



November 2014

## UNHCR POSITION ON RETURNS TO LIBYA

### *Introduction*

1. Since the overthrow of Colonel Muammar Gaddafi and his government in October 2011, Libya has been affected by a chronic state of insecurity.<sup>1</sup> In a climate of instability and chaos, the country has seen intense clashes between armed groups and almost daily assassinations, bombings and kidnappings. The presence of numerous militias – some reports indicate that there are up to 1,700 different armed groups<sup>2</sup> – each reported to control certain areas of territory, have left successive governments struggling to exercise authority in those areas. The many armed groups are reported to be ideologically divided and are said to be split along geographical lines in the country. Analysts have expressed concerns about the risk of Libya descending into civil war.<sup>3</sup> Intense fighting between rival armed groups takes its toll on civilians, as hundreds of thousands have been forcibly displaced across the country, vital infrastructure has been destroyed and the humanitarian situation is rapidly deteriorating.<sup>4</sup>

### *Recent Political Developments (2014)*

2. Social unrest, evidenced, *inter alia*, by demonstrations, armed clashes, and an increase in kidnappings and killings has been reported in Libya in a climate of deteriorating security. Since January 2014, Libya has had rapid succession in the Executive branch that is closely linked to the increasingly divided political landscape. In February 2014, protests erupted when the parliament, the General National Congress (GNC), cited the need for drafting a new constitution and extended its mandate beyond 7 February 2014. On 16 May 2014, the situation further deteriorated when a former General, Khalifa Haftar,<sup>5</sup> launched a military offensive against armed groups in Benghazi.

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<sup>1</sup> See UN Security Council, *Security Council resolution 2174 (2014) [on the situation in Libya]*, 27 August 2014, S/RES/2174 (2014), <http://www.refworld.org/docid/5418057d4.html>.

<sup>2</sup> BBC News, *Why is Libya Lawless?*, 15 July 2014, <http://bbc.in/1tZSPYq>.

<sup>3</sup> For reports on and analysis of developments in Libya, see e.g. Foreign Policy, *Who's Running This Joint, Anyway? Two Governments Are Competing to Rule Libya - But It May Be the Militias that Wield the Real Power*, 13 October 2014, <http://atfp.co/10uEFDc>; UN News Service, *For Any Political Progress to Hold, 'The Fighting Has to Stop,' UN Chief Declares in Libya*, 11 October 2014, <http://www.un.org/apps/news/story.asp?NewsID=49060>; UN News Service, *Libya Closer to Brink of Protracted Conflict and Strife, UN Envoy Warns*, 15 September 2014, <http://www.refworld.org/docid/541804de4.html>; Associated Press, *Under Militia Power, Libya Closer to Failed State*, 9 September 2014, <http://wapo.st/1tHGqso>; UN General Assembly, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 5 September 2014, S/2014/653, <http://www.refworld.org/docid/54119b554.html>; New York Times, *Libyan Militias Seize Control of Capital as Chaos Rises*, 1 September 2014, <http://nyti.ms/1Ei6Tjr>; BBC News, *Why is Libya Lawless?*, 15 July 2014, <http://bbc.in/1tZSPYq>; BBC News, *Guide to Key Libyan Militias*, 20 May 2014, <http://bbc.in/1sgf6No>.

<sup>4</sup> UN News Centre, *Libya: Intensifying fighting continues to take heavy civilian toll, warns UN agency*, 10 October 2014, <http://www.un.org/apps/news/story.asp?NewsID=49054>; UN News Centre, *Libya closer to brink of protracted conflict and strife, UN envoy warns*, 15 September 2014, <http://www.un.org/apps/news/story.asp?NewsID=48712>.

