

FORCED MIGRATION review

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North Africa and displacement 2011-2012



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From the editors



As this issue goes to print, the so-called Arab Spring continues to reverberate locally, regionally and geopolitically. It started in early 2011 and spread across North Africa, with well-documented consequences far further afield in Africa and Europe. The conflict in Libya in particular confronted aid and protection actors with complex situations where people were moving for diverse reasons and facing distinct needs.

This issue of FMR reflects on some of the experiences, challenges and lessons of the Arab Spring in North Africa, the implications of which resonate far wider than the region itself.

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The North Africa issue is being published in English, Arabic and French, and is online in a variety of formats, including audio, at www.fmreview.org/north-africa. The expanded contents Listing is online at www.fmreview.org/north-africa/FMR39listing.pdf.

Alongside this issue we are also publishing an updated version of our FMR supplement on 'Islam, human rights and displacement'.

FMR 40 will include a feature theme on 'Being young and out of place' and will be published online in July 2012. For all forthcoming issues, see www.fmreview.org/forthcoming.

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With our best wishes

Marion Couldrey and Maurice Herson

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Forced Migration Review

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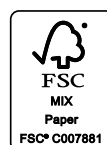
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Front cover image: On the Tunisia-Libya border
2011 UNHCR / A Duclos

Positive lessons from the Arab Spring

António Guterres

Forced displacement in today's world is marked by several characteristics: multiple and unpredictable triggers; overwhelming numbers fleeing in a short period of time; and entire communities destroyed, too often for generations, in a matter of days. Whether across international borders or within their countries of origin, those displaced are often met with remarkable generosity by individuals and host communities, yet sometimes fail to elicit the international assistance required to alleviate their misery or the political will to resolve their plight.

The exodus from Libya serves as a microcosm of these features. Sparked by an individual act of resistance in Tunisia, peaceful protests in Libya were met by oppression, and by late February border points with Tunisia that had formerly received 1,000 persons a day were getting that many in an hour. Entire communities fled, leaving behind their homes and life savings, the more fortunate carrying what possessions they could such as mattresses and blankets. The scenes I witnessed during my visits to the border during the crisis were dismaying, with frightened and disoriented crowds still in shock from the violence they had escaped and the uncertainty they faced.

The response from ordinary Tunisians was remarkable in its altruism. I witnessed villagers sharing their homes and land while others drove for miles to provide sandwiches for those stuck in the crowds at the border. That Tunisia

maintained an open border is also noteworthy as it was still emerging from its own 'Arab Spring' turmoil. The international community in this instance joined forces, sending aircraft to return workers and, in the case of refugees, offering resettlement places so that those secondarily displaced from Libya could start a new life.

Coordinated and timely assistance and protection are critical, as we witness a proliferation of new conflicts – Mali, Syria and Sudan – in addition to 'old' ones, including the Democratic Republic of Congo, Somalia and Afghanistan. We need, unfortunately, to be able to focus on more than one story at a time as the world is creating displacement faster than it is producing solutions. These are essentially political problems and require a political response, as humanitarian agencies like mine can neither prevent nor end displacement on our own. The reaction to the exodus from Libya showed it can be done, when the international community has the will to do so.

I welcome this issue of *Forced Migration Review* for examining what was accomplished and highlighting what challenges remain. Our common work to seek political responses and solutions, in a systematic fashion, must be underpinned by learning such as this.

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Broadening our perspective

William Lacy Swing

Upholding the human rights and dignity of migrants and people displaced is one of the major challenges of the century. The causes of migration are complex and myriad, and result in no small measure from the phenomenon of globalisation in the economic, political and cultural spheres. Human rights violations, armed conflict, natural disasters and, increasingly, climate change and environmental degradation also contribute to this unprecedented surge in human mobility.

Complex crises triggered by man-made and/or natural causes generate disorderly and predominantly forced movements of people, either internally or across borders; these not only make some populations significantly vulnerable but also have lasting implications for societies, economies, development, environments, security and governance. There is a growing recognition that existing legal categories of crisis-affected persons – such as refugees or internally displaced persons – may not fully capture the varied conditions of people in crisis situations, the many avenues used by persons to escape such situations, and the changing nature of circumstances over time.

Approaches that focus solely on displaced persons, for example, may fail to reflect other realities – such

as the high vulnerability of persons unable to migrate during crises and remaining trapped in dangerous conditions. Placing crisis-related mobility in a larger migration context can shed light on latent structural factors which determine people's migration behaviour before, during and after a crisis, and promote effective ways to protect, assist and guarantee the human rights of affected persons. The events in North Africa, in particular the Libya crisis, demonstrate the need and added value of looking at crises from a mobility standpoint, what we at IOM term a 'migration crisis'.

Complementary to humanitarian preparedness, response and recovery frameworks for complex crises, a migration management approach examines all phases related to crisis response from the standpoint of human mobility. One of the major challenges that remains is for states to coordinate among themselves and with the institutions that have the mandate and architecture to respond to these crises. IOM is taking a lead in reviewing operational systems and mechanisms to improve preparedness and response to migration crises.

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Migration and revolution

Hein de Haas and Nando Sigona

The Arab Spring has not radically transformed migration patterns in the Mediterranean, and the label 'migration crisis' does not do justice to the composite and stratified reality.

From the outbreak of the popular uprisings in North Africa and the Middle East, European media and politicians were preoccupied with the prospect of 'tidal waves' of North Africans reaching Europe. These sensational predictions lacked any scientific basis so it should come as no surprise that they have not come true.

Nonetheless, migration in its various forms has played a key part in the uprisings that spread across these regions. The columns of vehicles escaping from cities and villages under siege in Libya, the migrant workers awaiting repatriation in the holding centres in Egypt and Tunisia, the boats crammed with Tunisians and sub-Saharan Africans crossing the Mediterranean Sea and landing on the island of Lampedusa, and the numerous Egyptian émigrés and university students returning to Cairo to join the protests in Tahrir Square are a few examples of the ways in which human mobility has intersected the events in North Africa.

Recent migration events are not simply a side effect of the revolutions. The possible links between declining opportunities for migration from North Africa to the EU (due to the economic crisis and intensified border controls) and the exclusion and discontent of disenfranchised youth on the one hand, and the protests on the streets of Tunisia, Egypt, Libya, Algeria and Morocco on the other, deserve closer consideration.

As a starting point it seems useful to distinguish between the uprisings themselves, and the subsequent transition and consolidation of new political regimes. This allows a clearer overview of mobility patterns, the various ways migration and forced displacement have intersected with the popular uprisings over time, and the models of engagement adopted in this rapidly changing political situation by international agencies that otherwise would be lost in the generic label 'Arab Spring'.

From the northern shores

"In 2011, the EU missed a historic opportunity to demonstrate its commitment to the foundations it is built on. It is as if we'd said to them: 'It is wonderful that you make a revolution and want to embrace democracy but, by all means [possible], stay where you are because we have an economic crisis to deal with here.'" (Cecilia Malmström, EU Home Affairs Commissioner)

This quote from a public lecture at Harvard University in April 2012 reflects a remarkably candid assessment of the ambiguity of response by the EU and its Member States to the migration flows associated with the political instability and economic insecurity in North Africa and the Middle East. The array of documents, policy statements and position papers issued over the last year by EU institutions highlights an anxiety about the exodus of North Africans towards the northern shores of the Mediterranean Sea. While this exodus never

happened, the powerful image of an 'invasion' – with the Italian island of Lampedusa acquiring an iconic status – has certainly permeated public perceptions and the policy responses of EU Member States.

The EU's response to this conflict-related migration in North Africa has also demonstrated the tension between internal and external dimensions of migration governance. The EU's Global Approach to Migration and Mobility paper (GAMM)¹ of November 2011 tried to reframe the EU's approach around four "equally important" pillars: facilitating regular migration and mobility; preventing and reducing irregular migration and trafficking; maximising development impact; and promoting international protection and "enhancing the external dimension of asylum policy".

While this is a step in the right direction by apparently shifting away from a unilateral bias on security issues, the GAMM still remains locked into the false and misleading dichotomy of 'legal' and 'illegal' migration (even though with a softer tone). The centrality of migration enforcement and control is still paramount and the strengthened role of Frontex², which saw its operational budget rocket from €6.3 million in 2005 to nearly €42 million in 2007 and topping €87 million by 2010, symbolises this priority. The reality of the deaths at sea of an estimated 2,000 migrants in 2011 alone (according to the Council of Europe), at a time when the Mediterranean Sea had become one of the most militarised and heavily patrolled areas of the globe, is a stark reminder of the gap between EU rhetoric and actual practice on development and human rights.

The social and political unrest and the popular push towards more democratic governance in North Africa have upset the cosy relationship and collaboration on migration issues between European and North African governments. In the years preceding the revolutions, the EU and its North African counterparts thought that the problem of the crossing of the external borders of Europe by 'undesirables' was, if not solved, at least beginning to be overcome. In addition to increasingly restrictive immigration regimes, the EU externalised border controls to North African countries through initiatives such as the bilateral agreements between the former Libyan regime and Italy, or Tunisia and France, or Morocco and Spain. Rather than stopping migration, this has increased the irregular character of migration and has led to a geographical diversification of overland and maritime migration routes in and from Africa. This has made migration more costly and risky for migrants, and increased their



Sallum border post in the no-man's land between Libya and Egypt.

vulnerability to exploitation and suffering. EU policy makers seem rarely to consider these side effects.

From the southern shores

The hundreds of thousands of sub-Saharan and other migrant workers stranded in Libya during the civil war who sought refuge across the Egyptian and Tunisian borders suddenly exposed the scale of intra-African migration to the global public. Overall, migrant workers from more than 120 countries were displaced during the conflict.

Eurocentric accounts of the Arab Spring almost completely ignored the profound impact of the Arab Spring on countries of origin. This pertains not only to the possible role of returnees in the recent political violence in countries like Mali but also to the fact that many families in extremely poor countries are now deprived of vital remittance income since migrant workers returned home from Libya. In many ways, returnee migrants moved from one situation of insecurity to another.

Many displaced people were migrant workers who had lived in Libya for years. In the wake of the conflict most of them have tried to return home, discrediting the idea that the Arab Spring would cause a mass exodus to Europe. However, the most vulnerable group consisted of migrants and refugees who were not able to return because it was too dangerous and/or because they lacked the money and contacts to facilitate their flight. They have become trapped in a situation which the migration researcher Jørgen Carling has aptly described as “involuntary immobility”.

Others did not necessarily aspire to return, as they had fled insecurity, persecution and deprivation in their own countries, and had often been living in North Africa and the Middle East for many years or even decades. These include sub-Saharan and Tuareg migrants in Libya; Iraqis, Palestinians and Somalis in Syria; and Sudanese and Somalis in Egypt. Political instability, economic crisis, increasing costs of living and unemployment, and the increase of insecurity (due to reduced policing) have made these groups more vulnerable than they were already.

Mass flight has been largely confined to Libya and there has been no major increase of emigration from other North African countries. The increase in Tunisian emigration was facilitated by reduced policing during the revolution but stood in a long-standing tradition of irregular boat migration to Europe that has existed since southern European countries introduced visas for North Africans around 1991.

Emigration and revolution

It is rather unlikely that the revolutions will drastically change long-term migration patterns. The same processes that have created the conditions for the revolutions are also conducive to emigration, and the two phenomena may reinforce each other. In the region, a new generation has grown up, better educated, with wider aspirations and more aware of opportunities elsewhere and injustices at home than any previous generation, but at the same time

feeling rejected and angry due to high unemployment, corruption, inequality and political repression.

The coming of age of a new, wired and aware generation of angry young men and women has increased both the emigration and the revolutionary potential of Arab societies. Even under the most optimistic scenarios, the idea that emigration will stop is as unlikely as the idea of a mass exodus towards Europe. Certainly, a populous and deprived country like Egypt seems to have a significant emigration potential for years to come. However, whether these migrants will go to Europe or elsewhere primarily depends on future economic growth in Europe and elsewhere. At the same time, it is likely that the Libyan oil economy will continue to rely on migrant labour, and Egyptian and sub-Saharan migrants have in fact started to return there.

For political elites in the region, migration has fulfilled an important role as a safety valve, since the opportunity to migrate overseas relieved unemployment, discontent and internal political pressures for reform. This lack of migration opportunities may perhaps have turned the attention and anger inwards, and tipped the balance in favour of revolutionary forces. Besides, political exiles and emigrants played an important role in supporting the revolutions, certainly in Tunisia and Egypt.

