do not have the right to a fair public trial. Official impunity is a problem. The Government uses summary judicial proceedings in many cases. [sources 2a, 3a, 4, 5a & 5b]

2.9 During 2004, the Government infringed on citizens' privacy rights; restricted freedom of speech, press, assembly, association, and religion; imposed limits on freedom of movement; continued to ban political parties; and continued to prohibit the establishment of independent human rights organisations. Domestic violence against women is a problem. Traditional attitudes and practices continue to discriminate against women. There were reports in 2004 of trafficking in persons. The Government continues to repress banned Islamic groups and discriminated against ethnic and tribal minorities. The Government restricts labour rights, denies basic worker rights, and discriminates against foreign workers. [sources 2a, 3a, 4, 5a & 5b]

2.10 The country was reopened to international human rights monitors in 2004. During the year, the authorities announced several reform initiatives, including the possible abolition of the People's Court and a restriction of the scope of the death penalty. However, limited progress has been made in establishing the truth about how prisoners died in custody in past years. No significant steps have been taken to shed light on other past human rights violations, including "disappearances". Prisoners of conscience detained in previous years remain in prison. Legislation criminalising peaceful political activities remains in force. The security forces continue to arbitrarily arrest people for political reasons and to detain them incommunicado for long periods without charge. Migrants and asylum-seekers are not protected. Unfair trials before the People's Court continue to take place. The death penalty continues to be handed down. [sources 2a, 3a, 4, 5a & 5b]

[Back to top](#)

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Libya. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or

not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal flight are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

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

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave. (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws_policy/policy_instructions/apis.html

[Back to top](#)

3.6 Political / Islamic opposition groups

3.6.1 Most claimants will apply for asylum based on ill treatment amounting to persecution at the hands of the state authorities due to their membership of, involvement with, or perceived involvement with a political or Islamic opposition group.

3.6.2 *Treatment.* Libyan law prohibits opposition to the present regime. Even party-political activities are banned. The Libyan authorities are alert to opposition to the regime, especially Muslim fundamentalism. Since the Libyan Government eradicated certain anti-regime groups in the late 1990s, no verifiable information has been obtained about internal opposition. After September 11, 2001, the Libyan Government has tended to accuse all its opponents of membership of or conspiracy with the Al-Qa'ida organisation. [sources 1, 2a, 5a, 5b & 7]

3.6.3 There are numerous small groups opposed to the regime, the vast majority of which are based outside Libya. The National Front for the Salvation of Libya (NFSL),

the Libyan National Army (LNA) and the Libyan Islamic Fighting Group (LIFG) are perhaps the best known groups in the external opposition. The NFSL's importance reflects its financial strength. Internal opposition is repressed although there were significant disturbances in the East of the country in 1993 and 1996. Opposition groupings at home and abroad remain fragmented and have suffered at the hands of the regime's security apparatus. The regime is not thought to see this opposition as an actual threat at present. [sources 1, 2a, 2c, 5a, 5b, 7, 13a & 13b][1a]

3.6.4 The NFSL is the main expatriate secular opposition group. Its aim is the establishment of a democratically elected government in Libya. It operates out of the UK, also Sudan and the US. Other opposition groups in exile include the Libyan National Alliance, Libyan National Organisation, Libyan Change and Reform Movement, Libyan Constitutional Grouping and Libyan National Democratic Rally. [sources 1, 2a, 5a, 5b, 7 & 17b]

3.6.5 Internal opposition to the regime has often been religiously inspired. There was an upsurge of Islamist opposition in the 1990s, notably in the eastern region of Cyrenaica, and Benghazi (north-east Libya). In February 1996 it was reported that militants from the Militant Islamic group (MIG) had attempted to assassinate Qadhafi. Other religious-based opposition groups such as the Islah Party of Libya have also been active against the Libyan State in the late 1990s and early 2000s. [sources 1, 2a, 2b, 5a, 5b, 7, 17a, 17f & 17i]

3.6.6 The MIG is believed to have links with the Algerian Armed Islamic Group (GIA). In 1996 the Islamic Martyr's Movement claimed responsibility for assassinations of high - ranking officials. The Islamic Liberation Party's platform attacks the paralysis and corruption of the state and advocates equitable redistribution of wealth. The party's endorsement of armed resistance and the successful recruitment of students from the universities and military academies has made it an important source of opposition. [sources 2b, 5a, 17a, 17b, 17e, 17f & 17i]

