

The Emergency Transit Mechanism (ETM) programme from Libya to Niger: an update as of December 2021

As is well known, in late 2017 UNHCR approved an evacuation and resettlement plan allowing asylum seekers and refugees in Libya to gain access to tangible forms of protection and to the so-called “durable solutions”.

For this reason, in December of the same year UNHCR signed a [Memorandum of Understanding](#) with Niger, whereby Niger agreed to host people evacuated from Libya according to certain parameters, i.e. receiving a maximum of 600 people at a time and permission for each person to reside in Niger for a maximum of six months. In the intentions of the government of Niger, the number of people authorised to enter Niger should always match the number of people leaving the country, otherwise entries would be stopped immediately.

The Memorandum was extended on 20th February 2020 for another two years. The renewed Memorandum is essentially identical to the previous one. The procedures were not changed and the number of potential refugees that can be evacuated from Libya and received in Niger remained unchanged at 600 people. This limit was set by the government of Niger, which insists that it cannot be increased because this would violate the above described intentions.

Article 5 of the first Memorandum provided for the creation of a Technical Committee with the task of ensuring a coordinated implementation of the Memorandum’s provisions. The Minister of Interior, Public Security, Decentralization and Customary and Religious Affairs, acting in concert with the Directorate General of Civil Status, Migration and Refugees, established the Technical Committee with [Ordinance No. 243 of 12th April 2018](#) to supervise and coordinate the work of the parties for better implementation of the Memorandum itself. The new Memorandum signed in February 2020 expressly refers to this Committee.

This Committee is now composed of

- a President, i.e. the Vice Secretary General of the Ministry of Interior, Public Security, Decentralization and Customary and Religious Affairs;
- a Vice President, i.e. the Director General of Civil Status, Migration and Refugees;
- a first rapporteur who will always be the Director for Refugees at the Directorate General of Civil Status, Migration and Refugees;
- a second rapporteur chosen among the representatives of the United Nations High Commissioner for Refugees (UNHCR) in Niger.

Seven more chosen members were added to those listed above:

- a representative of the Prime Minister’s Office;
- a representative of the Ministry of Foreign Affairs, Cooperation, African Integration and Nigeriens Abroad;
- a representative of the Ministry of Humanitarian Action and Disaster Management;
- a representative of the Directorate General of Civil Protection; a representative of the Directorate of Public Security (DSP); and
- a representative of the Directorate of Territorial Surveillance (DST);
- a representative of the United Nations High Commissioner for Refugees (UNHCR) in Niger.

Apart from this minor change, both the Memorandum’s content and procedure remained unaltered.

A [previous report](#) drawn up by ASGI following the first ASGI delegation’s visits to Niger in 2018 described and analysed in depth the operation of the ETM. Very briefly, the procedure is still the same. First, evacuees are selected by UNHCR in Libya among the population identified under Article

3 of the Memorandum¹; then UNHCR staff prepares their dossiers and submits them to Nigerien authorities, who will either approve or reject them. In case of approval, the Nigerien authorities prepare the documentation necessary to travel and to ensure that evacuees from Libya enter Niger legally.

Travel and reception of asylum seekers is organised and managed, also financially, by UNHCR. Once the asylum seekers arrive in Niger, they are hosted in the Hamdallaye camp, 40 km outside of the capital Niamey, which was opened in May 2019. Only a few evacuees with medical or psychological vulnerabilities are hosted, for limited periods of time, in transit houses managed by COOPI in Niamey.

UNHCR prepares dossiers to be submitted to the National Eligibility Commission tasked with refugee status determination according to Nigerian legislation. In these dossiers UNHCR gives its opinion, either positive or negative, on each individual case. This opinion is a necessary condition to gain access to resettlement programmes in other countries. The Eligibility Commission hardly ever disregards the UNHCR's opinion.

During its December 2021 visit to Niamey, the ASGI delegation met with five refugees from Eritrea and it interviewed a member of the National Eligibility Commission, IOM and UNHCR staff operating in Niamey, the COOPI Head of Mission and a migrants' rights lawyer in Niger. The aim of these interviews was to gain an overall view of what evacuees from Libya actually went through during the four years since the implementation of the Memorandum. The resulting picture does not differ tangibly from the findings of the first report mentioned above and its later update of 2019. The processing of applications is very slow and it certainly exceeds the six-month time-limit laid down in the Memorandum, which considerably reduces arrivals and evacuations from Libya.

