

1208722 [2012] RRTA 953 (23 October 2012)

DECISION RECORD

RRT CASE NUMBER:	1208722
DIAC REFERENCE(S):	CLF2011/123539
COUNTRY OF REFERENCE:	Libya
TRIBUNAL MEMBER:	Stuart Webb
DATE:	23 October 2012
PLACE OF DECISION:	Melbourne
DECISION:	The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision made by a delegate of the Minister for Immigration to refuse to grant the applicants Protection (Class XA) visas under s.65 of the *Migration Act 1958* (the Act).
2. The applicants, who claim to be citizens of Libya, applied to the Department of Immigration for the visas on [date deleted under s.431(2) of the *Migration Act 1958* as this information may identify the applicant] August 2011. Both the first named applicant (hereafter the ‘applicant’) and the second named applicant (hereafter the ‘second applicant’) lodged claims for protection. The third named applicant, (hereafter named the applicant’s daughter), lodged an 866 Part D form.
3. The delegate refused to grant the visas [in] June 2012, and the applicants applied to the Tribunal for review of that decision.

RELEVANT LAW

4. Under s.65(1) a visa may be granted only if the decision maker is satisfied that the prescribed criteria for the visa have been satisfied. The criteria for a protection visa are set out in s.36 of the Act and Part 866 of Schedule 2 to the Migration Regulations 1994 (the Regulations). An applicant for the visa must meet one of the alternative criteria in s.36(2)(a), (aa), (b), or (c). That is, the applicant is either a person in respect of whom Australia has protection obligations under the 1951 Convention relating to the Status of Refugees as amended by the 1967 Protocol relating to the Status of Refugees (together, the Refugees Convention, or the Convention), or on other ‘complementary protection’ grounds, or is a member of the same family unit as a person in respect of whom Australia has protection obligations under s.36(2) and that person holds a protection visa.

Refugee criterion

5. Section 36(2)(a) provides that a criterion for a protection visa is that the applicant for the visa is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations under the Refugees Convention.
6. Australia is a party to the Refugees Convention and generally speaking, has protection obligations to people who are refugees as defined in Article 1 of the Convention. Article 1A(2) relevantly defines a refugee as any person who:

owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.
7. The High Court has considered this definition in a number of cases, notably *Chan Yee Kin v MIEA* (1989) 169 CLR 379, *Applicant A v MIEA* (1997) 190 CLR 225, *MIEA v Guo* (1997) 191 CLR 559, *Chen Shi Hai v MIMA* (2000) 201 CLR 293, *MIMA v Haji*

Ibrahim (2000) 204 CLR 1, *MIMA v Khawar* (2002) 210 CLR 1, *MIMA v Respondents S152/2003* (2004) 222 CLR 1, *Applicant S v MIMA* (2004) 217 CLR 387, *Appellant S395/2002 v MIMA* (2003) 216 CLR 473, *SZATV v MIAC* (2007) 233 CLR 18 and *SZFDV v MIAC* (2007) 233 CLR 51.

8. Sections 91R and 91S of the Act qualify some aspects of Article 1A(2) for the purposes of the application of the Act and the regulations to a particular person.
9. There are four key elements to the Convention definition. First, an applicant must be outside his or her country.
10. Second, an applicant must fear persecution. Under s.91R(1) of the Act persecution must involve 'serious harm' to the applicant (s.91R(1)(b)), and systematic and discriminatory conduct (s.91R(1)(c)). The expression 'serious harm' includes, for example, a threat to life or liberty, significant physical harassment or ill-treatment, or significant economic hardship or denial of access to basic services or denial of capacity to earn a livelihood, where such hardship or denial threatens the applicant's capacity to subsist: s.91R(2) of the Act. The High Court has explained that persecution may be directed against a person as an individual or as a member of a group. The persecution must have an official quality, in the sense that it is official, or officially tolerated or uncontrollable by the authorities of the country of nationality. However, the threat of harm need not be the product of government policy; it may be enough that the government has failed or is unable to protect the applicant from persecution.
11. Further, persecution implies an element of motivation on the part of those who persecute for the infliction of harm. People are persecuted for something perceived about them or attributed to them by their persecutors.
12. Third, the persecution which the applicant fears must be for one or more of the reasons enumerated in the Convention definition - race, religion, nationality, membership of a particular social group or political opinion. The phrase 'for reasons of' serves to identify the motivation for the infliction of the persecution. The persecution feared need not be *solely* attributable to a Convention reason. However, persecution for multiple motivations will not satisfy the relevant test unless a Convention reason or reasons constitute at least the essential and significant motivation for the persecution feared: s.91R(1)(a) of the Act.
13. Fourth, an applicant's fear of persecution for a Convention reason must be a 'well-founded' fear. This adds an objective requirement to the requirement that an applicant must in fact hold such a fear. A person has a 'well-founded fear' of persecution under the Convention if they have genuine fear founded upon a 'real chance' of being persecuted for a Convention stipulated reason. A fear is well-founded where there is a real substantial basis for it but not if it is merely assumed or based on mere speculation. A 'real chance' is one that is not remote or insubstantial or a far-fetched possibility. A person can have a well-founded fear of persecution even though the possibility of the persecution occurring is well below 50 per cent.
14. In addition, an applicant must be unable, or unwilling because of his or her fear, to avail himself or herself of the protection of his or her country or countries of nationality or, if stateless, unable, or unwilling because of his or her fear, to return to his or her country of former habitual residence. The expression 'the protection of that country' in the

second limb of Article 1A(2) is concerned with external or diplomatic protection extended to citizens abroad. Internal protection is nevertheless relevant to the first limb of the definition, in particular to whether a fear is well-founded and whether the conduct giving rise to the fear is persecution.

15. Whether an applicant is a person to whom Australia has protection obligations is to be assessed upon the facts as they exist when the decision is made and requires a consideration of the matter in relation to the reasonably foreseeable future.

Complementary protection criterion

16. If a person is found not to meet the refugee criterion in s.36(2)(a), he or she may nevertheless meet the criteria for the grant of a protection visa if he or she is a non-citizen in Australia in respect of whom the Minister is satisfied Australia has protection obligations because the Minister has substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm: s.36(2)(aa) ('the complementary protection criterion').
17. 'Significant harm' for these purposes is exhaustively defined in s.36(2A): s.5(1). A person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
18. There are certain circumstances in which there is taken not to be a real risk that an applicant will suffer significant harm in a country. These arise where it would be reasonable for the applicant to relocate to an area of the country where there would not be a real risk that the applicant will suffer significant harm; where the applicant could obtain, from an authority of the country, protection such that there would not be a real risk that the applicant will suffer significant harm; or where the real risk is one faced by the population of the country generally and is not faced by the applicant personally: s.36(2B) of the Act.

Member of the same family unit

19. Subsections 36(2)(b) and (c) provide as an alternative criterion that the applicant is a non-citizen in Australia who is a member of the same family unit as a non-citizen mentioned in s.36(2)(a) or (aa) who holds a protection visa. Section 5(1) of the Act provides that one person is a 'member of the same family unit' as another if either is a member of the family unit of the other or each is a member of the family unit of a third person. Section 5(1) also provides that 'member of the family unit' of a person has the meaning given by the Regulations for the purposes of the definition. The expression is defined in r.1.12 of the Regulations to include the wife and child of the applicant.

CLAIMS AND EVIDENCE

20. The Tribunal has before it the Department's file relating to the applicants. The Tribunal also has had regard to the material referred to in the delegate's decision, and other

material available to it from a range of sources, including a copy of the delegate's decision lodged with the Tribunal application.

