UNHCR POSITION ON RETURNS TO LIBYA (Update II)

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1. This document provides an update of and replaces the UNHCR Position on Returns to Libya (Update I) published in October 2015.1 It is based on information available up to 3 September 2018, unless otherwise stated.

2. The current situation in Libya is characterized by political and military fragmentation, hostilities between competing military factions, the proliferation of armed groups and a general climate of lawlessness, as well as a deteriorating human rights situation.2 Since 2014, armed conflict between rival armed groups has resulted in large numbers of civilian casualties,3 displaced hundreds of thousands of people,4 disrupted people’s access to basic services and livelihoods, and destroyed vital infrastructure.5 In 2017, armed conflict and political instability reportedly had a direct impact on the lives of around 25

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3 Between 1 January and 31 July 2018, the United Nations Support Mission in Libya (UNSMIL) documented the killing and injuring of 127 and 308 civilians, respectively. In 2017, UNSMIL documented 160 civilian deaths and 177 injuries. Given limitations on access to and information flow from conflict-affected areas, the actual casualty figures are likely to be significantly higher. Leading causes of civilian casualties reportedly include explosive remnants of war, gunfire, airstrikes, shelling and improvised explosive devices; see UNSMIL, Human Rights Report on Civilian Casualties, available at: https://bit.ly/2n7gXu. According to the Armed Conflict Location and Event Data Project (ACLED), 1,654 people were killed in 2017. The highest numbers of casualties were recorded in the provinces of Benghazi, Sirte and Tripoli; Austrian Centre for Country of Origin and Asylum Research and Documentation (ACCORD), Libya, Year 2017: Update on Incidents According to the Armed Conflict Location & Event Data Project (ACLED), 18 June 2018, https://bit.ly/2ttcMvB.
4 See below “Internal and External Displacement”.
5 See below “Humanitarian Situation”.

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per cent of the population. Insecurity and the lack of governance have enabled illicit activities such as corruption as well as people smuggling and human trafficking to thrive, further fuelling instability in the country.

Political and Security Developments

3. Since the overthrow of Colonel Muammar Gaddafi and his government in October 2011, successive transitional government arrangements have failed to end the political impasse and resulting internal conflict. The UN-backed Libyan Political Agreement (LPA), signed on 17 December 2015, failed to unify the rival political and military authorities under a single administration. As a result, Libya currently has two ruling powers, one based in the capital Tripoli and one based in the eastern cities of Tobruk and Al-Bayda. In Tripoli, the Presidency Council, which was formed under the terms of the LPA, is led by Prime Minister Fayez al-Sarraj, who carries out the functions of head of state and Supreme Commander of the Libyan Army. The Presidency Council presides over the Government of National Accord (GNA), the internationally recognized Government of Libya. The High Council of State, a consultative body established under the LPA, also operates from Tripoli and its elected head is Khaled Mishri. The second power centre is made up of the House of Representatives (HoR) based in Tobruk, which, under the LPA, would become the legitimate legislative authority; however, the HoR has to date not recognized the LPA and instead endorsed the rival “Interim Government” of Abdullah Al-Thinni based in the eastern city of Al-Bayda. The Tobruk and Al-Bayda-based authorities are reportedly aligned with and dominated by General Khalifa Haftar, who leads the Libyan National Army (LNA), a coalition of former army units and tribal or regional-based armed groups that controls a large section of central and eastern Libya. The former Islamist-dominated Government of National Salvation, which was formed in 2014 and led by Khalifa Al-Ghwell, reportedly no longer controls any relevant institutions after Ghwell’s forces were expelled from Tripoli in early 2017. The two rival governments are reported to compete over political legitimacy, control of territory, resources and infrastructure (e.g. oil facilities, ports).

13 Ibid.
4. In September 2017, a UN-sponsored “Action Plan for Libya” was launched, which aims at reinvigorating the political process by amending and implementing the LPA, convening an inclusive national conference, passing a constitution by popular referendum, and holding elections based on a new electoral law. On 29 May 2018 in Paris, four key Libyan political figures reportedly reached a tentative agreement to issue new election laws by September 2018 and hold presidential and legislative elections on a “constitutional basis” in December 2018. However, concerns have been raised that Libya currently lacks conditions conducive to a free and fair vote and that elections may risk further political fragmentation and conflict.

5. The Presidency Council reportedly struggles to assert full control over territory and institutions in accordance with the LPA, and has been beset by internal divisions. In this continued political vacuum, a myriad of armed groups, divided across ideological, regional, ethnic and tribal lines and with their own changing interests and loyalties, are reported to remain the most powerful actors on the ground. Conflict dynamics are often shaped by regional and local interests with local conflicts partly overlapping with divisions at the national level. Many of these groups reportedly receive central State funds and assume law enforcement functions such as arrests and detention; however, there is reportedly no effective government command and oversight. Groups

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27 “Hundreds of armed groups continue to operate throughout Libya, many nominally affiliated with the Ministries of Defence, Interior and Justice. They receive salaries from central State funds, but are not under the command and control of the State. They exercise effective
affiliated with the LNA reportedly control large parts of eastern Libya as well as parts of the southern region.28

6. The Islamic State of Iraq and Al-Sham (ISIS) reportedly no longer controls any territory after it was ousted from the city of Sirte in December 2016 by joint US forces and forces loyal to the GNA.29 However, it reportedly still maintains a presence around Sirte as well as in other areas of Libya and continues to carry out attacks against civilian and military targets.30 Al-Qaeda in the Islamic Maghreb (AQIM) reportedly maintains a presence around the southern town of Ubari, where it exploits the lack of governance for logistics, recruitment and training, as well as smuggling activities.31

7. The overall security situation reportedly remains poor and volatile.32 The situation is characterized by persistent lawlessness,33 intermittent but increasing fighting between rival armed groups (including between GNA-aligned forces, forces under the control of General Haftar, local militias, tribes, as well as affiliates of ISIS and AQIM), and widespread kidnappings for criminal and political reasons.34 The South continues to see intermittent intercommunal conflict primarily between tribal and ethnic groups, some of which are aligned with either the GNA or the LNA, including over control of smuggling routes

control in localized areas, including over detention centres where thousands of people are detained. Action to remove law enforcement powers from armed groups, as foreseen in the Libyan Political Agreement, and demobilization, disarmament and reintegration have not yet begun”; OHCHR, Arbitrary and Unlawful Detention in Libya, April 2018, http://www.refworld.org/docid/5b5590154.html, para. 10. “Libya is affected by a culture of entitlement and predation by Libya’s armed groups, many of whom claim affiliation with the internationally recognized Government of National Accord. Acting as quasi-police, the funds diverted to these armed groups go well beyond salaries to members, including letters of credit from the Central Bank. Their extortion of the Central Bank adds to the income these groups already derive from illicit activities like fuel smuggling and human trafficking”; CEIP, Libya Fractured: The Struggle for Unity, 18 April 2018, http://ceip.org/2GnvGsG. See also, UNSMIL, UNSMIL Statement on Militias Attacking Libyan Sovereign Institutions, 19 August 2018, https://bit.ly/2C20QqG.

See sources included above in footnote 26.