According to UNHCR staff, only 1% of asylum seekers evacuated from Libya obtain refugee status. Once the rejection has become final, migrants are informed that they can gain access to Assisted Voluntary Return through IOM and regularise their residence in Niger under the country's legislation. Given Niger's precarious social and economic situation, this is obviously a complex course of action also because it is not tangibly supported by any organisation. If foreigners evacuated from Libya have their applications for refugee status rejected and do not sign up for AVR, they are left to themselves without any backup.

There is another problem affecting those who have been recognised as refugees by UNHCR and by the Nigerien authorities, but cannot get access to resettlement programmes because requested countries reject resettlement submissions they receive from UNHCR. As pointed out by UNHCR staff during interviews, "resettlement is not a right". UNHCR has signed agreements with a number of countries for the Memorandum's implementation and supports in its dossiers the resettlement of individuals who have been recognised as refugees in Niger; however each state has a wide margin of discretion in deciding who should or should not be accepted.

If their resettlement is rejected, UNHCR may, according to the circumstances, decide to go for a review of the decision in the same country or submit the same dossier to another country. There is no limit to the number of countries that can be requested to consider a resettlement submission but each time UNHCR must inform the requested country if the applicant's request has been rejected by other countries, which reduces the chances of the application being successful in another State.

Requested countries are always chosen by UNHCR according to criteria stated by the countries themselves. In other words, the first requested country is where, according to UNHCR, a certain refugee is most likely to be accepted. Once that country has rejected the application, the road to

¹ Refugees recognised by UNHCR under its mandate in Libya, asylum seekers already registered by UNHCR in Libya, stateless persons or persons at risk of statelessness and family members of the above categories.

resettlement in other countries inevitably becomes more difficult.

There is no uniform examination procedure of dossiers in different States; some only examine the documentation gathered and submitted by UNHCR, others conduct one or more interviews through their officials, either online or face-to-face.

Likewise, there is no uniform rejection procedure. Not all the States participating in resettlement programmes provide a written decision and/or explain the reasons for making a rejection decision. In some cases, they simply reply to the request made by UNHCR by listing the names of those who have been accepted and those rejected, without giving any reasons for their decision. Where the requested country does not reply in writing, applicants are not issued with any documentation even by UNHCR which simply informs them accordingly and offers general counselling on future options.

UNHCR provides requested resettlement countries with a dossier composed of a standard form divided into three sections: the first section contains information on arrival and registration, including a life history and an account of family life; the second section is focused on the reasons why the applicant fled his country and the risks of his return; the third section lists vulnerabilities.

Countries participating in resettlement programmes may also have specific requirements and may wish to examine the dossier in greater detail or collect biometric data, unless they have already been provided, for the purpose of security screening.

Those who are unable to be admitted to resettlement remain in Niger in a UNHCR camp with a fully recognised status but with quite different prospects than those presented in Libya when signing up for the ETM programme.

UNHCR was unable to provide procedural time limits and explained that the uncertainty of processing times was due to a number of factors, including the situation in Libya, the COVID-19 pandemic and the timescales of the various requested countries.

As for the criteria used for selecting evacuees from Libya, answers were always vague and elusive and referred to the use of two main criteria: first, whether the potential evacuees had already been registered by UNHCR as protection seekers in Libya and secondly, whether they were considered vulnerable. We were unable to understand tangibly how evacuees are actually identified within the general category of asylum seekers registered as vulnerable, given the low numbers of participants in the ETM programme. In any case, it would seem that a first assessment of the real chances of resettlement after recognition of refugee status already takes place in Libya and this is one of the criteria used to select evacuees.

Every time questions were asked about Nigerian women victims of trafficking, a vulnerable category *par excellence*, the answers were vague and the matter was always referred to UNHCR staff in Libya. As already mentioned, during its visit to Niamey the ASGI delegation met up with five Eritrean citizens who had been evacuated from Libya in early 2018 and since then stuck in different stages of the procedure in Niger. Three of them were transferred to the Hamdallaye camp after it was opened in May 2019 where they have been stuck ever since. They told us that hygienic conditions are very poor and precarious. During the rainy season, tents do not hold up and they were expressly instructed to leave them for their own safety but, conversely, they were not provided with alternative shelter.