What will be the impact of political reforms and possibly more democratic modes of governance on migration and migration policy? Some observers argue that the more conservative, religiously inspired nature of current and future governments may possibly increase migration aspirations among secular elites, minorities and women, whose rights might possibly be impinged upon.

On the other hand, possible increases in respect for human rights for their own citizens may also push North African societies to become more reflective and self-critical towards xenophobia and violations of the rights of migrants and refugees, and make their governments less willing to collaborate with the security-focused immigration policies of European countries.

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This article partly reflects discussions at a workshop entitled ‘The Arab Spring and Beyond: Human Mobility, Forced Migration and Institutional Responses’ convened by the Refugee Studies Centre, the International Migration Institute and the Oxford Diasporas Programme in Oxford in March 2012.

Workshop report at www.rsc.ox.ac.uk/publications/rsc-reports/wr-arab-spring-beyond-120612.pdf/view

Podcasts available at www.forcedmigration.org/podcasts-videos-photos/podcasts/arab-spring-and-beyond

1. http://ec.europa.eu/home-affairs/news/intro/docs/1_EN_ACT_part1_v9.pdf

2. The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.



Bordering on a crisis

Guido Ambroso

While the phenomenon of 'mixed migratory flows' has long been recognised, this was the first time it applied to a large-scale displacement. It required a coordinated humanitarian response for a large and diverse group of displaced persons.

The Libya crisis generated a massive influx of migrants and refugees in Tunisia and Egypt, which might be labelled a 'mixed migration crisis', and presented several new challenges to the humanitarian community. While the huge magnitude of the flows was not unprecedented, nothing approaching that scale had ever happened in the Mediterranean. The whole international community was taken by surprise, particularly in Tunisia which had never been affected by any substantial influx of refugees or displaced persons. Hence little prior contingency planning had taken place.

Furthermore, the composition of the flow was quite new. Particularly in the first few weeks, the majority of the new arrivals were economic migrants and third-country nationals, that is, nationals of neither Libya nor the countries in which they arrived (including Egyptians in Tunisia). And while they clearly had humanitarian and protection needs, the vast majority of the first waves of displaced persons who arrived at the borders were not technically refugees according to the 1951 Convention. Most had been migrant workers in Libya which was estimated to host as many as two million migrants, of whom 600,000 were there legally.

The number of nationalities was also staggering, dozens at a time, and as many as 120 in total, while traditionally UNHCR had been used in dealing with one or two in the same influx. Finally, the influx was taking place in two countries, Tunisia and Egypt, which were experiencing transitions of their own.

There was no pre-existing asylum system in Tunisia and only a weak one in Egypt that effectively barred refugees from achieving local integration (particularly in terms of access to employment and services) and had limited resettlement opportunities.

The humanitarian response

There was an early strategic decision at the highest levels of UNHCR and IOM's leadership to cooperate closely within a flexible interpretation of their mandates (for refugees, and for migrants more generally, respectively). This strategic cooperation was the key to the success of the operation. UNHCR and IOM reacted very quickly and by the end of February tented camps were set up in the border areas in Tunisia and Egypt, the new arrivals were soon screened and the evacuation back to countries of origin began in earnest.

The camp locations were selected by the two governments. While Shousha in Tunisia was not ideal (in a rather turbulent area only 7 km from the border) but acceptable, new arrivals in Egypt were allowed to stay only in the confines of the fenced precinct of Salloum border area, legally in Egypt but in practice in no-man's land. The restricted area of the Salloum border was not suitable for a camp within accepted standards, and even permission to

erect a few large communal tents required lengthy negotiations with the Egyptian authorities at different levels. At the beginning of 2012 the Egyptian authorities indicated that they will make more land available for the refugees but still within the Salloum fenced border area.

The Humanitarian Evacuation Programme (HEP), jointly undertaken by IOM and UNHCR, was a crucial component of the operation. The HEP, announced on 1 March 2011, facilitated the repatriation of as many as 218,000 migrants, mostly by plane, from Tunisia and Egypt, making it arguably the largest air evacuation in history. UNHCR's role in the HEP was over by 2 April and, although time-limited, was crucial in supporting IOM in the initial phase before this activity was handed over entirely to IOM.

The initial overriding concern was to decongest the Tunisian and Egyptian border areas and to provide solutions for these war-affected displaced migrants who were experiencing what has been called a 'protection gap', since they are not covered by international legal instruments. The objective of the HEP from UNHCR's perspective was to keep the protection space open in Tunisia and Egypt for asylum seekers and refugees not able to return to Libya nor to their country of origin. Depending on the definition of 'protection space' this impact was at least partially achieved.

After the first waves, the profiles of the new arrivals at the Tunisian and Egyptian border started changing. Although there were still many economic migrants, there were also two categories of refugees (who, unlike the migrants, could not repatriate because of protection concerns): Libyans and sub-Saharan Africans, mainly from Eritrea, Somalia and Sudan.

Of the approximately 150,000 Libyans who crossed primarily into Tunisia, the first to arrive were seeking a temporary safe haven from the conflict, and were then followed by those who were afraid of the political transition. However, Libyan refugees were not in much need of international protection and assistance because existing bilateral agreements allowed them full access to Tunisian and Egyptian territory and free access to most services enjoyed by the local population and those in material need were hosted by local families who showed great hospitality and generosity. Hence UNHCR's assistance role was mainly limited to paying utilities and medical bills (in Tunisia a limited number of destitute Libyans were also temporarily assisted in a tented camp and with food).

The same was not true for sub-Saharan Africans, who were ordered to stay in the Shousha and Salloum camps and could not go any further as neither Tunisia nor Egypt was prepared to allow them to enjoy full asylum on their territory but only temporary protection in the two camps. Admission had been granted on condition

that not only all migrant workers but also all refugees and asylum seekers escaping from Libya (with the exception of Libyans) would leave – and the sooner the better. These refugees were not only displaced by the war but also traumatised by the anti-Gaddafi forces' perception that all 'black Africans' had been employed to fight for Gaddafi's regime and they were therefore also fearful of returning to the new Libya.

Given that repatriation was not an option because of protection concerns, the only solution for them was resettlement to a third country. But before individual cases could be submitted to resettlement countries, a thorough refugee status determination (RSD) had to be carried out. A few refugees had already been recognised by UNHCR in Libya under its mandate but many others had never approached the office. Though the numbers were not huge (4,276 in Shousha and 1,442 in Salloom by mid August 2011), the variety of nationalities made the RSD process very cumbersome, with the need to hire interpreters for many different languages and to identify and deploy additional protection staff alongside competing emergencies in West Africa and the Horn of Africa. These challenges meant that the RSD process took on average more than six months and created some frustrations among the asylum seekers; accelerated procedures could not be followed because they would not be accepted by resettlement countries.

The influx in Tunisia and Egypt may be characterised as a mixed flow not only because there were migrants who fled side by side with asylum seekers and refugees but also because some of the persons who claimed refugee status had mixed motivations, partly economic and partly 'political', to leave their country of origin in the first place. For example Somalis and Eritreans had gone to Libya to find work but also had legitimate concerns about returning to their home countries.

The mix of nationalities also created tensions among the camp populations, particularly in Shousha, and by mid May UNHCR and its partners had to divide the camp into several sections according to the different nationalities, a move that was appreciated by the vast majority of the beneficiaries who felt much more secure, at least from a psychological point of view.

Resettlement and emergencies

Resettlement to a third country is dependent on commitments made by resettlement countries to offer refugees this solution. Unfortunately, most European resettlement countries, which have relatively speedy resettlement procedures, did not substantially increase their resettlement quotas to cater for this emergency beyond what was previously planned, in spite of a UNHCR-led Global Resettlement Solidarity Initiative and a crisis that was unfolding on the shores of the Mediterranean.

In contrast, the United States, having a large resettlement quota, could absorb the majority of the refugees referred for resettlement even though it has slow procedures owing to lengthy security checks. As a result, by the end of 2011, as many as 66% of the resettlement cases had been submitted to the US, although only 17% of the refugees submitted for resettlement and 13% of the total number of persons of concern to UNHCR had physically departed.

In Egypt the focus on resettlement for the new arrivals from Libya created resentment among the existing refugees in Cairo who, with few prospects of local integration, had also hoped to be resettled but with substantially fewer resettlement opportunities than the new arrivals and hence much longer waiting periods.

It is foreseen that all resettlement submissions will be finished by mid 2012, thanks also to the mobilisation of a considerable number of resettlement officers on an emergency basis, a novel development for UNHCR, but the acceptance process and physical departures are likely to continue well into 2013. One lesson for UNHCR is therefore that while it can undertake resettlement in emergencies, it cannot achieve emergency resettlement since it is inevitably a lengthy process.

Conclusion

The joint IOM-UNHCR HEP operation was key to providing humanitarian assistance, protection and solutions (through repatriation) to over 200,000 war-affected migrants. Together with the protection activities (particularly resettlement) and humanitarian assistance provided to refugees in the camps, it showed the international community's tangible solidarity with Tunisia and Egypt. This had the positive impact of keeping the borders open.

In this sense, the HEP and the resettlement operation had a positive impact on protection space in Tunisia and Egypt. If, however, protection space is seen as the presence of asylum systems in line with international standards, then the impact has been more mixed. Since the beginning of 2012 there have been positive signs that Tunisia might eventually adopt an asylum law and put in place a system for asylum seekers and refugees in line with international standards but the situation in Egypt appears unlikely to change in the foreseeable future.

The issue of mixed migratory flows is likely to recur and the strategic cooperation between UNHCR and IOM, as well as other partners, may therefore have to be activated again in the near future. It will also require cooperation and burden sharing from all concerned states and not just from those directly affected by these movements.

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Shousha transit camp, Tunisia



Legal protection frameworks

Tamara Wood

The large-scale displacement associated with the recent popular uprisings in North Africa both reinforces and challenges the role of legal protection mechanisms.

For more than 60 years the 1951 Convention relating to the Status of Refugees (1951 Refugee Convention) has provided the cornerstone of international protection for displaced persons. It is an important source of protection for many of those fleeing popular uprisings in North Africa, having been ratified by many of the destination countries, such as Egypt, Tunisia, Algeria, Italy and Malta.¹

The broader context of North African displacement, however, highlights some of the limitations of the Convention's rather narrow and technical definition of a refugee, which may exclude many people genuinely in need of protection. Persons fleeing generalised violence or armed conflict, such as occurred in Libya for example, will frequently fall outside the Convention's definition because of their inability to establish a link between the risk of harm they face and one of the five stated grounds of persecution [see box]. In addition, the Convention's refugee definition is confined to persons with a well-founded fear of persecution only in relation to their country of nationality. So-called 'third-country nationals' – including migrant workers and refugees from other

countries living and working in North African states at the time of the uprisings – are unable to claim protection under the Refugee Convention in relation to their fear of harm in those states.

For persons falling outside the scope of the Refugee Convention, a number of

This more readily encompasses displacement caused by situations of widespread conflict, such as in Libya.

Like 1951 Convention refugees, refugees under the 1969 Convention also benefit from the principle of *non-refoulement*, which prevents them from being returned to a territory where their "life, physical integrity or liberty" would be threatened. They also arguably benefit from the broad range of refugee rights set out in the 1951 Convention; although the 1969 Convention itself does not contain a comparable list of rights, its explicit intention to provide a 'regional complement' to the former presents a strong case for the provision of equal rights to refugees under both definitions.

While the scope of the 1969 Convention's refugee definition is broader than its 1951 counterpart, it imposes protection obligations on African states only, and does not extend to the more than 45,000 people who fled across the Mediterranean Sea to Europe, who must rely on the narrower 1951 Convention definition for refugee status. And even within Africa, OAU Convention refugees may be denied the opportunity to access durable solutions such as resettlement, which is generally only available to refugees under the 1951 Convention.

Refugee status under both the 1951 and 1969 Conventions is also subject to the instruments' respective exclusion and cessation provisions, whereby a refugee's protected status may be denied where the refugee has committed a war crime, crime against humanity or other serious non-political crime,⁴ or may be removed where "the circumstances in connection with which he was recognized as a refugee have ceased to exist"⁵. However, such provisions must be interpreted in light of each Convention's overall object and purpose – which is to provide protection – and thus should be applied cautiously. For example, UNHCR has made it clear that for change in country conditions to warrant cessation of refugee status, that change must be sufficiently "fundamental, stable and durable".⁶ While many Libyans who left the country during the height of conflict have now returned, the violent nature of regime change in Libya means it is unlikely to constitute sufficiently stable and durable change to warrant the cessation of refugee status in the immediate future.