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8. Violations and abuses of international human rights and humanitarian law continue to be perpetrated by all parties to the conflict with impunity for even the most serious of crimes. The most common violations and abuses reportedly include: arbitrary detention, abductions, enforced disappearances, torture and other forms of ill-treatment, rape and other forms of sexual violence against both women and men, unlawful killings, including summary executions, forced displacement, as well as both targeted and indiscriminate attacks against civilians and civilian objects, including medical facilities, schools, mosques, etc. Men, women and children are reportedly at risk of being targeted for arbitrary arrest and kidnapping by armed groups and security forces affiliated with rival governments “for financial or political gain, on the basis of their tribal origin or family identity, or for their perceived political affiliations and opinions”. According to reports, those singled out for attacks include: fighters and civilians opposing or perceived to be opposing a party to the conflict; former Gaddafi loyalists; and former members of rival armed groups. 


According to reports, male rape is systematically used against perceived political opponents, e.g. men from Tawergha accused of having supported the former Gaddafi government; The Guardian, Revealed: Male Rape Used Systematically in Libya as Instrument of War, 3 November 2017, https://bit.ly/2h0n3d0; Euro-Mediterranean Human Rights Monitor (Euro-Med Monitor), Libya: Testimonies of Rape and Brutal Torture Are Horrific, 3 November 2017, https://bit.ly/2v96GvD.


Including inhabitants of the town of Tawergha, who are reportedly perceived as having supported the former Gaddafi government and having been involved in human rights abuses in 2011; see below para. 13. See also, Al-Monitor, Gadafi Supporters Arrested During Peace Talks in Tripoli, 25 May 2018, https://bit.ly/2LdJWV.
9. There are consistent reports of the widespread use of prolonged arbitrary and unlawful detention and endemic human rights abuses in prisons and detention facilities nominally under the control of state institutions but partially or fully under the control of armed groups,53 as well as in facilities run by armed

government officials and politicians;45 members of the judiciary and law enforcement;46 members of certain minority religious, ethnic or tribal groups;47 persons perceived to be violating “public morals”;48 media professionals;49 human rights defenders and civil society activists;50 medical professionals,51 and humanitarian workers.52

groups with no formal connection to state institutions or with affiliation to the unrecognized “Interim Government” and affiliated institutions in eastern Libya.\(^{54}\) The vast majority of detainees in official facilities are reportedly held in pre-trial detention.\(^{55}\) According to reports, detainees are routinely held "incommunicado," are frequently not informed of the charges against them, have not appeared before courts and lack legal representation.\(^{56}\) Torture and other forms of ill-treatment are reported to be “systematic,” particularly at the outset of detention and during interrogations, and has resulted in deaths.\(^{57}\) There are also credible reports of summary executions of captured or detained persons at the hands of armed groups.\(^{58}\) Detention conditions are reported to be inhumane both in official and non-official detention centres.\(^{59}\) The LPA recognizes the urgent need to address the situation of thousands of “conflict-related” detainees held without legal basis,\(^{60}\) however, little progress has reportedly been made in this respect.\(^{61}\) The UN and human rights observers have also expressed concern over the continued imposition of the death penalty.\(^{62}\)

10. **Women and girls** reportedly continue to be subjected to severe discrimination in law and practice, as well as to various forms of violence and ill-treatment at the hands of both state and non-state actors, including in particular gender-based violence. There is a reported lack of state protection for women in these situations.\(^{63}\) Armed groups reportedly subject women to widespread harassment and intimidation, unlawful killings, enforced disappearances, and sexual abuse, targeting in particular women accused of not complying with strict interpretations of religious and societal gender norms,\(^{64}\) women’s rights (GIS) under the oversight of the Presidency Council; OHCHR, *Arbitrary and Unlawful Detention* in Libya, April 2018, [http://www.refworld.org/docid/5b5590154.html](http://www.refworld.org/docid/5b5590154.html), p. 11.

\(^{54}\) “Some 6,400 individuals were held in 26 official prisons under the Ministry of Justice, an estimated 75 to 80 per cent of them in pretrial detention. Thousands of others were held in facilities nominally under the control of the Ministry of the Interior or the Ministry of Defence, as well as facilities directly run by armed groups”; UN Security Council, *United Nations Support Mission in Libya*, 24 August 2018, [http://www.refworld.org/docid/5b8d31bc4.html](http://www.refworld.org/docid/5b8d31bc4.html), para. 31. See also, OHCHR, *Arbitrary and Unlawful Detention in Libya*, April 2018, [http://www.refworld.org/docid/5b5590154.html](http://www.refworld.org/docid/5b5590154.html).

\(^{55}\) “There are serious risks for those forcibly disappeared by armed groups. The bodies of hundreds of individuals taken by armed groups have been uncovered in streets, hospitals, and rubbish dumps, many with bound limbs, marks of torture and gunshot wounds, OHCHR/UNSMIL found that armed groups across the country have summarily executed or otherwise unlawfully killed individuals deprived of their liberty”; OHCHR, *Arbitrary and Unlawful Detention in Libya*, April 2018, [http://www.refworld.org/docid/5b5590154.html](http://www.refworld.org/docid/5b5590154.html).


\(^{61}\) The LPA requires armed groups to release persons held without legal basis or hand them over to the judicial authorities within 30 days and requires judicial authorities to bring detainees before courts or release them within another 60 days, and to provide effective protection and safeguards against abuse; *Libyan Political Agreement*, 17 December 2015, [http://www.refworld.org/docid/5b6414ae4.html](http://www.refworld.org/docid/5b6414ae4.html), Article 26; OHCHR, *Arbitrary and Unlawful Detention in Libya*, April 2018, [http://www.refworld.org/docid/5b5590154.html](http://www.refworld.org/docid/5b5590154.html), p. 9.


On 15 August 2018, 45 alleged supporters of the former Gaddafi government were sentenced to death in a mass trial relating to the killing of protesters during the 2011 uprising. The trial was described as falling short of international fair trial standards. No death sentences have reportedly been implemented since 2010; HRW, *Libya: 45 Sentenced to Death for 2011 Killings*, 22 August 2018, [http://www.refworld.org/docid/5b4c64fd4.html](http://www.refworld.org/docid/5b4c64fd4.html) (hereafter: OHCHR, *Situation of Human Rights in Libya*, 21 February 2018, [http://www.refworld.org/docid/5b4c64fd4.html](http://www.refworld.org/docid/5b4c64fd4.html), paras 33, 36).


11. **Children** are reportedly disproportionately affected by the ongoing conflict and violence in Libya. They are reportedly at risk of sexual and gender-based violence; domestic violence; recruitment by armed groups; abduction, unlawful detention, as well as torture and other forms of ill-treatment, including on account of their own or their family members’ alleged or actual association with other parties to the conflict; and killing as a result of the indiscriminate use of weapons in residential areas, in crossfire and from explosive remnants of war. Access to education has reportedly been impaired by

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68 “In February [2017] the military in eastern Libya issued Decree No. 6 of 2017, restricting Libyan women under the age of 60 from travelling abroad without a legal male guardian. Following a public outcry and calls from civil society for its removal, Decree No. 6 was replaced on 23 February with Decree No. 7, which stipulated that no Libyan male or female between the ages of 18 and 45 could travel abroad without prior ‘security approval’. The Decree failed to specify the procedure required to obtain such approval or the criteria that would be used to grant or deny it”; Amnesty International, *Amnesty International Report 2017/18 – Libya*, 22 February 2018, [http://www.refworld.org/docid/5a938c64.html](http://www.refworld.org/docid/5a938c64.html). See also, OHCHR, *Situation of Human Rights in Libya*, 21 February 2018, [http://www.refworld.org/docid/5b4c64fd4.html](http://www.refworld.org/docid/5b4c64fd4.html), para. 33.