<sup>5</sup> General Khalifa Haftar served in the Libyan Army under Colonel Muammar Gaddafi and later took part in his overthrow in 2011. On 16 May 2014, he launched *Operation Dignity* against militias allied with Islamist groups in Benghazi. See e.g. Foreign Affairs, *Libya's*

Two days later, armed groups allied with former General Haftar stormed the parliament building in Tripoli accusing the then-elected Prime Minister Ahmed Maiteeq,<sup>6</sup> of supporting Islamist groups. A new parliament, the House of Representatives, was elected in June. The security situation continued to deteriorate rapidly in July 2014, when fighting between rival militias<sup>7</sup> over control of Tripoli International Airport erupted into weeks of active combat and spread to other parts of the city, directly affecting civilians and causing large-scale displacement.<sup>8</sup> A number of embassies were closed, many foreign nationals were evacuated and programmes of UN agencies and partners are largely remotely managed.<sup>9</sup>

3. In August 2014, the political crisis escalated further, when the House of Representatives<sup>10</sup> moved to Tobruk while a number of its members boycotted its proceedings and the GNC reconvened in Tripoli. The House of Representatives reappointed Abdullah Al Thinni as Prime Minister, while the GNC appointed Omar Al Hassi as Prime Minister, effectively leaving the country with two governments.<sup>11</sup> The UN Support Mission in Libya (UNSMIL) has started a political dialogue with the different stakeholders.<sup>12</sup> Although calm returned to Tripoli in early September after over six weeks of heavy fighting, the city is reported to be under the control of a coalition of armed groups supportive of the GNC and Al Hassi Government,<sup>13</sup> and fighting continues in cities and towns to the west and south of Tripoli.<sup>14</sup> Fighting in Benghazi intensified on 15 October when former General Haftar scaled up military actions in the city with the endorsement of the House of Representatives.<sup>15</sup> On 6 November 2014, Libya's Supreme Court ruled the House of Representatives unconstitutional after a legal challenge by a group of politicians. In response to the ruling, certain members of the House of Representatives in Tobruk declared that they did not recognize the Supreme Court ruling. The ruling might deepen the political crisis and contribute to further turmoil.<sup>16</sup>
4. In addition to recent developments in the west and east of the country, the southern region of Libya has also seen intermittent violent conflict linked to inter and intra-ethnic rivalries exacerbated by geopolitics and shifting allegiances.<sup>17</sup> Since January 2014, the situation in the south has reportedly deteriorated, particularly in and around the cities of Sabha and Obari, resulting in further waves of displacement and increasing risks of spill-over of violence into southern neighbouring countries.<sup>18</sup>

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*Legitimacy Crisis*, 6 October 2014, <http://fam.ag/1tbHCik>; and BBC News Africa, *Profile: Libyan ex-General Khalifa Haftar*, 16 October 2014, <http://bbc.in/10uFBYy>.

<sup>6</sup> The Constitutional Court ruled on 5 June 2014 that the election of Ahmad Maiteeq was illegal. See Al Arabiya News, *Court: election of Maiteeq as Libya's PM illegal*, 5 June 2014, <http://english.alarabiya.net/en/News/middle-east/2014/06/05/Libyan-court-Election-of-Ahmed-Maiteeq-as-PM-illegal.html>.

<sup>7</sup> In July 2014, fighting broke out over control of the airport between armed groups from the town of Zintan, who had controlled the airport since 2011, and armed groups from the coastal city of Misrata. See e.g. Washington Post, *What's Behind Libya's Spiraling Violence*, 28 July 2014, <http://ceip.org/1uvo92V>.

<sup>8</sup> IOM Libya, *Situation Report*, 14 September 2014, <http://www.iom.int/files/live/sites/iom/files/Country/docs/Donor-Update-Report-14-09-2014.pdf>.

<sup>9</sup> IRIN, *Conditions worsen in Benghazi as fighting intensifies*, 5 November 2014, <http://shar.es/10ZHGO>.

<sup>10</sup> The House of Representatives is recognized by the United Nations and the international community as the legitimate Parliament, see e.g. UN Security Council, *Security Council resolution 2174 (2014) [on the situation in Libya]*, 27 August 2014, S/RES/2174 (2014), <http://www.refworld.org/docid/5418057d4.html>.