3.6.7 Although long persecuted by the regime the Muslim Brotherhood has also experienced a revival. Its representative group for Libya is the LIG. Since 1998, scores of professionals and students were arrested on suspicion of political opposition activities, specifically support of or sympathy for the LIG, an underground movement that is not known to have used or advocated violence. At a trial in February 2002, 2 death sentences, 73 sentences of life imprisonment and 11 sentences of 10 years imprisonment, were imposed on these prisoners. It emerged that several of those arrested had already been killed or died in custody. The death sentences were not carried out after an appeal. [sources 2b, 5a, 17a, 17b, 17e, 17f & 17i]

3.6.8 The authorities claim that there are no longer any political prisoners. Dozens of political prisoners were released between 2001 and 2004. However Amnesty International (AI) asserts that many political prisoners arrested in previous years, including prisoners of conscience, remain in Libyan jails, such as the Abu Salim prison in Tripoli. The figure has decreased in recent years, it was previously several thousand. Organised torture of arrested or convicted individuals is reportedly rare these days. However association with an opponent of the government is already sufficient excuse to detain and interview someone for a longer period. [sources 1, 2a, 2b, 5a, 5b, 6, & 7]

3.6.9 Sufficiency of protection. As this category of applicants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.6.10 Internal relocation. As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.6.11 Caselaw.

IAT/AIT Determinations: HH (Libya) CG [2003] UKIAT 00202, promulgated 24 February 2004. Risk on return for failed asylum seekers. The adjudicator had had reference to Hassan [2002] UKIAT 00062. In that case it was held that anyone returned after 6 months is subject to interrogation and are imprisoned for having shown disloyalty to the state. (para 3) In deciding not to follow Hassan, the Adjudicator noted the FCO had issued a new report, which considered failed asylum seekers were not at risk of Article 3 infringement.

The Tribunal looked at the Dutch report on returnees of 2002, which stated that since 2002 the authorities no longer applied the six-month rule. The report also found that even if they were held it was only for a few days for interview. Those who are suspected of or involved in opposition activities are treated less well. Length of absence abroad was not a determinative factor. The FCO report and the UNHCR advice both which no longer advised a blanket ban on removal. (paras 8-9) The Tribunal held that the evidence only supported a finding of a real risk in respect of returnees who are perceived by the authorities to have a profile of political opposition, which would lead to ill-treatment. However, for those who have no political profile the evidence indicates that they would not be able to demonstrate a real risk of ill-treatment. (para 10) 'We would add that the decision we have reached in this case accords with that reached by a Tribunal chaired by the President sitting in October 2003. In this case - E (Libya) [2003] 00200, having considered the Dutch report and the relevant materials, including an Amnesty International letter of September 2003, the Tribunal concluded that it was only in relation to returnees perceived to have been or to be involved in, or at least seriously suspected of being involved in, oppositionist political activity or who are perceived as radical Islamic supporters, that there is a real risk of treatment contrary to Article 3.' (para 12). See also KK (Libya) CG [2004] UKIAT 00151 promulgated 27 May 2004.

ME (Libya) CG [2003] UKIAT 00200, promulgated 17 December 2003. Political opposition group involvement not sufficient. The Tribunal distinguished the case of Hassan (Libya) [2002] UKIAT 00062 in paras 7 and 20. The Tribunal found that "It is plain that people who are suspected of serious involvement with anti-Libyan political groups are at risk in the event of their return... The examples of people being seriously ill-treated all appear to relate to those who have been involved, or at least seriously suspected of being involved, in serious political activity or are radical Islamic supporters." (para 20) "It must be the case that the bald assertion that any returned asylum seeker will be persecuted because they will be perceived as someone taking a stance against the Government is wrong." (para 21)

MA (Libya) [2004] UKIAT 00252, promulgated 14 September 2004. Risk from any political activity. The Tribunal reinforced the findings of ME with a clarification over para 20 which used the phrase 'in serious political activity'. In relation to this the evidence of Alison Pargeter was considered. Her evidence was accepted as being given in good faith with the benefit of her experience as an academic. The Tribunal also concluded that it was not inconsistent with other material before them. Tribunal find that just because seeking asylum abroad is viewed with disfavour does not mean that every person known to have claimed asylum abroad risks persecution. (para 12 & 13) Case of ME, was never intended to suggest that only those involved in high degree activities would be at risk. Each case must be considered on its own merits. (para 14)