The 1951 Refugee Convention, along with its 1967 Protocol, applies to any person who "owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country" (Art 1A(2)). Persons satisfying this definition are refugees and benefit from a range of rights under the Convention, including rights to work, education and housing, as well as protection from *refoulement* – that is, from being returned to a place in which their life or freedom would be threatened (Art 33).²

subsequent developments in the protection of forced migrants may provide an alternative source of protection. The 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa (1969 OAU Convention) is one such source, designed to address aspects of African refugee protection not adequately addressed by the 1951 Convention.³ Significantly, the 1969 OAU Convention's definition of a refugee extends protection to include any person who "owing to external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality, is compelled to leave his place of habitual residence in order to seek refuge in another place outside his country of origin or nationality" (Art 1 (2)).



In addition to the refugee-specific 1951 and 1969 Conventions, broader international human rights law also provides protection to displaced persons, both by extending the principle of *non-refoulement* beyond those who qualify for refugee status and by stipulating minimum standards of treatment for all persons within a given state's territory or jurisdiction. The International Covenant on Civil and Political Rights (ICCPR), the Convention against Torture (CAT) and the Convention on the Rights of the Child (CRC), for example, all prevent states from returning people to locations and situations where they would face harm.

In Europe, these broader *non-refoulement* obligations have been implemented under the European Union's

forms of displacement pose to existing frameworks. A significant number of Somali, Sudanese and Eritrean migrant workers, for example, fled Libya to neighbouring countries such as Egypt and Tunisia. The 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families provides important rights for migrant workers in their country of residence; however, it does not address the particular issue of displacement. Where migrant workers can show that they would face serious harm if returned to their country of origin, they may benefit from the broader principle of *non-refoulement* but, in general, despite facing situations of vulnerability equal to, or greater than, many displaced nationals, migrant workers are rarely afforded the special status of many other displaced persons.

The lack of protection under international law for persons who have not crossed an international border – i.e. IDPs – is also a noted feature of international and regional forced displacement governance, although the Guiding Principles on Internal Displacement⁷ and the African Union Convention for the Protection and Assistance of Internally Displaced Persons in Africa (Kampala Convention)⁸ present two significant developments in this area. In particular, the Kampala Convention – adopted unanimously by the African Union (AU) in October 2009 – provides binding obligations on African States Party to provide for protection of persons displaced within their own borders. Although this is yet to come into effect (requiring ratification by a minimum of 15 AU Member States), the North African experience demonstrates the potential future significance of such an instrument in the region.

Perhaps the greatest challenge to protection, however, is in the actual implementation of international and regional legal protection mechanisms. In many states, both treaty and customary obligations must be incorporated into national law before they are enforceable at the national level. Where states fail to fulfil their international protection obligations, there are limited opportunities for redress for those affected. While many human rights treaties have review and complaints mechanisms, such mechanisms are slow-acting and may bring a result too late to be meaningful for the complainant. And there is a conspicuous absence of any equivalent procedures under refugee-specific protection instruments. The experience of displacement in North Africa presents an opportunity to consider how both international and regional legal protection mechanisms might be strengthened to ensure that limitations in scope and implementation do not undermine the overall protection goals for which they were conceived.

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1. See 'Who's signed what' section, FMR supplement on 'Islam, human rights and displacement' www.fmreview.org/human-rights
2. www.ohchr.org/english/law/refugees.htm
3. www.unhcr.org/refworld/docid/3ae6b36018.html
4. 1951 Refugee Convention, Art 1F
5. 1969 OAU Convention Art 1(4)(e); 1951 Refugee Convention Art 1C(5)
6. UNHCR ExCom Conclusion No. 68 (1992)
7. See www.brookings.edu/about/projects/iddp/gp-page for all language versions
8. <http://tinyurl.com/Kampala-Convention-En>



A Tunisian man hands back passports to Bangladeshi refugees that were collected by the Tunisian military at the time of crossing the border.

'subsidiary protection' regime. However, it is worth noting that the principle of *non-refoulement* is now so widely accepted that it is considered a principle of customary international law; the obligation not to return persons to harm is therefore binding on all states, including those not party to any of the relevant treaties.

Outside the protection net

The international and regional protection instruments described above reflect long-standing legal and normative distinctions between different categories of migrants – in particular, between so-called 'forced' and 'voluntary' migrants. Mixed migrations flows – whereby economic ('voluntary') migrants, refugees and other forced migrants move simultaneously between states and regions – make it difficult to identify those genuinely in need of protection. In addition, the mixed motivations of individual migrants challenge the conceptual distinction between refugees and other migrants.

In the North African context, displaced migrant workers provide a stark illustration of the challenges that modern

The bittersweet return home

Asmita Naik and Frank Laczko

Migrants left Libya in haste and in fear for their lives. Possessions and valuables were abandoned in the rush to leave. A rapid international response saved lives and facilitated the return home but a premature return may have some unwelcome repercussions.

This article draws on assessment reports and profiling exercises carried out by the International Organization for Migration (IOM) to map out needs in areas for return and to pave the way for reintegration and community stabilisation programmes. The findings of the assessments reports led to some reintegration projects being started in Ghana for example. The assessments were carried out between June and October 2011.¹

Nearly 800,000 migrants fled Libya in 2011, of whom 212,331 West African nationals returned to six home countries², 130,677 by direct border crossing from Libya and 81,654 with IOM assistance, the majority by air. The vast majority of West African returnees were males (98-99%), mostly aged between 20 and 40 years old, of whom a high percentage held low-skilled jobs in Libya, such as labouring, farming and construction.

It has been estimated that migrant workers in Libya remitted nearly US\$1 billion in 2010. The majority of returnees were from impoverished and underdeveloped communities which experience agricultural failure, food insecurity, malnutrition, an absence of economic opportunities, and inadequate health infrastructure and education services. Labour migration was a key coping strategy with remittances from returnees playing a major role in household survival. These were used to meet basic daily needs – food, housing, health and education – and little was left over for investment. In fact most remittances were spent on food, with nearly 90% of remittance income going towards this basic essential in some countries. If money was spent on buying assets, this tended to be on agricultural assets.

The economic impact of the loss of remittances was felt at individual family and community levels, although other findings appear to show that remittances actually had little effect on the wider community. Family consumption was undoubtedly affected, money for housekeeping and daily food was a problem, and some had to consider withdrawing children from schools. The problem seems especially acute in places which had suffered severe food insecurity for years such as Niger or where there was a particularly heavy dependence on remittances such as in Mali. In Niger the abrupt termination of remittances had a negative effect on local markets and traders. In Senegal, villages with a large expatriate community in Libya suffered acutely; in one village 75% of the village income was derived from remittances from Libya or elsewhere.

Reception at home

IOM worked with government and partner agencies to ensure reception facilities were in place. This involved setting up transit centres to provide food, water and sanitation while arranging transportation to final destinations. In some countries, returnees were met in their home towns with food and accommodation provided by local authorities and NGOs.

The return and reception of migrants appears to have been systematically organised across the countries of West Africa but measures faltered, perhaps inevitably given the circumstances, when it came to reintegration support. In terms of reception, the approach in Senegal seems typical of other countries in the region. The government mobilised a national committee with the help of IOM and other agencies to plan a response. This involved



Returnee migrants from Libya to Chad

meeting returnees at international airports or at land border crossings, providing them with basic assistance and then organising transport for them to get home.

Returnees are back safe and sound but what is much needed is reintegration support. In Niger, the government issued an order for support to returnees comprising food distribution, seed supply, distribution of livestock and cash support. But implementation varied at local level. Some local authorities had done little, and did not even have a clear registration process; other authorities, while slow to start, had plans in place for cash transfers, cash for work, and strengthening grain banks. In Chad some regions had set up welcome committees and were carrying out registration as a prelude to other activities, while others were doing nothing. In Senegal part of the problem appeared to be that return was managed at central level without the involvement of local authorities which made for a weak response at local level. In Ghana, despite the stated good intentions of government, no reintegration programme had been started. A returnee in Niger said, "I've been here four months and no support has reached us. It seems that something is scheduled for us but it remains blocked for some reason in Niamey."

An important lesson learned is the need to introduce specific measures to facilitate the reintegration of the returnees in a timely way. An innovative reintegration scheme for returnees was introduced in Bangladesh [see following article]. It is too early to assess the longer-term outcomes of this scheme but it could be a model for other countries in the future.

The reception on arriving home was a bittersweet experience for many returnees. Reunions were emotional; families were relieved to see family members come home safely but joy quickly turned to worries about making ends meet and embarrassment among returnees at coming home empty-handed. Most returnees were from poor families anyway and the return home heightened the vulnerability of already struggling households.

Returnees in all countries found themselves in very difficult circumstances and commonly expressed sentiments of desperation, anxiety and frustration. Above all, the human tragedy of young men and women, suddenly uprooted from their livelihoods, and transplanted back to a situation of dependency, and facing a bleak and uncertain outlook, comes across forcefully in all the reports. Returnees frequently talked of feeling humiliated, and commonly expressed sentiments of despair, anxiety and frustration; of scorn and abuse by community members; and of fragile and unstable emotional states of mind. The most common and obvious concerns were employment, daily expenses and housing. In Burkina Faso most returnees were living with relatives or friends in homes made of temporary materials. Some appeared to have problems finding the next meal, and with meeting the costs of schooling and health care.

Returnees are responding to this situation by turning to a variety of measures to make ends meet. Local bank managers in Ghana reported the withdrawal of deposits

and early redemption of fixed deposits as well as an increase in demand for loans. In Burkina Faso, animals were being sold to meet immediate needs. In both cases, this was in effect cashing in important investments.

Some returnees returned to their former occupations but not many had returned with sufficient savings to set themselves up. In all these countries returnees had ideas about starting new income-generating activities, and were keen to do so, but needed money and materials to help launch these initiatives.

Apart from money, other key barriers to reintegration included psychological trauma, loss of property or investment, and debts. The 'culture shock' of returning home seems to have been an issue for some; having got used to a different lifestyle in Libya, they were described by community members as dressing differently, standing out and engaging in what was seen as inappropriate behaviour. In some cases they appeared unwilling to do the work they did before and wanted more skilled work. It is not surprising that the assessments found some returnees turning to the idea of migrating again. What is interesting, however, is that most of the returnees were keen on staying at home and adapting to local conditions, if only they could be assisted to find jobs or set up enterprises.

In some communities where labour migration was a key coping strategy, such as in Ghana, community members were generally sensitive to the difficulties facing returning migrants, and concerned about the social instability that might arise if these hardworking young men were unable to find jobs. By contrast, in Burkina Faso there was little community support, probably due to a lack of investment by migrants in their places of origin while they were away.

Conclusion

There is a reasonably clear and consistent picture across countries. The efficiency of the repatriation operation carried out by the international community, governments and NGOs, in response to the most immediate danger, saved the lives of thousands of migrant workers and prevented the Libyan crisis from spilling over into other countries and turning into a much larger humanitarian catastrophe. Several months on, and with immediate security threats at bay, what is most visible now is the hardship and disappointment faced by tens of thousands of young men suddenly robbed of the livelihoods they had journeyed so hard to find, and with no means of helping themselves back home. Programmes for socio-economic integration are badly needed not only to help individual returnees and families but also for the peace and stability of wider communities, countries and the region as a whole.

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1. The reports are available on request from IOM.

2. Burkina Faso, Chad, Ghana, Mali, Niger and Senegal.

The reintegration programme for Bangladeshi returnees

Anita J Wadud

When evacuated Bangladeshi migrants arrived home, the government, civil society, international organisations and the private sector cooperated to help them.

In 2011, during the first three weeks of March, 36,594 Bangladeshi migrants fled the violence in Libya and returned to Bangladesh. Returnees were greeted at the airport by IOM staff who provided assistance with registration and immigration processing and immediate medical attention – round the clock, seven days a week for the entire period. The government provided each returnee with food and water on arrival, registered all returnees, gave 1,000 taka (approximately US\$12) for onward transport and arranged for shuttle bus services to the main bus and train terminals in the city. Despite the logistical nightmare, constant liaison between IOM Dhaka, IOM field missions in Tunisia and Egypt and the government resulted in a fairly systematic processing of all returnees.

While most were exhausted, they were nonetheless happy to have returned safely and were eager to see their families. However, they have returned to large debts and have left behind possessions and months' worth of unpaid salary in Libya. Many had large suitcases filled with whatever they could carry but many others returned only with the clothes they were wearing and perhaps a blanket.