21. The applicants lodged statutory declarations and submissions with their application. In summary, the claims were that the applicants supported the revolution against the Gaddafi regime. The first applicant participated in numerous demonstrations against the Gaddafi regime in Australia, both in [City 1] and in [City 2]. They were videotaped in their demonstration. Pro – Gaddafi spies informed on his involvement in the protests. The second applicant went to one demonstration. She also feared the atrocities committed by the Gaddafi regime.
22. The first applicant appeared at a DIAC interview [in] September 2011. The evidence provided at this interview included a detailed discussion of the then relevant security situation in Libya, with details of the areas then under control of the pro-Gaddafi forces. The first applicant feared that his name would be on a list of anti Gaddafi activists, and that he would be persecuted for expressing his political opinion. He feared the existence of sleeper cells in Libya, that there was a stockpiling of weapons by pro-Gaddafi forces, that Gaddafi's children would continue to wage war and that Libya would be like Somalia. He was not aware of who the Gaddafi supporters were in [Town 3], but that they controlled part of the town. He does not have any tribal issues. There would be ideological problems between Islamists and secularists. He will not be able to relocate within Libya.
23. Following the first interview, the assessment was deferred due to the evolving security situation in Libya. A second interview was held [in] May 2012. The first applicant attended and gave further evidence. The Gaddafi regime had fallen but the situation was very tense and dangerous. Houses were being raided by pro-Gaddafi people, and checkpoints were being set up by them, they call themselves Mujahideen. However it was difficult to tell who they were. Gaddafi's children were still active and organising violence. Anti-Gaddafi individuals were being targeted. There was violence between people living in [Town 3] and [town deleted: s.431(2)], and tribal issues were common. Tripoli was more dangerous than [Town 3]. A friend of his was killed on the way home. Information about the applicant's involvement in protests had been sent back to Libya. None of his relatives had been harmed. After the interview the applicant's advisor provided supporting country information and video footage of Libya.
24. The DIAC delegate considered the evidence provided. In summary, the delegate determined that the applicants did not have any political profile that would draw the attention of the pro-Gaddafi elements within Libya and cause them to be harmed. The delegate stated that he did not believe that the uncertain security situation in Libya gave rise to a well-founded fear of harm amounting to persecution for ordinary citizens who opposed the Gaddafi regime. The delegate found that the likelihood of the first applicant or his family being caught up in future violence was remote.
25. A submission by the applicant's adviser was provided to the Tribunal late [in] September 2012. The submission stated that the applicant feared persecution due to political opinion. It stated that the second applicant feared persecution because of her political opinion and that she was a member of a particular social group in being women in Libya.

26. The first applicant appeared before the Tribunal [in] September 2012 to give evidence and present arguments. The Tribunal hearing was conducted with the assistance of an interpreter in the Arabic and English languages. The second applicant and the applicant's daughter did not attend the hearing as the second applicant was sick at the time of the hearing. The applicant was represented in relation to the review by their registered migration agent.
27. The following is a summary of the hearing took place [in] September 2012.
28. The applicant confirmed they had been born in [year deleted: s.431(2)] in Tripoli Libya and that he had moved to [Town 3] in 1980 with his family. His father and mother and [siblings] live in [Town 3]. The applicant speaks to his family every week to 10 days. Prior to coming to Australia the applicant had lived at his family home while the rest of the family had moved to their own homes in [Town 3]. The applicant's family had not been harmed. Children go to school in [Town 3] but it is not regular, due to threats made to attack schools in the area. The applicant's father has retired while his siblings all work and remain in the jobs that they have had some time. The applicant had been employed [in a large organisation] over 15 years. The [workplace] is still operating.
29. The applicant was asked what tribe he belonged to. He said he belonged to the [tribe deleted: s.431(2)]tribe but that he did not have any particular affiliation with his tribe.
30. The Tribunal asked the applicant about the current situation in [Town 3]. The applicant stated that sometimes it is quiet. Otherwise there are lots of weapons in the hands of the people, you can hear gunshots and heavy weapons being fired. Asked why there was such shooting the applicant stated that there were many people still supporting Gaddafi working in every town there are lots of problems explosives being used to attack infrastructure, including energy and power services. The applicant stated that the communication centre and mobile phone towers in [Town 3] were being attacked. There have been two attempts to attack the bank of [Town 3] including attempts to steal the money and break into the computer system. This happened two to three days before the end of Ramadan, when there was money being made available for end of Ramadan celebrations. Two police were killed and 12 were injured in this attack. There were further attacks on those supported the revolution, including assassinations and kidnappings.
31. The Tribunal asked why information about such attacks has not been widely reported by media or independent organisations. The applicant stated that it was only local news, lots of incidents occur but there is no interest to have them all reported.
32. The Tribunal asked the applicant about his claims that the Gaddafi loyalists control parts of Libya. The applicant stated that the loyalists control the town of Bani Walid, which is located in the south-east area of Libya. This town is the epicentre of the loyalist movement and controls all the loyalists operating across Libya. The applicant stated that the military had gone into the town of Tarhouna recently, and had discovered significant armaments purportedly under the control of the loyalists, including over 100 tanks. The applicant stated this was evidence that the loyalists were preparing to stage a coup against the new government. The loyalist's aim is to terrorise the people and put fear into their hearts. They wanted to show that the Gaddafi regime still existed and wanted to return to power.

33. The applicant described a town between [Town 3] and Tripoli where three quarters of the town still supported Gaddafi. The blockages and checkpoints on the road, and were wearing uniforms of the new revolution. However they are actually loyalists to the Gaddafi regime. This had been reported on the television in Libya. The applicant also stated that a number of criminals had been released towards the end of the fighting by Gaddafi and that these criminals were fighting for the Gaddafi regime.
34. The Tribunal put to the applicant that there had been recently elections that have been conducted without significant violence or disruption. The applicant stated this happens after revolutions but it is no sign that the situation is safe. Iraq example where things have become more dangerous. The applicant stated that the government could not do anything against the loyalists and that they themselves were under attack. The government cannot control or establish the police force and no one knows what this will lead to.
35. The applicant was asked about his personal opinion toward the previous regime. He said that he was not part of any party. He was not happy with the Gaddafi regime because Gaddafi was a dictator and did not share the wealth of the nation with the people, he gave it to his children and his loyalists
36. The applicant was asked about his involvement in the demonstrations in [City 1] against the regime in 2011. The applicant stated he had attended demonstrations on two occasions. He stated he was trying to bring the attention of the Australian and international community to what was happening in Libya. They also collected financial assistance for displaced people on the Tunisian and Egyptian borders. His wife attended one demonstration. He did not attend the demonstration in [City 2]. The applicant did not have any official role in the demonstration at was in the first line.
37. The applicant stated that there were informants in the crowd who were taking photographs of those taking part in the demonstrations. These were students who were parts of Libyan intelligence, and complete names of demonstrators have been sent to security services in Libya. When the officials in Libya had received the names they had attended the demonstrator's homes in Libya. The applicant stated that his family had told him that people attend his home about the middle of 2011 asking about him.
38. The applicant was asked how he knew the informants in the crowd. The applicant stated that he personally knew one man who was a spy for the Libyan authorities. The applicant named this man as [Mr A]. [Mr A] was [in the street] on top of the stairs taking photographs of the demonstrators. [Mr A] sent a list of names to the authorities in Libya. This list had become available to other students in [City 1] and it included the applicant's name. [Details of Mr A and his family deleted: s.431(2)]. He sent the material over the Internet to the authorities.
39. The Tribunal indicated it had been provided information about [Mr A] from other sources. It included a report sent back to Libyan intelligence services in July 2011, including the leaders of the [City 1] demonstrations and others playing active role. It would put this information to the applicant in the form of a 424A letter after the hearing and invite comment from the applicant to this information.
40. The Tribunal stated that [Mr A] had been an agent for the Gaddafi regime. That regime is no longer in place, and those people who received the information are not in a

position to take action against anti-Gaddafi activists. The Tribunal stated that it understood the concern of the applicant to be that information had been sent back to the authorities in Libya who were in control at the time. There has been a significant change in Libya since that information was sent, and that those who are in now in authority are quite different from those who previously were in authority, arising out of the revolution you supported. The Tribunal asked why the applicant still feared the information that was sent back. The applicant stated that he feared the Gaddafi loyalists who were in [Town 3] and Tripoli, they have lots of supporters there, the information is still with those people.