71 A study by the National Center for Disease Control on Violence against Children in 2017 among middle school students in Libya, showed a high prevalence of violence against children at home and in school with 92 per cent of male and 88 per cent female students having experienced at least some form of violence; UNICEF, *Libya: Humanitarian Situation Report 2017*, 22 January 2018, [https://uni.cf/2n1Aoo7](https://uni.cf/2n1Aoo7), p. 3.


conflict and instability, and schools have been the target for attacks. Many children are reportedly in need of mental health support given the conflict’s devastating impact.

12. **Persons of Diverse Sexual Orientation and/or Gender Identities** are reportedly subjected to state and societal discrimination. Moreover, same-sex relations are proscribed under the Penal Code of 1953 (as amended by Law 70 of 1976). Reports suggest that other provisions which criminalize “acts of indecency” and the distribution of “articles of an indecent nature” may also be used to prosecute persons of diverse sexual orientations and/or gender identities. Persons of diverse sexual orientations and/or gender identities reportedly face physical violence, harassment, threats, arbitrary arrest and death at the hands of non-state actors operating with impunity.

13. **Internally Displaced Persons (IDPs)** are reportedly targeted for forced eviction, arbitrary detention, abduction, and torture by different armed groups on account of their perceived affiliation with rival armed groups. Many IDPs are reportedly barred from returning to their areas of origin due to their perceived support of “terrorism” or the former Gaddafi government. IDP women and girls are particularly vulnerable to sexual and gender-based violence, which is said to be “widely underreported”.

See below para. 32.

See above para. 8.


“...the penal code prohibits all sexual acts outside marriage, including same-sex relations, and punishes them with up to five years in prison”;


and reported to occur with impunity.\textsuperscript{85} Judges and lawyers reportedly face pressure not to take on cases involving abuses committed against IDPs.\textsuperscript{86}

14. The administration of justice is reported to be “dysfunctional in most of the country”.\textsuperscript{87} The judiciary reportedly delay deciding cases with political or security related aspects.\textsuperscript{88} Prosecutors, judges and other judicial staff are reportedly targeted for threats and attacks.\textsuperscript{89}

**Situation of Third-Country Nationals (Including Asylum-Seekers, Refugees and Migrants)**

15. Libya is not party to the 1951 Convention relating to the Status of Refugees or its Protocol.\textsuperscript{90} It has ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention)\textsuperscript{91} and is also party to the African Charter on Human and Peoples' Rights (“Banjul Charter”).\textsuperscript{92} While the right to asylum is provided for in Article 10 of Libya’s 2011 interim Constitutional Declaration,\textsuperscript{93} there is no asylum legislation or any established asylum procedures.\textsuperscript{94} As a result, all non-Libyans regardless of their status fall under national immigration laws, including asylum-seekers and refugees. Applicable Libyan laws criminalize all irregular entry, stay, or exit, for example without the appropriate documentation or through unofficial border posts, without distinguishing between asylum-seekers/refugees, migrants, or victims of trafficking. Violations are penalized with an undefined prison sentence with “hard labour” or a fine of approximately 1,000 Libyan Dinars (USD 723) and eventually deportation once the sentence is completed.\textsuperscript{95} Third-country nationals who have been deported from Libya are not permitted to return without a decision from the Director of the General Directorate of Passports and Nationality.\textsuperscript{96}

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\textsuperscript{85} “According to several reports submitted to the Special Rapporteur, violence against internally displaced women and girls ranges from psychological and verbal abuse to kidnapping, rape and other forms of sexual assault. Due to stigma, fear of retaliation, weak reporting structures, lack of specialized staff and a lack of trust in the formal judicial system, these cases of sexual and gender-based violence are widely underreported in Libya”; UN General Assembly, Report of the Special Rapporteur on the Human Rights of IDPs, 10 May 2018, http://www.refworld.org/docid/5b4c60664.html, para. 47.

\textsuperscript{86} Ibid., para. 40.


\textsuperscript{89} See above para. 8.


\textsuperscript{91} Although Libya is a party to the OAU Convention, it has not enacted domestic legislation to implement the convention; Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 UN Treaty Series 45, http://www.refworld.org/docid/3ae6b36018.html.


\textsuperscript{93} Article 10 of the 2011 Constitutional Declaration stipulates: “The State shall guarantee the right of asylum in accordance with an Act of Parliament. The extradition of political refugees shall be prohibited”; Constitutional Declaration [Libya], 3 August 2011, http://www.refworld.org/docid/5b65f5fd4.html.


\textsuperscript{96} Article 18 of Law No. 6 (1987) Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya as amended by Law No. 2 (2004).
16. As of 31 August 2018, UNHCR in Libya had registered 55,008 asylum-seekers and refugees. In addition to asylum-seekers and refugees registered with UNHCR, there are third-country nationals or stateless persons with international protection needs who have not been registered with UNHCR. Furthermore, as of June 2018, over 679,000 migrants from over 40 nationalities were recorded to be living in Libya, although the actual number is estimated to be up to one million. A January 2015 entry ban for Syrians, Palestinians, Bangladeshis and Sudanese, which was expanded in September 2015 to also include Yemenis, Iranians and Pakistanis, reportedly remains in place in areas under control of the Tobruk/Al-Bayda-based authorities, although no information as to the actual implementation is available.

17. Asylum-seekers, refugees and migrants transiting through or remaining in Libya are reportedly particularly vulnerable in the context of the volatile security situation and deteriorating socio-economic conditions. The majority of asylum-seekers, refugees and migrants do not have access to residence permits, putting them at acute risk of arrest and detention for irregular stay. As a result of their irregular status and lack of legal documents, as well as widespread discriminatory practices (particularly, but not exclusively, against persons from sub-Saharan countries), they are reportedly often excluded from social security mechanisms and denied access to basic services, including emergency health care, resulting in poor living conditions. Many are therefore compelled to resort to negative coping strategies. According to a December 2017 study, no significant differences were observed in health status and coping mechanisms for the migrant populations reporting either formal or informal employment, health care and education.


In practice, the Libyan authorities only recognize that individuals of nine designated nationalities may have a claim for international protection. Accordingly, UNHCR can register as persons of concern only individuals from these nine countries, namely Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen. UNHCR continues to advocate for the registration of all persons seeking international protection, regardless of nationality; UNHCR information, August 2018.