As soon as the majority of the Bangladeshi migrants had returned safely to Bangladesh, talks about reintegration programmes began. The government, civil society, international organisations and even the private sector held meetings to discuss ways in which over 35,000 returnees could be supported. The government agreed that the returnees would be given priority for overseas employment opportunities and the private sector

also agreed to employ some of the returnees; most, however, remained unemployed with little means of supporting themselves and their families. Ultimately, the government obtained a loan of US\$40 million from the World Bank with which it reimbursed IOM for the air-travel costs of 10,000 of the approximately 31,000 Bangladeshis IOM had repatriated. With the rest of the loan, each Bangladeshi returnee from Libya was provided with a one-off cash grant of 50,000 taka (approx \$600) to meet their immediate needs.

The reintegration programme was implemented in several stages. Firstly, through an extensive outreach campaign the returnees were informed of the programme and what documents they would need, including the need for a personal bank account. A comprehensive database of all returnees was developed by IOM from the registration conducted by the Bureau of Manpower Employment and Training at the airport. A call centre was set up and its numbers disseminated through print and electronic media and texts to returnees' phone numbers obtained at the airport. Each returnee used the call centre to make an appointment. Then the Verification Centre went into operation for in-person verification with all relevant documents. This was the last step in the exhaustive process of identification of actual returnees before the cash grant of 50,000 taka was transferred directly to their accounts.

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Local hosting and transnational identity

Katherine E Hoffman

Tunisian people, rather than their government, led the response to the humanitarian crisis when Libyans started their own revolt and people starting fleeing across the border.

In February and March 2011, Tunisians were managing the fallout from their own revolution. Governmental institutions were on hold, and security and policing were absent in south-eastern Tunisia, the area closest to Libya's western border. Informal but highly effective community efforts in Tunisia, outside the auspices of national and international institutions, played a crucial role in ensuring the safe passage and accommodation of hundreds of thousands of people fleeing Libya. Initially, as groups of migrant workers crossed into Tunisia en route to the airport on the Tunisian island of Djerba, Tunisian villagers organised cooking crews, with men cooking together in community centres and women cooking separately in their homes. They took this food

to the airport as third-country nationals waited for flights home paid for by the international community.

No sooner had these migrant workers left than Libyan families began streaming across the border in search of a safe haven – and ended up staying for five to eight months. One man on Djerba asked rhetorically, "We helped the Egyptians, we helped the Chinese, we helped the Bangladeshis. So when the Libyans came to stay, how could we not help them too?" Another said: "We were busy with the Tunisian revolution. We were dealing with our own problems and then the Libyan problem came. A friend called from Ras Jdir at the border. He said there were masses of hungry people, at



Youth hostel in Douiret, Tunisia, converted for use by Libyan refugee families.

least 40,000, and could I help? So I called all my friends, we had a meeting, and we raised money and we bought food, diapers and mattresses, loaded up twenty pick-up trucks, and headed to the border to deliver everything. After that we went down to where people from the Nafusa Mountains were coming in. There everyone is Amazigh [Berber]. They're Amazigh, we're Amazigh."

Of the hundreds of thousands of Libyans fleeing the violence in their country and going to Tunisia, initially most were Amazigh people from the Nafusa Mountains. The closest safe haven for them once inside Tunisia through the Dehiba border crossing was a camp run by the Emirates only 13 km from the border. Tunisians volunteered as organisers there too, including an entrepreneurial young woman named Insaf who started working with Libyan women and children in the camp to assess their needs, and then presented programme proposals to the Emirati and Libyan men in charge of the strictly gender-segregated camp activities. A short while later, UNHCR established a camp further north in Ramada and Qatar established one still further north outside the provincial capital of Tataouine.

The logistics of refugee hosting

Individuals with no previous experience in humanitarian assistance arranged for the stay of many of the 60-80,000 Libyans who settled mostly in south-eastern Tunisia. Wealthier Libyans rented hotel rooms or sought rental situations outside the auspices of these community organisers rather than accept charity. But most families needed help.

Some families lived with Tunisian families. In addition, in each village or town, one person took responsibility for collecting keys for abandoned houses, emigrants' summer residences and other empty housing. Collectively, villagers cleaned and refurnished these homes, equipped them with stoves, refrigerators and in some cases washing machines, and turned the electricity and water back on if necessary. The settlement process followed a pattern. One or two Libyan families came first with an organiser from the Nafusa Mountains who knew the geography

and customs in southeastern Tunisia. He went directly to villages and asked the local men whether there was housing for those families and potentially for others. The Djerban organisers then showed the Libyan family heads available homes and identified matches. Locals talked about this housing situation as a 'rental', and UNHCR statistics use the same term, but only rarely did money change hands. Even seasoned aid officials said they had never witnessed such a reception by a host country during a refugee crisis.

The shared language and similar customs facilitated Libyan integration into Tunisian villages and small towns. Since pre-school-aged Libyan children in the Nafusa Mountains usually only speak

Tamazight, Libyan women felt reassured living among Tamazight speakers. Additionally, the Amazigh groups on both sides of the border tended to be conservative in regards to gender segregation. Libyan men who were commuting to fight with the rebels needed to feel they could entrust their wives and daughters to Tunisian host communities, although while they were in Tunisia many Libyan women were required to assume roles they previously would have allocated to men, such as taking children to the doctor or procuring rations.

Solidarity and its discontents

In early to mid 2011, Libyans and Tunisians told stories of solidarity. Over a main street of the market town of Tataouine hung a handwritten banner in Arabic reading "Welcome to our Libyan brothers". The support was fortunate, as Libyans doubled the population of the town from 40,000 to 80,000. A Libyan woman in Douiret showed her hand that had been hennaed by a Tunisian woman who offered her tea en route to the settlement camp. She also described a planned marriage between a young Libyan woman in the Dehiba camp and a Tunisian aid worker. People narrated incidents such as these as evidence of good relations between Tunisians and Libyans in the midst of crisis – signalling the kind of integration of displaced populations that is possible when communities share values.

Yet by Ramadan in August 2011, disillusion and tension had set in. The public welcome banners were gone, and stocks of basic necessities like milk, dates and gasoline were running low. With the National Transitional Council's seizure of Tripoli, increasing numbers of pro-Gaddafi supporters and army defectors poured into Tunisia. It was increasingly hard to tell which refugees were on which side of the conflict but Tunisian host communities continued to assume the neutral stance of the humanitarian groups – they offered food and housing to those in need.

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Resettlement is needed for refugees in Tunisia

Amaya Valcárcel

With Tunisia experiencing wide-ranging political, social and economic change, there is an imperative need to alleviate the burden of hosting people fleeing Libya who are unable to return to their countries of origin.

The countries neighbouring Libya were not in a position to provide more than temporary refuge for many people who had experienced multiple displacement from their countries of origin and previous countries of asylum.

"I am very happy but also fearful," says Tigi¹, a 21-year-old Eritrean woman who has been living in Shousha camp in southern Tunisia since the early days of the war in Libya and who has been selected to go through a resettlement programme to Australia. She fled her country when she was 15 years old, first to Sudan and then Libya. "Life in Libya was very difficult. I worked as a domestic worker."

refugees living in Shousha camp with the majority of refugees being submitted to the US. However, vulnerable cases face significant difficulties because of the slower processing time of the US (6-12 months before departure is the norm). In addition, some refugees in Shousha camp will be ineligible to be submitted for resettlement to the US due to its restrictive approach to persons perceived to be affiliated to certain opposition groups. Alternative solutions need to be found for these individuals.

Of the people who are stranded in Shousha, more and more are going back to Libya, despite facing serious risks there, in order to board boats for Europe and embark on a

perilous sea journey. Thomas from Nigeria says, "Arriving in Lampedusa is a question of luck. If you fail, ok; if you succeed, it's fine.² One needs to have courage in life to continue moving forward. Here we are stuck... but how can we go back to Nigeria empty-handed? Our families paid so we could earn money to send it back home. If we could go back at least with some money, we would not feel ashamed." If IOM and UNHCR were to provide some financial assistance to migrants (as well as assistance in terms of transportation and documentation), they would be in a better position to decide to go back home.

Given their proximity to the affected region and their comparatively greater resources, EU Member States should be taking a leading role in responding to the grim situation of these refugees. EU Member States bear a heavy responsibility for the way in which in recent years they have ignored Libya's dire human rights record on the one hand, while

actively seeking the collaboration of Colonel Gaddafi's government to stem the flow of people arriving in Europe from Africa, on the other. The policies of the EU resulted in serious violations of the human rights of refugees, asylum seekers and migrants.

EU countries' poor resettlement response so far to the plight of displaced refugees on Europe's doorstep also ignores the fact that some European countries, by participating in NATO operations in Libya, have been party to the very conflict that has been one of the main causes of the involuntary movement of people.

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1. The names used in this article are not their real names.

2. In 2011 the Mediterranean took the record for being the deadliest stretch of water in the world: more than 1,500 people drowned or went missing (and these numbers may be an underestimate).



Sudanese refugee says farewell to friends in Shousha camp. She and her family have been accepted for resettlement in Norway.

Musse has been less lucky. Also from Eritrea, his resettlement application to Norway and USA has been rejected and his life is about waiting. "Going back to Libya now is not an option. Sub-Saharan Africans are being detained and tortured." Some of his friends went back to Libya to take a boat towards Europe. "They are now in Italy. We have to wait for a slow solution here in the camp, so they decided for the quick solution. We are young but time is against us." Talking to these young men, one realises how many of them are ready to risk their lives taking a boat for Lampedusa or Malta. Many say, "The alternative is Shousha, so what can I lose?"

Extended stay in Shousha camp poses considerable risks to families with small children, unaccompanied minors, persons with serious medical conditions and other vulnerable persons. Resettlement is, for the time being, the only realistic durable solution for the refugees in Shousha. But there has been a limited response by European countries thus far in providing resettlement spaces for

Dispossession and displacement in Libya

Rhodri C Williams

Inability to access pre-displacement housing, land and property poses a significant obstacle to the achievement of durable solutions for most IDPs in Libya. Displacement and dispossession cannot be separated from the legacy of the Gaddafi era.

By post-conflict standards, Libya has relatively few internally displaced persons (IDPs) but many of these, including several entire displaced communities, face the prospect of protracted internal displacement. For households that remain displaced within their own towns due to the wartime destruction of their homes, durable solutions are largely contingent on reconstruction. However, for IDPs displaced away from their places of origin, inability to access pre-war homes and properties is merely a symptom of the broader insecurity that has blocked virtually all return to date. In most cases, IDPs also face significant insecurity of tenure in their current locations.

Lurking behind both the insecurity currently facing IDPs and their difficulties accessing pre-war property are much broader questions related to the sweeping redistributions of property – waves of confiscation and partial compensation – undertaken under the Gaddafi regime. These acts are largely viewed as illegitimate by the interim National Transitional Council but there is broad recognition that any peremptory attempt to revoke them would risk destabilising the country. While IDPs – and some refugees in Libya – may be most immediately affected by such ‘legacy’ property issues, almost every constituency in the country and many in the diaspora have a stake in their resolution.

During the Gaddafi period, foreign-owned property was nationalised and Libyan-owned property redistributed. For example, Law No. 4 in 1978 transformed all tenants into owners of the homes or land they rented. Subsequent efforts to regulate and enforce this measure included the 1986 public burning of property records in the main squares of Libya’s towns. Later efforts to partially reverse this policy through restitution and compensation for confiscated property were still underway at the time of the uprising. Property relations under the Gaddafi regime were symptomatic of a broader hollowing out of the state and the rule of law, the net effect of which was to undermine trust in the rule of law and public institutions generally.

Unable to return, unable to remain

During the uprising, a number of cities and towns suffered extensive destruction and several communities were subjected to mass displacement. Broadly speaking, IDPs are either those temporarily displaced within their own communities due to the wartime destruction of their homes or large groups or communities displaced and unable to return due to opposition from the communities in their place of origin. The latter are clearly of greatest concern and most at risk of finding themselves in situations of protracted displacement. Although property issues remain a subsidiary concern to basic security, IDPs who acquired

their homes in connection with Law No. 4 fear that their legal rights may be revoked in their absence.

