

Submission by the United Nations High Commissioner for Refugees

For the Office of the High Commissioner for Human Rights' Compilation Report –

Universal Periodic Review:

LIBYA

I. BACKGROUND INFORMATION

Libya is not a State party to the 1951 Convention relating to the Status of Refugees, nor to its 1967 protocol. Libya is a State party to the 1969 Convention of the Organization of the African Union (OAU) governing the specific aspects of refugee problems in Africa, which is the regional complement of the 1951 Convention.¹ Libya is a State party to key human rights treaties.² In the absence of a national asylum system, registration, documentation and refugee status determination activities have been carried out by UNHCR. Following the 2011 revolution, a Constitutional Declaration of the National Transitional Council (NTC) guaranteed the right to asylum under Article 10,³ but in practice, there is no legislation that reaffirms these rights.

Libya is also a signatory to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Libya is going through a tumultuous transition period three years after its revolution in 2011. Political polarization backed by armed militias has resulted in a volatile security environment characterized by daily assassinations, kidnappings and armed conflict in the capital of Tripoli and eastern part of the country. This translates into an extremely challenging protection

¹ Convention Governing the Specific Aspects of Refugee Problems in Africa, Article 8, 2nd paragraph: “The present Convention shall be the effective regional complement in Africa of the 1951 United Nations Convention on the Status of Refugee,” available at: http://www.au.int/en/sites/default/files/Convention_En_Refugee_Problems_in_Africa_AddisAbaba_10September1969_0.pdf

² Including the International Covenant on Civil and Political Rights and its Optional Protocol; the International Covenant on Economic Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the Convention on the Rights of the Child; and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Libya is also a party to the Arab Charter on Human Rights and the African Charter on Human and Peoples' Rights and has ratified the Protocol establishing the African Court for Human and Peoples' Rights. Libya is also a State party to instruments addressing human trafficking and smuggling, including the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children.

³ Article 10 of the Constitutional Declaration of the National Transitional Council states: “The State shall guarantee the right of asylum by virtue of the law”.

environment for people of concern to UNHCR. In the absence of any national asylum legislation or framework, refugees and asylum-seekers are generally viewed as illegal migrants and have little to no access to protection mechanisms.

At present, 36,984 refugees and asylum-seekers are registered with UNHCR in Libya, of which the majority is Syrian (18,710), Palestinian (5,300) and Eritrean (4,867).⁴ With the exception of Palestinians, many of whom have resided in Libya for many years, these two groups and other mostly African nationals are part of the ongoing influx of migrants, refugees, and asylum-seekers who continue to arrive in Libya by way of its porous borders with Egypt, Algeria, Sudan, Tunisia, Chad and Niger.

Refugees and asylum-seekers remain easy targets and fall victim to human rights violations including arbitrary arrest, indefinite detention, trafficking, forced labour and other degrading treatment. Sub-Saharan African refugees and asylum-seekers prove to be at greater risk from both the authorities as well as the general host population due to persistent discrimination and a general social perception that they are carriers of disease and moral corruption.

Refugees and asylum-seekers upon arrival in Libya, particularly African nationals, are treated as illegal migrants and are at risk of arbitrary arrest and detention. People detained in detention sites face serious protection concerns ranging from access to food, water, health, physical mistreatment to labour exploitation. This detention practice tends to push newly arrived refugees and asylum-seekers underground out of fear of arrest and impedes their access to UNHCR and other available support structures, and thereby further fuels human trafficking and smuggling towards Europe.

Libya has become the main stepping-stone towards Europe for migrants, refugees and asylum-seekers from much of Africa and the Middle East hoping to cross the Mediterranean by boat. Mixed migrants enter Libya from its many official and unofficial borders and are often exploited by trafficking and smuggling networks, become victims of extortion and violence, risk dehydration and death due to harsh desert conditions or are forcibly pushed back across the borders. Over 43,000 persons arrived in Italy by boat in 2013, already a three hundred per cent increase from 2012. More than 21,719 persons of those people departed from Libya. The scale of sea migration from Libya has been highest in 2014. As of August 2014, over 109,000 have arrived in Europe, of whom over 98,000 persons departed from Libya. The increase in irregular sea migration has also resulted in terrible tragedies at sea whereby over 2,000 lives have been lost in the Mediterranean in the first 8 months of 2014 alone.