“In order to live, work, and have access to basic services, migrants must have necessary documentation. Whilst the majority of migrants and refugees enter Libya irregularly, some migrants enter Libya in possession of appropriate travel documents, but they are unable to renew these documents when they expire”; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, p. 8.


found in terms of access to resources and services between refugees and migrants who were long-term residents compared to those who had arrived in the country more recently.\(^ {107}\)

18. Asylum-seekers and refugees with a valid UNHCR certificate are in principle granted access to free education and medical assistance in public schools and hospitals; however, in practice this is not always the case. Syrians, Palestinians and Iraqis normally have access, while those from sub-Saharan countries would need the intervention by UNHCR and its partner International Medical Corps (IMC) on a case-by-case basis to access services.\(^ {108}\) Since 2017, UNHCR has observed a remarkable increase in the number of refugees and asylum-seekers who are wholly dependent on UNHCR’s direct financial and medical assistance.\(^ {109}\)

19. Following interception or rescue of individuals at sea, the Libyan Coast Guard (LCG) hands the persons over to the authorities of the Directorate to Combat Illegal Migration (DCIM),\(^ {110}\) which transfers them directly to government-run detention centres where they are held for indefinite periods.\(^ {111}\) Presently, there is no possibility of release, except in the context of repatriation, evacuation or resettlement to third countries.\(^ {112}\) At the time of writing, UNHCR estimates that over 8,000 persons, including more than 4,500 persons of the nine nationalities that UNHCR is able to register in Libya,\(^ {113}\) are held in detention centres run by the DCIM after having been rescued or intercepted at sea, or after having been arrested on land during house raids or identity checks including near land borders.\(^ {114}\) There are no available figures for those held by various armed factions or criminal networks in unofficial detention centres, including in warehouses and farms.\(^ {115}\) In all facilities, detention conditions reportedly fail to meet international standards\(^ {116}\) and have been described as “appalling”,\(^ {117}\) “nightmarish”,\(^ {118}\) “cruel, inhuman and degrading.”\(^ {119}\) Both male and female asylum-seekers, refugees, and migrants, including children, are reportedly systematically subjected to or are at very high risk of torture and other forms of ill-

\(^{107}\) Ibid., p. 2.

\(^{108}\) UNHCR information, August 2018. See also below “Humanitarian Situation”.

\(^{109}\) UNHCR information, August 2018.

\(^{110}\) The DCIM was established as a division of the GNA’s Ministry of Interior in 2012 to tackle irregular migration flows into the country. It is responsible for arresting anyone who has entered the country irregularly, organizing the deportations of irregular migrants and managing the detention centres.

\(^{111}\) “Since there is no registration system in place for those disembarked and subsequently detained, it is impossible to know with any degree of accuracy how many people are being held in official detention at any given time, the length of their detention and, ultimately, their fate”; IRC, Pushing the Boundaries, 11 July 2018, https://bit.ly/2vrfPY1, p. 15.


\(^{113}\) See above footnote 98.


\(^{116}\) Reports describe conditions of extreme overcrowding, poor lighting and ventilation, as well as lack of access to medical care, psychosocial support and adequate nutrition. (Then) UN High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, said that “[T]he detention system for migrants in Libya is broken beyond repair.” He further described the conditions as encountered by UN monitors visiting four DCIM detention facilities in Tripoli: “Monitors were shocked by what they witnessed: thousands of emaciated and traumatized men, women and children piled on top of each other, locked up in hangars with no access to the most basic necessities, and stripped of their human dignity”; OHCHR, UN Human Rights Chief: Suffering of Migrants in Libya Outrage to Conscience of Humanity, 14 November 2017, http://www.refworld.org/docid/5b6461354.html. See also, Médecins Sans Frontières (MSF), Stop Arbitrary Detention of Refugees and Migrants Disembarked in Libya, 24 July 2018, https://bit.ly/2LMBkY9; UN Security Council, United Nations Support Mission in Libya, 7 May 2018, http://www.refworld.org/docid/5b4c65d64.html, para. 44; Refugees International, Europe Continues to Fail Refugees and Migrants in Libya, 15 April 2018, http://www.refworld.org/docid/5b55c5ce4.html.


treatment, including rape and other forms of sexual violence, forced labour as well as extortion, both in official and unofficial detention facilities. Racial and religious discrimination in detention is also reported. Those detained have no possibility to challenge the legality of their detention or treatment. Third-country nationals in detention are also impacted by the general security situation in the country as demonstrated during the late August 2018 escalated in fighting between rival armed groups in Tripoli.

20. Insecurity and the absence of a central state authority with effective control has allowed Libya to become a main country of transit and departure for refugees and migrants seeking to reach Europe in their flight from persecution, conflict and violence or hardship, often in unseaworthy, overcrowded boats. Smuggling networks operating across East and West Africa reportedly bring the refugees and migrants by road via Libya’s southern border in the Fezzan region, which borders Niger, Chad and Algeria. From there, they make their way to the country’s north-west from where they attempt to move onwards to European destinations, mainly to or via Italy.

21. En route and during their stay in Libya, migrants, refugees and asylum-seekers, including children, are reportedly at risk of being subjected to widespread and systematic human rights violations and abuses at the hands of smugglers, traffickers, armed groups, militias, criminal gangs and state officials acting with impunity. These violations and abuses reportedly include unlawful deprivation of liberty and arbitrary detention; torture and other forms of ill-treatment, including rape and other forms of sexual violence and other forms of sexual violence. As a consequence, riots and hunger strikes by refugees inside detention centres in grave danger; UNHCR, International, MSF, http://www.refworld.org/docid/5a2fa1cb4.html.

120 “Migrant women and girls were raped and otherwise sexually abused during their journeys through Libya, in both official and unofficial migrant detention centres. Survivors described being taken away from cells shared with others by armed men, including guards of the Department for Illegal Migration, and being raped repeatedly by multiple perpetrators. Those who tried to resist were beaten, threatened at gunpoint, and denied food and water”; OHCHR, Situation of Human Rights in Libya, 21 February 2018, http://www.refworld.org/docid/5b4c64fd4.html, para. 35. See also, UN Security Council, United Nations Support Mission in Libya, 24 August 2018, http://www.refworld.org/docid/5bb831bc4.html, para. 39; OHCHR, Returned Migrants Are Being Robbed, Raped and Murdered in Libya, 8 September 2017, http://www.refworld.org/docid/5b5992d4.html.


122 Amnesty International, Abuses Against Refugees and Migrants, 11 December 2017, http://www.refworld.org/docid/5a2fa1cb4.html, p. 22. “In recent weeks, UNHCR has witnessed a critical worsening in conditions in detention centres, due to the increasing overcrowding and lack of basic living standards. As a consequence, riots and hunger strikes by refugees inside detention centres are taking place, demanding a resolution to their bleak living conditions”; UNHCR, UNHCR Flash Update Libya (17 - 24 August 2018), 24 August 2018, https://bit.ly/2NxyY9A.


127 UNHCR/REACH, Mixed Migration Routes and Dynamics in Libya: The Impact of EU Migration Measures on Mixed Migration in Libya, April 2018, https://bit.ly/2NiRvMl, p. 2. "According to one analyst, trafficking gangs with links to Libyan militias in the south can demand between 1,000 to 1,500 Libyan dinars ($800 to $1,100) to take migrants as far as Tripoli. If migrants are unable to pay, they are handed over directly to rogue militias who place them in safe houses owned by armed gangs. There the migrants will usually try to call home, requesting money to pay for their release. If their families are unable to pay, the militias sell them to wealthy Libyans who need cheap labor on their farms or on construction sites. These African migrants in effect become independent laborers for Libyans who provide them little in the way of pay or maintenance for the work they do. Some may be passed as slaves among the different militias, while the more fortunate ones are sold to wealthy Libyans and become employees who can eventually earn enough money to pay to escape the country. Others will end up in the hands of government-aligned militias who then place them in detention centers awaiting deportation"; Jamestown Monitor, Libya’s Rogue Militias Keep the Country from Tackling Human Trafficking, 26 February 2018, https://bit.ly/2LTQqeu. See also, ICG, How Libya’s Fezzan Became Europe’s New Border, 31 July 2017, http://www.refworld.org/docid/59831y6b4.html, p. 21.
violence; abduction for ransom and other forms of extortion; forced labour; and unlawful killing. Women and girls are reported to be particularly vulnerable to being subjected to rape, forced prostitution and other forms of sexual violence.