41. The Tribunal put country information to the applicant that there were many protests across the world against the Gaddafi regime, and that many of the people overseas were against Gaddafi. Why would they be interested in the applicant when so many had attended the rallies. The applicant stated that the number of Libyans in Australia was very few, while in other countries there were lots of people. He is more identifiable having attended the smaller protests in Australia.
42. The applicant stated that he knows what would happen to him should he return. The loyalists are still there, in every corner and especially active against those who were against the regime. A good friend who was against the regime was killed four months ago while driving along a road. Three men stepped out and shot the car he was driving, killing him and injuring two passengers.
43. The Tribunal asked the applicant about Gaddafi's children and their involvement in the loyalist movement. The applicant stated that Saadi in Niger was the centre of the problems in Libya, while he was 85% sure that Khamis was still alive and active in Bani Walid. Saif was in jail and it was unclear what he could do from there. Other family members of Gaddafi were in Algeria but not active in the loyalist activities.
44. The Tribunal raised with the applicant and his advisor the non-attendance of the applicant's wife. The Tribunal stated that it had some idea from the material provided as to what her claims were, but asked the applicant to provide some further information about the claims made by his wife. The Tribunal noted that the applicant's claims relating to political opinion could be imputed to the applicant's wife and asked if there was anything further that the applicant's wife would raise in relation to this claim. The applicant had nothing further to add to these claims of persecution for political opinion.
45. The Tribunal put to the applicant that his wife had claimed that she would be persecuted because she belonged to a particular social group, that being women in Libya. The Tribunal noted the information provided that women and children were at risk of rape and kidnap in Libya. The Tribunal stated that it might have some difficulty in accepting this social group argument existed, that the applicant wife's claims may more readily be a subset of the political opinion claim, but that it had an open mind to the consideration that such a particular social group may exist. The applicant stated that women and children were at heightened risk because of their vulnerability and that they were easy targets for loyalists seeking retribution, or criminals taking advantage of the lawlessness in Libya. Women were finding it difficult to leave the family home due to their fears of harm. There was no government to protect women in Libya.
46. The applicant was asked what he feared would happen if he returned to Libya. He stated he did not know. If he could live his life normally, he would return. But he felt

like his life and that of his [wife] and child were in danger. The government is not in control and there is no way it could provide protection to the applicant. Certain government employees are still the same and would release the names of those returning from overseas who were involved in protests against the Gaddafi regime to Gaddafi supporters.

47. The applicant's advisor made a brief submission, but noted that he would provide a more substantive submission in response to the 424A letter. The Tribunal noted that it did not feel it needed to ask the applicant's wife to attend a further hearing to provide information, given what was already provided regarding these claims. The advisor summarised her claims regarding her political opinion that she had attended one demonstration and been seen there, and secondly, because she is the applicant's wife, and being part of the family unit she would have imputed political views. In relation to particular social group, being a woman she would be an easier target. As a particular social group, there is a lack of security in Libya, and as a woman she is unable to protect herself, she can't seek protection from the authorities, there is no government to protect her. Because she comes from the west, that may be a factor as well.
48. The Tribunal asked if the advisor was raising another claim, that being a returnee from the West. The advisor said that because the applicant had demonstrated against the Gaddafi regime in Australia, and because there were only a relative few of them, it would be easier for them to identify him on return from Australia to Libya.
49. After the hearing the Tribunal wrote to the applicant to put information to him under s424A of the Migration Act. The letter stated:

At the hearing you stated that [this man], was a spy working for the intelligence services of the Gaddafi regime. You stated that you knew [Mr A], who is from [town], though you have not spoken to him. You stated he knew you. You stated that he was the one who sent the list of your complete names to the security services in Libya. Students here had seen the list he had sent. You stated your name was on this list, and confirmed that your full name, [the applicant], was on this list.

The Tribunal has been provided with a copy of the list of names sent by [Mr A] to the security services in Libya. This list was provided to the Tribunal by another applicant to the Tribunal. A copy of the original and the translation is enclosed for your information.

As you can see from this list of names, your name is not present.

This information is relevant as it contradicts your statement that [Mr A] has provided information to the intelligence services about your involvement in the protests in Australia. It raises doubts as to whether you would be a person of interest to any loyalist groups who were able to get this information from the security services who worked for the Gaddafi regime. Subject to your comments, this may lead the Tribunal to consider that you are not known for your involvement in the anti-Gaddafi protests in Australia. This would be a reason, or part of the reason for affirming the decision of the delegate under review.

50. [In] September 2012 the Tribunal received the following response.

Our client instructs that during the hearing he advised that some [Libyans] told him about [Mr A] and the lists he sent to Libya. Our client was also told that his name was mentioned in one of the lists. At the hearing our client mentioned that he never saw

the lists personally however he indicated that [Mr A] used to tape and take photos of the demonstrations. As such our client instructs that [Mr A] sent a number of reports via entails and fax. He further instructs that given the small number of the Libyan community in [City 1] together with the fact that [Mr A] knows our client [personally], our client believes that his name was sent to the Gadhafi regime.

Further to the above our client advises that such documents could be easily edited and his name could have been taken of the list and other student's names could have been added. Our client reiterates that he did participate in the demonstrations and [Mr A] saw him there.

With regards to the situation in Libya our client believes that the Gadhafi supporters are present and that he will be in danger if he returns. He explains that Libya is a wealthy country and he felt that it would be safe for and his family to return he would have returned.

51. [In] September 2012 the Tribunal received a further submission from the applicant's advisors. The submission stated:

Our client instructs that the letter presented by the Tribunal which contains the list of the names of the students who attended demonstrations could be edited. Our client would like to draw the attention of the member to the top of the page in the letter where it shows that it page number 7 and 8 in a fax that was sent [in] July 2011 at 9:44 PM. This

[Our client] instructs that the above shows that there could be other missing pages sent the letter could include other reports. He also reiterates that is easy to edit an issue such letters from Libya and that the applicant name was communicated by [Mr A] to the Gaddafi regime.

52. The Tribunal wrote to the applicant to advise him of where the information included in the 424A letter had been obtained from.
53. The applicant responded that he reiterated his position in believing that the report provided could have been edited and falsified by the other Applicant who submitted it to the Tribunal. He explained that his name was sent to Gaddafi loyalists by [Mr A]. He also provided some further country information regarding Libya.

Country Information

Pro Gaddafi Militia in Libya.