<sup>11</sup> Reuters, *Libya near 'point of no return', U.N. says as fighting toll rises*, 28 October 2014, <http://yhoo.it/1yYhFZ1>; The Economist, *Libya's Rival Governments. Too Many Chiefs*, 27 September 2014, <http://econ.st/1x5PVRX>.

<sup>12</sup> UN News Centre, *Libya: UN Envoy Hails Start of Political Dialogue Aimed at Resolving Ongoing Crisis*, 29 September 2014, <http://www.un.org/apps/news/story.asp?NewsID=48941>.

<sup>13</sup> The coalition is known as *Libyan Dawn* or *Operation Dawn* and led by armed groups based in Misrata. See also The Guardian, *Libyan capital under Islamist control after Tripoli airport seized*, 24 August 2014, <http://bit.ly/11685Rr>.

<sup>14</sup> See e.g. Associated Press, *23 Killed in Libya as Islamist Militants Battle Rival Militias*, 12 October 2014, <http://bitly.com/1woutPE>; Associated Press, *Under Militia Power, Libya Closer to Failed State*, 9 September 2014, <http://bit.ly/1ytwYbn>.

<sup>15</sup> See e.g. Reuters, *Libyan army urges residents of Benghazi port area to evacuate*, 2 November 2014, <http://reut.rs/1pggDYp>; Reuters, *Libya near 'point of no return', U.N. says as fighting toll rises*, 28 October 2014, <http://yhoo.it/1yYhFZ1>.

<sup>16</sup> See e.g. BBC, *Libya supreme court 'invalidates' elected parliament*, 6 November 2014, <http://bbc.in/1zy5IBX>; Reuters, *Libya faces chaos as top court rejects elected assembly*, 6 November 2014, <http://bit.ly/10z64Um>. See also: UNSMIL, *UNSMIL Studying Supreme Court Ruling, Emphasises Urgent Need for Political Consensus*, 6 November 2014, <http://unsmil.unmissions.org/Default.aspx?tabid=3543&ctl=Details&mid=6187&ItemID=1992314&language=en-US>.

<sup>17</sup> See e.g. Reuters, *Fighting close to Libyan oilfield and refinery as rival "oil minister" appears*, 22 September 2014, <http://bit.ly/1y32XyO>; Saudi Gazette, *No winners in Libya*, 20 October 2014, <http://bit.ly/1y33mRW>.

<sup>18</sup> Fighting in and around Obari further intensified in October 2014 as Tebu, Tuareg and Awlad Suleiman groups vied for influence over southern oil fields and began to align themselves with the major power blocs in Tobruk and Tripoli. See e.g. Foreign Policy, *Libya's*

## Human Rights Developments

5. The United Nations Support Mission in Libya (UNSMIL) and the Office of the High Commissioner for Human Rights (OHCHR) have jointly published an overview of violations of international human rights and humanitarian law during the on-going violence in Libya.<sup>19</sup> The report, published in early September 2014, emphasizes the dire effects of the violence on civilians, in particular in and around Tripoli and Benghazi. It refers to “a deepening political polarization”, which has generated “a climate of fear in which people are reluctant to talk about certain violations and abuses that are taking place, particularly detention, abductions and torture, out of fear of retaliation by various armed groups”. UNSMIL and OHCHR report indiscriminate shelling and attacks on civilian objects and a disregard among fighters of the impact of their actions on civilians, with civilian casualties including foreign nationals.<sup>20</sup> Armed groups are reported to have engaged in abductions, reportedly motivated by the victims’ “actual or suspected tribal, family or religious affiliation”, torture, and detention of fighters of competing groups and civilians for reason of “political, religious affiliation or nationality”. Assassinations, unlawful killings and summary public executions have been reported as well.<sup>21</sup> The widespread presence of weapons in the country, with the vast majority beyond state control, is said to compound the lack of security and sense of lawlessness. In addition, the justice system is reportedly not functioning properly, with non-state dispute mechanisms having emerged to fill the void. These mechanisms reportedly rely more on the relative power of the disputing parties than on the law and are not considered effective.<sup>22</sup>
6. Refugees, asylum-seekers<sup>23</sup> and migrant workers<sup>24</sup> have found themselves in a very vulnerable and exposed situation, with many of them trapped in areas affected by fighting without having the means to move to safety. The widespread and systematic detention of refugees, asylum-seekers and migrant workers (in particular but not exclusively of sub-Saharan) in detention centres with abysmal conditions, was already reported to be pervasive before the recent intensification of conflict and violence in Libya.<sup>25</sup> Detention conditions are, however, said to have worsened further as a result of the fighting and the related breakdown in public services and scarcity of food, medicine and other basic items. In the current situation of insecurity, these third-country nationals,

