

NIGER\_ MISSION JUNE 2019

From 14 to 19 June the partners ASGI Cristina Laura Cecchini, Giulia Crescini and Alberto Guariso and the cultural mediator Tsegehans Weldeslassie with the support of the associations "Spazi Circolari" and IndieWatch have made a second legal survey in Niamey, Niger, in order to follow up what they have already verified and described during the survey of November 2018.

As per ONGs, institutional subjects and the non-governmental organisations met on November 2018, we invite you to read again the report related to the first survey (attached hereby); as per the criminalization of the transit processes toward Libya and within the border of Niger, and the ETM and Resettlement proceeding of refugees from Libya to Niger, till the European countries, we suggest you to read again the two documents already published on the ASGI's website, at the following link:

<https://www.asgi.it/asilo-e-protezione-internazionale/niger-libiia-esternalizzazione/>.

The second survey had the target to update the relationships and information related mostly to the evacuation proceeding from Libya and to the resettlement from Niger (ETM) through interviews with institutional subjects and foreign citizens, in particular Eritrean involved in the proceedings.

Particularly, we tried to have more information in relation to the delays in the Resettlement's proceedings of people evacuated from Libya; the value; the knowability; the possibility to appeal the UNHCR opinion in order to access the resettlement procedure; the reception conditions of the new centre for refugees and asylum seekers; and the possibility, for the victims of trafficking, to accede the asylum proceeding.

### ***Interviews with the Eritrean citizens evacuated from Libya waiting for the determination of the asylum application***

The first two days of interviews have been, almost entirely, dedicated to the collection of the stories of those Eritrean citizens who have been evacuated from Libya and are now waiting for a year for the determination of their asylum request from the Nigerian Government. We interviewed 8 persons who have told us that they have been evacuated from Libya **in early 2018** (when the ETM programme had just begun) from the Libyan Governmental centres, and the majority of them came from the centre of Tarek Al Matar, Tripoli. They told us that some of them, after having escaped from official or unofficial centres **contacted UNHCR Libya. UNHCR Libya has brought them to the detention centres**, considered safe place for escaping the conflict, from which some of them were given access to the ETM programme. **In particular, the centre of Tarek al Matar has been for the people interviewed the last centre of detention before the evacuation**; the living conditions therein are described as

particularly severe: the guards are extremely violent, the food is very limited and it is overcrowded. People interviewed told us that the Libyan authorities to decide and select those to be released **on the basis of their nationality**. All the people interviewed have confirmed us to be reassured by UNHCR that the transit in Niger **would have lasted 3 months after which they would have been transferred in Europe**. On the basis of this information, the people interviewed have agreed to be brought in Niger; indeed many of them have told us that if they had known that the Niger could become a destination country, they would have assessed with more attention their transfer. In particular for the Eritrean, travelling for long time, **the Niger is a country outside the conventional route**; hence in case of block, the possibility to come back in Libya through informal transit route is extremely difficult and dangerous.

**People travel from Libya with a travel document** (we have already seen a travel document released by the International Red Cross) **and with the document released by UNHCR** which certifies the quality of asylum seeker. UNHCR also asks to the authorities to work in order to permit the access to the services as well as to protect from expulsions in the country of origin (attached copy of the documents). Alike, owners of a document for asylum seekers are those who are waiting in Niger for the asylum recognition or the resettlement.

During these months of staying in Niger, the interviewed Eritrean told us **to have been heard by UNHCR several times**, often with interpreters connected only by telephone, **without ever having received minutes of the statements made**. During the interviews with UNHCR, they have talked about their story, escape, travel, but also of the actions taken during the military service, of their role in the army and of the type of weapons used.

Many of the people met did not have a document by which it was possible to understand the status of procedure, the possible hostility to the recognition of the asylum right or the possible existence of a negative opinion on the resettlement. Such situation of total lack of documents and written information leads to: great disorientation, incapacity of protecting their own rights and of understanding if there is an effective risk of not being included among those who would be given access to the resettlement in Europe, USA or Canada. We have noticed that such situation creates a subjective condition of absolute despair related to the fact they remain in the Nigerian territory and have to restart the travel with less logistical and organisational resources.