54. Reports indicate that there are pro-Gaddafi elements operating in Libya, but exact details about the motivations and allegiances of different groups are unclear and could be subject to disinformation.¹ Over recent months, Libya has witnessed a spate of

¹ Meo, N 2012, 'Tripoli one year later: 'The loss of my five sons is the price I have had to pay'', *The Telegraph*, 25 August <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/9499196/Tripoli-one-year-later-The-loss-of-my-five-sons-is-the-price-I-have-had-to-pay.html>> ; 'Libya seizes tanks from pro-Gaddafi militia' 2012, *Al Jazeera*, 24 August, <http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>, Quinn, B 2012, 'Gaddafi loyalists held over deadly blasts in Libyan capital' 2012, *The Guardian*, 20 August <http://www.guardian.co.uk/world/2012/aug/20/gaddafi-loyalists-held-blasts-libya>, Zapita, S 2012, 'Ministry of Interior condemns Eid car bombs as 'cowardly and terrorist'', *Libya Herald*, 25 August <<http://www.libyaherald.com/?p=13197>>; Kirkpatrick, D and Nordland, R 2011, 'Waves of Disinformation and

bombings, assassinations and kidnappings which the authorities have attributed to Gaddafi loyalists and militias.² On 18 August 2012, *The Telegraph* reported that Gaddafi loyalists who escaped to Algeria and Egypt with ‘billions’ had in recent weeks been blamed for bomb attacks.³ Further, the Libyan authorities reportedly believe that exiled Gaddafi supporters ‘have attempted to spring or bribe jailed friends from prison’⁴

55. The 28 August 2012 NATO Civil-Military Fusion Centre *Mediterranean Review* provides a news summary, reporting on recent incidents in Libya that have been attributed to pro-Gaddafi militia or loyalists:

Two car bombs exploded in Tripoli on 19 August, killing at least two people and wounding three others, reports the *New York Times* Following an initial blast near the Interior Ministry, the two car bombs went off outside a former police headquarters currently used by the Defence Ministry. An unexploded bomb was found near the Interior Ministry. Libyan authorities arrested 32 people who are members of a network loyal to former leader Muammar Gaddafi, reports *BBC*, after having established a link between the group and the bombing incidents. Only a day after the twin car bombings in Tripoli, a bomb exploded under the car of the Egyptian consulate’s first secretary Abdul Hamid Rifai; however, no one was injured, according to *Reuters*. In addition, nearly 30 rocket launchers and over 100 tanks were seized on 23 August during a raid on the camp of the “Brigade of the Faithful Loyalist” Gaddafi group. One person was killed and a number of others were injured, while 13 were arrested and three militants managed to escape. Officials said the group was behind the 19 August car bombings.⁵

56. The tanks and rocket launchers seized from the ‘Brigade of the Faithful’ (the al-Awfiya militia) were located at a military barracks near Tarhouna, 60 km southeast of Tripoli.⁶ According to the *Libya Herald*, the Under Secretary for the Interior Ministry said that the barrack was assumed to be under the control of the National Army.⁷ The same militia group took control of Tripoli airport in early June and demanded the release of their leader, Abu-Ajilah Habshi, whom the militia believed had been kidnapped by

Confusion Swamp the Truth in Libya’, *The New York Times*, 23 August

<<http://www.nytimes.com/2011/08/24/world/africa/24fog.html?pagewanted=all>

² Meo, N 2012, ‘Tripoli one year later: “The loss of my five sons is the price I have had to pay”, *The Telegraph*, 25 August <<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/9499196/Tripoli-one-year-later-The-loss-of-my-five-sons-is-the-price-I-have-had-to-pay.html>> ; ‘Libya seizes tanks from pro-Gaddafi militia’ 2012, *Al Jazeera*, 24 August

<<http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>; Quinn, B 2012, ‘Gaddafi loyalists held over deadly blasts in Libyan capital’ 2012, *The Guardian*, 20 August

<<http://www.guardian.co.uk/world/2012/aug/20/gaddafi-loyalists-held-blasts-libya>

³ Meo, N 2012, ‘Libya: Saif Gaddafi to go on trial next month’, *The Telegraph*, 18 August

<<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/9484459/Libya-Saif-Gaddafi-to-go-on-trial-next-month.html>

⁴ Meo, N 2012, ‘Libya: Saif Gaddafi to go on trial next month’, *The Telegraph*, 18 August

<<http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/9484459/Libya-Saif-Gaddafi-to-go-on-trial-next-month.html>

⁵ NATO Civil-Military Fusion Centre 2012, *Mediterranean Review*, 28 August, p.2

⁶ ‘Libya seizes tanks from pro-Gaddafi militia’ 2012, *Al Jazeera*, 24 August

<<http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>; Zapita, S 2012, ‘Ministry of Interior condemns Eid car bombs as ‘cowardly and terrorist’’, *Libya Herald*, 25 August

<<http://www.libyaherald.com/?p=13197>

⁷ Zapita, S 2012, ‘Ministry of Interior condemns Eid car bombs as ‘cowardly and terrorist’’, *Libya Herald*, 25 August <<http://www.libyaherald.com/?p=13197>

unidentified assailants.⁸ A Libyan Interior Ministry spokesman stated that the authorities had believed that the militia group “defended Libya and the revolution, but it turned out to be contrary”.⁹ The spokesman also said that the ministry believed that Libya’s security forces had been infiltrated by supporters of the former regime and that a committee had been formed to investigate this situation.¹⁰

57. Country information suggests that the children of Gaddafi are behind some of the loyalist activities. The following excerpt discusses the activity of Saadi, currently in Niger.

Last week a number of Tahloob were killed when Libyan security forces raided a farm where loyalists were hiding out after they were said to have coordinated the car bombing outside the headquarters of Tripoli’s military police.

One of the members who survived was alleged to have set up sleeper cells in Libya and to have been criss-crossing Libya’s border with Tunisia from where he and several comrades were allegedly smuggling weapons into Libya to “destabilise the country post-Gaddafi”.

Libyan intelligence also allege the group were in possession of another seven bombs, one of them intended for another Tripoli hotel. Documents linking them with one of Gaddafi’s sons, Saadi, who is under house arrest in Niger, were also said to have been found on the survivor. Saadi warned earlier in the year that he was in contact with sleeper cells who were organising underground resistance.¹¹

58. On 20 October 2012, one year to the day after the death of Muammar Gaddafi, there are reports that his son Khamis Gaddafi has been killed in an attack by government forces on the town of Bani Walid.

Khamis Gaddafi, youngest son of the former Libyan dictator, has allegedly been killed during fighting in the town of Bani Walid, a year to the day that rebel forces killed his father, Muammar.

A short statement from the Libyan national congress spokesman, Omar Hamdan, said the 28-year-old was killed “in battle” but gave no further details. His body was apparently found after a day of heavy fighting between the town’s pro-Gaddafi garrison and militias allied to the Libyan government. Government forces reported 13 dead and 121 wounded, amid a fourth day of bitter clashes for control of the town.

Khamis’s alleged killing prompted wild celebrations in Misrata, Libya’s third city, which was besieged for six months by his 32nd Brigade, blamed for an orgy of murder, rape and torture.

⁸ ‘Libya seizes tanks from pro-Gaddafi militia’ 2012, *Al Jazeera*, <<http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>>; ‘Tarhouna military leader kidnapped’ 2012, *Libya Herald*, 3 June <<http://www.libyaherald.com/?p=8497>>; ‘Libyan government regains control of Tripoli airport’ 2012, *BBC News*, 4 June <<http://www.bbc.co.uk/news/world-africa-18324501>>

⁹ ‘Libya seizes tanks from pro-Gaddafi militia’ 2012, *Al Jazeera* <<http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>>

¹⁰ ‘Libya seizes tanks from pro-Gaddafi militia’ 2012, *Al Jazeera*, 24 August <<http://www.aljazeera.com/news/africa/2012/08/201282415813211951.html>>

¹¹ [http://www.ipsnews.net/2012/08/gaddafi-loyalists-up-in-arm s/](http://www.ipsnews.net/2012/08/gaddafi-loyalists-up-in-arm-s/)

Khamis, who has been reported dead several times before, was known as one of the most hardline of Gaddafi's sons: after studying in a Russian military academy, he formed the 32nd Brigade as a special unit to be at the service of his father.¹²

59. Violence in Bani Walid, the remaining significant stronghold of the Gaddafi loyalists, continues to cause difficulties for the new government in Libya.