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*civil war chaos draws in remote south*, 4 November 2014, <http://on.ft.com/1oeJtrd>; Libya Herald, *Obari's Tuaregs announce support for HoR as Tebu forces threaten to fight Misratans over oilfields*, 30 October 2014, <http://bit.ly/10uGMH3>; Eurasia Review, *Libya: Fresh Tribal Clashes In Sabha*, 2 October 2014, <http://www.eurasiareview.com/02102014-libya-fresh-tribal-clashes-sabha/>; Reuters, *Tribesmen fight security forces in south Libya near major oilfield*, 21 September 2014, <http://reut.rs/XGdPq1>.

- <sup>19</sup> UN Office of the High Commissioner for Human Rights (OHCHR), *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>.
- <sup>20</sup> Libya Body Count has recorded 2,365 casualties between January and 4 November 2014 based on media reports and reports from the public websites of the Libyan Ministry of Health, Interior Ministry and Defense Ministry. Note: the organization does not make a distinction between civilians and fighters. See Libya Body Count, accessed 4 November 2014, <http://www.libyabodycount.org/table>. Note that several media sources use casualty figures provided by Libya Body Count. UNHCR is not aware of its methodology and its reliability as a source has not been independently verified. Associated Press reported on 5 November that nearly 400 persons had reportedly been killed in three weeks, see Associated Press, *Nearly 400 Killed in 3 Weeks of Libya Fighting*, 5 November 2014, <http://apne.ws/1xdNtd9>.
- <sup>21</sup> OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>. See also Amnesty International, *Rule of the gun: Abductions, torture and other militia abuses in western Libya*, 30 October 2014, <http://www.refworld.org/docid/545797924.html>; Human Rights Watch (HRW), *Libya: UPR Submission September 2014*, 16 September 2014, <http://www.hrw.org/news/2014/09/16/libya-upr-submission-september-2014>; HRW, *Libya: Assassinations May Be Crimes Against Humanity*, 24 September 2014, <http://www.refworld.org/docid/542560db4.html>; HRW, *Libya: Spiraling Militia Attacks May Be War Crimes*, 8 September 2014, <http://www.refworld.org/docid/540ea9974.html>.
- <sup>22</sup> US Institute of Peace, *Security and Justice in Post-Revolution Libya: Where to Turn?*, 18 September 2014, <http://www.usip.org/publications/security-and-justice-in-post-revolution-libya>; OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>; BBC News, *Why is Libya Lawless?*, 15 July 2014, <http://bbc.in/1tZSPYq>.
- <sup>23</sup> According to information available to UNHCR.
- <sup>24</sup> See e.g. International Organization for Migration (IOM), *Migrant Workers in Libya at Growing Risk, Could Feed Deadly Mediterranean Exodus*, 14 October 2014, <http://www.iom.int/cms/en/sites/iom/home/news-and-views/press-briefing-notes/pbn-2014b/pbn-listing/migrant-workers-in-libya-at-grow.html>; IOM Libya, *Situation Report*, 12 October 2014, <http://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Libya-Situation-Report-12-October-2014.pdf>.
- <sup>25</sup> See e.g. HRW, *Libya: Whipped, Beaten, and Hung from Trees*, 22 June 2014, <http://www.refworld.org/docid/53aa7e2f4.html>; Amnesty International, *'If an African dies here, no one cares' – abuses of migrants and refugees in detention in Libya*, 18 December 2013, <http://livewire.amnesty.org/2013/12/18/if-an-african-dies-here-no-one-cares-abuses-of-migrants-and-refugees-in-detention-in-libya/>.