In the meantime, the most obvious problems relate to IDP camps, which have typically been established on the sites of half-finished construction projects, as well as in public buildings and resort villages. The lack of any clear legal basis for occupation of these sites presents clear risks to residents, especially where such sites may be subject to claims by foreign companies returning to Libya. As a result of this lack



Tripoli Street, Misrata.

of security of tenure, IDPs are unable to undertake basic improvements necessary to ensure conditions of basic adequacy and have been exposed to threats of eviction that have, in some cases, been carried out.

Many other IDPs are thought to be living in private accommodation, either with family or friends or in private rental situations. Experience from other settings indicates that unless IDPs in private accommodation are able to integrate and, in particular, to find employment, they are likely to expend whatever goodwill and resources they currently enjoy, and find themselves facing eviction from their current accommodation without a clear fallback option.

Whatever combination of return and integration-led local strategies is ultimately adopted to resolve internal displacement in Libya, implementation of the right of IDPs to remedies for the loss of their properties will need to be coordinated with broader efforts to come to grips with the Gaddafi-era legacy of contested property relations.

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We are not all Egyptian

Martin Jones

For many refugees in Egypt the weeks of the revolution were marked by isolation, fear and brutality. In the aftermath of the revolution, the promise of greater freedom has not yet been extended to refugees.

In the heady days of the Arab Spring in 2011, even as protesters in Tahrir Square took up a chant proclaiming “We are all Egyptian”, many refugees and migrants in Egypt were facing increased xenophobia, overt racism and violence. The Egyptian Foundation for Refugee Rights (EFRR) recorded its busiest year in 2011 as the number of refugees complaining of arbitrary arrest and detention, acts of violence and acts of discrimination increased by over 20%.

Until recently refugees in Egypt found a reception policy that has been characterised as ‘benign neglect’. The chief complaints by refugees before the revolution were the lack of access to public schooling, discrimination in employment and housing, arbitrary arrest, and criminal victimisation (by both Egyptians and other refugees). In addition, resettlement has effectively stopped being available for most refugees (except Iraqi refugees and particularly vulnerable refugees). Such changes in resettlement and status determination policies resulted in a mass protest and sit-in lasting 90 days outside UNHCR’s Cairo office at the end of 2005 – one of the most significant acts of public protest in Egypt in the decade before the revolution, a protest crushed by the Egyptian security forces with the loss of at least 26 lives.

In the uncertainty of the revolution, refugees were the object of suspicion. The propaganda of the failing Mubarak regime – that the country was under siege from foreign agitators – in conjunction with the notion that refugees were in Egypt thanks to the policies of the Mubarak regime triggered widespread hostility, refusal of services, profiteering, threats and violence against refugees. In one case, a 49-year-old single mother Iraqi refugee was accused by a neighbour of hoarding weapons and being a foreign instigator. Her home was raided by the Egyptian military and she was forced to find housing elsewhere.

The change in the nature of policing also had a profound effect on refugees. During the revolution, policing devolved to self-appointed local ‘popular committees’, which often erected barricades and armed themselves with knives and other basic weapons. Some committees did not allow refugees to join and even refugees who were long-standing residents of mixed neighbourhoods were questioned and harassed when moving about. However, some refugees report that they were welcomed to join committees and a significant number report feeling that being a member of a committee was the only contribution that they were allowed to make to the revolution.

Even in the aftermath of the revolution, the use of the military to perform civilian policing has posed new challenges for refugees. At a basic level, soldiers are not familiar with refugee identity documents and the legal category of ‘refugee’. This has resulted in several refugees being arrested and threatened with immediate

deportation. Fortunately, in these cases the lawyers of EFRR managed to intervene and have the refugees released (though not before they had been taken to the airport).

Since the revolution EFRR’s lawyers have had to visit clients in their homes because travel in Cairo has become much more difficult for refugees – and was impossible for periods of time during the revolution. UNHCR closed its offices in Egypt for almost two weeks during the revolution. During this time refugees were unable to access not only registration and status determination but also protection services and financial assistance. The office closure was mitigated by UNHCR’s use of local NGOs to disburse financial assistance. However, many refugees complained about the lack of transparency of payments and suspected corruption even within well-established local NGOs. To UNHCR’s credit, it learned from the revolution and shorter closures that occurred later caused much less disruption.

As well as UNHCR, local NGOs also closed their offices. The largest providers of services to refugees were all located near the epicentre of the revolution, and this posed problems both for staff getting to work and also refugees attending at their offices. Those that rely heavily upon international staff and international interns suffered attrition as staff members left Egypt.

Moving forward

The revolution brought a flood of attention to civil society in Egypt, leading to increased funding opportunities. The flood of money has brought with it public attention to the financing of civil society activities in Egypt. In particular, a very public expansion of funding of Egyptian civil society by the US government has led to much hostility in the Egyptian media. While civil society organisations have for at least the last decade worked under fairly severe restrictions, the revolution prompted a crack down on NGOs which has had a chilling effect on all civil society organisations, including refugee service providers, notwithstanding that none of them could function without funding from outside of Egypt.

Somewhat surprisingly in this environment, there has been a growth in interest by refugees in organising themselves into community-based organisations (CBOs). While there have been refugee CBOs in Cairo for a long time (particularly amongst well-established communities such as various Sudanese ethnicities), since the revolution a growing number of groups of refugees have approached EFRR with a view to formalising themselves as CBOs. Some of this interest may arise out of the isolation of the revolution and a desire to mitigate such a situation in the future. Alternatively, some of this interest may be emerging out of the new sense of opportunity and freedom felt by many in Egypt.

A growth in civil society has increased the mobility of experienced managers and made recruitment of experienced staff more difficult. All refugee service providers are now competing for staff with mainstream civil society organisations with higher political profiles and often offering higher salaries.

Establishing the rule of law

The revolution has posed challenges for the rule of law, among its casualties being the national human rights institutions of Egypt with which, in recent years, refugee NGOs had been able to engage to the benefit of refugees.

The biggest dangers to refugees in Egypt remain the ignorance and indifference in all political parties to refugees. Faced with long-standing pressing demands from citizens, refugee issues have been further marginalised. Since the revolution, most political actors have focused on citizens as being the principal rights bearers in Egypt; most of the rights in the Constitutional Declaration 2011 are extended only to citizens. Thus, despite the opportunity presented by the new political freedom brought by the revolution, advocates for refugees have been forced to largely focus on maintaining basic rights (such as *non-refoulement*) rather than extending refugee rights.

Conclusion

The chaos and uncertainty of the revolution and the discrimination it has released have resulted in an increase in human rights violations against refugees and made all refugees more vulnerable. As a sign of the fear felt by refugees, a growing number of them are, at the time of writing, staging a public protest (begun in March 2012) outside the Cairo offices of UNHCR. They demand either resettlement or secure segregated housing. (Ironically for one of the pilot sites of UNHCR's new urban refugee policy, the revolution has made refugees advocate for a policy of urban encampment.)

The new government's policies and practices towards refugees, along with the views of the Egyptian public, will be one of the first indicators of the extent to which the freedom and inclusion promised by the revolutionaries of Tahrir Square have been genuinely realised.

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Protecting and assisting migrants caught in crises

Mohammed Abdiker and Angela Sherwood

The 2011 Libya crisis brought into sharp focus how global migration patterns are re-defining the range and type of needs and vulnerabilities of persons affected by a humanitarian crisis.

The migration dimension of the Libya crisis has engaged with a growing debate over the crisis-migration nexus. A 'migration crisis' – that is, a disaster creating large-scale population movements that are complex in terms of the persons affected and the routes taken to places of safety and survival – can significantly challenge existing humanitarian systems that were designed for refugee or IDP response, as it brings to light different categories, needs and vulnerabilities of a wider range of persons who are affected by a crisis situation.

The requirement for immediate or predictable responses to crises is certainly nothing new to the humanitarian discussion. However, if the populations in question are migrants (whose safest haven is in most cases their countries of origin), achieving rapid, predictable, efficient and appropriate responses requires us to re-consider some aspects of meeting humanitarian needs, including roles, coordination and the institutional architecture.

States bear the primary responsibility to protect and assist crisis-affected persons residing on their territory in a manner consistent with international humanitarian and human rights law. Where needed, states should allow humanitarian access to crisis-affected persons so that humanitarian assistance can be provided by

other states, including those whose nationals have been affected, and other relevant actors. Modern-day crises have often overwhelmed the resources and capacities of states to provide this protection and assistance to their nationals in times of crisis. As a result of its mandate, operational resources, experience and expertise in movement management, the International Organization for Migration (IOM) has come to be relied upon as the lead agency to support states in acting upon their obligations to crisis-affected migrant populations. The integration of migration management and humanitarian approaches when dealing with a crisis situation that is generating complex patterns of human mobility has been particularly important in developing an efficient referral system to assist migrants – with a variety of vulnerabilities and protection needs – when fleeing in large numbers across an international border.

In the crisis

In the first six weeks of the humanitarian crisis in Libya, on average a total of more than 7,000 persons a day were arriving at the borders of Tunisia, Egypt, Chad, Niger and Algeria – and by sea into Malta and Italy. Those fleeing to Libya's neighbouring countries and beyond included migrant workers and their families, refugees, asylum seekers, unaccompanied children, trafficked victims, and



IOM 2011 Nicole Tung

others with special vulnerabilities. A number of migrants remained trapped inside the conflict zone; IOM extracted 35,000 such migrants from high-risk environments.

IOM was requested by 46 governments to protect and assist affected migrant populations. In the beginning of the response, however, a number of discussions and advocacy efforts were required within the international community to re-orient the initial humanitarian strategy. Eventually camps were used mainly as transit facilities to support timely evacuation, instead of as places to receive protection and assistance as in a prolonged displacement crisis.

An evacuation operation for migrants from multiple origins is a demanding exercise and required devising new types of coordination between governments, international humanitarian actors, migration management authorities, consular officials, military actors and transportation companies. The Libya crisis response illustrates a remarkable level of international cooperation and drive by countries of origin and transit, and those providing external assistance.

In addition, the necessity for migration management services – in order, for example, to manage the movement of populations crossing the border, ensure a robust referral mechanism for persons with special vulnerabilities or protection needs, and provide travel documents and *Laissez-Passers* to migrants without documentation – has also emerged as a central and often disregarded aspect of such a crisis response.

While only 3% of the crisis-affected migrants stranded in Libya made their way to Europe – often on unseaworthy vessels – it is widely speculated that, without the ability to accept immediate assistance to return home, a much larger number of migrants would have been vulnerable to human trafficking and smuggling rings promising a route out of the crisis area and into Europe and beyond.

Looking ahead

Clearly, a ‘migration crisis’ such as that which developed in Libya has the potential to produce patterns of forced migration that do not show the typical characteristics of movement anticipated and prepared for in international humanitarian responses. Elaborating upon the vulnerabilities of migrants naturally raises questions about the general preparedness of states to provide protection and assistance to all of their nationals residing abroad in the event of a crisis. In the aftermath of the Libya crisis a number of Asian countries have acknowledged the need to better manage humanitarian evacuations at the national and regional level and, just as importantly, the need to support the reintegration of their nationals who return home to situations of unemployment and possibly even debt from having funded a long migration journey.

The Libya crisis highlighted how understanding global migration patterns can assist in crafting a more efficient and humane response, since the plight and special needs of migrants add significant complexity to crisis responses. It also demonstrated the broad challenges faced by migration management systems inside a humanitarian response. Among the different migration management tools that are relevant to ensure a humane and effective response to populations on the move are emergency consular services, referral systems for persons with special protection needs, and temporary protection of migrants crossing an international border. IOM will continue to encourage and support efforts to discuss and explore the migration dimension of crises within the international community.

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Looking beyond legal status to human need

Tarak Bach Baouab, Hernan del Valle, Katharine Derderian and Aurelie Ponthieu

What humanitarians can expect more of in the future is more mixed flows defying rigid categorisation and calling for a humanitarian response based on common needs for assistance and protection.

The dilemmas of assisting people moving in 'mixed flows' have long been debated, including whether and how to define categories of people on the move, how to access and ensure assistance and protection for the most vulnerable, and how to aid the undocumented.

In the fall-out from the Libyan conflict, humanitarians were confronted with state policies and practices that resulted in assistance and protection gaps for refugees and asylum seekers, widespread barriers to an even minimal level of basic services and/or criminalisation, detention and the risk of *refoulement*. Even in the face of mixed flows fleeing Libya, many states and agencies turned to a generalised 'migration response', using rigid categories determined by people's putative motivation for migration. Yet this approach risked limiting responses to specific groups of people, even though many shared similar needs and urgently required similar assistance and protection. Rather than being framed primarily by states' migration policies, responses towards such populations on the move need to be based on established policy and practice toward refugees and asylum seekers, including reception conditions, status determination, assistance and access to basic services, identification of vulnerable persons and protection measures.