In relation to the delays in the procedure's definition, it has emerged that many Eritreans, who have been waiting for more than one year, contacted continuously UNHCR members, **who have evidenced that such delays and problems should be attributed to the Nigerian Commission for Eligibility or to the necessity of further investigations**. Because of these explanations, - considered inadequate - and the very fast departure of other refugees arrived many months later, **some Eritrean, Somali and Ethiopian citizens have set up a committee and have manifested** in front of the UNHCR headquarter, the French and American embassies **to claim their right to be transferred in safe third countries** and their right to

know the actual status of their request. Hence, they have spread a press release (attached in the document) in which they identify the reasons of such delay and **ask to UNHCR more incisive and respectful actions in order to protect their asylum right**. In particular in the press release, it is assumed that the delays may depend on the age of Eritrean citizens. Indeed, very often they are soldiers for many years, unlike the younger, minors or under twenty who escaped before beginning the military service and consequently could be more easily accepted by third European countries. **They ask to UNHCR to remove these discriminatory practices against those who, escaped after years of military service**, older and with more family responsibilities, would be as entitled as the younger ones to reach safely the Europe, after being transferred from Libya to Niger.

***Interview with the responsible for the protection and assistance division of the Nigerian National Commission which assesses the asylum applications***

Through this interview, it has been possible to further investigate **the assessment procedure concerning the international protection requests and the appeal proceedings in case of rejection**. The Commissioner has pointed out that the asylum seekers evacuated from Libya, in the context of the resettlement proceeding, **are always heard by UNHCR**. Following the interview (which can also be repeated several times for more insights) **UNHCR prepares the file** which is transmitted to the Commission for Eligibility, together with a positive or negative opinion to the recognition itself. **The Commission afterwards decides independently both on the basis of the UNHCR's investigations and considering the opinion given by the same**. In case of positive recognition, the applicant is a refugee for the Republic of Niger and in case of UNHCR positive opinion, he could access the resettlement mechanism. **The duration of the proceeding on the assessment of the asylum request depends on the speed with which UNHCR prepares the file for the Commission**. The Nigerian asylum system recognises as holders of a protection right **only those who fall within the category of refugee listed by the Geneva Convention**; however the legislative procedure aimed to discuss and approve a new normative on asylum which includes a protection similar to the **subsidiary protection**, is ongoing

**The Commission for Eligibility can also reject the protection request**. It has been possible to understand that the rejections issued - at least until now - depends on the lack of **credibility or vagueness** of the information collected; in case of application of a **clause of exclusion of protection**, as set out in the Geneva Convention, it may depend on nationalities, such as Somalia where the area of provenance of the applicant assumes relevance (e.g. for those who come from Somaliland).

In case of asylum seekers in the context of ETM project, **the procedure notification is sent by UNHCR**. In this case **the negative decision is suspended and the applicant can appeal** through an administrative procedure without the necessary technical assistance. In this case,

the grounds for the appeal are discussed by the committee which analyses the request again. Even in this case, the hearing is potential. **Sometimes the applicants are helped by UNHCR to write up memoirs and to go deeper into the aspects of story.** In case of rejection of the administrative appeal too, it is possible to refer to the **Administrative Supreme Court.**

The Commission reports that sometimes, in case of a positive opinion by UNHCR and a rejection of the Nigerian Commission while the appeal is pending, **some asylum seekers have been recognised as refugees for mandate by UNHCR and included in the resettlement proceeding,** in some cases even **before** the Commission's examination.

It is confirmed that the **UNHCR's opinion** released at first instance of the proceeding but potentially revisable in the second one, allows - only if positive - the recognised refugee to access the resettlement. **The interested parties can never access the content of the opinion, the minutes of the interview and the reasons supporting the decision,** neither in accordance with the Nigerian law which recognises the access to documents. The documents related to the asylum application are subject to strict confidentiality and the interested parties have exclusively access to the decision of rejection or recognition. **The decision is issued only in French and there is no translation.**

In case of rejection of the recognition of protection in last instance, the foreign citizen can go to the immigration office where he can claim the release of a residence permit if certain requirements are satisfied.

Alongside the recognition of protection proceeding, already seen, and hereby detailed, for those who arrive in Niger via the ETM proceeding (or when reported by IOM within the agreement IOM-UNHCR-NIGER), **the Nigerian Commission also deals with the asylum requests presented by asylum seekers who are already present in the territory. Moreover it deals with applications submitted by Sudanese citizens who are in the UNHCR camps in Agadez** who, if recognised as refugees, may access, from few months, the resettlement proceeding.