and in particular refugees and asylum-seekers among them, are at heightened risk of abuse, including exploitation and coercion by smugglers, human trafficking and sexual violence. UNHCR has also received reports of refugees and asylum seekers being targeted due to their perceived political or religious affiliation. The situation for Syrian and Palestinian refugees, which previously was somewhat better in comparison to sub-Saharan Africans, has reportedly also deteriorated, with Syrians describing increasing harassment and threats of violence. One of the consequences of the dire situation in which these persons find themselves is the increase in numbers of persons attempting to cross the Mediterranean from Libya, with approximately 130,000 persons (or about 85% of all arrivals) reported to have arrived in Italy from Libya by boat in the period January - October 2014.<sup>26</sup> Amongst persons making or seeking to make this crossing are many originating from countries affected by, amongst others, conflict, human rights violations, violence and insecurity, such as Syrians and Eritreans.<sup>27</sup> Syrians and Eritreans alone made up some 46 per cent of persons who arrived in Italy in 2014.<sup>28</sup>

### *Internal Displacement and External Displacement*

7. The rapidly deteriorating security situation in Libya has continued to cause new waves of displacement, particularly on the western outskirts of Tripoli and in Benghazi. UNSMIL and local crisis committees put the total number of people internally displaced in Libya at over 287,000, while the Internal Displacement Monitoring Center (IDMC) estimates that there were at least 327,000 IDPs in Libya as of October 2014.<sup>29</sup> The assessment of their needs poses significant challenges due to access and security constraints, which in turn has seriously hampered humanitarian response efforts in the eastern parts of the country and limited them in the western parts.<sup>30</sup>
8. On account of security constraints, including strict exit control measures at Libya's borders with Egypt and Tunisia, movements across the borders are limited. The obstacles encountered when seeking safety through land routes<sup>31</sup> have left many asylum-seekers and refugees in Libya with the sea route as the only option. As reported above, the number of persons seeking to leave by boat has increased dramatically in recent months.

### *Humanitarian Situation*

9. The renewed fighting has increased the humanitarian needs of internally displaced persons (IDPs) and of communities affected by the fighting or hosting IDPs. The prices of food and basic items such as cooking fuel and wheat flour have reportedly risen steeply during the hostilities. In Tripoli, shortages of water, diesel, cooking gas, and other essential items such as milk have been reported, as well as disruptive prolonged power cuts in particular, during the six weeks of hostilities that started in mid-July 2014. Common criminality is reported to have risen markedly in some areas.<sup>32</sup>

<sup>26</sup> Statistics available to UNHCR.

<sup>27</sup> For data on nationalities of persons crossing or attempting to cross the Mediterranean, see e.g. International Organization for Migration (IOM), *Fatal Journeys. Tracking Lives Lost During Migration*, 2014, [http://publications.iom.int/bookstore/free/FatalJourneys\\_CountingtheUncounted.pdf](http://publications.iom.int/bookstore/free/FatalJourneys_CountingtheUncounted.pdf). See also e.g. The Guardian, Datablog, *Migrants Crossing the Mediterranean: Key Numbers*, 10 June 2014, <http://gu.com/p/3qx3y/tw>.

<sup>28</sup> Statistics received by UNHCR from the Italian Ministry of Interior.

<sup>29</sup> UNHCR, *Libya Crisis: UNHCR Regional Update #7: 15-28 September 2014*, 28 September 2014, <http://www.refworld.org/docid/543ba76e4.html>; IDMC, *Libya IDP Figures Analysis*, 31 October 2014, <http://www.internal-displacement.org/middle-east-and-north-africa/libya/figures-analysis>.

<sup>30</sup> UNHCR, *UNHCR Regional Update- Libya Situation, 8-14 September 2014*, 14 September 2014, <http://www.refworld.org/docid/542124814.html>.