22. Since 2017, Italy and the EU provide assistance to the LCG to increase its capacity to carry out search and rescue operations and prevent irregular departures on the Central Mediterranean route. As a result of increased LCG operations, the number of people crossing from Libya to Italy has reduced significantly, while out of the total number of people who do still attempt the crossing, the proportion of persons intercepted or rescued at sea by the LCG has increased. The increase in interceptions and rescue operations conducted by the LCG resulted in greater numbers of persons disembarked (and detained) in Libya. During rescues / interception operations at sea, the LCG have reportedly been involved in human rights violations against refugees, asylum-seekers and migrants, including the


133 Between 1 January and 31 August 2018, the Libyan Coast Guard rescued/intercepted a total of 13,185 people in different locations along the Libyan coast and transferred them to detention centres (an increase of 24.4 per cent compared to the same period in 2017). 552 individuals were rescued/intercepted in August 2018, 2,167 in July and 3,453 in June. Among those disembarked between January and August 2018, UNHCR identified over 3,200 persons of nationalities that can register with UNHCR in Libya, including from Eritrea, Sudan, Somalia, Ethiopia, Palestine and Syria. UNHCR and its partners are present at disembarkation points along the Libyan coast and provide life-saving assistance and undertake protection monitoring to identify persons of concern; UNHCR, Libya: Activities at Disembarkation, Monthly Update, August 2018, https://bit.ly/2PzKvxB; UNHCR, Activities at Disembarkation, accessed 2 September 2018, https://bit.ly/2D6xmnXm. As a result of increased interceptions at sea since June 2018, there has reportedly been a sharp increase in the number of refugees, asylum-seekers and migrants held in already overcrowded Libyan detention centres; UN Security Council, United Nations Support Mission in Libya, 24 August 2018, http://www.refworld.org/docid/5b8d31bc4.html, para. 36; Amnesty International, „Between the Devil and the Deep Blue Sea – Europe Fails Refugees and Migrants in the Central Mediterranean, 8 August 2018, http://www.refworld.org/docid/5b6c22944.html, pp. 6, 18; MSF, Stop Arbitrary Detention of Refugees and Migrants Disembarked in Libya, 24 July 2018, https://bit.ly/2LmjvBv.

134 “LCG officials are also responsible for human rights violations and are known to operate in collusion with smuggling networks. LCG officials conducting interception operations have used threats and violence against refugees and migrants on board boats in distress that is the very people they are supposed to rescue, sometimes in order to rob them of their few possessions. They have also caused deaths and put lives at risk by operating with blatant disregard for basic security protocols and standards”, Amnesty International, „Abuses Against Europe-Bound Refugees and Migrants, 11 December 2017, http://www.refworld.org/docid/5c2f3a1cb4.html, p. 8. In June 2018, Abd Al Rahman Al-Milad, the head of the regional coastguard unit in Zawiya was added to the UN Security Council’s sanctions list, as the unit “is
deliberate sinking of boats using firearms. In parallel, critical activities of non-governmental organization (NGO) rescue boats have been increasingly restricted. These developments have led to a higher percentage of people dying at sea than before. In the end of June 2018, the Libyan Search-and-Rescue Region (SRR) has been formalized, indicating that Libya has assumed primary responsibility for search and rescue coordination in an area extending to around 100 miles from some of the primary departure sites. The capacity of the Libyan authorities to effectively and safely conduct and coordinate search and rescue operations over such a wide area is reportedly limited, including because of limited vessel and rescue coordination capacity and the lack of reliable communication systems.

23. The international community has scaled up efforts to repatriate or evacuate people out of detention since the end of 2017. However, these activities can only reach a limited number of the total refugee and migrant population in Libya. Since January 2017, over 30,000 individuals returned to their countries of origin through the Voluntary Humanitarian Returns (VHR) programme run by the International Organization for Migration (IOM). The voluntary nature of these returns has been questioned given that the practice of detention often leaves no alternative.

Consistently linked with violence against migrants”, UN News Service, As Security Council Imposes Sanctions on Six Human Traffickers in Libya, UN Chief Calls for more Accountability, 8 June 2018, See also, UN Security Council, Report of the Secretary-General on Conflict-Related Sexual Violence, 23 March 2018; IOM, “Taking Bribes to Free Detained Migrants” after Pushing Boats Back to Shore, 24 July 2018,


“I already this year, more than 1,500 people have drowned or gone missing on the Mediterranean. On the Central Mediterranean route in particular, the rate of lives being lost has increased threefold, and now stands at one death for every 17 people who attempt to cross compared to one in 43 during the same period last year”; UNHCR, UNHCR Welcomes Aquarius Resolution, but Stressess Need for more Predictable Approach to Disembarkation, 15 August 2018, https://bit.ly/2Oycvth. “UNHCR is especially concerned about the impact of a more limited search and rescue capacity if boats are discouraged from responding to distress calls through fear of being denied permission to disembark people rescued. NGOs in particular have voiced their concerns at restrictions being placed on their abilities to conduct search and rescue as a result of limitations on their movements and the threat of potential legal actions”; UNHCR, As Mediterranean Sea Arrivals Decline and Death Rates Rise, UNHCR Calls for Strengthening of Search and Rescue, 6 July 2018, http:// unhcr.org/5b3f2704a.html. See also, Euronews, Prompted by EU, Libya Quietly Claims Right to Order Rescuers to Return Fleeing Migrants, 6 July 2018, https://bit.ly/2uk15dr; Vita (in Italian), La Libia Ha Dichiarato la Sua Zona SAR: Lo Conferma l’IMO, 28 June 2018, https://bit.ly/2K0QjiT.


Tensions inside detention centres are increasing as refugees and migrants are frustrated with the lack of solutions; UNHCR information, August 2018. See also above footnote 122.


Between November 2017 and 31 August 2018, UNHCR evacuated 1,858 individuals from Libya (1,536 to Niger, 312 to Italy and 10 to Romania). These evacuations allow for the transfer of vulnerable individuals from detention centres in Libya to a safe and dignified environment while their while they are processed for solutions such as resettlement or family reunification. In September 2017, UNHCR called for 40,000 resettlement places to be made available for refugees located in 15 countries along the Central Mediterranean route. As of 13 August 2018. 12 States (Belgium, Canada, Finland, France, Germany, Italy, Malta, Netherlands, Norway, Sweden, Switzerland and the United Kingdom) have committed 3,886 resettlement places for the Libyan-Niger situation. Out of these pledges, 1,090 will be used for
Gathering and Departure Facility (GDF), which would speed up the process of securing solutions in third countries and provide a critical alternative to detention for persons of concern to UNHCR while their cases are processed. UNHCR has observed an increase in the number of asylum-seekers registered with UNHCR in Libya who are trying to cross the Mediterranean Sea, reportedly due to the lack of solutions in the country.