All interviewees met with UNHCR in Libya in the detention camps of Tarek Al Mattar, Tripoli or Misrata where they were registered for access to the ETM programme. When they decided to accept evacuation and on the basis of the information they were given they would never have thought that they would be stuck in Niger for almost four years or even run the risk of having to settle down there.

Three of them were recognised as refugees in Niger between late 2019 and early 2020 and since then they have been waiting for resettlement. Two of them were refused resettlement to Canada because of their age and because they had spent some time in the Eritrean army, another one was rejected also by Sweden but was not handed any written document². Canada seems to be one of the few countries to provide individual, written and reasoned rejection letters, although its decisions cannot be appealed in any way.

One of the applicants interviewed was hosted with his wife and two small children, one born in Libya and one in Niger, in one of COOPI's transit houses in Niamey for vulnerable people with mental health problems. His wife had suffered a lot in Libya and giving birth to two children and living in precarious conditions had worsened her depression. Because of her mental condition they could not live in the Hamdallaye camp. This woman had never had a personal interview with UNHCR or other bodies. Only her husband was interviewed but his story sounded unclear in some parts and he received a first negative decision from the Eligibility Commission. He appealed against the decision in the hope that he could clarify the doubts which had emerged during the first instance procedure. However, a decision on his appeal has been pending for months now. One more applicant told us that he brought an appeal over a year ago and is still waiting for the outcome.

In general, all applicants report events occurring in Niger in a confused manner. The long, monotonous days, months and years they spend in the country, without work or practical things to do, combined with a lack of reliable information makes it hard for them to reconstruct accurately what they have lived through so far. In particular, all the interviewees give the impression that after the first two years of the MoU's operation, from 2020 onwards everything has been sort of suspended and slowed down. The information they receive is scarce and fragmented and often proven to be inaccurate by later events.

Even a COOPI representative underlined in his interview that during the first years of implementation of the Memorandum the ETM really seemed to be an innovative instrument with great potential but at present it has become one of the many UNHCR projects, which further reduces the already limited scope that this project has had from the beginning.

According to UNHCR staff, in the last year the average number of people participating in the ETM programme in Niger, hosted either in the Hamdallaye camp or in transit houses managed by COOPI in Niamey, was around 360. The COOPI representative explained that transit houses can accommodate up to 400 people, while the Hamdallaye camp originally had a capacity of 1,500 people.

Arrivals have decreased although UNHCR staff reports that there are departures and arrivals on a daily basis in the framework of the ETM. However, those who live in the Hamdallaye camp did not confirm this statement.

The [latest available data published in May 2022](#) by UNHCR show that the number of people evacuated to Niger from the beginning of the project amounts to 3361.

Conclusions

Along with assisted voluntary return programmes, the ETM programme is one of the few measures implemented to compensate for the blocking of migrant departures by sea from Libya towards Italy and the European Union and to propose a narrative in which European countries take steps to protect migrants who are detained in inhumane and degrading conditions in Libya. However, as evidenced by several feature articles drawn up over the years by ASGI, the ETM is far from being an effective instrument of protection.

² Even the 2019 inspection had clearly revealed that several countries refuse resettlement to citizens from Somalia, Eritrea or Ethiopia who served long time in the army

On the one hand, the question must be asked whether migrants detained under notoriously inhumane conditions in detention centres in Libya can sign up for a programme like ETM or AVR by making a choice that can really be described as “informed” and “voluntary”. On the other hand, the total number of evacuees since the approval of the programme is definitely low if compared to the number of migrants detained in Libya.

Add to this the fact that the ETM is the result of a concession and of a discretionary decision-making process and that it is implemented differently than described. Evacuees are not fully aware of how the procedure works or how long it will last and when they sign up for the programme, they certainly have no idea that they may end up stuck in a limbo in Niger for three or four years.

There are no precise guarantees or safeguards allowing evacuated migrants to act for their own protection and there is a risk that, after a long suspension, they might decide to go back to Libya, thus putting their lives on the line again to avoid going back to their countries of origin.