Demonstrators have broken into the grounds of Libya's parliament, wounding two security guards, in a protest against the continuing fighting in Bani Walid, a former stronghold of Muammar Gaddafi.

More than 300 protesters from the town forced their way past perimeter security guards, opening fire on police inside the grounds and wounding one man in the neck and leg, before smashing the glass on the main doors to the national congress hall.

Fighting in Bani Walid, 90 miles south-east of Tripoli, continued for a fifth day, with the government yet to provide proof of its assertion that Gaddafi's youngest son, Khamis, was killed in the town on Saturday.

On Sunday evening the parliament was ringed by troops and militiamen, some firing warning shots in the air. Around the front of the congress building, a converted conference centre, were spent brass cartridge casings, smoke grenade canisters and torn placards. One read: "We will die before we surrender Bani Walid."

...

The crisis in Bani Walid seems only to be escalating. The weekend saw the heaviest fighting yet, with 22 soldiers killed and more than 200 wounded, and no reliable casualty figures from inside the town. The main hospital in Misrata, the main base for operations, was choked with wounded, in scenes not seen since last year's Arab spring.¹³

60. This country information does indicate that the situation in Libya is dangerous, and that there is a level of generalised violence that is destabilising Libya.
61. However there are positive steps being taken. The following excerpt is taken from Time Magazine, who interviewed the Prime Minister of Libya.

LIBYA: What lies ahead for Libya: An interview with the Prime Minister?

Several rounds of ethnic clashes and a string of bombings were not enough to dampen the spirits of Abdurrahim El-Keib, Libya's outgoing Prime Minister. "We are seeing the birth of a new Libya that is as beautiful as the waves of the sea," he told TIME.

In the wide-ranging interview, Keib said that recent bombings that struck the country's three largest cities - including the latest attack on Tripoli - were the work not of jihadists but of loyalists of the late Libyan dictator Muammar Gaddafi - with help from neighbouring countries. He said he was not overly concerned by the loyalists. "They are a nuisance and they are living in a state of denial," he said.

Rather than focusing on the actions of a disgruntled few, Keib spoke of Libya's "social mosaic." Though approximately 90% of the country's residents are Arabs, a number of ethnic groups populate the fringes of the desert and the coastal mountain

¹² <http://www.guardian.co.uk/world/2012/oct/20/khamis-gaddafi-killed-bani-walid-muammar?intcmp=239>

¹³ <http://www.guardian.co.uk/world/2012/oct/21/protesters-libya-parliament-bani-walid-conflict?intcmp=239>

chain west of Tripoli. "I am hoping that someday all of these groups will come out with their own folk dances, dancing in the streets." He wants to extend this social mosaic to Libyans Gaddafi expelled when he took power in 1969. "When I was growing up, we had Italians and Jews in my neighbourhood. We had churches there, synagogues. It was part of our cultural heritage."

He pointed to the country's recent elections - in which a secular coalition beat a number of Islamist parties - as proof that Libya is on track to become the newest member of the world's democratic community. (The new parliament was installed on Thursday and would get to work on picking a new Prime Minister; no party holds an outright majority.) "We are making progress," he said.

And Keib was all business as he rambled off a list of the successes of the interim government he ran since the fall of Gaddafi's regime last October. He detailed the \$6 billion in contracts the National Transitional Council (NTC) has signed with foreign firms and the \$650 million it allocated for reconstruction projects. He recounted efforts to enhance border security and reduce the smuggling of Libyan weapons that have reached jihadists from Mali to Gaza. "The road is tough, but there is some light ahead," he said.

Today, as Libya tries to rebuild and reconcile with its past, Keib is as pragmatic as he is optimistic. He does not shy away from discussing the challenges Libya faces. Chief among them is the need to disarm the 100,000 militiamen who spearheaded the drive to overthrow Gaddafi by either integrating them into the security forces or finding them jobs. A budding federalist movement in the country's eastern province of Cyrenaica has the support of Libyans long neglected by a distant central government and frustrated with the NTC's inability to deliver on its promises.

Disbanding the myriad militias that roam the country's streets with heavy weapons and control highway checkpoints consistently ranks at the top of Libyans' grievances. But Keib advocates a piecemeal approach to dealing with the problem. "We need to bring them in as individuals and not brigades. There is a process here and we can't move too fast," he said. But a recent report by the Washington Institute for Near East Policy noted that the interim government has been slow to move on the issue, saying that "the NTC has thus far been unable and unwilling to disarm these militias, integrate their elite fighters into formal military brigades or demobilize those wishing to return to civilian life."

As for the movement for regional autonomy, Keib said, "This is democracy in practice," referring to the Cyrenaicans, who have increasingly clamoured for the return of the loose federation that prevailed in Libya between 1951 and '63, when the country's three provinces controlled revenue disbursement. "In Texas we have people like that, right?" he asked, referring to the secession movement in the Lone Star State.

Keib suggested the best way to defuse the burgeoning crisis was to increase decentralization by empowering municipalities and provinces, and moving a number of government companies to marginalized regions. "People must feel that they are a part of the whole process and they are getting their share," he explained.

His decentralized vision sounds much like the one Gaddafi tried and failed to implement in the late 1980s. In the wake of a 1986 American bombing, a vulnerable Gaddafi sought to spread out his government, bent on preventing a repeat of the devastating attack that paralyzed the capital. But after a few years, he returned the ministries back to Tripoli, when he realized that little work could be accomplished with institutions spread out over the vast desert country. Some analysts believe

instituting a decentralized model today would undermine the fragile Libyan state rather than strengthening peripheral support. "It would weaken the central government, making it difficult to improve security and secure the nation's borders," explained Jason Pack, a researcher of Libyan history at Cambridge University.

Keib does not discount his country's problems, but he remains optimistic. "Libya is going through a lot of very difficult times now," he said as he headed out for his last meal before sunrise. "But overall it's O.K. I guarantee you it will be much better in the near future."¹⁴

62. The head of the UN Support Mission in Libya (UNSMIL), Ian Martin, discussed a number of the challenges faced by Libya. In an interview given on 6 August 2012 he stated that:

...we've seen the outbreak of a number of local conflicts – which is not surprising, they're conflicts that have long roots – and, indeed, were there during the al-Qadhafi period and in many ways were exacerbated by the al-Qadhafi [regime's] actions, but that's going to need the attention of an elected government and elected representatives.

UN News Centre: What are underlying issues behind those security concerns?

Ian Martin: It's the question of how one moves [on] from the revolutionary brigades, which have continued to be an important provider of security... ever since the end of the conflict, much of the security in towns and cities, in the absence of a robust police force or a sizable neutral army, has been provided by the brigades.

Now, there are some who are ill-disciplined and there have been serious abuses that continue – abductions, detentions, ill treatment by some of those brigades – but the leadership of the local military councils, the majority of the brigades, is a responsible leadership, which does not, I think, want to challenge state authority. Indeed [they] want to see the transformation that they fought for last year – but will only be ready to disarm and disband when sensible decisions are taken about the future of those who make up the brigades, and when the State capacity is there to hand over to.

UN News Centre: What has the role of UNSMIL been up until now and how will it change in the immediate future?