3.6.12 Conclusion. The Libyan government continues to be repressive of any dissent and opposition political activists and opposition Islamic activists are generally not allowed to operate on any substantial scale within the country. If it is accepted that the claimant has in the past been involved in opposition political activity or is a radical Islamic activist for one of the opposition political or Islamic groups mentioned above then there is a real risk they will encounter state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore likely to be appropriate.

3.6.13 Several of the political and Islamic opposition groups have been responsible for numerous organised attacks and terrorist campaigns against the Libyan authorities and the LIFG is proscribed under UK law. If it is accepted that the claimant was a member or combatant for one of these groups, then caseworkers should consider whether to apply one of the Exclusion clauses. Caseworkers should refer such cases to a Senior Caseworker in the first instance.

[Back to top](#)

3.7 Berbers

3.7.1 Some claimants will apply for asylum based on ill treatment amounting to persecution at the hands of the state authorities due to them being a member of the Berber minority group.

3.7.2 *Treatment.* The principal ethnic minorities in Libya are Berbers (or Amazighs) and sub-Saharan Africans. The Berbers are an indigenous North African tribe found in Morocco, Algeria, Tunisia, Egypt, Mali, Niger, Burkina Faso, Mauritania and Libya. In Libya, the largest Berber population is in the north-west of the country, in the Jabal Nafusah escarpment, and in the cities of Zuwarah and Ghudamis. Currently there are six Berber groups in Libya, including the Tamacheq people who reside in the south of the country. In 2004, Arabic-speaking Muslims of mixed Arab-Amazigh ancestry constituted 97% of the population. There were frequent allegations of discrimination based on tribal status, particularly against Amazighs in the interior and Tuaregs in the South. [sources 1, 2a, 2c, 5a & 17m]

3.7.3 Although they possess their own language and culture, most Berbers in Libya are to a certain degree influenced by Arab culture and language, except those who reside in Jabal Nafusa. Jabal Nafusa houses the largest Libyan community of Berbers who have successfully preserved and maintained their culture, and who as a consequence, are least likely to marry out of their community. [source 17m]

3.7.4 The Berbers in Libya are weaker and fewer in number than their cousins in Algeria and Morocco. Following Libya's independence in 1951, the Berber community was optimistic about having its language and culture officially recognised on an equal standing with the Arabic language and culture, but this optimism was short-lived due to a rise in Arab nationalism leading up to and since the 1969 coup. Today's Berbers continue to live a completely separate life from the rest of the Libyan population, and maintain their very different culture with a sense of pride. [source 17m]

3.7.5 Following the consideration of Libya's periodic report, submitted to the United Nations under the International Convention on the Elimination of All Forms of Racial Discrimination, in March 2004, the United Nations Committee on the Elimination of Racial Discrimination noted that "there was no recognition of Amazigh language and culture in Libya and Amazighs were impeded from preserving and expressing their cultural and linguistic identity". The Libyan government maintained control over ethnic and tribal minorities, including the Berber community in 2004. [sources 2a & 17m] However, diplomatic sources contributing to a 2002 fact-finding mission report said that they had never heard of Berbers being persecuted in Libya and that there are expressions of Berber culture in the country. It was noted that every year there is a Berber festival in Ghadames in Western Libya. [source 4]

3.7.6 Sufficiency of protection. As this category of applicants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.7.7 Internal relocation. As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.7.8 Conclusion. Though the Libyan authorities maintain control over all ethnic and tribal minorities in the country, membership of the Berber group and expressions of Berber culture do not cause any problems for those involved. Those who simply cite membership of the Berber group as the sole basis of their claim are therefore unlikely to encounter state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is not likely to be appropriate.

[Back to top](#)

3.8 Returning failed asylum seekers

3.8.1 Some claimants will apply for asylum based on ill treatment amounting to persecution at the hands of the state authorities due to them returning to Libya having claimed asylum in another country.