II. ACHIEVEMENTS AND BEST PRACTICES

UNHCR welcomes the Government's approaches consisting of granting free public education to nationals of Arabic speaking countries and of providing free access to medical care in public hospitals to Syrian and Palestinian nationals in Libya, while emphasizing that such services should also be extended to other nationals who are refugees and asylum-seekers.

UNHCR also welcome the fact that since the 2011 revolution, Libyan authorities have observed the principle of *non-refoulement* for people from war-torn countries such as

⁴ Since May (in Benghazi) and July (in Tripoli), UNHCR operations have been affected by the deteriorating security situation. UNHCR temporarily suspended registration activities until normal operations can be resumed.

Somalia and Eritrea. The Government of Libya has also granted UNHCR and other humanitarian actors full access to immigration detention centres in order to monitor conditions and provide humanitarian assistance.

III. CHALLENGES AND RECOMMENDATIONS

Issue 1: Creation of a national legal framework for the protection of refugees and asylum-seekers

Libya is a State party to the 1969 OAU Convention as well as other instruments that contain provisions ensuring the right to asylum and nationality, including the Arab Charter on Human Rights and the African Charter on Human and Peoples' Rights. In addition, the Constitutional Declaration of the National Transitional Council (NTC) foresees the development of a body of laws guaranteeing the right to asylum. However, Libya is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol and no asylum legislation is currently in place. The absence of an effectively implemented legal framework impedes the development of protection and asylum space inside of Libya. As a result, refugees and asylum-seekers are viewed as illegal migrants and subject to arbitrary arrest and detention in immigration detention centres.

Furthermore, UNHCR in Libya operates without official recognition by the government, which limits UNHCR's ability to fill gaps in the asylum framework and contribute to the development of protection space within the country.

Recommendations:

UNHCR recommends that Libya:

- Accede to and apply the provisions of the *1951 Convention Relating to the Status of Refugees* and its *1967 Protocol*;
- Formalize the relationship with the Office of the United Nations High Commissioner for Refugees;
- Cooperate with UNHCR to improve the conditions of refugees and asylum-seekers.
- Adopt a national asylum legislation and procedures, including a refugee status determination (RSD) procedure, in compliance with relevant international standards and UNHCR guidelines;
- Provide training on basic protection principles and standards to personnel at all levels of law enforcement, border management and detention centre administration.

Issue 2: Detention of asylum-seekers and refugees

According to information shared with UNHCR by the Department for Combatting Irregular Migration (DCIM), over 15,000 irregular migrants have been detained since January 2014; of this, 4,150 are from Somalia and Eritrea, including 650 women and 100 children.⁵

The Government of Libya does allow UNHCR formal access to refugees and asylum-seekers in detention, however, UNHCR is unable to carry out registration or refugee status

⁵ Further to UNHCR's advocacy efforts, over 696 people of concern were released from detention centers and registered accordingly, including women, children and those with medical needs.

determination procedures for detained persons. This may be explained by the fact that UNHCR's role is not yet formalized by the Government.

UNHCR would like to note that the detention of asylum-seekers and refugees should normally be avoided and should only be used as a measure of last resort. Alternatives to detention should be sought and given preference, in particular for certain categories of vulnerable people. If detained, asylum-seekers should be entitled to minimum procedural guarantees, including the possibility to contact and be contacted by UNHCR. The current border control measures are not sufficient to address this issue, and action is needed to reduce the use of detention and to improve conditions in detention centres. It is UNHCR's view that the position of asylum-seekers may differ fundamentally from that of ordinary migrants in that they may not be in a position to comply with legal formalities for entry.⁶ They may, for example, be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure.

Recommendations:

UNHCR recommends that Libya:

- Ensure that detention of persons in need of international protection is only used as a measure of last resort, and, where necessary, for as short a period as possible and apply alternatives to detention; and
- Amend relevant Libyan laws to recognize the specific protection needs of refugees and asylum-seekers.

Issue 3: Trafficking in persons and comprehensive border management

Libya has become a major destination and point of transit for well-developed smuggling and trafficking networks that begin in sub-Saharan Africa and the Middle East and move through Libya, often for the purposes of sea migration to Europe. Weak border management and a general break down in law and order in much of the country have contributed significantly to this phenomenon.

The lure of possible access to Europe and job opportunities in Libya constitute major pull factors leading large numbers of persons to accept extremely dangerous conditions, exploitation and abuse in the hands of smugglers, and in some cases, vulnerable individuals are handed over or sold to traffickers. Refugees and asylum-seekers are particularly at risk of falling victim to trafficking or dangerous smuggling due to the precarious and volatile situations they often face in their countries of origin, as well as in Libya.

