



UNHCR

United Nations High Commissioner for Refugees
Haut Commissariat des Nations Unies pour les réfugiés



25 February 2011

Protection considerations with regard to people fleeing from Libya – UNHCR’s recommendations (as at 25 February 2011)

1. Introduction

Thousands of people are fleeing from Libya, following the escalating unrest and violence in the country. Most people are leaving Libya overland to Egypt and Tunisia, but there are also departures by land, air and sea to other countries. Little information is available on the current situation in Libya, but there have been credible and alarming reports of excessive use of force against civilians and casualties in the hundreds. Reportedly violence is also being specifically targeted towards the large groups of foreigners in the country, including refugees and asylum-seekers. The UN Security Council has called for an end to the violence against civilians and for international humanitarian assistance to be provided to the people in Libya.

UNHCR has been reinforcing its operations in countries affected by recent displacements in North Africa in order to provide necessary support to governments. UNHCR is maintaining close contact with the Governments concerned and is working to assist them, as appropriate, to provide targeted support to meet needs and respond to the specific movements they are or may be experiencing.

2. UNHCR’s Recommendations

Given the current situation in Libya, UNHCR is issuing the following advisory regarding the treatment of arrivals from and the possibility of returns to Libya. This advisory is not a guideline on eligibility for refugee status accorded through national asylum systems. Hence, UNHCR’s position is without prejudice to decisions made on an individual basis on asylum claims for persons from Libya. UNHCR’s position will be reviewed as the situation evolves and will be updated as necessary.

- **All people leaving Libya should be granted access to territory without discrimination, irrespective of their background.**

UNHCR welcomes the Government of Tunisia’s policy to receive all arrivals from Libya. We likewise appreciate the Government of Egypt’s pledge to allow entry to Libyan nationals, as well as many other third country nationals including refugees and asylum-seekers registered with UNHCR. The Office appeals to all neighbouring governments in North Africa and Europe to keep maintain open land, air and sea borders for people forced to flee from Libya. There should be no enforced returns to Libya.

- **All people leaving Libya should be able to benefit from reception arrangements where their immediate needs can be addressed.**

Reception arrangements to meet the immediate basic material and psychosocial needs of new arrivals (e.g. accommodation, food, clothing, and medical services) should be provided to persons, regardless of status, to ensure their welfare until their referral is possible to appropriate services and procedures which address more directly their situation. Designated reception facilities, where a range of necessary services can be provided, supported by different humanitarian actors, including UNHCR as appropriate, could be particularly useful for countries facing large groups of arrivals from Libya.

For the safety and security of arrivals, reception facilities, even temporary ones should be located at a sufficient distance from the Libyan border to guarantee safety.

- **Given the varying profiles of people leaving Libya UNHCR is calling for a differentiated protection response, facilitated by profiling and referral upon arrival in the host State.**

Initial information about new arrivals suggests that they do or could include a range of different groups:

- Third country nationals who have resided in Libya as labour migrants or for other purposes and wish to return to their countries of origin.
 - Individuals with specific needs (e.g. women at risk, unaccompanied/separated children or trafficked persons).
 - Libyan nationals fleeing persecution, violence and serious disturbances of public order in Libya.
 - Individuals who may be subject to exclusion from international refugee protection or are ineligible for such protection.
 - Refugees or asylum-seekers from third countries who have resided in and/or transited through Libya, whether registered or not.
- **UNHCR recommends that Libyan nationals be granted temporary protection pending firm clarification of their circumstances and arrangements of possible solutions.**

Given the current situation in Libya, UNHCR considers Libyan nationals in principle to be persons of concern. Based on the information available to UNHCR, the Office understands the situation in the country to fall within those situations covered by the 1969 OAU Refugee Convention.¹ The circumstances of a number of Libyan nationals may also bring them within the framework of the 1951 Convention relating to the Status of Refugees, or subsidiary protection instruments or schemes.

Given that the situation in Libya is volatile and evolving rapidly on a daily basis, UNHCR believes that the most appropriate response to the diversity of needs of

¹ 1969 OAU Convention governing the specific aspects of refugee problems in Africa.

Libyans fleeing Libya is one of temporary protection until the situation in Libya clarifies and pending arrangement of possible solutions.²

- **UNHCR is also cognisant of the need for special efforts to identify individuals who may be excluded from international refugee protection or who may not be eligible because of their continued involvement in military activities.**

There may be, among the groups leaving Libya, persons who are implicated, through their past positions of authority or through their activities during the current unrest, in serious criminal acts. These would include, among others, persons associated with Libyan police or military, paramilitary groups, foreign mercenaries or other armed groups.

For these individuals, it will be necessary to examine carefully any issues of responsibility for serious human rights violations or other crimes which may give rise to exclusion from international refugee protection. This equally applies to persons who belonged to paramilitary groups or who are foreign mercenaries and, reportedly, have been employed by the Libyan authorities. Whenever feasible, they should be separated from civilian arrivals.

- **Third country nationals who claim to be refugees or to be otherwise in need of international protection should be referred to national asylum procedures or, as necessary, to UNHCR mandate refugee status determination (RSD) procedures for consideration of their asylum claim.**

Libya has been a transit and destination country for refugees and people otherwise in need of international protection from third countries. People who have been recognized as refugees in Libya by UNHCR, under its mandate, include Palestinians and Iraqis. Sudanese, Ethiopian Somali and Eritrean refugees, as well as smaller numbers of refugees from other countries, have also been living in Libya.

In addition, however, there are persons whose claims have not yet been determined, including:

- individuals registered as asylum-seekers with UNHCR in Libya; and
- third country nationals or stateless persons who claim to be in need of international protection, but who have not yet had access to UNHCR or been able to apply for refugee protection, in particular due to the limits imposed on UNHCR's activities by the Libyan Government.

UNHCR recommends that these persons be referred to the national asylum procedure, or, in countries where there is no such procedure, to UNHCR's mandate RSD procedure, to have their protection needs determined.

² See Article II paragraph 5 of the OAU Refugee Convention or the EU Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing in mind the consequences thereof. Existing national legal frameworks also variously make provision for temporary stay in exceptional circumstances in a number of countries.

- **Arrangements should be put in place to address specific vulnerabilities, including of unaccompanied/separated children, women at risk, trafficked persons, and elderly or traumatized people.**

UNHCR does not yet have information as to whether and how many arrivals in various host States may have specific needs. However we expect that unaccompanied/separated children, elderly, women at risk, people who have been trafficked, individuals who have experienced trauma and others with high vulnerability may require immediate attention and special expertise.

- **Third country nationals who do not claim international protection or who are found not to be in need of international protection should be provided with assistance to return home.**

Libya has been a major destination country for labour migrants from countries in Sub-Saharan Africa and elsewhere. In addition, there are third country nationals who have lived in Libya for other reasons. According to media reports, some of these people have been assisted to leave Libya directly by their governments. Others have requested to return home after having first departed to neighbouring countries. Significant and welcome efforts underway by countries of origin to facilitate return of these stranded migrants to their home countries, with the support of IOM.

- **UNHCR calls on all governments in the region, as well as the international community, to cooperate in responding to this emergency and to provide support to the most affected countries in a spirit of solidarity and burden sharing.**

Most people leaving Libya, to date, have departed to Egypt and Tunisia. The arrival of large numbers of returning nationals as well as foreign nationals places considerable strain on these countries, which have had recently to contend with their own major, internal changes. UNHCR and other international organizations have offered to assist governments seeking to respond to the influx, but more support is needed.

UNHCR
25 February 2011