3.8.2 Treatment. Rejected asylum seekers, most of whom have spent a long time out of Libya anyway, are highly likely to be held for a few days for interview. It may also happen that rejected asylum seekers returning to Libya are just interviewed briefly. As far as is known, the practice of the Libyan authorities has no repercussions on staying in Libya. Examples are known of removed rejected asylum seekers who, since their forced return, have resumed living in Libya unhindered. [source 7]

3.8.3 The Libyan authorities have also given assurances to the UK Foreign and Commonwealth Office that "economic migrants and those that had committed crimes" were unlikely to be people of any significance to the Libyan security authorities. On that basis, they would not face difficulties. Indeed, they might not even be questioned on their return. [1b]

3.8.4 There has been no evidence since late 2002 to indicate that the Libyan authorities have changed their attitude or approach to returning Libyan nationals who may have claimed asylum in another country.

3.8.5 Sufficiency of protection. As this category of applicants' fear is of ill treatment/persecution by the state authorities, they cannot apply to these authorities for protection.

3.8.6 Internal relocation. As this category of applicants' fear is of ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.8.7 Caselaw.

IAT/AIT Determinations: HH (Libya) CG [2003] UKIAT 00202, promulgated 24 February 2004. Risk on return for failed asylum seekers. The adjudicator had had reference to Hassan [2002] UKIAT 00062. In that case it was held that anyone returned after 6 months is subject to interrogation and are imprisoned for having shown disloyalty to the state. (para 3) In deciding

not to follow Hassan, the Adjudicator noted the FCO had issued a new report, which considered failed asylum seekers were not at risk of Article 3 infringement.

The Tribunal looked at the Dutch report on returnees of 2002, which stated that since 2002 the authorities no longer applied the six-month rule. The report also found that even if they were held it was only for a few days for interview. Those who are suspected of or involved in opposition activities are treated less well. Length of absence abroad was not a determinative factor. The FCO report and the UNHCR advice both which no longer advised a blanket ban on removal. (paras 8-9) The Tribunal held that the evidence only supported a finding of a real risk in respect of returnees who are perceived by the authorities to have a profile of political opposition, which would lead to ill-treatment. However, for those who have no political profile the evidence indicates that they would not be able to demonstrate a real risk of ill-treatment. (para 10) 'We would add that the decision we have reached in this case accords with that reached by a Tribunal chaired by the President sitting in October 2003. In this case - **E** (Libya) [2003] 00200, having considered the Dutch report and the relevant materials, including an Amnesty International letter of September 2003, the Tribunal concluded that it was only in relation to returnees perceived to have been or to be involved in, or at least seriously suspected of being involved in, oppositionist political activity or who are perceived as radical Islamic supporters, that there is a real risk of treatment contrary to Article 3.' (para 12). See also KK (Libya) CG [2004] UKIAT 00151 promulgated 27 May 2004.

MA (Libya) [2004] UKIAT 00252, promulgated 14 September 2004. Risk from any political activity. The Tribunal reinforced the findings of **ME** with two clarifications: the first concern was over para 20 that used the phrase 'in serious political activity'. In relation to this the evidence of Alison Pargeter was considered. Her evidence was accepted as being given in good faith with the benefit of her experience as an academic. The Tribunal also concluded that it was not inconsistent with other material before them. Tribunal find that just because seeking asylum abroad is viewed with disfavour does not mean that every person known to have claimed asylum abroad risks persecution. (para 12 & 13) Case of **ME**, was never intended to suggest that only those involved in high degree activities would be at risk. Each case must be considered on its own merits. (para 14)

The second point concerned risk to returned asylum seekers due to suspicion from the Authorities. Ms Pargeter's report was considered. Tribunal concludes that there is no real risk of an unsuccessful asylum seeker being persecuted on some future occasion because he claimed asylum abroad and then returned to Libya. No objective evidence to show a risk, yet objective evidence to show able to continue lives unhindered. (para 15). Concluded at para 16, 'We do not accept that there is, generally, a real risk to people who have returned to Libya just because they are known to have claimed asylum in the United Kingdom. (para 16)

3.8.8 Conclusion. There is no evidence to suggest that individuals who have been absent from Libya for any period of time or who are returning failed asylum seekers are liable for adverse treatment by the authorities solely for these reasons. Moreover, there is no evidence that an application for asylum abroad, should the authorities become aware that one had been made, will in itself put a Libyan national at risk of state-sponsored ill-treatment amounting to persecution within the terms of the 1951 Convention. The grant of asylum in such cases is therefore not likely to be appropriate.