In the present context, The Libyan government, with the support of European and neighboring countries, has developed a border management strategy that focusses solely on border control at the expense of a more comprehensive approach that recognizes the different protection needs and rights of mixed-migrant populations. In 2006, UNHCR issued a 10-Point Plan of Action⁷ for addressing refugee protection in mixed-migration contexts. The

⁶ UN High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, available at:

<http://www.unhcr.org/505b10ee9.html>

UN High Commission for Refugees, Beyond Detention: A Global Strategy to Support Governments to End Detention of Asylum-Seekers and Refugees, 2014, available at: <http://www.unhcr.org/53aa929f6.pdf>

⁷ UN High Commissioner for Refugees (UNHCR), *Refugee Protection and Mixed Migration: A 10-Point Plan of Action*, January 2007, Rev.1, available at: <http://www.refworld.org/docid/45b0c09b2.html>

plan proposes a comprehensive, cooperative and regional approach and calls on governments to adopt protection sensitive responses to mixed movements. The 10-Point Plan remains a key tool to help governments respond to complex mixed-migration and has yet to be implemented in the Libyan context.

Recommendations:

UNHCR recommends that Libya:

- Adopt a comprehensive strategy for border management that takes into consideration the specific protection needs of refugees and asylum-seekers and includes, inter alia, provision of short term assistance and referral mechanisms, where needed.

Issue 4: Right of mothers to confer their nationality to their children

Libya is a signatory to the UN Committee on the Elimination of Discrimination against Women (CEDAW), which entered into force in the country on 15 June 1990⁸ with no reservations on Article 9(2), which requires equality in the ability of mothers and fathers to confer their nationality to their children. Libya is also a signatory to the Convention on the Rights of the Child (CRC) without reservation, which under Article 7 guarantees the right of all children to acquire a nationality and calls on states to implement this right in accordance with national law where a child would otherwise be stateless.

UNHCR welcomes the passing of domestic legislation entitled, “Law Number 24 of 2010” granting Libyan nationality to anyone born in Libya to a Libyan mother and a father of unknown nationality and to foundlings (Article 3.) Article 11 of the same law further stipulates that it is permissible to grant Libyan nationality to children of Libyan mothers married to non-Libyans fathers.

However, no legislation is currently in place to ensure the right of Libyan women married to men of a known foreign nationality to confer their Libyan nationality to their children. Furthermore, UNHCR would like to note that provisions under Article 11 of “Law Number 24 of 2010” are not applied automatically and the law itself has yet to be implemented, further impeding the prevention of statelessness for children. As a result, Libyan women married to foreign men may be unable to confer their nationality to their children, and where the father’s nationality is unknown, their children may be denied their right to acquire a nationality.

Recommendations:

UNHCR recommends that Libya:

- Implement Article 11 of “Law Number 24 of 2010” to ensure that mothers are able to pass their nationality to their children, regardless of the status or nationality of the child’s father;
- Amend relevant Libyan laws, in particular the Nationality Law, to ensure the full and effective implementation of Libya’s obligations towards stateless persons according to the two statelessness conventions and general human rights instruments; and

⁸ UN Committee on the Elimination of Discrimination Against Women (CEDAW), https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en

- Ensure that the rights guaranteed in the International Covenant on Civil and Political Rights (ICCPR) are extended to all individuals regardless of nationality or statelessness, including refugees, asylum-seekers and migrant workers.⁹

Issue 5: Birth registration

Refugees and asylum-seekers face specific obstacles in accessing civil registration for newborn children in Libya. Many refugees and asylum-seekers enter the country through irregular channels, sometimes via smugglers or traffickers, and may not have valid visas or identity documents and fear they could be detained or deported if they approach the authorities to register their children. Sub-Saharan Africans in particular, face significant challenges in accessing civil registration of their newly born children, including obstacles related to language and discrimination. They do not have free access to basic education and health care services, and in many cases will prefer not to give birth in a hospital for fear of being treated as an illegal migrant and facing deportation. The most affected persons are from Eritrea, Ethiopia, the Democratic Republic of Congo, Liberia and Chad.