According to the statistics of the Nigerian Commission for Eligibility, during 2018 **416 requests have been examined in the context of the ETM proceeding** with positive result for 341 requests, and **75 rejections**, of which 21 appeals. On December 2018 only one rejection has been notified, the others have been notified over the course of the next few months. **In almost all cases the Nigerian Commission has complied with the UNHCR opinion.** As for 2019, decisions on the asylum requests have not yet been taken; 15 cases are ready to be decided, it is not known how many cases are in the preparatory stage from UNHCR. The majority of the rejections have been notified to Somali citizens, only one to an Eritrean citizen.

**During 2018, 14 foreign citizens have required asylum outside the ETM proceeding,** of which 8 have been accepted; 30 asylum requests have been presented during the first half of

2019, 9 of which have been rejected and the other 31 are ready for the discussion and the decision. In these proceedings, outside the ETM, the UNHCR presence is not request in any phase. The rejections have been addressed to asylum seekers came from Liberia, Ethiopia, Libya, Europe, Sudan, Ghana and Cameroun.

Moreover to the Commission is now entrusted for the assessment of the asylum requests presented by Sudanese citizens present in Agadez and hosted in the UNHCR camps. During 2018, 7 requests have been presented and examined, 6 of which with positive result. **As for 2019, it is expected that at least 200 cases will be presented.**

***Interview with UNHCR NIGER and Commission for Eligibility: focus on Sudanese cases***

In addition to what already reported, during the last survey **the situation has extremely changed for the Sudanese citizens**, who have independently turned to UNHCR in order to present their asylum requests and access the resettlement proceeding. After an initial moment where the Sudanese citizens **have been informally excluded from the resettlement proceeding**, in a second moment they **have been admitted to the submission of the asylum request and to the possibility of resettlement**. The Sudanese citizens often come back from Libya autonomously and are hosted in the UNHCR centres in the north of the country, precisely in the city of Agadez. These centres are described by journalists as in particularly degrading conditions. **Some of them, the most vulnerable - in particular single women and foreign unaccompanied minors - are transferred to Niamey.**

At least 200 persons have been admitted to the assessment of the asylum request and such assessment is carried out by **a team set up within the Nigerian Commission**, where UNHCR does not participate.

Moreover, we have been informed that several dozens of Sudanese citizens are, who are recognised refugees by Chad now settled in a building made available by UNHCR in Niamey. From the interview with UNHCR it emerged that **some of them would go back to Chad**, while others carry out activities in Niger and would access the resettlement. Demonstrations and protest have been organised.

***Interview with UNHCR on the ETM proceeding with focus on negative opinion, delays in the procedure, exclusion from resettlement, reception conditions, referral of IOM***

Two interviews with UNHCR have been made, where various issues have been examined, including reception conditions of evacuated people, timing for transfer, the legal basis for the positive or negative opinion and the possibility to appeal against it, questions related to the referral proceeding of people who enter into contact with IOM.

As an update to the previous survey, **it should be noted that the collaboration with IOM has significantly improved.** UNHCR cooperates with IOM to the referral of people rescued in the desert or who are in the centres of IOM and could be recognised worthy of protection. **The Nigerian victims of trafficking do not seem to be ever referred to UNHCR** as asylum seekers, neither they have been identified as potential refugees to be included in the ETM programme. In Libya, the Nigerians are not included among the citizens who can be contacted by UNHCR, while in the centres of IOM, the Nigerian women citizens, victims of trafficking, do not manifest their will to seek asylum so they are not included in the resettlement programme. UNHCR indeed points out that the asylum application is personal and it cannot be induced. **However, it is not clear if the Nigerian women citizens are made aware of the possibility to seek asylum or if it is only told them – in Niger as well as in Libya –about the possibility to access the voluntary return.** At the moment, in any case, there have been no Nigerian victims of trafficking who have asked to UNHCR to access the asylum request. Indeed in that case they would have been included in the programme and potentially resettled.

Furthermore, it has been discussed about **many Eritrean citizens**, who after having been evacuated from Libya, have been for more than one year in Niger, since a decision about their asylum request has not been issued yet. We tried to investigate with particular reference to the **negative opinion** given by UNHCR on the assessment of the asylum request. Indeed if such opinion, once given, was no longer editable, the immediate consequence would be that the asylum seekers would not have access to the resettlement anymore. The existence and knowability of the negative opinion are therefore fundamental elements, whereas the majority of people evacuated from Libya consider Niger only as a transit country. Hence, a negative decision of access to resettlement has direct impact on the most important expectation of those evacuated from Libya. In fact, the latter do not have interest in receiving refuge in Niger, **since they want to safely reach European Union countries.** However, from the interview made with UNHCR, it has not been possible to obtain clear information in relation to the legal effects of the opinion released, to the casuistry, to the numbers of the same: on one hand it seems that **the opinion can always be amended** by UNHCR, even during the appeal, on the basis of further elements collected; on the other hand **the asylum seeker and the refugee can never be made aware of existence of the that opinion**, thus he always remains in a state of limbo and uncertainty on the possibility to access the resettlement.