The default 'migration response' launched in neighbouring states to the huge numbers of people fleeing the Libyan conflict had far-reaching humanitarian consequences for those seeking safety and a means of survival. As conflict erupted in Libya, people who found themselves caught in the crossfire included refugees from sub-Saharan African countries, asylum seekers en route to Europe who faced arrest and abuse in Libyan detention centres, migrants seeking economic opportunities, and many others. The conflict only complicated population movements and the definition of categories of people on the move. As people fled to Italy, Malta and Tunisia, they met with sub-standard reception conditions in Europe and inadequate assistance in Tunisian transit camps. As a result, some of those who ended up stranded in Tunisia actually crossed back into war-torn Libya to seek a more favourable status: the temporary protection accorded in southern Europe to those arriving directly from Libya.

Various concurrent population movements led to fluidity in the categorisation of people on the move, their status and their resulting access to assistance and protection. Fleeing Libyans found refugee protection while, despite often risking their lives to reach safety, migrants fleeing from torture in detention, from being targeted as foreigners or from the conflict itself were simply labelled 'third-country nationals' – ineligible for the same level of protection either in neighbouring countries or in southern Europe.

There was a wider backdrop to refugees' and migrants' increased humanitarian and protection needs during and in the aftermath of the Libyan conflict. As EU Member

States' migration policies had grown more restrictive and aimed at containing refugees and migrants in Libya, Médecins Sans Frontières (MSF) patients' accounts pointed to systematic detention, push-back and abuse of people on the move. Even before the Libyan war, these populations thus already faced a fragile situation of migration hardship, inhumane detention conditions in Libya and violence linked to human trafficking.

During the conflict, with a complex situation leading to the simultaneous application of Refugee Law and International Humanitarian Law (not to mention Human Rights Law), the status of people already present in mixed flows changed rapidly depending on the progress of the armed conflict, people's physical location or their forced detention. At one or at different times, foreign nationals could be categorised as civilians, refugees, asylum seekers, third-country nationals or simply stranded people with no possibility of return to their previous location. The complexity of categorising these 'mixed' populations on the move during the conflict resulted in an overall response which paid limited attention to individuals' medical, humanitarian and protection needs.

Both in Lampedusa and in Shousha camp in Tunisia, little effort was made to accommodate people according to their individual humanitarian needs. Living conditions were kept sub-standard, possibly to avoid creating a pull factor for out-migration from Libya. MSF denounced the impact of the poor living conditions and the lack of services on the physical and mental health of the populations fleeing Libya.¹ For an organisation such as MSF, refugee/migrant health provision in urban contexts, open settings or settings of on-going movement remains a key challenge for the future. There is a great need for more elaborated refugee/migrant health profiling if we are to work effectively in such rapidly evolving settings, including for example how to address torture and ill-treatment in mixed flows as both a health and a humanitarian need.

In the absence of neat categories for people on the move and their immediate needs, the overall humanitarian response to these mixed flows was framed as a 'migration response' from the onset, with a significant impact on the aid and protection actors who intervened. For example, the International Organization for Migration repatriated third-country nationals as a 'protection' measure aimed at avoiding a possible humanitarian crisis in neighbouring countries. At the same time, a broader ambiguity reigned about the relative responsibilities and legal obligations of UNHCR, states of origin and the various Libyan authorities towards other foreign nationals trapped in-country.

Elusive categorisation or humanitarian need?

The field reality saw vastly divergent responses to the same population in different locations, as the response reflected assumptions about people's status based solely on their current location or national origin.

Italian authorities differentiated between influxes to Italy from Libya and Tunisia, with Libyans accessing asylum procedures while Tunisians entered on an 'economic migrant' track. Reception conditions and access to services, including medical care, depended on nationality and port of departure, discriminating between people based less on humanitarian need than on rigid legal and political categories. We should ask whether it is legally and ethically acceptable for states and protection-mandated agencies to latch on to such categorisations when the end result is the abandonment of entire 'categories' of people to their own devices, allowing them to suffer from neglect at a moment of great need.

Witnessing the restrictive situation facing people on the move as the conflict escalated, MSF questioned the logic of European military intervention in Libya under the doctrine of responsibility to protect even as many of those fleeing Libya failed to find refugee protection in Europe.²

Where migration management works at cross-purposes with assistance and protection, the gaps left by states and mandated organisations also raise many questions for aid actors. The 2011 Libyan crisis put humanitarians in the position of softening the impact of a larger, political policy of non-response to the acute needs of people displaced by conflict in a mixed migration flow. Such policies have risked *refoulement* of the most vulnerable, not to mention significant health and humanitarian impacts for other people on the move. As aid actors

working with refugees and migrants, should we not be calling for a more consistent approach between protection in conflict and refugee protection given globally as people become displaced under mixed flows?

As the complexity of displacement grows, so does the risk of states adopting a default 'migration response' to mixed flows. Humanitarian organisations, protection-mandated organisations and others who wish to assist refugees and migrants will need to learn to respond in transit, open or urban settings (and detention facilities) to these diverse categories of population with diverse assistance and protection needs. At the same time, humanitarians will have no choice but to continue to push for increased state responsiveness — or else we risk losing sight of the most vulnerable wherever the overall effort to assist mixed flows becomes reduced to a 'migration' response.

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1. For further information see MSF Briefing Papers at <http://tinyurl.com/MSF-BP-3May2011> and <http://tinyurl.com/MSF-BP-24June2011>
2. MSF 'Open Letter concerning civilians fleeing Libya for Europe', 19 May 2011, <http://tinyurl.com/MSF-openletter-19May2011>

From commitment to practice: the EU response

Madeline Garlick and Joanne van Selm

The EU's response to boat arrivals from North Africa in 2011 indicates that more is needed to translate a commitment to solidarity from limited aid and statements of principle into practical reality.

Boat arrivals from North Africa over the past decade have carried thousands of North Africans and others to European shores, including asylum seekers fleeing persecution or serious harm, and people moving irregularly for other reasons. Annual arrivals from 2000-2008 had varied – peaking in 2008 at 39,000 – but had dropped dramatically to under 5,000 after the introduction of the Italian 'pushback' policy and increased cooperation with Libya.

From North Africa as a whole there were close to 59,000 total estimated arrivals in the EU in 2011. This involved 28,000 people fleeing Libya – less than 5% of the people displaced from there – as well as 28,000 Tunisians, most of whom neither requested nor needed protection, and some 1,500 from Egypt. Of those arriving from Libya, nationalities included Somalis, Eritreans, Nigerians, Ghanaians, Malians, Ivorians and citizens of other sub-Saharan African countries. By contrast, Tunisia and Egypt, at the peak of the outflows, had together hosted over half a million people in their territories, and allowed the provision of shelter and humanitarian assistance to these people pending evacuation or other solutions.

In spite of their relatively small scale, the arrivals in Europe, and the concern that more could come, prompted

intense discussions among EU Member States. These discussions focused on burden sharing, support – and stemming the flow. Political statements of solidarity with the affected countries outside EU borders were issued. The concrete support offered, however, was primarily financial and logistical, and less focused on direct responsibility sharing in the form of places in Member States for persons in need of protection.

The EU response

The EU's first step was to evacuate its own citizens from Libya. Its subsequent priorities were provision of humanitarian support and assistance in North Africa, addressing migratory movements towards the EU, solidarity with EU Member States (and other states in the region) facing possible arrivals, and the role of Frontex¹ in addressing the maritime border control.

EU Member States showed great readiness to provide significant financial and logistical support, notably to the humanitarian evacuation out of Tunisia and Egypt undertaken jointly by UNHCR and IOM for third-country nationals. However, the response in terms of addressing the possible, and actual, influx of people seeking protection in the EU seemed to reveal a certain disjuncture between alarmist

concerns and the reality, and between assertions of a coming invasion of migrants in Europe and the absence of collective measures in response.

The outflow from Tunisia largely involved people seeking migration opportunities. However, there was concern that the situation in Libya could trigger a very significant exodus. Bearing that in mind, there were calls not only for broad solidarity within the EU and with North African countries receiving people seeking protection but also for discussion of the possibility of using, for the first time, the 2002 EU Temporary Protection Directive. This Directive establishes a mechanism offering short-term protection to large groups of people, by suspending asylum procedures to avert excessive pressure on administrative structures.

The Directive contains no binding obligation for Member States to receive people admitted under temporary protection to other states. However, it represents a framework, in principle, for sharing the financial and potentially also the physical burden of protection. In the case of Libya, frontline Member States and UNHCR suggested that the possibility of employing the Directive should be on the table. However, several Member States opposed its use, largely due to the fear that it would become a 'pull factor' encouraging more people to head for Europe. Eventually, the limited numbers arriving meant that there was no need for its application. The apparent reluctance even to discuss it, for fear of attracting more arrivals, might raise questions about the realistic scope for the Directive's use in general.

Another important element in the EU's response to the crisis was deployment of the Frontex-coordinated joint border operation 'Hermes'.² This 12 million Euro operation, initially involving joint EU sea border patrols between Tunisia and Italy, was extended during 2011 to cover more of the Mediterranean, including between Southern European countries and Libya and Egypt. In addition to surveillance and interception of people suspected of attempting irregular entry to EU Member States, the operation aimed at locating and arresting those facilitating irregular movements. In its public statements, Frontex emphasised that the operation was successful not only in detecting and intercepting irregular movers but also in saving lives, through search-and-rescue actions at sea.

Resettlement and relocation

The EU also looked at what else could be done to support Italy and Malta, as well as Tunisia and Egypt, through measures beyond humanitarian aid. The European Commission pushed strongly for concrete solidarity, through relocation within the EU and resettlement from third countries. The response of Egypt and Tunisia had been generous. To sustain their political readiness to host the displaced, it was necessary to demonstrate that international help was available, and that the refugee situation would not become protracted, imposing long-term demands on local resources. UNHCR maintained that resettlement would be an important way to communicate Europe's support to the North African governments and to their citizens living in the border areas, thereby encouraging the provision of continued humanitarian or protection space.

The response to these calls was modest. EU Member States offered Malta several hundred relocation places. From UNHCR's perspective, while relocation as a sign of solidarity with Malta was welcome, this should not take precedence over resettlement from Tunisia and Egypt. It was noteworthy, however, that resettlement of refugees from Malta to the US, Canada and elsewhere far exceeded relocations on the basis of solidarity within the EU.

EU Member States also offered resettlement places for refugees from North Africa: nearly 600 refugees were accepted, as of early 2012, collectively by Sweden, Netherlands, Belgium, Finland, Ireland, Portugal and Denmark. Non-EU Member State Norway accepted nearly 500, only a slightly smaller number than the EU's collective total, while the US took approximately 700, and Australia 100.

The reluctance of EU Member States to undertake resettlement in significant numbers out of North Africa was attributable to various factors. Some appeared concerned that this was an inappropriate response to an emergency displacement situation, and that resettlement to the EU should be reserved for more strategic purposes – to resolve or alleviate situations of long-term or protracted displacement, for example, or to create 'protection space' in host countries who would be encouraged by the example of global responsibility sharing to maintain open borders and welcome refugees.

North Africa was such a situation in which resettlement could be used for these strategic reasons. A number of those displaced from Libya to Tunisia and Egypt were found, while being registered by UNHCR, to be among those whom UNHCR had previously registered as refugees or asylum seekers in Libya. By the beginning of 2011, despite significant official constraints on its activities, UNHCR had recorded some 8,000 mandate refugees and approximately 3,000 asylum seekers in Libya. Given Libya's refusal to grant these people any form of status or protection, resettlement to third countries was their only available solution, and UNHCR was in the process of submitting many for resettlement. The fact that many of them had moved into neighbouring countries, which were also unable to provide them with durable solutions, meant they were still just as much, if not more, in need of resettlement to address their long-term displacement.

Asylum and arrivals in Europe

With tens of thousands of Tunisian citizens arriving in Italy, primarily on the island of Lampedusa, over a few weeks – sometimes over 1,000 per day – the detention facilities and several other mainland centres for irregular migrants soon became vastly overcrowded. At some points, hundreds of Tunisians were sleeping outside on the streets of Lampedusa, sparking protests from the local community and strident reactions in Italian media. The official Italian response – to issue temporary residence permits to many of those who came – triggered sharp political reactions at European levels when it became apparent that many Tunisians were, in the absence of internal border controls, moving on from Italy to other countries, notably France.