Without UNHCR interventions, asylum-seekers and refugees from Sub-Saharan Africa are prone to arrest, especially women, when they access hospitals and other public facilities. In particular, women who are not accompanied by men are at particular risk when delivering their babies at government hospitals as they could be suspected of being a prostitute and face detention. It is illegal for women to give birth outside of marriage, and unaccompanied women must produce proof of marriage or risk arrest on these grounds. As a result many women do not receive adequate pre and post natal care. In addition, without birth registration documents, children do not have access to Libyan immunization programmes.

Birth registration helps to ensure all children have access to a nationality and an identity by establishing a legal record of where a child was born and who his or her parents are. As such it serves as a key form of proof of whether a person has acquired nationality by birth or by descent. Failure to document a person's legal existence can prevent the effective enjoyment of a range of human rights, including access to education, civil liberties and health care, etc.

Recommendations:

UNHCR recommends that Libya:

- Ensure access to birth registration for all children born in Libya, in accordance with Libya's obligations under the Convention on the Rights of the Child;
- Amend legislation that criminalizes women for becoming pregnant outside of marriage; and
- Ensure access of all children to immunization programs, regardless of legal status.

Issue 6: Access to free education and health care for all refugees and asylum-seekers

Although the Libyan Government has granted Syrian and other Arabic speaking nationals free access to public education, children of other nationalities are required to pay fees to attend school, including at the primary level. As a result, many refugee, asylum seeker and migrant children are effectively without access to education as their parents lack the

⁹ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series. General comment 31, paragraph 10, on Article 2.

resources to send them to school. The Convention on the Rights of the Child imposes upon States parties to “make primary education compulsory and available free to all,”¹⁰ which is still far from being the case in Libya.

Syrians and Palestinians have been generously granted free access to medical care in public hospitals on par with services available to Libyan nationals. However access to health services remain a challenge for asylum-seekers and refugees from other nationalities, in particular for nationals of many sub-Saharan African Countries. Some refugees and asylum-seekers do not have documentation confirming their identities, which can inhibit access to treatment. Furthermore, UNHCR has also received reports that priority for available services is given to persons from Arabic speaking nationalities and, in some cases, asylum-seekers and refugees from other nationalities have reported being denied treatment, even when they are able to pay for services.

The decision to extend free education to some foreign nationalities was taken for the 2013-2014 school year and it is not yet clear whether this decision will be extended for the 2014-2015 school year.

Recommendations:

UNHCR recommends that Libya:

- Provide access to free compulsory primary education to all children regardless of nationality or gender;
- Provide free access to public health services to all refugees and asylum-seekers;
- Extend the duration and scope of official decisions granting public education to all non-Libyan children; and
- Ensure non-discrimination in the provision of public health services.

Human Rights Liaison Unit
Division of International Protection
UNHCR
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¹⁰ Article 28 (a) of the Convention on the rights of the Child, available at: <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

Excerpts of Recommendations from UN Treaty Bodies

- Universal Periodic Review:

LIBYAN ARAB JAMAHIRIYA

We would like to bring your attention to the following excerpts from UN Treaty Bodies reports relating to issues of interest and persons of concern to UNHCR with regards to Libyan Arab Jamahiriya.

I. Treaty Bodies

Committee on the Elimination of Discrimination against Women
[Concluding observations \(2009\) CEDAW/C/LBY/CO/5](#), 43rd Session
6 February 2009

Violence against women

23. While noting that, according to article 17 of Law No. 10 of 1984, a man should refrain from causing physical or psychological harm to his wife, and commending the State party for the establishment of 20 Women's Courts across the country dealing with violence against women, the Committee is concerned that the State party has not yet adopted comprehensive legislation to protect women against violence, especially domestic violence, as recommended by the Human Rights Committee in its concluding observations adopted on 30 October 2007. The Committee is further concerned at the confinement of women and girls who have not been convicted in so-called social rehabilitation facilities, some of whom are victims of gender-based violence and domestic violence, for their own protection according to the State party, without the provision of a possibility to challenge this confinement in a court. The Committee is also concerned at the widespread practice whereby marriage between perpetrators of rape and women victims of rape is encouraged to protect the victims from social stigma and marginalization and ensure clarity of lineage if the victim is pregnant, which results in impunity for the perpetrator. The Committee is of the view that marriage between perpetrators of rape and the victim can lead to revictimization of the victim. The Committee expresses concern about the lack of statistics provided in the report on the extent of different forms of violence against women and girls. The Committee is also concerned that the maintenance of Law No. 70 (1973) criminalizing extramarital sexual relations may have a disproportionate impact on women.