...the development of the police force – we have had a police advisory team working with the Ministry of Interior and the police from the beginning. We've been doing a good deal of work with the army as well, coordinating international expertise, helping the Libyans draw up a first defence white paper, to conceive of security forces being under proper democratic control. That also includes the areas of border security and management of arms and ammunition, and the eventual demobilization and reintegration of the members of the brigades.

UN News Centre: Do you see problems with public acceptance of people such as politician Mahmoud Jibril, who had prior links to the al-Qadhafi regime?

Ian Martin: There will go on being a debate for a long time, about the records of different individuals who worked for periods inside the al-Qadhafi regime – although, in general, those who made an immediate break in February last year are regarded as having made an important contribution to the revolution. Certainly he [Mahmoud

¹⁴ <http://world.time.com/2012/08/09/what-lies-ahead-for-libya-an-interview-with-the-prime-minister/>

Jibril] did so, as a major mobilizer of the international support to Libya during last year.

What role do tribal rivalries and loyalties play in Libya today?

Ian Martin: That's a question that Libya experts disagree on! There are many ways in which the tribes play a positive role, in social networks, and indeed, while on the one hand tribal divisions can be part of local conflicts, the tribes actually have considerable mediation capacity and issues are worked out between them. And, of course, the bulk of Libya's population now is young and lives in the mixed cities of the coastal strip. So I think there's a tendency on the outside to exaggerate the view of Libya as a place of warring tribes. I hope we'll see that tribes will be playing a positive role in the new Libya, but the form of democracy will be – as this election shows – a modern, representative democracy.¹⁵

Treatment of Women in Libya

63. 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.¹⁶ This is supported by a SIGI report describing the same cultural and religious restrictions.¹⁷

64. USA Today in an article of 1 December 2011, *Women frustrated by lack of representation in Libya*, stated:

Libya is a deeply conservative, male-dominated country. In a 2009 index on gender equality published by the Organization for Economic Cooperation and Development, it ranked 91st out of 102 countries.

Outside the capital and major cities, most women wear head scarves and hide their bodies under long layers of loose clothing. Unaccompanied women do not go out after dark, and many do not drive.

Libya's legal system theoretically allows women an unusual degree of freedom in the region. Gadhafi's Green Book, in which the dictator set out his philosophies, states that a woman's place is in the home, but Gadhafi travelled with a band of female bodyguards.

During his 42 years in power, women attended universities and made careers as lawyers, doctors and teachers. But politics remained off limits to many women during his time in power.¹⁸

65. A Human Rights Watch report of 24 November 2011, called *The Women's Lib movement in Libya sees a surprising twist*, noted:

¹⁵ Libya: Interview with Ian Martin, Secretary-general's Special Representative for Libya, UN News Service

¹⁶ Freedom House: *Women's Rights in the Middle East and North Africa 2010 – Libya*, 3 March 2010

¹⁷ Social Institutions & Gender Index: genderindex.org/country/libya undated,

¹⁸ USA Today, *Women frustrated by lack of representation in Libya* 1 December 2011

<http://www.usatoday.com/news/world/story/2011-12-01/libya-women-government/51555266/1?csp=34news>

A few hundred Libyan women gathered this month for the first women's rights conference since the fall of Muammar Gaddafi. They argued about how to facilitate participation in a new government, about the role of Sharia law, and about how to abolish laws discriminating against women in marriage...

Abdeljalil [chairman of the governing National Transitional Council, Mustafa Abdeljalil who attended the meeting] asserted that Libyan women can expect to have the same rights as men and to play an important role in government, stating, 'We expect women to be important figures in the future of this country.' This time, unlike his infamous speech on the day of the Declaration of Liberation - in which he failed to acknowledge the role of women in the revolution and stated that Libya would re-introduce polygamy - Abdeljalil took care to enumerate the many ways that women had supported and led the revolution.

Then women, old and young, from Tripoli, Benghazi and the western mountains, some with headscarves, some dressed in jeans and sneakers, jostled for position at the microphone to pepper Abdeljalil with questions. For almost an hour, they took the leader of their newly liberated country to task for his comments on polygamy, asked him whether he would include a quota for women in the new constitution and reminded him, repeatedly, that women have a key role to play in the rebuilding of Libya. Abdeljalil listened quietly and patiently, took notes, and answered many of the questions. He explained that he did not particularly support polygamy, and that he wanted to hear women's views before any decisions were made.

As he answered questions, a commotion broke out in the back of the hall. The new prime minister, Abdulrahmin el-Keab, had arrived. He was followed into the hall, in rapid succession, by the minister of justice, the security minister and the information minister, all of whom talked about the vital role women played in the revolution and affirmed the role that they must now play. The Minister of Justice, Mohammed Allagi, went so far as to say that he would support a quota for women in government and that at least one of the top three positions in government should go to a woman. By now, the entire National Transitional Council was sitting at a hastily placed table in the front of the room. Then former Prime Minister Mahmoud Jibril arrived.

Singing and chanting broke out as women cheered the significance of what was taking place in an ordinary conference room on this November evening. Libyan women crowded around the table to listen as Jibril affirmed his personal commitment to women's rights, posing for photographs on mobile phones, and listening as the women called family and friends to share what was taking place.

At the end of the conference, the women presented a list of recommendations for the National Transitional Council leaders, enumerating key challenges that Libya faces today. They urged leaders to enact new laws to protect women from violence, and guarantee access to justice, health care and psychological support. They asked the NTC to promote women's equality and back their ability to participate in public life. And they reminded the government about the necessity of investing in women's economic empowerment. Finally, the participants asked Libya's new leaders to sign major international human-rights agreements.

What started out as a modest attempt to bring women together had turned into a moment when a new Libya was briefly visible, where rights for all could be protected and respected. Libya's women had laid out their vision for a fresh beginning, and

their leaders had come to listen. Now they must press those leaders to make their words a reality.¹⁹

FINDINGS AND REASONS

66. The applicants have provided copies of their passports with their application. The two adults were born in Libya. Their child was born in Australia while her parents were in Australia on valid visas. Based on the information provided to DIAC and the Tribunal, including the claims as provided, the Tribunal finds that all the applicants are Libyan nationals and their claims for protection are based on that country.
67. The applicant's primary claims are that he fears being returned to Libya due to his anti-Gaddafi political opinion. This opinion was demonstrated by his attendances at two rallies in [City 1] in 2011 to protest the violence that was being perpetrated by the Gaddafi regime against revolutionary activists in Libya. The applicant has stated that he had did not have a responsible role in the demonstrations but that he was in the front line.
68. The Tribunal considers the applicant and his wife's attendance at the demonstrations in [City 1] in 2011 to be a reflection of both of the applicants genuine political views and not conducted for any other purpose, as envisaged in s91R(3) of the Migration Act.
69. The applicant claimed that spies for the Libyan regime were also in attendance at the demonstrations and were taking photographs of demonstrators taking part. The applicant named one of these demonstrators. The applicant stated that the names of people involved in the demonstrations were sent back to Libya and that family members of the applicant were approached in Libya and asked questions about the applicant.
70. The applicant stated that he knew one of the [spies]. The applicant was told by friends that [Mr A] had been sending information back to security services in Libya about the conduct of demonstrators in [City 1]. The applicant claimed that his name was included in the information being sent back by [Mr A] to Libya. The Tribunal put information that it had received to the applicant regarding a list of names that have been sent by [Mr A] to Libya. It provided the applicant with a copy of one of the communications sent by [Mr A]. The Tribunal put to the applicant that his name was not included in the list of names on that document.
71. The applicant responded in two parts to this information. He stated that he had never seen the information that had been sent back to Libya directly, but that he had been told his name was included. The applicant stated that other reports were sent back and believes his name was included. He further responded that the material presented to the applicant was specified page seven and page eight of a fax, the other pages could include other reports, and that it is easy to edit and issue such letters. The applicant stated that his name was communicated back to the Gaddafi regime in Libya.
72. The Tribunal is aware of the general violent circumstances occurring presently in Libya. In 2011 a violent uprising occurred against the Gaddafi regime. A significant element of the population took up arms and fought the system of authority established

¹⁹ HRW The Women's Lib movement in Libya sees a surprising twist, 24 November 2011
<http://www.hrw.org/news/2011/11/24/womens-lib-movement-libya-sees-surprising-twist>

by Gaddafi over 50 years of his rule. This uprising, which commenced [in] February 2011, culminated in the eventual overthrow of the Gaddafi regime, the killing of Muammar Gaddafi and various family members, the arrest of other children of Gaddafi, and the dismantling of the various systems of authority established by Gaddafi to support his dictatorial rule. One significant element of the Gaddafi regime was the security service known as the Revolutionary Committee. This Revolutionary Committee was one of the more significant bodies responsible for controlling Libyan society.

