

EXTERNALISATION OF BORDERS

detention practices and denial of the right to asylum

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Conditional refugees: resettlement as a condition to exist

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I examine the experiences of refugees, asylum-seekers and migrants in Libya and try to challenge the notion of international protection both from a legal perspective and in the context of EU externalisation migration policy. I will provide an analysis of the existing cooperation between the EU and Libya and the role of UNHCR, the UN Refugee Agency, while raising awareness on the risk and fear that this cooperation is guided primarily by a desire to prevent the flow of people into the EU, regardless of their protection needs. What's the legal framework relating to refugees and migrants in Libya and how does this affect people's experiences in the country? How can UNHCR provide protection?

Transforming a country like Libya into what the EU wants to call a safe country of asylum is very controversial. Access to international protection in Libya is an illusion because no organisation, including UNHCR, the UN Refugee Agency guarantees an effective asylum procedure, making choices that appear completely arbitrary. In Libya, there is no right to asylum; refugee status is an illusion that is determined on the basis of criteria such as nationality. The paradox is that the EU is asking a country like Libya, that is at war, to Libyan authorities that are actively involved in the conflict, to manage people in a system of arbitrary detention, where they are exposed to a range of human rights abuses, including but not limited to degrading living conditions, repeated extortion, sexual and other exploitation, and torture. Many detention centres, particularly in Tripoli, continue to be located in or near conflict areas. Some are in militarised zones or near military compounds, increasing the likelihood that they could be hit, killing or severely wounding the refugees and migrants who are trapped within. Previous incidents where this has already happened include:

- 26 April 2019: Refugees and migrants in Qasr Bin Gashir detention centre are shot at and injured. At the time, over 700 unarmed men, women and children were trapped there.
- 7 May 2019: The Tajoura detention centre is hit by a shell. It lands less than 100 metres from where women and children are sleeping. Shrapnel sprays the women's shelter with one infant nearly hit by the blast.

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- 3 July 2019: The Tajoura detention centre, which housed almost 600 people, is hit by two airstrikes, killing 53 people and injuring approximately 130 others.
- October 2019: As the conflict outside intensified, over 400 detainees fled the Abusalim detention centre to seek refuge in the UNHCR gathering and departure facility (GDF) in the hope that they would be evacuated or resettled.

Libyan law considers asylum-seekers and refugees as illegal migrants and arbitrary detention in life-threatening conditions is widespread, with frequent allegations of torture. The legal basis for detaining migrants is Law 19 of 2010, which gives a judge the authority to do whatever is deemed fit in the case of illegal migrants. However, this would have to be determined by a court decision where the migrant appears before a judge, which almost never happens in Libya today. Libya is not a signatory to the 1951 Refugee Convention. The 1951 Convention relating to the Status of Refugees (hereafter the UN Refugee Convention) and its 1967 Protocol are the key legal documents defining who is a refugee, setting out their rights and stipulating the legal obligations of states towards refugees. In the absence of a national asylum system, registration, documentation activities and refugee status determination procedures are carried out by UNHCR. Libya hosts 48,626 refugees and asylum-seekers who are registered with UNHCR¹. The UN refugee agency is currently registering individuals of the following nationalities: Iraqi, Syrian, Palestinian, Eritrean, Ethiopian, Somali, Sudanese, South Sudanese and Yemeni. Only 221 people are currently registered with UNHCR from other nationalities, only 0.5% of the total. Until recently, UNHCR said the Libyan authorities had only allowed it to register people from nine countries for refugee status, but Libya's Undersecretary of the Ministry of Interior for Migration, Mohammed Al-Shibani, said that on the contrary the Libyan government is not refusing to register other nationalities. "The nationalities are determined by the UN not by us," he said in an interview I conducted in September 2019 in Tripoli.²

According to the UNHCR, registration is an important tool in ensuring the integrity of refugee protection systems & preventing fraud, corruption and crime, including trafficking. Registration is a right for asylum seekers and refugees wherever they are, but in Libya there are two main problems: being registered does not offer any form of protection and registration only applies to certain nationalities. Moreover, in Libya, in detention centres, I could witness UNHCR can only give a plastified slip of paper as registration proof. UNHCR has insisted that they are not authorised to give anything else to asylum seekers or refugees, as the authorities are opposed to UNHCR providing proper documentation. In spite of having ratified the 1969 OAU Convention relating to refugees³, Libyan authorities do not consider itself as a country of asylum. As a consequence the refugees recognized by UNHCR do not enjoy asylum in Libya. UNHCR access to detention centers and assistance is unpredictable and the level of assistance is below all norms and standards. The picture below was taken last september in Tarik Al-Sikka detention center in Tripoli.

¹ <https://data2.unhcr.org/en/country/lby>

² <https://www.euronews.com/2019/10/03/unhcr-in-libya-part-3-former-staffer-blows-whistle-on-favouritism-and-culture-of-impunity>

³ <https://www.unhcr.org/about-us/background/45dc1a682/oau-convention-governing-specific-aspects-refugee-problems-africa-adopted.html>



John - Eritrean in the picture - has been detained in Tarik Al-Sikka Detention Center for more than 2 years. He has only received a piece of paper from UNHCR with his registration number. The center was also renovated with the support of the Italian Agency for Cooperation and Development (AICS). The center is formally under the control of the Directorate for Combating Illegal Migration (DCIM) and some of the people held inside have been detained for over 2 years. “Some Ethiopian and

Somali in this centre [Tarik Al-Sikka, controlled by a pro-government militia] remained for two years here. After a period of 1-2 years, UNHCR informed them that they were refused and not allowed to be resettled”, Captain Abdelnaser Ezam, vice president of Tripoli’s branch of the Ministry of the Interior, Government of National Accord (GNA) told me in Tripoli. “During the last period, we had a Somali person waiting for two years here. Then, the employers of UNHCR came and informed him that he refused to be resettled. The result: he suicided by burning himself and died after 2 days in intensive care in the hospital. This is the result of depression hit the immigrants because the immigrants believe that when they register for UNHCR and make an interview, directly he will be accepted and have the resettlement”. The Somali migrant was called Abdulaziz, he was 28 when he died, in October 2018.