**Internal and External Displacement**

24. Libya reportedly has one of the highest per capita displacement levels in Africa and internal displacement has reportedly become “a permanent feature of life for many in Libya”.

In mid-2014, as violence in Libya escalated, an estimated 400,000 people became internally displaced. Although many have returned since, others have become newly displaced due to periodic escalations of armed conflict. As of June 2018, over 192,500 persons remained displaced, over 50 per cent of whom are children. The main drivers for displacement are reported to be armed conflict, human rights violations, and persecution based on perceived political affiliation.

25. The provision of assistance and protection to IDPs is reported to be inadequate as a result of gaps in state capacity, lack of sustained and regular humanitarian access, limited coordination mechanisms and a lack of international support. Many IDPs currently have no prospect of returning home as a result of ongoing conflict or insecurity, destruction or damage to homes and basic infrastructure, contamination with explosive remnants of war, as well as due to fear of being subjected to human rights violations.

resettlement processing directly out of Libya, while the remainder will be allocated to evacuees from Libya and refugees registered in Niger. Since 1 September 2017, 797 individuals were submitted for resettlement to eight States (Canada, France, Germany, Italy, Netherlands, Norway, Sweden and Switzerland). A total of 70 individuals departed on resettlement directly from Libya to Canada, France, Sweden and the Netherlands; UNHCR, UNHCR Flash Update Libya (17 - 24 August 2018), 24 August 2018, https://bit.ly/2 NxY9A9; UNHCR, Central Mediterranean Situation: UNHCR Calls for an Additional 40,000 Resettlement Places, 11 September 2017, http://www.refworld.org/docid/ 5b97ee104.html.


On the humanitarian conditions for IDPs, see “Humanitarian Situation”. 16
26. An increasing number of Libyans, including IDPs, are reportedly seeking to leave the country.159

**Humanitarian Situation**

27. The ongoing conflict and political impasse have reportedly led to a further deterioration of the humanitarian conditions across all sectors in Libya.160 As of March 2018, 1.1 million people were estimated to be in need of life-saving humanitarian assistance and protection, including 378,000 children and 307,000 women of reproductive age.161 The humanitarian response remains poorly funded, further undermining critical access to and availability of basic services to people in need.162 Areas of ongoing conflict163 as well as areas with disrupted and poor economic and livelihoods opportunities with large numbers of returnees, IDPs, migrants, refugees and asylum-seekers are reported to be among those with the most severe needs across multiple sectors.164 The highly volatile security and political situation hampers sustained humanitarian access,165 leaving the most vulnerable communities,166 in particular IDPs, asylum-seekers, refugees and migrants, with unmet urgent needs.167


161 As at 31 August 2018, according to the UN Financial Tracking Service (FTS), the Libya 2018 Humanitarian Response Plan faces a funding gap of 77.5 per cent (US$ 224.2 million) of unmet requirements; FTS, Response Plan/Appeal Snapshot for 2018, accessed 3 September 2018, https://bit.ly/2uhhVZd.


165 Humanitarian partners have identified the following population groups as being most in need of humanitarian assistance: people living in conflict-affected areas, or in areas contaminated with explosive hazards, or in hard-to-reach areas; migrants, refugees and asylum-seekers, including those in detention centres; persons with chronic diseases, disabilities, or mental health issues; IDPs living in rented accommodation and collective centres; returnees (during first three months of return); over-burdened host communities; pregnant women; female-headed households; children, youth; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, pp. 31-34.

166 “Internally displaced people, refugees and migrants, as well as returnees and non-displaced Libyans in the worst affected areas are assessed as in most need of humanitarian assistance”; OCHA, Libya, accessed 3 September 2018, https://bit.ly/2mcK3rQ. See also, UN General Assembly, Report of the Special Rapporteur on the Human Rights of IDPs, 10 May 2018, http://www.refworld.org/docid/5b4c60664.html, paras 18-24; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, pp. 13-14. Many IDPs have reportedly lost or left behind their personal documentation needed in order to access services, assistance and employment. However, for security and other reasons, they may not be able to return to their place of origin in order to re-issue identity documents; UN General Assembly, Report of the Special Rapporteur on the Human Rights Rights
28. **Food security:** As of March 2018, 175,000 people were reported to be in need of food assistance.\(^{168}\) Negative coping strategies such as cutting the number of daily meals and reducing non-food related expenses such as health and education are reported to be prevalent.\(^{169}\) Due to limited port access and road blockages, food imports into Libya have reportedly diminished, causing food prices to rise steeply.\(^{170}\)

29. **Livelihoods:** Despite relative improvements in Libya’s Gross Domestic Product since early 2018,\(^{171}\) the overall economic situation reportedly continues to deteriorate with people reported to have less income while the cost of living has increased substantially.\(^{172}\) Living conditions are reported to be worsening due to the weak provision of basic services and rising commodity prices.\(^{173}\) According to reports, vulnerable persons are increasingly compelled to reduce expenditures on food, education and healthcare.\(^{174}\)

30. **Health:** The health care system is reported to have deteriorated to the point of collapse.\(^{175}\) A number of health care facilities have reportedly been closed, particularly in conflict-affected areas.\(^{176}\) Armed groups are reported to attack medical personnel and facilities, and to interfere with and disrupt their work.\(^{177}\) While medical needs, particularly conflict-related injuries, reportedly continue to rise, there is a shortage of medicines, medical supplies and equipment along with a critical shortage of specialized and skilled staff.\(^{178}\) Pregnant women and persons with chronic diseases, disabilities and mental health

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\(^{168}\) of IDPs, 10 May 2018, [http://www.refworld.org/docid/5b4c60664.html](http://www.refworld.org/docid/5b4c60664.html), para. 29. See also, Reuters, *Benghazi’s Displaced: A Litmus Test for Libya*, 17 May 2018, [https://reut.rs/2wipe5g](https://reut.rs/2wipe5g); UNHCR, *Internally Displaced Persons from Benghazi*, March 2018, [http://www.refworld.org/docid/5b6aebf64.html](http://www.refworld.org/docid/5b6aebf64.html), p. 1.


\(^{171}\) The prices of many staple food items (e.g. rice and wheat flour) have reportedly increased by as much as 200 per cent when compared to pre-conflict levels; *WFP Libya Country Brief, June 2018*, 30 June 2018, [https://bit.ly/2MvTT0](https://bit.ly/2MvTT0), p. 1. In May-June 2018, in 95 out of 100 municipalities, food was assessed to be too expensive for IDPs; IOM, *DTM Libya – IDP & Returnee Report*, 30 June 2018, [https://bit.ly/2vm58Vx](https://bit.ly/2vm58Vx), p. 20.


\(^{173}\) “The economic situation continues to deteriorate: inflation, the devaluation of the Libyan dinar on the black market, and cash shortages have all led to reduced purchasing power of the Libyan population – especially those already affected by the conflict, further deepening vulnerabilities”; OCHA, *Libya Humanitarian Response Plan (January - December 2018)*, 1 March 2018, [http://www.refworld.org/docid/5b644a484.html](http://www.refworld.org/docid/5b644a484.html), p. 6.