73. Information that was sent back by the agent of the former regime was most likely sent back to agencies such as the Revolutionary Committee. This information certainly could have been a cause of concern to anyone named in that communication, as it may have drawn the adverse attention to that person by the security agencies of the Gaddafi regime. The Tribunal put to the applicant that the security agencies of the Gaddafi regime were dismantled after the Gaddafi regime was replaced, first by a transition authority and now an elected government. The Tribunal put to the applicant that those who had previously been in power were no longer in positions to take action against those who had been reported upon during the uprising against Gaddafi.
74. The applicant stated that the loyalists were still in sufficient numbers to constitute a risk to those people who had identified as anti-Gaddafi revolutionaries. The applicant stated that these loyalists had control of weapons and were creating sleeper cells prepared to wait until an appropriate time to attack the new authority and its supporters.
75. The Tribunal put further information that there were significant protests against the Gaddafi regime across the world during the uprising. Thousands of Libyans outside of Libya had participated in demonstrations against the violence that the Gaddafi regime was perpetrating against its people. The Tribunal put to the applicant that it was not conceivable that every one of these demonstrators across the world would face harm due to their activities in protesting against the Gaddafi regime.
76. The applicant stated he was aware of such protests and understood that not every person who had been involved in the protests would be targeted for their activity. However the applicant stated that the protests in [City 1] were relatively small and that it was easier for agents to identify individuals involved and pass this information back to the loyalists in Libya. He stated that he would therefore be readily identifiable as an anti-Gaddafi activist. The Tribunal does not accept this explanation that the applicant would be more readily identifiable because of his involvement in a smaller protest. It does not believe that the loyalists would choose to seek retribution against insignificant individuals involved in any protests across the world, identifiable or otherwise.
77. The Tribunal does not accept that the applicant has a significant profile due to his activities in Australia. The Tribunal accepts that he has an anti-Gaddafi opinion, but it does not accept that the applicant will face a real chance of serious harm for his holding of this opinion or his actions in support of it. The Tribunal considers that the loyalists who may seek reprisals against those people they hold responsible for their loss of power and influence, would not consider the applicant as being in any way significant or responsible for their change of circumstance in Libya. The Tribunal does not accept that the applicant faces any risk of identification back in Libya for his activities in [City 1]. The Tribunal does not accept that the loyalists who had received information about anti-Gaddafi activities in [City 1] would have any interest in the applicant, who by his

own admission had a marginal role in the demonstrations and attended only two protests in [City 1]. The Tribunal considers that the issue raised by the advisor, that the applicant would be identifiable because he is coming back from the West, is subsumed into this point. The Tribunal, in finding that the applicant will not be targeted because he was marginally involved in the protests in [City 1], finds that the applicant will not be persecuted because he was involved in protests against the Gaddafi regime in a Western nation. There is no evidence to show that people returning to Libya after the fall of the Gaddafi regime have been targeted for reprisal on this basis.

78. The applicant claims that he will be at risk because he [knew him] as the man who provided the report to the Gaddafi regime. The Tribunal does not accept this claim. The report provided to the applicant under s424A of the Migration Act lists a series of names and where they come from in Libya. [Details of the list deleted: s.431(2)]. The applicant is not named at all. The Tribunal considers it significant that the applicant is not mentioned in this report alongside the other men who come from this town. It does not accept that the document was edited for the purposes of removing any reference to the applicant. The Tribunal considers that the limited involvement by the applicant in the demonstrations is a more significant reason as to why the applicant is not included in the document as being an enemy of the Gaddafi regime.
79. In respect to the claim that the document is only page seven and eight of a longer document, the Tribunal considers this is not a relevant consideration. The Tribunal has only been provided the pages made available to the applicant. The absence of pages one to six of the fax does not provide any evidence that the applicant was reported upon by the agent in Australia. The applicant has claimed that he was included in a list of names provided to the Gaddafi regime in Libya. The pages that are included are relevant as they do provide a list of individuals who were perceived as being active in the protests, provided to the Gaddafi regime, and the absence of the applicant's name from this list is evidence that the applicant was not considered significantly active in the protests, merely an attendee. The Tribunal does not accept that the applicant's name would be edited out of the list, there is no reason provided as to why the applicant's name would be taken out in a context where the list was provided by a separate applicant to the Tribunal pursuing their own claims, who had no knowledge of the applicant's own actions or activities, or of the applicant's present application before the Tribunal. Consequently there would be no interest of the other applicant to alter the document to the detriment of this applicant.
80. Having determined that the applicant was not informed upon by the agent in Australia, the applicant does not accept that the applicant's family were approached by security officials in the middle of 2011 Libya asking about the applicant. The Tribunal finds that the applicant has no profile that would draw the attention of security officials to his family in Libya. The Tribunal finds that the applicant does not face a real chance of serious harm due to his [knowing] the informant in Australia.
81. The Tribunal finds that the applicant does not face a real chance of serious harm arising from his involvement in anti-Gaddafi activities in Australia. The Tribunal further finds that the applicant does not face a real chance of serious harm arising from his anti-Gaddafi political opinion.
82. The second applicant has put in two claims for protection. The first relates to her real anti-Gaddafi political opinion, and an imputed anti-Gaddafi opinion arising out of her

husband's activities. The Tribunal notes that the second applicant attended one demonstration in [City 1]. The Tribunal considers that reasonable that the second applicant may have a political opinion that is anti-Gaddafi, and that opinion is genuinely held opinion, for the purposes of s91R(3) of the Migration Act.