Asylum seekers coming from Libya, however, faced other challenges in Italy. Entitled under Italian law to reception in open centres, there was initially insufficient space available in the islands or elsewhere, due to the presence of the Tunisian arrivals. However, regional authorities in Italy moved swiftly to provide the necessary housing for all those who claimed asylum. Transport was provided to move arrivals from the islands to open reception centres on the mainland, and asylum claims were registered from those who requested protection.

Initial arrivals in Italy from Libya included many people from countries where there is risk of persecution or serious harm. Somalis and Eritreans were among the most numerous in early months. However, around mid 2011, this pattern began to change. The arrival of significant numbers of Nigerians, Ghanaians, Malians, Ivorians

and Bangladeshis might have been seen to demonstrate that irregular immigrants could take advantage of conflict situations and breakdown of state border control. However, Italy and Malta, to their credit and in line with international and European law, continued to respect their obligations to admit those who claimed protection to their territories and asylum systems.

Malta's experience differed from that of Italy, in that arrivals were seen almost exclusively in the first four months of 2011. Some 1,500 people landed in that period, and almost all sought asylum – with a high percentage subsequently recognised as needing protection. Malta's initial call for relocation had been made in the expectation that these numbers would grow but, in the end, the influx was limited.

The progressive decline in arrival figures later in 2011 made the situation more manageable. Political support for continued openness to refugees was undoubtedly also shored up by Tunisia's readiness to accept back, under a specific re-admission agreement negotiated with Italy in early 2012, those of its nationals who had not claimed protection. Had the situation evolved differently, and had numbers of asylum seekers climbed or continued in the longer term, the consequences could have been considerable. Whether wider spill-over into other EU Member States might have motivated or enabled the EU or other individual states to develop contingency plans, the elements of a responsibility-sharing response in Europe or other measures remains an open question.

Failure to rescue at sea

UNHCR estimated that over 1,500 people drowned in the Mediterranean in the early months of 2011 – despite the heavy maritime traffic throughout that period. Why was it not possible to detect and rescue more of those who attempted the perilous voyage?

Loss of life at sea has long been a tragic result of maritime movements between North Africa and Europe. However, as many fled Libya, the greater numbers of those crossing – as well as the unseaworthy condition of many boats available in Libya at the time – contributed to a dramatic rise in the number of casualties.

The Council of Europe investigated one incident in which 63 people died out of 72 who had set off in a small boat from Libya in March 2011. The boat encountered problems shortly after departing Libya in an area in which a NATO sea operation was underway. It reportedly sent a distress signal that reached Italian coast guards and was shared with other military ships. Yet no rescue mission was launched, and none of the several air or sea vessels that encountered the boat during the two weeks in which it drifted was apparently able to assist. Under the international law of the sea, all ship captains are bound by the universal obligation to rescue those in distress at sea.

Another case highlighted the unresolved question of responsibility for disembarkation of those rescued or intercepted at sea. In this case, a Spanish military frigate taking part in the NATO operations rescued a group of people in distress, and reportedly attempted to disembark them in various countries, including in Europe, in fulfilment of the obligation to take rescues to a 'safe port'. However, after five days, the 106 people were disembarked in Tunisia. While the rescue itself was commendable, and in all probability saved the lives of those concerned, the lack of readiness on the part of EU states to allow the rescued people to disembark was clear. While the international obligation to rescue is widely accepted, states may take different views in particular cases about what constitutes the 'nearest safe port' in which the rescued people should be disembarked, and about the extent of obligations binding other concerned states under international search-and-rescue conventions. This becomes a complicating factor directly related to the question of which state should be responsible for long-term obligations to protect such people if they claim asylum, or for their removal if they have no legal right to stay.

Conclusion

The North African crises, and resulting movements within and beyond the region, brought to the fore many challenging questions which the EU has yet to resolve in building the Common European Asylum System, as well as in developing its cooperation with third countries on asylum and migration. The concept of 'solidarity' is a core part of those policies, yet responses to arrivals in Europe of people fleeing – in particular from Libya – did not demonstrate the EU's readiness to put in place responses, mechanisms and resources that could have assisted Member States under pressure. Fortunately for all concerned, overwhelming numbers did not come.

The EU's solidarity was expressed through financial and other support to the humanitarian effort. However, a chance was missed to demonstrate visibly its political commitment to sharing responsibility for refugee protection through relocation and a substantial resettlement effort. The EU's encouragement of states to respect fundamental rights, including to asylum and protection, is welcomed. However, more could be done in future to lead actively by example.

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1. Frontex is the EU agency established in 2004 to coordinate and develop European border management. www.frontex.europa.eu

2. See <http://frontex.europa.eu/operations/archive-of-accomplished-operations/178>

The first safe country

Raffaella Puggioni

The Dublin II Regulation makes the first safe country of refuge solely responsible for refugees and asylum seekers. In the case of Italy, the first responsible country has not been acting responsibly.

While the reception capacity of the Italian asylum system has always been very limited, the situation has deteriorated since the uprisings in North Africa. The protection offered continues to be inspired by the original rationale of very short-term assistance. Settlement policies are completely missing and those granted refugee status are in effect left to fend for themselves. This has led to the paradoxical situation where people have escaped **to** Italy – and then seek to escape **from** Italy. Some simply attempt to move towards other European countries without going through any identification process after landing. Others apply for asylum and move on soon after when they find themselves abandoned by local institutions. And still others do move on even if in possession of an official piece of paper that grants them international protection. In Italy that recognition, in the vast majority of cases, offers nothing in terms of living facilities and of a dignified life.

On 12th February 2011, given the large number of people reaching its shores, Italy declared a state of humanitarian emergency. In 2011, 28,542 'African' asylum requests were received, mostly people fleeing from the Horn of Africa and Sub-Saharan Africa, who made their journey via Libya and across the Mediterranean. This figure includes 24,854 Tunisians who were granted six months' protection on humanitarian grounds. Apparently, some 11,800 of these moved away from Italy towards other EU countries with documents issued by the Italian authorities which deliberately allowed free circulation within the Schengen area. Their fate is not known. The Italian government decided to renew the temporary protection permit for those who remained in Italy, of whom only some 700 have been given assistance and accommodation. No information is available on the legal or socio-economic conditions of all the others. Presumably, they are all living in the EU without legal recognition, and thus without any legal protection. The same uncertain fate might be awaiting the approximately 15,000 who later fled from and/or via Libya as no protection has so far been offered to them.

Protection in Italy simply means accommodation, for some but not for all, for up to six months. Italy has very few accommodation facilities for such people in

comparison to the need. The recognition of refugee status is a piece of paper which does not offer any concrete social protection. Basic needs are often not met, including a roof, meals and health care.

Italy's policy of (non-)reception should be considered alongside its policy of maritime border patrols in the Mediterranean. Patrolling, rescue and send-back policies have all been conducted with the intention of preventing and/or reducing unwanted influxes as much as possible. The 2008 Friendship Agreement with Libya



An Italian coastguard vessel prepares to dock in Lampedusa's port, carrying people who had been rescued before their boat sank at sea.

allowed Italy to shift all the protection responsibility to a country which was known for its degrading and violent policies, paying little or no attention to the fate of all those escaping other African countries via Libya. In a recent judgment by the European Court of Human Rights, Italy was criticised for earlier actions in forcibly returning to Tripoli those whom it had intercepted on the Mediterranean; the Court stated that Italy could not shift its international obligations onto countries whose human rights records were extremely poor.

Although the agreement is currently suspended, the Italian government is looking to reactivate the bilateral 'cooperation', which has for some time been effective in reducing its migration problem but at great cost.

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Protection for migrants after the Libyan Revolution

Samuel Cheung

Irregular and mixed migration is still of great concern in post-revolutionary Libya, made more complex by the securitisation of border control issues and the inherent challenges of an interim government consolidating its authority.

At the time of writing, de facto authority continues to lie with the armed brigades who physically control numerous sites, facilities and installations. For example, of the more than 20 migrant detention centres which existed in Libya before the revolution, virtually all of them are now under the control of different brigades. Numerous other unofficial detention facilities for migrants are also under the control of brigades, most of which do not receive any official guidance or financial support. Without financial support, detained migrants are often held in inadequate facilities, giving rise to concerns over access to food, water, health and labour exploitation. Other brigades remain responsible for some border points, ports and other facilities where migrants are being held. Until members of the brigades – who played such a crucial role in the success of the revolution – are integrated into national forces or demobilised, migration policymaking will continue to be extremely ad hoc and decentralised in this way.

While the reviving economy has helped to normalise the situation for some migrants, a significant number continue to face the risk of arrest and detention. For both the government ministries and brigades alike, the gradual return to normalcy after the conflict has thus far been accompanied by strict migration control approaches, focusing on detention of irregular migrants and return or deportation. There remains the need to ensure that a proper legal framework exists to protect the rights of sub-Saharan migrants in

particular, which does not confuse irregular migration status with suspicion of being a mercenary, as well as practical guidelines for local brigades on their dealings with irregular migrants, including increased oversight, proper legal review and accountability.

The post-conflict transition will take time, yet these early stages of how post-revolutionary Libya deals with foreigners may set the precedent for future migration and asylum policies in the country. As policies and practices under the previous regime are reviewed for their applicability, new opportunities exist for the development of a migration policy that is protection-sensitive and cognisant of the specific needs of migrants and asylum seekers. While voluntary return would be a solution for some willing migrants, it is not a comprehensive solution for the estimated million or so irregular migrants present in Libya, many of whom wish to remain there or fear to return home. The international community has recommended possible alternatives to detention, such as a registration scheme giving provisional documentation to foreigners under a temporary immigration amnesty. Registration, rather than circular detention, would allow the Libyan authorities to stabilise the migration situation and plan better for longer-term decisions on migration policies and enforcement.

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An asylum spring in the new Libya?

Jean-François Durieux, Violeta Moreno-Lax and Marina Sharpe

The legacy of almost half a century of authoritarianism and isolation has left the new Libya vulnerable to inheriting the previous regime's human rights failings. The international rights of migrants in general, and of refugees in particular, were largely ignored and often violated under Gaddafi's rule. The events of 2011 have given rise to immediate issues in this domain, including a crisis of internal displacement, that require fair and lasting responses.

These circumstances highlight the urgency of engaging with the human rights of the displaced and tackling internal displacement and mixed migration flows in and across North Africa. These issues set the agenda for a joint two-day workshop organised by UNHCR and the University of Tripoli in early May 2012, which attracted students and academics, plus representatives from civil society, international organisations and the diplomatic community.

For UNHCR the workshop constituted its first public event since its post-revolution return to Libya. For the University of Tripoli the workshop was among its first opportunities for open dialogue with a wide array of interlocutors, both internally and externally. Interventions by local participants focused on the complexity of the challenges facing the new Libya in meeting its international obligations, as well as its national priorities.

At the same time, they demonstrated an incipient openness to recognising the importance of international protection and Libya's role in this regard. The students were keen to contribute to the development of a genuine asylum space in Libya and to the design and implementation of just policies for resolving internal displacement. While the workshop exposed a number of misconceptions, it also revealed great enthusiasm to address these multifaceted issues within a human rights framework. These problems require local solutions, supported externally and informed by international standards.

The Refugee Studies Centre, which we represented at the workshop, has made a commitment to collaboration with the University of Tripoli, in partnership with UNHCR. A joint programme of activities will be designed with a view to promoting human rights education and research in the new Libya.

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Newly recognised humanitarian actors

James Shaw-Hamilton

'New' humanitarian leaders are growing in profile, impact and capacity. They need to be recognised as equals by the international humanitarian community.

The multiple parallel humanitarian crises of 2011-12 in the Middle East and North Africa (MENA) have challenged the traditional humanitarian system because of constraints of access, adaptation and funding. At the same time, 'non-traditional' actors have had a great impact in Egypt, Libya, Tunisia and Yemen by being close in space and time. They have filled a gap by acting earlier than the international community and having better links into the local community and to informal governance structures. The same is true in Somalia.

A traditional model of internationally mandated humanitarian action depends on interest in a disaster where humanitarian governance and funding are, i.e. in the global North. It assumes a weak local or regional humanitarian community (in terms of scale, principles and coordination). Early in 2011, the situation in Libya belied this. In the east of the country, as well as on the borders with Egypt and Tunisia, local communities and civil society organisations (CSOs) were the first to respond to the needs of displaced people. Egyptian NGOs followed, organising convoys to Benghazi and elsewhere, while local humanitarian committees in Libya, the Organisation of Islamic Cooperation (OIC) and the Arab Medical Union produced regular situation reports weeks before those of the traditional response system.