\(^{177}\) According to a survey conducted by WHO and the Libyan Ministry of Health, 17 out of 97 hospitals are closed and only four hospitals are functional between 75-80 per cent of their capacity. In addition, over 20 per cent of primary health care facilities are closed and the remainder are not suitable to provide services; WHO, *2017 Review of Health Sector in Libya*, 31 December 2017, [http://www.refworld.org/docid/5b644b8d4.html](http://www.refworld.org/docid/5b644b8d4.html), p. 1. See also, OCHA, *Libya HNO 2018*, 1 March 2018, [http://www.refworld.org/docid/5b6429ad4.html](http://www.refworld.org/docid/5b6429ad4.html), p. 15.


issues are reported to be particularly vulnerable in light of the limited capacity of health services. Access to health care by IDPs, returnees, refugees and migrants reportedly remains limited. Drug and alcohol abuse has reportedly been on the rise since the beginning of the conflict.

31. Shelter: Housing and infrastructure, particularly in coastal areas, have reportedly seen high levels of destruction as a result of waves of conflict since 2011. As a result, thousands of people, mostly IDPs, are reported to live in substandard conditions in damaged and/or unfinished buildings. Asylum-seekers, refugees and migrants are reported to have particular difficulty in accessing adequate shelter due to their irregular situation in Libya.

32. Education: Although overall school attendance is reported to be on the rise, problems persist including as a result of damage to and/or destruction of schools. Instances of kidnappings and other attacks by armed groups against children, teaching personnel and schools have been reported. In light of the economic situation, unaffordability of educational services is reported to be a barrier to education, particularly for IDPs.

33. Water, Sanitation, Fuel and Electricity: Public services have reportedly been disrupted and infrastructure has deteriorated, severely impacting access to health services, electricity, fuel, sanitation and clean water. The UN has expressed concern over the potential collapse of the water system in Libya.

For example, mental health and family planning services are reported to be entirely unavailable in the South and available in only one per cent of all health facilities in other parts of Libya; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, pp. 7, 33, 34.

“Without legal documents validating their status migrants and refugees are often excluded from social security mechanisms and denied access to basic services. Migrants and refugees in Libya suffer from very limited access to primary medical care, mental health care and emergency medical intervention, including clinical management of Sexual and Gender Based Violence (SGBV) survivors”; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, p. 43. “Migrants found to have a communicable disease (e.g. tuberculosis) are detained. This means most migrants are reluctant to use public health services for fear of being sent to detention centres”; IRC, UNHCR Libya Fact Sheet (April 2018), 13 April 2018, https://bit.ly/2Kg8SBP, p. 3; REACH, Refugees and Migrants’ Access to Resources, Healthcare and Housing, December 2017, https://bit.ly/2Kf8C6K, pp. 1, 21-24.


For example in the city of Sirte, over 2,500 houses remain reportedly destroyed as a result of conflict in 2016; UNHCR, UNHCR Flash Update, Libya 13 – 9 August 2018, https://bit.ly/2NhAoHA. Three central districts of Sirte (Campo, Giza and Sirte 3) reportedly remain empty of inhabitants as a result of large-scale destruction; IRIN, In Libya, a City once Run by Islamic State Struggles to Start again, 21 August 2018, http://www.refworld.org/docid/5b87f0154.html.


A total of 489 schools have reportedly been affected by the crisis, of which 40 had been fully destroyed while 26 were accommodating IDPs. This affects an estimated 244,500 Libyan students in addition to 160,178 refugee and migrant students; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad3.html, p. 41. According to IOM’s Displacement Tracking Matrix (DTM), 97 per cent of municipalities reported that the majority of students were attending schools. The remaining three per cent reported irregular attendance in Derna, Ubari, Janzour and Hrawa; IOM, DTM Libya – IDP & Returnee Report, 30 June 2018, https://bit.ly/2vm58Vx, pp. 4, 17.

According to Libyan Education Minister, Osman Abdel Jalil, “[s]ome schools have stopped operating altogether and others are in a very bad condition. A rising pitch of violence in those areas makes continuing the educational process impossible. Going to work for the teachers and attending classes for the students is a heroic mission”; Their World, Libyans Shocked as Bodies of Children Kidnapped on Their Way to School are Found, 9 April 2018, https://bit.ly/2K03T80. See also, OCHA, Protection of Women and Children Snapshot, 28 March 2018, http://www.refworld.org/docid/5b6449314.html. See also above paras 8 and 11.


“Six years after the crisis erupted, assessments show that only 64 per cent of the affected population have access to adequate drinking water sources. The frequent electricity cuts […] continue to affect water and sanitation facilities, and lack of maintenance and spare parts are the main drivers for inadequate access to water and sanitation services”; OCHA, Libya HNO 2018, 1 March 2018, http://www.refworld.org/docid/5b6429ad4.html, p. 45. See also pp. 5, 8, 14 and 15 of the same report. See also, ICRC, Libya: Hospitals Suffering from Shortages; Public Infrastructure Collapsing, 24 August 2017, https://bit.ly/2w3i8TG.
case essential maintenance is not performed.\textsuperscript{191} Frequent electricity cuts on most days reportedly remain a challenge for many households.\textsuperscript{191}

**Access to Territory and International Protection**

34. As the situation in Libya remains fluid and uncertain, UNHCR calls on all countries to allow civilians (Libyan nationals, former habitual residents of Libya and third-country nationals) fleeing Libya access to their territories.

35. All claims of nationals and habitual residents of Libya seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law.\textsuperscript{192} For individuals whose claim had been rejected previous to recent events, the current situation may, depending on the individual circumstances of the claim, give rise to changed circumstances, which need to be considered if a new asylum claim is submitted. UNHCR considers that persons having been directly affected by developments since 2011 may be at a particular risk of persecution or other forms of serious harm, including, *inter alia*, individuals opposing or perceived to be opposing a party to the conflict; government officials and politicians; members of the judiciary and law enforcement; members of certain minority religious, ethnic or tribal groups; individuals perceived to be violating “public morals”; media professionals; human rights defenders and civil society activists; medical professionals; humanitarian workers; women engaged in the public sphere; individuals of (real or perceived) diverse sexual orientations and/or gender identities; and members of tribes/families or individuals perceived to be in support of the former Gaddafi regime.\textsuperscript{193} Persons with these and other profiles may be in need of international refugee protection in accordance with the 1951 Convention, for reason of real or imputed political opinion, or for reasons related to other 1951 Convention grounds. Claims need to be considered on an individual basis, carefully taking into account the particular circumstances of each case. Furthermore, UNHCR considers that persons fleeing Libya may be in need of international refugee protection in accordance with Article 1(2) of the 1969 OAU Convention, or, in countries of asylum outside the African Union and in cases where the 1951 Convention criteria are found not to apply in the individual case, may meet the criteria for complementary forms of protection.\textsuperscript{194}

36. There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention.\textsuperscript{195} In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.\textsuperscript{196}

**UNHCR Position on Returns**

37. UNHCR commends any measure taken by States to suspend forcible returns of nationals or habitual residents of Libya, including those who have had their asylum claim rejected. UNHCR urges all States to suspend forcible returns to Libya until the security and human rights situation has improved considerably. Given the volatility of the situation, the fragmentation of control and the plethora of armed groups, UNHCR considers that in the current circumstances the relevance and reasonableness criteria

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\textsuperscript{192} Applicable frameworks include that of the 1951 Refugee Convention and its 1967 Protocol; the EU Qualification Directive [European Union, Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast) (“Qualification Directive”), 13 December 2011, [http://www.refworld.org/docid/4f06fa5e2.html](http://www.refworld.org/docid/4f06fa5e2.html)], or other applicable regional frameworks, including the 1969 OAU Convention and the Cartagena Declaration [Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, 22 November 1984, [http://www.refworld.org/docid/3ae6b36ec.html](http://www.refworld.org/docid/3ae6b36ec.html)].