83. However the Tribunal considers that that the findings made regarding the applicant's claim of feared harm because of an anti-Gaddafi political opinion are true also of the second applicant. The second applicant attended only one demonstration and is unlikely to have come to the attention of loyalists who may constitute a threat if she was returned to Libya. It is unlikely that the loyalists would have any interest in harming the second applicant because of her political opinion and involvement in one demonstration.
84. The Tribunal finds that the second applicant does not face a real chance of serious harm arising from her involvement in anti-Gaddafi activities in Australia. The Tribunal further finds that the second applicant does not face a real chance of serious harm arising from her anti-Gaddafi political opinion, or from the imputed political opinion arising out of her husband's activities.
85. The second applicant has claimed that she is a member of a particular social group, that being women in Libya. The meaning of the expression 'for reasons of ... membership of a particular social group' was considered by the High Court in *Applicant A's* case and also in *Applicant S*. In *Applicant S* Gleeson CJ, Gummow and Kirby JJ gave the following summary of principles for the determination of whether a group falls within the definition of particular social group at [36]:

... First, the group must be identifiable by a characteristic or attribute common to all members of the group. Secondly, the characteristic or attribute common to all members of the group cannot be the shared fear of persecution. Thirdly, the possession of that characteristic or attribute must distinguish the group from society at large. Borrowing the language of Dawson J in *Applicant A*, a group that fulfils the first two propositions, but not the third, is merely a "social group" and not a "particular social group". ...
86. Whether a supposed group is a 'particular social group' in a society will depend upon all of the evidence including relevant information regarding legal, social, cultural and religious norms in the country. However it is not sufficient that a person be a member of a particular social group and also have a well-founded fear of persecution. The persecution must be for reasons of the person's membership of the particular social group.
87. The Tribunal is prepared to consider this claim in this form.
88. The second applicant's claims in this regard are stated in the submission as follows:

The Gaddafi regime was known to perform atrocities against women who they would rape. Now Gaddafi is deceased, his supporters continue to cause havoc in the country Despite Gaddafi's death, their wicked mentality has not changed and their persecution of women remains ongoing.
89. The Tribunal notes that the claim is against the remaining Gaddafi supporters, that they continue to cause causing havoc in the country, and that they continue to persecute women. The Tribunal considers country information that during the uprising Gaddafi

supporters did conduct attacks against vulnerable people, including women and children, and that there were incidents of rape committed. The Tribunal notes that these attacks were conducted in the civil war environment and that they have significantly dropped in number since the overthrow of the Gaddafi regime.

90. The Tribunal finds that there is no evidence to show that the loyalists are continuing to target women as part of their campaign to destabilise the current authorities. The Tribunal accepts that generalised violence is occurring and that due to this generalised violence women and children are at risk of harm, as are other members of the community.
91. However the Tribunal does not consider that this generalised violence, whether conducted by the loyalists or other elements in the community, specifically targets women in this context. The Tribunal finds that the violence is generalised and sporadic and not aimed at any particular group in the community. It does not accept that women are being specifically targeted by loyalists. The Tribunal finds that violence against women is a subset of the generalised violence that is occurring in Libya and not a specific campaign against women per se. Accordingly, the Tribunal finds that the second applicant will not be targeted because she is a woman in Libya. The Tribunal finds that the second applicant does not face a real chance of serious harm because she is a woman in Libya.
92. In considering these claims separately and cumulatively, the Tribunal finds that the applicants do not face a real risk of serious harm should they return to Libya.

Complementary Protection

93. Having considered that the applicants do not have claims under the Refugee Convention, the Tribunal must consider whether the Australia has protection obligations due to there being substantial grounds for believing that, as a necessary and foreseeable consequence of the applicant being removed from Australia to a receiving country, there is a real risk that he or she will suffer significant harm. The receiving country in this instance remains Libya.
94. Significant harm for these purposes is exhaustively defined in s.36(2A) and s.5(1) of the Migration Act. This states that a person will suffer significant harm if he or she will be arbitrarily deprived of their life; or the death penalty will be carried out on the person; or the person will be subjected to torture; or to cruel or inhuman treatment or punishment; or to degrading treatment or punishment. 'Cruel or inhuman treatment or punishment', 'degrading treatment or punishment', and 'torture', are further defined in s.5(1) of the Act.
95. The Tribunal again has to consider whether any of the claims as raised by the applicants show substantial grounds for believing that as a necessary and foreseeable consequence of being returned to Libya there is a real risk that they will suffer significant harm. In relation to the political opinion and activity of the applicants, the Tribunal has considered the evidence of the applicants and the country information in relation to the current treatment of anti-Gaddafi activists in Libya. The Tribunal notes that the anti-Gaddafi supporters were successful in their aim to remove the Gaddafi regime and supporting apparatus from power, and have created a democratically elected government to replace it. This action had the effect of removing individuals who had

previously held positions of power and influence, which has caused some difficulty in the rebuilding of Libya. Some Gaddafi loyalists have taken steps to destabilise the new regime and represent an ongoing threat to the daily lives of Libyan nationals. The country information cited above demonstrates that there is ongoing violence arising out of the displacement of individuals from power due to the uprising of 2011.

96. The Tribunal has to consider whether the actions of these loyalists in destabilising the current government and systems put in place post Gaddafi constitutes substantial grounds for believing that there is a real risk that the applicants will suffer significant harm. Generalised violence in a country is specifically not a ground under which complementary protection claims can be considered by the Tribunal.
97. There is no evidence provided to the Tribunal that the applicants themselves face a real risk of significant harm in terms of arbitrary loss of life, cruel or inhuman treatment or punishment, degrading treatment or punishment, or are likely to be subjected to torture, or the death penalty. While violence does occur at present in Libya, there is nothing to suggest that the applicants face a real risk of this occurring to them. Significant numbers of Libyans were involved in the overthrow of the Gaddafi regime. Thousands of Libyans who fled during the fighting have returned to their towns and villages since the overthrow of Gaddafi. There is no evidence of widespread or targeted harm against these anti-Gaddafi individuals. Ordinary individuals, including family members of the applicants, have returned to ordinary life, albeit with a heightened degree of vigilance for their personal safety.
98. The Explanatory Memorandum to the Migration Amendment (Complementary Protection) Bill states that:

[a] real risk of significant harm is one where the harm is a necessary and foreseeable consequence of removal. The risk must be assessed on grounds that go beyond mere theory and suspicion but does not have to meet the test of being highly probable. The danger of harm must be personal and present.²⁰
99. The Tribunal finds that there is no danger of harm that is personal and present in the circumstances as provided to the Tribunal, and that the Gaddafi loyalists do not constitute a real risk that is a necessary and foreseeable consequence of the applicants being removed from Australia.
100. The Tribunal finds that the applicants do not face a real risk of significant harm due to their political opinion.
101. The second applicant has claimed that she has substantial grounds for believing that as a necessary and foreseeable consequence of being returned to Libya there is a real risk that they will suffer significant harm due to her being a woman in Libya. The second applicant claims that she is more vulnerable due to her status. As the Tribunal has considered previously, there was some violence against women in Libya. Loyalist individuals and criminal elements have harmed some women, taking advantage of the less than secure circumstances presently in Libya. Loyalists have sought to create an atmosphere of fear and intimidation by taking opportunities to harm women who are in communal areas often without protection. However these instances are rare and date

²⁰ Explanatory Memorandum to the Migration Amendment (Complementary Protection) Bill 2011 at [67].

back primarily to circumstances during the uprising and prior to the fall of the Gaddafi regime.

102. The Tribunal does take into account the evidence that there are sounds of gunfire, some checkpoints, and random acts of violence that every person in Libya can recount. The Tribunal also takes into account the evidence of the applicant that his family members remain in jobs that they have held prior to, during and after the uprising against Gaddafi. The applicant also gave evidence children attend school, and that in many regards life goes on as it had done previously. Greater steps to ensure security are taken, based on the ongoing concerns for safety. However the Tribunal does not believe that these constitute substantial grounds for believing the second applicant faces a real risk of significant harm.
103. The Tribunal finds separately and cumulatively that there are no substantial grounds for believing that, as a necessary foreseeable consequence of the applicants being removed from Australia to Libya, that the applicants face a real risk of significant harm on return to Libya.

CONCLUSIONS

104. The Tribunal is not satisfied that any of the applicants is a person in respect of whom Australia has protection obligations. Therefore the applicants do not satisfy the criterion set out in s.36(2)(a) or (aa) for a protection visa. It follows that they are also unable to satisfy the criterion set out in s.36(2)(b) or (c). As they do not satisfy the criteria for a protection visa, they cannot be granted the visa.

DECISION

105. The Tribunal affirms the decision not to grant the applicants Protection (Class XA) visas.