24. **The Committee urges the State party to implement the recommendations identified in the study of the Secretary-General on all forms of violence against women (A/61/122 and Add.1 and Add.1/Corr.1) and in the report of the Special Rapporteur on violence against women, its causes and consequences (A/HRC/4/34/Add.1) and to monitor their impact. Furthermore, the Committee calls upon the State party to enact legislation on violence against women, including domestic violence. The Committee**

recommends that the State party adopt and implement a national strategy to combat violence against women, which would include the collection of sex-disaggregated data on all forms of violence and research into the extent of violence against women and girls, including that which occurs in the domestic sphere. It urges the State party to reconsider and amend the legal provisions which allow the confinement of women and girls in so-called rehabilitation facilities against their will. Furthermore, the Committee calls upon the State party to discourage the practice whereby victims of rape are forced to marry the perpetrator and to ensure that in all cases perpetrators are duly prosecuted and punished, and victims rehabilitated. The Committee recommends that training and awareness-raising programmes be offered to judicial personnel, law enforcement officials, members of the legal and health professions and the general public, taking into account its general recommendation No. 19 on violence against women. The Committee encourages the State party to make use of the multi-year campaign launched in 2008 to eliminate violence against women. The Committee also calls upon the State Party to consider repealing Law No. 70 (1973).

Vulnerable groups of women

25. While noting with satisfaction that the State party ratified the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2004, the Committee expresses concern at reports regarding the alleged ill-treatment of undocumented migrants, including women and children. The Committee is also concerned that the State party's reports do not contain information on the situation of migrant women in the Libyan Arab Jamahiriya.

26. **The Committee recommends that the State party implement the provisions of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. The Committee further recommends that the State party consider ratifying the 1951 Convention relating to the Status of Refugees. It requests the State party to provide detailed information on the situation of migrant women in its next periodic report.**

Trafficking and exploitation of prostitution

27. The Committee welcomes the State party's ratification of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children. While noting that the Penal Code criminalizes all forms of trafficking in women, and that Libyan nationals shall be sentenced even if the crime was committed abroad, the Committee expresses concern about the lack of information regarding the extent of trafficking in women and girls and the absence of a comprehensive law and plan to prevent and eliminate trafficking in women and to protect victims. The Committee is also concerned about the lack of information in regard to prostitution and the lack of a comprehensive strategy for the protection and rehabilitation of victims of exploitation of prostitution.

28. The Committee recommends that the State party take measures to combat all forms of trafficking in women and girls through the adoption and implementation of a comprehensive strategy, and increase its efforts in relation to regional, international and bilateral cooperation with countries of origin and transit so as to address more effectively the causes of trafficking and improve its prevention through information exchange. It encourages the State party to collect and analyse data from national police and international sources, prosecute and punish traffickers, and ensure protection of the rights of trafficked women and girls. It recommends that the State party take measures to ensure that trafficked women and girls receive adequate support and protection to support them in testifying against their traffickers. The Committee urges the State party to analyse the causes and extent of trafficking in women and girls from its perspective as a country of transit. The Committee calls upon the State party to take all appropriate measures to suppress the exploitation of prostitution of women, including discouraging male demand by ensuring the effective prosecution and punishment of those who exploit prostitution. The Committee requests the State party to provide, in its next report, comprehensive information and data on exploitation of prostitution and trafficking in women and girls, as well as on the measures taken to prevent and combat such activities.

Human Rights Committee

[Concluding observations \(2007\) CCPR/C/LBY/CO/4](#), 91st Session

15 November 2007

18. While noting the establishment of a Committee to draft a law on refugees and migrants, the Committee is concerned by reports that the State party routinely and collectively sends back refugees and asylum-seekers to their countries of origin where they might be subject to torture and other ill-treatment. The Committee furthermore notes with concern the persistent allegations of migrants, asylum-seekers and refugees of being exposed to torture and cruel, inhuman and degrading treatment upon arrest and particularly in detention centers. (art. 7, 10, and 13)

The State party should adopt legislative and administrative structures to ensure that detention as well as extradition, expulsion or deportation of aliens do not lead to their being subjected to torture or other ill-treatment.

The State party should also ensure that aliens claiming risks of torture, and cruel, inhuman and degrading treatment can file an appeal against their forced removal with suspensive effects.

Human Rights Liaison Unit

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