<sup>31</sup> See e.g. "high number of third country nationals (TCNs) trapped inside Libya, since the border between Libya and Egypt/Tunisia remains practically closed to them", in IOM *Libya, Situation Report*, 12 October 2014, <http://www.iom.int/files/live/sites/iom/files/Country/docs/IOM-Libya-Situation-Report-12-October-2014.pdf>. See also e.g. Al Jazeera, *Tunisia seals Libya border after violence*, 2 August 2014, <http://aje.me/1m5IV09>.

<sup>32</sup> OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>.

In Benghazi, persistent fighting since May 2014 has left parts of the city inaccessible and entire neighbourhoods devastated by shelling. According to UNSMIL, the Benghazi Local Council has registered some 34,000 IDPs in need of basic assistance.<sup>33</sup> Hospitals in Benghazi were shelled, and hospitals that are still functioning are reported to be overstretched with high numbers of casualties of shelling and fighting, while reporting a lack of medical supplies and absence of medical personnel.<sup>34</sup>

10. Initially, many IDPs were taken in by families in host communities. However, as the number of IDPs has continued to rise, both in eastern and western parts of the country, many are now reported to be living in schools as local capacity to absorb IDPs has been exhausted.<sup>35</sup> Host communities are reported to be under growing strain from the influx of IDPs and some Local Councils have stopped registering new arrivals due to limited capacity to provide a response. Access to IDPs is difficult for convoys from abroad and for local staff of humanitarian aid agencies, with security constraints and blocked roads preventing the delivery of food and medical supplies to areas most affected by conflict.<sup>36</sup> It is estimated that 2 million people are likely to be affected by shortages in food and in medical supplies if the fighting continues.<sup>37</sup>

#### *Nationals and Habitual Residents of Libya who Seek International Protection – Individual Asylum and Refugee Status Determination Procedures*

11. All claims of nationals and habitual residents of Libya seeking international protection should be processed in fair and efficient procedures in accordance with international and regional refugee law.<sup>38</sup> For some individuals whose claim had been rejected previous to recent events, the current situation may, depending on the individual circumstances of the claim, give rise to changed circumstances, which need to be considered if a new asylum claim is submitted. Claims for international protection of persons having been directly affected by recent developments may need to be given particular attention, including, for example, political activists, human rights activists, judges, women engaged in the public sphere, NGO workers, media professionals, ethnic and religious minorities, and members of tribes or individuals perceived to be in support of the former Gaddafi regime.<sup>39</sup> Persons with these and other profiles may be in need of international protection

<sup>33</sup> UN OCHA, 2014 *Libya Humanitarian Appeal, September 2014 – February 2015*, October 2014, [https://docs.unocha.org/sites/dms/CAP/2014\\_Libya\\_Humanitarian\\_Appeal.pdf](https://docs.unocha.org/sites/dms/CAP/2014_Libya_Humanitarian_Appeal.pdf).

<sup>34</sup> IRIN, *Conditions worsen in Benghazi as fighting intensifies*, 5 November 2014, <http://shar.es/10ZHGO>; OHCHR, *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>.

<sup>35</sup> UN News Service, *Libya: Intensifying Fighting Continues to Take Heavy Civilian Toll, Warns UN Agency*, 10 October 2014, <http://www.un.org/apps/news/story.asp?NewsID=49054>.

<sup>36</sup> UNHCR, *UN Convoy into Western Libya Delivers Food and Relief Supplies to Displaced People*, 22 September 2014, <http://www.unhcr.org/541fe0d46.html>.

<sup>37</sup> UNHCR, *UNHCR Regional Update - Libya Situation, 8 – 14 September 2014*, 14 September 2014, <http://www.refworld.org/docid/542124814.html>. Up to 12,000 IDPs have been reached with humanitarian aid through two cross-border UN convoys; see UNHCR, *Cross-Border Aid Reaches 12,000 Displaced Civilians in Western Libya*, 18 August 2014, <http://www.unhcr.org/53f200d09.html>; UNHCR, *UN Convoy into Western Libya Delivers Food and Relief Supplies to Displaced People*, 22 September 2014, <http://www.unhcr.org/541fe0d46.html>.