[Back to top](#)

3.9 Prison conditions

3.9.1 Claimants may claim that they cannot return to Libya due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in the Libya are so poor as to amount to torture or inhuman treatment or punishment.

3.9.2 Consideration. Prison conditions generally are poor. In February 2004, the Government permitted Amnesty International (AI) to visit the country following a 15-year absence. The AI delegation visited some prisons, and spoke with some inmates they

considered to be "prisoners of conscience." The authorities prevented the group from seeing selected prisoners despite repeated requests. The Government did not permit other human rights monitors to visit the prisons. [sources 2a & 3a]

3.9.3 During its visit, AI raised concerns with the Government about the health of 86 men in Abu Salim prison who undertook a 7-day hunger strike, in October 2003, to protest lengthy delays in their appeal process and to call for the abolition of the People's Court. The Abu Salim detainees were believed to be members of the Libyan Islamic Group, also known as the Muslim Brotherhood. At least eight of the hunger strikers reportedly were taken to a hospital, but there were no details about any medical attention afforded to the others. [sources 2a & 3a]

3.9.4 In 2004, security forces reportedly subjected political detainees to cruel, inhumane, or degrading conditions, and denied adequate medical care, which led to several deaths in custody. In at least three cases known to AI, the Government issued death certificates that stated the prisoners had died of natural causes, without further explanation or any evidence. In each case reported to AI, the authorities refused to return the detainee's body to the family. [sources 2a & 3a]

3.9.5 Male and female prisoners are held separately, and juveniles are separated from adults. Pre-trial detainees and convicts are held together in the same facilities. More than half the prisoners in the country are reportedly pretrial detainees. Prison officials frequently hold pre-trial detainees for long periods of time. [sources 2a & 3a]

3.9.6 Conclusion. Whilst prison conditions in Libya are poor with overcrowding and ill-treatment of inmates being particular problems, conditions for ordinary, non-political prisoners are unlikely to reach the Article 3 threshold. Therefore even where claimants can demonstrate a real risk of imprisonment on return to Libya a grant of Humanitarian Protection will not generally be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health.

3.9.7 Prison conditions in Libya for political prisoners are severe and taking into account degrading conditions and an absence of adequate medical care conditions for such individuals in prisons and detention facilities in Libya are likely to reach the Article 3 threshold. Therefore a grant of HP will be appropriate where individual claimants are able to demonstrate a real risk of imprisonment on return to Libya. Where the real risk of imprisonment is related to one of the five Refugee Convention grounds a grant of asylum will be appropriate.

[Back to top](#)

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 API on Discretionary Leave)

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 not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Unaccompanied minors

4.3.1 The policy on unaccompanied minors is set out in the API on Children. Unaccompanied minors who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception arrangements in place.

4.3.2 Unaccompanied minors without a family to return to, or where there are no adequate reception arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

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

4.4.2 According to the latest World Health Organisation (WHO) health indicators for Libya of August 2004, 100% of the population have access to primary healthcare. Between 90 and 100% of children have received all major inoculations. Per 10,000 people in 2002 there was a total of 12.1 doctors, 1.1 pharmacists, 50 nurses, 39 hospital beds and 2.2 local clinics and healthcare centres. Measles, tuberculosis and HIV/AIDS are the main causes of death by disease. [source 10a, 11a & 11b]

4.4.3 Where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

[Back to top](#)

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Returns are to the capital Tripoli.

5.2 Libyan nationals may return voluntarily to any region of Libya at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Libya. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Libyan nationals wishing to avail themselves of this opportunity for assisted return to Libya should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

[Back to top](#)

6. Additional references

[1] UK Foreign and Commonwealth Office

a. Country Profile: Libya. Last updated 2 August 2005 at

<http://www.fco.gov.uk/servlet/Front?pagename=OpenMarket/Xcelerate/ShowPage&c=Page&cid=1007029394365&a=KCountryProfile&aid=1019149793547>

b. Letter about the treatment of returning failed asylum seekers 15 April 2002.

**Asylum and Appeals Policy Directorate
October 2005**

[Back to top](#)