\textsuperscript{193} See above “Violations of International Human Rights and Humanitarian Law”.

\textsuperscript{194} In the context of human rights obligations, or of applicable regional frameworks, such as the EU Qualification Directive.


for an internal flight or relocation alternative are unlikely to be met.\textsuperscript{197} Suspension of forcible returns of nationals and habitual residents to Libya serves as a minimum standard and should not replace international refugee protection for persons found to meet the criteria for refugee status under the 1951 Convention and the 1969 OAU Convention. This advice is valid until such time as the security and human rights situation in Libya has improved sufficiently to permit a safe and dignified return.

\textbf{International Protection Needs of Third-Country Nationals Departing from/through Libya}

38. Among those who have found themselves compelled to leave Libya, including by sea, are third-country nationals, including persons who were recognized as refugees or registered as asylum-seekers in Libya by UNHCR, or persons transiting through Libya who have been registered with or recognized as refugees in other countries where they resided before reaching Libya (by UNHCR or in state asylum procedures), as well as other persons in need of international protection.

39. The situation in which a state exercises jurisdiction over people as a result of interception or rescue at sea requires respect for the principle of non-refoulement. UNHCR urges states to refrain from returning to Libya any third-country nationals intercepted or rescued at sea and to ensure that those in need of international protection are able to access fair and effective asylum procedures upon disembarkation.\textsuperscript{198}

40. Upon arrival in a country of asylum, third-country nationals seeking or otherwise indicating a possible need for international protection should be referred to national asylum procedures, for consideration of their applications for international refugee protection.\textsuperscript{199}

\textbf{Designation of Libya as Safe Third Country}

41. UNHCR does not consider it appropriate for States to designate or apply in practice a designation of Libya as a so-called “safe third country”. The designation of a country as a “safe third country” may result in a request for international protection not being considered on its merits but declared inadmissible, or processed in an accelerated procedure with reduced procedural safeguards. Even before the current unrest and insecurity, UNHCR considered that Libya should not be regarded as a safe third country in light of the absence of a functioning asylum system, the widely reported difficulties and abuses faced by asylum-seekers and refugees in Libya, the absence of protection from such abuses and the lack of durable solutions.\textsuperscript{200} UNHCR calls on States not to channel applications for international protection from third-country nationals into an accelerated procedure or declare them inadmissible, merely on the basis of the fact that they previously resided in or transited through Libya.

\textsuperscript{197} The decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned. See: UNHCR, \textit{Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative’ Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees}, HCR/GIP/03/04, 23 July 2003, \textit{http://www.refworld.org/pdfid/3d7791a44.pdf}, and paras 33-35. For an IFA/IRA to be relevant, the proposed area of relocation must be practically, safely and legally accessible. Further, where the claimant has a well-founded fear of persecution at the hands of the State and its agents, there is a presumption that consideration of an IFA/IRA is not “relevant” for areas under the control of the State. If the applicant fears persecution by a non-state agent of persecution, the ability to pursue the claimant in the proposed area and the State’s ability to provide protection there must be considered, see paras 9-21. UNHCR considers that a similar analysis would apply when the applicability of IFA is considered in the context of determining eligibility for subsidiary protection.

\textsuperscript{198} See UN Security Council Resolution 2240 (2015), which authorizes Member States to inspect vessels on the high seas off the Libyan coast if they are suspected of migrant smuggling or human trafficking from Libya, and to seize vessels which are confirmed as being used for these purposes. The resolution recognizes that “that among these migrants may be persons who meet the definition of a refugee under the 1951 Convention relating to the Status of Refugees and the 1967 Protocol thereto” and urges states to respect the rights of migrants and “to comply with their obligations under international law, including international human rights law and international refugee law, as applicable”; UN Security Council, Resolution 2240 (2015), Adopted by the Security Council at its 7531st Meeting, on 9 October 2015, 9 October 2015, S/RES/2240 (2015), \textit{http://www.refworld.org/docid/5b64698c4.html}. See also UNHCR, \textit{UNHCR Intervention Before the European Court of Human Rights in the Case of Hirsi and Others v. Italy}, March 2010, Application No. 27765/09, \textit{http://www.refworld.org/docid/4b77784d2.html}. People on the move to and through the Mediterranean Sea have different migratory status, with the majority of them not qualifying for refugee or subsidiary protection. However, according to EUROSTAT, approximately 30 per cent of those arriving on the European shores were in need of international protection. Moreover, some have faced extreme hardship and abuse at the hands of unscrupulous traffickers during the journey; UNHCR/IOM, \textit{Proposal for a Regional Cooperative Arrangement Ensuring Predictable Disembarkation and Subsequent Processing of Persons Rescued-at-Sea}, 27 June 2018, \textit{https://bit.ly/20i1UJX}, p. 1.

\textsuperscript{199} UNHCR, \textit{UNHCR Intervention before the European Court of Human Rights in the Case of Hirsi and Others v. Italy}, March 2010, Application No. 27765/09, \textit{http://www.refworld.org/docid/4b77784d2.html}. See also above “Situation of Third-Country Nationals (Including Asylum-Seekers, Refugees and Migrants)”.

\textsuperscript{200} UNHCR, \textit{UNHCR Intervention Before the European Court of Human Rights in the Case of Hirsi and Others v. Italy}, March 2010, Application No. 27765/09, \textit{http://www.refworld.org/docid/4b77784d2.html}. See also above “Situation of Third-Country Nationals (Including Asylum-Seekers, Refugees and Migrants)”.
Designation of Libya as a Place of Safety for the Purpose of Disembarkation following Rescue at Sea

42. In the context of rescue at sea and in line with international maritime law, disembarkation is to occur in a predictable manner in a place of safety and in conditions that uphold respect for the human rights of those who are rescued, including adherence to the principle of non-refoulement.\(^{201}\) When asylum-seekers, refugees and migrants are rescued at sea, including by military and commercial vessels, “the need to avoid disembarkation in territories where [their] lives and freedoms (...) would be threatened” is relevant in determining what constitutes a place of safety.\(^{202}\) In light of the volatile security situation in general and the particular protection risks for third-country nationals (including detention in substandard conditions, and reports of serious abuses against asylum-seekers, refugees and migrants),\(^{203}\) UNHCR does not consider that Libya meets the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea.\(^{204}\) The proposed establishment of a Gathering and Departure Facility as an alternative to detention does not change UNHCR’s position that Libya cannot be designated as a place of safety for the purpose of disembarkation, noting also that all individuals transferring through this facility would have to be evacuated from Libya for protection-related reasons, although this may not be an option for all.

Updating and Review

43. UNHCR’s position will be reviewed as the situation evolves and will be updated as necessary.


\(^{203}\) See above paras 19 and 21.

\(^{204}\) Non-refoulement obligations also apply in relation to Libyan nationals and former habitual residents of Libya intercepted / rescued at sea.