<sup>38</sup> Applicable frameworks include that of the 1951 Convention relating to the Status of Refugees [*Convention Relating to the Status of Refugees* (“1951 Convention”), 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, <http://www.refworld.org/docid/3be01b964.html>] and its Protocol [*Protocol Relating to the Status of Refugees*, 31 January 1967, United Nations, Treaty Series, vol. 606, p. 267, <http://www.refworld.org/docid/3ae6b3ae4.html>], the EU Qualification Directive, relating to refugees or persons in need of subsidiary protection [European Union, *Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted* (recast) (“Qualification Directive”), 13 December 2011, <http://www.refworld.org/docid/4f06fa5e2.html>] or other applicable regional frameworks; the OAU Convention [*Convention Governing the Specific Aspects of Refugee Problems in Africa* (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45, <http://www.unhcr.org/refworld/docid/3ae6b36018.html>], and the Cartagena Declaration [*Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama*, 22 November 1984, <http://www.refworld.org/docid/3ae6b36ec.html>].

<sup>39</sup> See reports on incidents of violence against / abductions / killings of persons with such profiles in: OHCHR and UNSMIL, *Overview of Violations of International Human Rights and Humanitarian Law during the ongoing Violence in Libya*, 4 September 2014, <http://www.refworld.org/docid/540d627e4.html>; HRW, *Libya: Assassinations May Be Crimes Against Humanity*, 24 September 2014, <http://www.refworld.org/docid/542560db4.html>. As regards women engaged in the public sphere, see e.g. HRW, *Libya: Tribute to Salwa Bughighis*, 26 June 2014, <http://www.refworld.org/docid/53ad46d04.html>.

in accordance with the 1951 Convention, for reason of real or imputed political opinion, or for reasons related to other 1951 Convention grounds. Claims need to be considered on an individual basis, carefully taking into account the particular circumstances of each case. Furthermore, where applicable, UNHCR considers that persons fleeing Libya may be in need of international protection in accordance with Article 1(2) of the 1969 OAU Convention, or, if the 1951 Convention criteria are found not to apply in the individual case, may meet the criteria for complementary forms of protection.<sup>40</sup> There may be individuals who have been associated with acts that bring them within the scope of the exclusion clauses contained in Article 1F of the 1951 Convention.<sup>41</sup> In such cases, it will be necessary to examine carefully any issues of individual responsibility for crimes which may give rise to exclusion from international refugee protection. In addition, to preserve the civilian character of asylum, States would need to assess the situation of arrivals carefully so as to identify armed elements and separate them from the civilian refugee population.<sup>42</sup>

#### *Access to Territory and UNHCR Position on Returns*

12. As the situation in Libya remains fluid and uncertain, UNHCR calls on all countries to allow civilians fleeing Libya access to their territories. UNHCR furthermore commends any measure taken by States to suspend forcible returns of nationals or habitual residents of Libya, including those who have had their asylum claim rejected. UNHCR urges all States to suspend forcible returns to Libya until the security and human rights situation has improved considerably. Any proposed returns in the context of the application of an internal flight or relocation alternative would need to be assessed carefully, taking into account the individual circumstances of the case; UNHCR considers that, in the current circumstances, in most cases the relevance and reasonableness criteria are unlikely to be met.<sup>43</sup> Suspension of forcible returns of nationals and habitual residents to Libya serves as a minimum standard and should not replace international protection for persons found to meet the criteria for refugee status under the 1951 Convention and the 1969 OAU Convention. This advice is valid until such time as the security and human rights situation in Libya has improved sufficiently to permit a safe and dignified return.