As for negative opinion cases, based on the information received, these relate to citizens who, because of the **long stay in the military service** –as example the Eritreans – or for the **conduct held in Libya, could have committed serious crimes.** By including these subjects in the resettlement programme, the consequence could be to **impact the asylum space**, that as claimed by UNHCR, it must remain a "pure" asylum space, not extendible to those subjects whose previous conduct could give the impression, based on a prognostic judgement, that the same in the future could be bearers of criminal conducts. Including these subjects in the asylum space and transferring them in third countries as refugees **could even discredit and degrade all the resettlement and ETM programmes.**

Such statements have made us reflect on the possibility that the negative opinion is given not only to those who fall within the clauses of protection exclusion, but even to subjects that, on the basis of a prognostic assessment, **could not be acceptable to third countries**, or that could hold dangerous conducts in the future against the host communities. In any case, such prospects seem to be affected by respect for the asylum right and by the UNHCR mandate to protect the refugees, since such valuations go beyond the protection instances; on the contrary it appears that UNHCR is selecting the refugees on behalf of the third countries which should ultimately choose between refugee population already assessed and pre-selected. Indeed there is a doubt that such subjects who receive a negative opinion by UNHCR also outside the cases of clauses of protection exclusion listed in the Geneva Convention, could have been granted the recognition of protection if they had reached the European Union countries autonomously and asked asylum to the European authorities directly.

Moreover, as for those who have already obtained the status, some Countries (in particular France and Canada) carry out further assessment interview on site in order to decide whether to accept one refugee or the other. Although this is a different aspect from the one just reported, the element of "selection" by the third countries is in any case emphasised.

In addition to the above, we understand that UNHCR, in order to avoid the evacuation of refugees and asylum seekers who could not be resettled, has built a centre in Tripoli where **safely assessing the request of protection of those citizens got away from the detention centres before deciding on their transfer**. Such *iter* could find, however, resistance from Libyan authorities who require that all the people authorised to leave the detention centres, are later transferred in Niger or other Countries.

Indeed, UNHCR is arranging transfers from Niger and Libya **of asylum seekers out of the resettlement programme** thus independently from their recognition as refugees, among these Countries there is Italy.

Moreover it has been discussed about the reception conditions of refugees and asylum seekers evacuated from Libya. Firstly, they have been hosted in houses in the capital Niamey, while for some months at least 900 persons have been transferred to the camp of Hamdallaye approx. 40 km from Niamey. We have not visited the camp because of the lack of authorisations: on the conditions of the camp, the UNHCR opinions (which insists mostly on the upcoming construction of a football camp curated by *Fondazione Milan* and other sport equipment) and those of seekers already hosted there (who have referred conditions very precarious both for accommodation and for dining) are extremely different.

***Interviews with the staff of the Minister of Justice and with the Director General of the National Agency of Fighting Trafficking in Human Beings (ANLTP)***

As for the relation between trafficking and asylum, it has been noted that the identification as trafficking victim does not assume any relevance on the decision concerning the request of

protection. The trafficking victim can submit the asylum request and be addressed to UNHCR, or can access the protection system in Niger, or in the end can require to return to the country of origin hence to be addressed to IOM.

At the moment, the Minister has only agreements with associations which run houses of protection, however shortly an halfway house for 40 women victims of trafficking and exploitation should open and it should be run directly by the Nigerian Government.

A number particularly high of women victims of trafficking are minors and, in case of tracking down on the territory, they are channelled into social services that enter into contact with the family of origin, and their assisted return is organised.

**Many of the trafficking victims are intended for labour exploitation.** We have been told about cases of Togolese minor girls found in conditions of absolute slavery (i.e. in chains etc) that would have had significant impact on the Nigerian media and for whom the service has organised the return to their families of origin in Togo.

**With specific focus on Nigerian citizens,** it is reported that the risk of re-victimization in case of return on the country of origin is very high. Niger is not a country where women can find a solution of durable protection, since the possibility of their ongoing and systematic exploitation is high. **The solution considered is to transfer them in another African country, among others Burkina Faso,** but this is the Director's personal opinion, that so far has not been implemented.