Regionally, the humanitarian departments of the League of Arab States (LAS) and the OIC have grown in resources and impact. National NGOs are also becoming more visible, after being stifled under autocratic regimes. Egyptian NGOs are working more internationally, with organisations like the Arab Medical Union and the Food Bank responding in Libya, Somalia and Syria. NGOs from the Gulf (particularly Qatar and the UAE) and Turkey are also increasingly active both in MENA and outside it.

The international community needs to show commitment to these evolving actors, supporting them on their own terms. They need to be recognised because of their access, legitimacy and connections. This means building trust, supporting capacity and encouraging cooperation. Additionally such partnerships may help to break down misplaced suspicions and promote humanitarian and development work as a neutral area for building trust between communities.

It is time to deepen partnership between the UN, LAS and OIC, each of which has different skills,

constituencies and access. This is happening in joint meetings and assessment visits (for example about Syria). As part of this, the regional bodies need to discuss mechanisms of coordination supported by all, including governments and NGOs. Structures like the Inter-Agency Standing Committee (IASC) would certainly benefit from involving and recognising the new actors. Collectively, they should have a seat on the IASC in the same way that other NGO groups have seats. Another way to demonstrate trust – and maximise effectiveness – would be for western governments to provide direct funding to more Islamic NGOs.

International NGOs sometimes have better access to those in need, more experience and different funding sources. Their impact on the ground and in galvanising support in donor countries is clear. Nevertheless, local NGOs need to be seen as equals and donors should do more to support systemic CSO capacity and connections. There also needs to be a coming together as peers. One of the perceived barriers is that the traditional and the 'newly recognised' humanitarian communities treat accountability and humanitarian principles differently. It is not enough to ask why one humanitarian community does not have the same statement of values as another; we need to understand the organisations and their values.

It remains to be seen if the extreme situation during the first year of the Arab Spring will continue to challenge the regional humanitarian architecture – but it seems likely. Together, we need to find better ways of addressing the crises in Syria, Somalia, the Sahel, Yemen and elsewhere.

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The Humanitarian Forum was set up in 2005 as a network of key humanitarian and development organisations from Muslim donor and recipient countries, the West and the multilateral system. It aims to improve the effectiveness and efficiency of aid by addressing identified gaps between humanitarian communities through training, dialogue and cooperation, working internationally and in partner countries. The Humanitarian Forum has trained hundreds of civil society organisations (CSOs) working in or for eastern Libya, Somalia, Syria and Yemen.

Frontline Manual on rules of armed conflict

In response to allegations of misconduct by Libyan dissident forces during the conflict, Libya's National Transitional Council (NTC) asked a newly formed group of expatriate Libyan lawyers, called Lawyers for Justice in Libya (www.libyanjustice.org), to advise on the applicable rules of the law of armed conflict. The resulting Frontline Manual was launched by the NTC in May 2011

and distributed in various forms, including sending extracts as text messages on mobile phones.

English: www.libyanjustice.org/downloads/FinalGuidelines.pdf
Arabic: www.libyanjustice.org/downloads/Arabic%20Guidelines.pdf
For more information see www.ejiltalk.org/operationalising-the-law-of-armed-conflict-for-dissident-forces-in-libya/

Migrants caught in crisis

Brian Kelly

A number of new initiatives point to ways in which the international community – particularly governments – could help reduce the vulnerabilities of migrant workers during conflict and crisis situations.

International labour migrants in a conflict zone are often more vulnerable than the local population. They may not speak the language or share the culture, lack knowledge of the geography of the country, and are often at the bottom of the economic pyramid. With no family or community networks to call on in times of trouble, their isolation is in stark contrast to, for example, the support given to fleeing Libyans by family members and by Tunisians. They fear both the immediate danger and the future negative impact that a change in their overseas employment situation will have on those who are dependent on their remittances.

As seen in the aftermath of the Libya crisis, the rapid return of large numbers of migrant workers to their countries of origin within a fairly short time has tremendous negative consequences in terms not only of lost foreign exchange earnings but also of increased unemployment. These returning migrants also quickly shift from being the primary provider for a family to becoming a dependant. This adjustment is often difficult and stressful for both the individual and his or her family. In addition, if – as is often the case – debts were incurred to secure the overseas work, the repayment of the debt becomes the responsibility of the entire family, putting additional financial pressures on the household.

How every country handled the return and reintegration of labour migrants during the Libya crisis depended primarily on the number of migrant workers involved and the resources available to the government. As the crisis in Libya worsened, the Philippines government managed to quickly mobilise the necessary funds and create structures to initiate the repatriation. It also worked closely with the Filipino community in Libya to disseminate information, mobilise and register migrant workers wishing to relocate, and to help in the actual evacuation and repatriation efforts. Furthermore, the Philippines had also long had legislation institutionalising the procedures and structures for responding to and managing such large-scale repatriation.

Other countries took a different route and funded international organisations, such as the International Organization for Migration (IOM), to charter flights and handle the evacuation of migrant workers from Libya. Some others, such as Bangladesh and Chad, themselves provided charter flights in addition to financial contributions. There is no standard approach.

This crisis once again highlighted the vulnerabilities of migrant workers during conflict situations. These include the fear of being harassed or targeted by warring parties, the inability to cover travel expenses out of conflict zones, a lack of access to travel documents (since some employers keep the workers' passports to minimise contract defaults), a lack or limited knowledge of local languages, a lack of or limited access to embassy

officials (particularly in instances when embassy officials evacuated early) and a lack of knowledge about the transportation system and safe escape routes.

As highlighted earlier, forced evacuation commonly results in the return of a debt-ridden traumatised migrant worker to families dependent on remittances from abroad. Migrants returning to poor conditions back home are usually keen to re-migrate, usually to the country they have fled, given their sense of familiarity with the local environment.

The recent migration crisis in Libya is such a case. Repatriated migrants are willing and even eager to return there despite its instability. As early as 23 November 2011, 38 Bangladeshi migrants had returned to Libya to work, even as other migrants were still fleeing to Bangladesh.

The way forward

Governments and relevant organisations are already undertaking important initiatives to address these challenges. Below are some initiatives which could either be undertaken or expanded:

Develop standard operating procedures: In light of the Libyan crisis, during the April 2011 Fourth Ministerial Consultations of the Labour Sending Countries in Asia (known as the Colombo Process),¹ government delegates from the member states recommended the development of standing operating procedures (SOPs) for the protection of migrant workers in complex emergencies. SOPs provide for the necessary institutional structures and contingency planning required in order to address similar situations in the future. More specifically, SOPs include detailed information on in-situ protection measures, relocation, and evacuation and repatriation procedures, with an emphasis on coordination among the various stakeholders.

The Philippines government, for instance, has long recognised that supporting its citizens working abroad during crisis is critically important and in the nation's best interest. During the Libyan crisis, the Philippines created an Overseas Preparedness and Response Team under the office of the President. The team was tasked with, among other things, formulating and periodically reviewing contingency plans in times of crises affecting Filipinos overseas.

Create an emergency trust fund: The Colombo Process member states also recommended establishing a formal funding mechanism to ensure a rapid and structured response, as an alternative to the current flash-appeal process following a humanitarian crisis. Few labour-sending states have the standing capacity to evacuate and repatriate their nationals from a conflict zone as quickly as necessary. While IOM and its partners can respond rapidly to a crisis, the inconsistency of donor

responses results in inefficient mobilisation. Funding gaps have previously jeopardised the continued repatriation of migrants from conflict zones. Ensuring the human security of migrants requires a more stable funding stream, not solely dependent on donors' altruism or their desire to mitigate the likelihood of irregular migration.

Offer micro-insurance to migrants: Migrant workers are often unprepared to deal with emergency situations – such as personal illness and injury, natural disasters or political upheaval – in the destination country. If employers close their businesses and leave, migrant workers typically have no means to support themselves. Over the past decade, migrant insurance schemes have spread with success throughout Latin America and South and Southeast Asia. There are also examples of social insurance, as in Sri Lanka, where social insurance schemes are a permanent feature of the migration process. Social insurance schemes are sponsored by governments for specific population groups, whereas micro-insurance schemes are provided by private agencies for migrants and their families.

Train migrants in contingency planning: Most migrant workers are unaware of the risks and hardships associated with migrating abroad before they depart. While various awareness campaigns and pre-departure orientation programmes in recent years have aimed at raising awareness on various topics from financial literacy to host country cultural norms, the topic of emergency crisis planning is rarely included. Migrants need to be aware of the types of risks they may encounter (especially in the case of sudden political upheaval and conflict) and what steps they can take to ensure their safety.

Build embassies' capacity to protect labour migrants: A number of labour-sending countries, such as Bangladesh, Pakistan and the Philippines, have designated labour attachés within their respective embassies to provide assistance and welfare. Such officials are trained in various issues relating to migration such as counter-trafficking, facilitating remittances, and registering and responding to complaints. Increasing their awareness of existing mechanisms and institutional responses to

crises would enhance their capacity to protect migrants, whether in situ or during relocation, evacuation and repatriation. Labour attachés should be the first point of contact for distressed migrants and be responsible for disseminating information to migrant communities, especially during emergencies. Special attention should be given to unaccompanied minors and women migrants, who are always at higher risk.

Develop post-return and reintegration plans:

National and international actors need to consider long-term rehabilitation strategies for migrants forced to return, such as by providing job opportunities at home or abroad. For instance, several countries, including Bangladesh, have made it mandatory for all returnees to register upon arrival at the airport. Even though no reintegration plans existed during the Libyan migrant crisis, Bangladeshi immigration officials registered migrants to ensure that the government had a full list of returnees, including their contact details. The information collected proved extremely useful when the Government of Bangladesh later obtained a loan from the World Bank to reimburse IOM for some of the repatriation costs and to provide each returnee with a one-time cash grant.

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1. www.colomboprocess.org



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Proud to be Tunisian

Elizabeth Eyster, Houda Chalchoul and Carole Lalève

Last year's civil war in Libya caught the world by surprise. Nobody was prepared, least of all neighbouring Tunisia, deep into its own revolution. By 27 February, more than 10,000 people were crossing the border between Tunisia and Libya each day. Tunisia responded by keeping its borders with Libya open and Tunisians from around the country mobilised support for the thousands of foreigners entering their territory in desperate, difficult conditions.

Tunisians who wanted to help in the relief effort found every means to do so, ranging from a company providing huge quantities of milk to an elderly woman travelling by bus to bring home-cooked food for the refugees. Staff working for a transport company took it upon themselves to mobilise a pool of vehicles to transfer people arriving from Libya to shelters, to Djerba airport and to other locations in Tunisia. Overnight shelters sprang up in schools, recreation centres and hostels.

One doctor travelled hundreds of kilometres to offer his services. When he discovered that the Tunisian Red Crescent's policy is not to take on new and untrained volunteers while a humanitarian response operation is underway, he was undeterred. He made a personal donation towards the relief effort and then started work picking up the rubbish left behind by the huge numbers of people passing through.

Red Crescent volunteer Hafedh has vivid memories of a Tunisian cook who arrived at Shousha transit camp. The cook brought bread and rice he had

prepared beforehand, planning to spend only one day in Shousha. "But the sight of thousands of people, exhausted, traumatised and hungry, moved him and made him return the next day, with his friends," explains Hafedh. "This group of volunteer cooks put up a tent... and set about preparing meals for the residents of the camp. They provided cooked meals for the camp for two weeks, using provisions brought to them by local citizens. Then the International Committee of the Red Cross began funding them, and that is how Shousha's main kitchen was born, providing 23-28,000 meals a day."

In Tunisia's southernmost province of Tataouine, Tunisians welcomed some 80,000 Libyans into their homes, causing not inconsiderable financial difficulties for themselves as utility bills soared. When UNHCR officials offered Tunisian families assistance to cover their water, gas and electricity bills, many took offence, replying: "We don't expect any compensation." UNHCR then entered into a contract with the Tunisian utility companies to provide subsidies directly.

The Tunisians' outpouring of generosity came without instructions or high-level orchestration – people simply acted, responding not with fear but with compassion.

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Shousha transit camp was established in Ras Jdir, 7km from the Tunisia-Libya border, to accommodate those fleeing Libya. As of June 2012, it still hosts just under 3,000 refugees awaiting a durable solution.