#### *Refugees and Asylum-Seekers (Third Country Nationals)*

13. Libya is not party to the 1951 Refugee Convention. Confronted with increasing insecurity, third country nationals have found themselves compelled to leave Libya in large numbers, many of them resorting to dangerous sea journeys. Among these persons, there are persons who were recognized as refugees or registered as asylum-seekers in Libya by UNHCR, or in other countries where they resided before reaching Libya (by UNHCR or in State refugee status determination or asylum procedures). Syrians, Palestinians, Eritreans and Iraqis are the largest groups of asylum-seekers and refugees registered with UNHCR in Libya.<sup>44</sup> In addition, there are likely to be third country

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<sup>40</sup> In the context of human rights obligations, or of applicable regional frameworks, such as the EU Qualification Directive.

<sup>41</sup> UNHCR, *Guidelines on International Protection No. 5: Application of the Exclusion Clauses: Article 1F of the 1951 Convention relating to the Status of Refugees*, 4 September 2003, CR/GIP/03/05, <http://www.unhcr.org/refworld/docid/3f5857684.html>.

<sup>42</sup> See UNHCR, *Operational Guidelines on Maintaining the Civilian and Humanitarian Character of Asylum*, September 2006, <http://www.refworld.org/docid/452b9bca2.html>.

<sup>43</sup> The decision-maker bears the burden of proof of establishing that an analysis of relocation is relevant to the particular case. If considered relevant, it is up to the party asserting this to identify the proposed area of relocation and provide evidence establishing that it is a reasonable alternative for the individual concerned. See UNHCR, *Guidelines on International Protection No. 4: Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees*, HCR/GIP/03/04, 23 July 2003, <http://www.refworld.org/pdfid/3f2791a44.pdf>, and paras. 33-35. For an IFA/IRA to be relevant, the proposed area of relocation must be practically, safely and legally accessible. Further, where the claimant has a well-founded fear of persecution at the hands of the State and its agents, there is a presumption that consideration of an IFA/IRA is not "relevant" for areas under the control of the State. If the applicant fears persecution by a non-state agent of persecution, the ability to pursue the claimant in the proposed area and the State's ability to provide protection there must be considered, See paras. 9 –21. UNHCR considers that a similar analysis would apply when the applicability of IFA is considered in the context of determining eligibility for subsidiary protection.

<sup>44</sup> Out of the total of 36,984 persons registered, 18,700 are Syrian, 5,300 are Palestinian, 4,687 are Eritrean and 3,105 are Iraqi. Other registered nationalities include Somali, Sudanese, Ethiopian, Congolese and Chadian. Detailed statistics available from UNHCR.

nationals or stateless persons who resided in Libya but who had not or not yet applied with UNHCR for international protection in Libya before moving onwards to seek international protection elsewhere. This category may include persons originating from countries in conflict or otherwise in turmoil who were residing in Libya as migrant workers, but found themselves compelled to leave as a result of insecurity and violence. Upon arrival in another country, third country nationals seeking or otherwise indicating a possible need for international protection should be referred to national asylum procedures, for consideration of their applications for international protection.

#### *Designation of Libya as Safe Third Country*

14. UNHCR does not consider it appropriate for States to designate or apply in practice a designation of Libya as a so-called “safe third country”. The designation of a country as a “safe third country” may result in a request for international protection not being considered on its merits but declared inadmissible, or processed in an accelerated procedure with reduced procedural safeguards. Even before the current unrest and insecurity, UNHCR considered that Libya should not be considered as a safe third country, in light of the absence of a functioning asylum system, the widely reported difficulties and abuses faced by asylum-seekers and refugees in Libya, and the absence of protection from such abuses.<sup>45</sup> UNHCR calls on States not to channel applications for international protection from third country nationals into accelerated procedure or declare them inadmissible, merely on the basis of the fact that they previously resided in or transited through Libya.

#### *Updating and Review*

15. UNHCR’s position will be reviewed as the situation evolves and will be updated as necessary.

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<sup>45</sup> See e.g. UNHCR, *UNHCR Intervention Before the European Court of Human Rights in the case of Hirsi and Others v. Italy*, March 2010, Application no. 27765/09, <http://www.refworld.org/docid/4b9778d2.html>. See also footnote 25.