The UN refugees agency, largely funded by the EU, is operating in the country without a memorandum of understanding, but according to the EU, it has established alternatives to the arbitrary



detention system and is the UN organisation which has the right and the capacity to identify potential refugees eligible for possible resettlements operations. One of the flagship initiatives of the organisation in Libya - so called ‘alternative to detention’ - is the Gathering and Departure Facility in Tripoli, now completely collapsed, and transformed into a military facility, managed by the Directorate for Combating Illegal Migration (DCIM).

The Gathering and Departure Facility (GDF) was opened in late 2018 after international donors pitched in \$6 million; the hope was that the GDF could serve as a well-ordered waystation for people about to leave the war-torn country through resettlement to another country, family reunification, or by other means. The GDF is just across the street from The Tarik al-Sikka detention centre, and some people have allegedly paid guards to pass between the two facilities, in order to facilitate their resettlement. UNHCR press release issued in late 2018 said the then-new GDF was a place to “bring vulnerable refugees to a safe environment while solutions including refugee resettlement, family reunification, evacuation to emergency facilities in other countries, return to a country of previous asylum, and voluntary repatriation are sought for them”. The EU, which has supported the Emergency Transit Mechanism (ETM), a pilot program sponsored by the UN Refugee Agency (UNHCR), managed to evacuate a limited number of refugees and asylum seekers from detention centers in

Libya to Niger, Rwanda or directly to EU countries. The first evacuation flight took place on the 11th of November 2017. To date, the UNHCR has evacuated 4,250 refugees and asylum-seekers out of Libya to other countries since 2017. According to multiple sources who worked in Libya's aid operation, all of whom requested anonymity, physical and administrative control of the GDF has largely been dictated by local authorities, and occasionally the militias that back them and provide armed security. UNHCR's Special Envoy for the Central Mediterranean Situation Vincent Cochetel has confirmed me during an interview that prostitution was also happening in the center and that the agency had limited choice in who it would work with in the GDF, and which firms to contract for services. It's "costing us enormous amounts of money; we cannot choose the partners", he said. "We pay for food four times the level we should be paying." More and more people sought help at the GDF, and by November 2019, UNHCR said it could no longer help or protect the people inside. In the meanwhile, UNHCR had refused or failed to admit extremely vulnerable cases of refugees into the GDF, simply for not being booked for evacuation. Again, how is the GDF considered as a protection toll and how people are identified for evacuation or resettlement? If GDF was used as an alternative to detention, UNHCR should have welcomed former detainees indiscriminately rather than moving only those scheduled to leave in a few days, particularly when the government doesn't object to such self move.

In a controversial move, UNHCR began telling people they would "not be considered for evacuation or resettlement"⁴ if they stayed in the GDF, alongside offering money and other aid if they leave. The reality is that calling a place in Tripoli "departure facility" has attracted a lot of asylum seekers and migrants searching for solutions or even registration. To fix its own mess, UNHCR shamelessly has violated its own mandate and has deceived people by denying their rights, offering them silly packages with no foreseeable durable and sustainable solution. Asylum seekers should be considered asylum seekers and can't be denied the right to seek asylum on the basis of their stay at the GDF, unlike the explicit threat made by UNHCR in the note given to refugees, to force them to leave. At the end of January, the UN's refugee agency announced it was suspending work in the GDF due to fears over the centre's safety amid Libya's escalating conflict. As I have reported in my previous article, according to one UNHCR staff member in Tripoli, who requested to remain anonymous because they were not authorised to speak about the sensitive subject, the facility had increasingly been seen as tarnishing the agency's reputation. "Some want to shut down the GDF project and end this chapter of wasted resources," the source said.⁵

Since the signature of the Memorandum of Understanding between Italy and Libya in 2017, around 40,000 people have been intercepted at sea and brought back to Libya. The MoU established a framework for cooperation between Libya and Italy "in the development sector, combating illegal immigration, human trafficking and contraband, and strengthening border security". However, despite much fanfare, the MoU is largely a political symbol – and should be treated as such. The solutions proposed to those who may not be evacuated or resettled, although deemed in need of international protection, are against UNHCR mandate and policy guidelines. I.e. only two options are available either to return to their country of origin or the country of first asylum. If Libya is a country of first asylum, this is interpreted in offering refugees one option which is return to country of origin, where as the mere fact such refugees have been recognised as in need of international protection

⁴ <https://www.thenewhumanitarian.org/investigation/2019/12/10/UN-migrants-Libya-transit-centre-project>

⁵ <https://www.thenewhumanitarian.org/news/2020/01/31/Libya-refugees-UNHCR-Tripoli>

means they can't be safe back home and their return should not be promoted, which UNHCR is doing by making it the only viable option for recognised refugees in Libya who have not been prioritised for evacuation or resettlement. This is forcing or at least inducing, return not meeting the voluntary condition. To conclude, the modus operandi of UNHCR in Libya is suggesting that there is no clear criteria applied by the operation to identify and prioritise people for evacuation. According to a former UNHCR staff, It's a general attitude not to answer refugees and keep them blind to avoid more requests. "They receive very little information about their file and most of the time, no proper update about the process, or in case they have to appeal if their request has been rejected". A lot of questions are raised on how integral the all process is.

