Extraterritorial asylum processing: the Libya-Niger Emergency Transit Mechanism

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The Libya-Niger Emergency Transit Mechanism launched in 2017 successfully evacuated a large number of asylum seekers detained in Libya. However, the outcomes for many of the asylum seekers, and indeed for the three main partners (UNHCR, the EU and Niger), were far from what they had hoped for.

In late 2017, UNHCR, the European Union (EU) and Niger attracted international attention by presenting the Emergency Transit Mechanism (ETM) as a humanitarian solution to the well-documented torture and exploitation of asylum seekers and refugees in Libya. Implemented with funding from the EU Trust Fund for Africa, this programme proposed flying 3,800 vulnerable people from Libyan detention centres to Niger, Libya's southern neighbour. In Niger, their asylum claims would be determined before refugees could access resettlement or complementary pathways to Europe and North America. However, a significant number of evacuees received negative asylum decisions in Niger, which undermined the initial depiction of Niger as a space of 'transit'.

Rejections represent a core issue of the ETM and extraterritorial asylum processing at large, though it has not been widely discussed. Although Niger was declared a transit state, its role in filtering evacuees before their arrival in the Global North and the conflicting selection criteria between evacuation, refugee status determination and resettlement made rejections likely. Nigerien officials and ETM asylum seekers opposed to Niger's role as a holding country have called on UNHCR and resettlement countries to live up to their international responsibilities.[1]

A buffer state between Libya and Europe

The creation of the ETM was integral to European attempts to keep refugees and migrants at bay in Libya. With European funding and support, the Libyan coast guard intercepted refugees and migrants and detained them. UNHCR had partial access to the detention centres but its refugee protection and resettlement procedures were constrained by the civil war and limitations imposed by the government. The central idea of the ETM was thus to 'deterritorialise' these procedures – that is, to move them to a third State – in order to provide immediate protection and to select asylum seekers before their physical arrival in Europe or North America. In this sense, Niger also played the role of a buffer state that allowed for a selection process before migrants arrived at Europe's borders.

At the same time, the ETM made access to asylum for refugees in Libya partially possible. It was partial because only a certain proportion of those in detention and among the 50,000 registered with UNHCR in Libya were offered evacuation. Many

more were only given the option to accept voluntary return to their countries of origin.[2] The plan involved high political stakes for UNHCR, the EU and Niger. It introduced a protection factor in EU externalisation policies which were often criticised for being security- and exclusion-focused and enhanced the reputation of Niger, currently the largest refugee host country in West Africa, as a country of hospitality.

In numerous reports, the EU, UNHCR and Nigerien officials alike depicted Niger as a transit country, and this was also reflected in the 2017 Memorandum of Understanding between UNHCR and the Nigerien Interior Minister. Procedurally, however, the MoU also included provisions for the remainder of evacuees excluded from resettlement in Niger. Although UNHCR prepared asylum files and issued recommendations, the final (negative) asylum decision rested with Niger.[3] This allowed the State to take responsibility for implementing subsequent immigration decisions such as deportation and legalisation.

Conflicting selection criteria

There were conflicting selection procedures throughout the process. Due to constraints on its operation in Libya, UNHCR only undertook a simplified screening procedure for selecting candidates for evacuation to Niger. In contrast to earlier emergency evacuation schemes, detainees were screened according to their vulnerability and only undertook asylum procedures once in Niger.[4] As a result, a large number of people were evacuated to Niger who would later not be eligible for refugee status.

In addition, the situation in Libya did not allow for orderly selection procedures. UNHCR staff in Niger confirmed that the

screening was "not done on everyone" initially and not done well due to the lack of rule of law. Apart from allegations of corruption against Libyan officials, detainees also changed their biodata in order to increase their evacuation chances.[5] The pervasiveness of these different informal practices in Libya raised the likelihood of rejections in Niger.

Furthermore, resettlement countries applied their own criteria in Niger when processing resettlement applications and rejected certain profiles based on their countries' interests and capacities. Germany rejected an Ethiopian woman in order to avoid a precedence for Ethiopian refugee recognition in Germany. The Netherlands precluded refugees with more serious medical conditions due to their cost. France refused unaccompanied minors who did not already have family members in the country, because of the complexities involved in their integration and to prevent subsequent family reunifications. Several European countries made decisions against candidates based on security reasons. Although UNHCR resubmitted cases to other resettlement countries and sought complementary pathways, the interests of resettlement countries risked further refugees remaining in Niger. Complementary pathways were also severely restrained

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Police registration of Emergency Transit Mechanism asylum seekers, Niamey, Niger, 2019.

by the highly selective visa policies of Global North consulates in Niger.

Responsibility and burden sharing

As a result of conflicting selection criteria, a number of evacuees in Niger had issues with their cases. In 2018, the Nigerien asylum authorities took decisions on 415 ETM files and rejected 85 out of them in the first instance. In August 2019, a UNHCR official interviewed in the course of this research reported that he considered about 100 applicants to be "complex cases", which required detailed credibility assessments. Also, there were about 20 "potentially dangerous profiles in international criminal networks" who had reportedly been involved in migrant smuggling and trafficking or crimes against humanity. These exclusion cases took UNHCR by surprise.

After the final appeal process, Niger would be responsible for immigration decisions. As deportations to Libya and resettlement were ruled out for these cases, rejected claimants would probably have to stay in Niger. Confronted with multiple security issues in managing the ETM, Nigerien officials and government representatives were often reluctant to assume responsibility for rejections, and strongly criticised UNHCR and the resettlement countries for leaving Niger to carry the burden.

Those asylum seekers who received negative first-instance decisions felt stuck in limbo after waiting for more than a year since their evacuation, and blamed UNHCR. One of them said: "UNHCR brought us here. UNHCR is playing with us. We can't do anything." They saw UNHCR as responsible for their future because it was UNHCR that had relocated them to Niger, a country they had not sought to go to.

Some asylum seekers with negative first-instance decisions considered returning to Libya via the Sahara, despite the violence they had suffered in Libya. They did not see Niger, which ranks last globally in the Human Development Index, as offering them the potential of a decent life. These asylum seekers had spent thousands of

dollars and faced high personal risk to migrate to Europe via Libya in order to pursue their dream of a better life. They had not planned for a life of precarity in Niger.

Conclusion

The implementation of the ETM in Niger underlines the unresolved issue of rejections in third-country asylum processing. From a humanitarian perspective, the ETM has surely saved and improved the lives of many refugees. Nevertheless, a core problem at the outset was the disconnect between evacuation, refugee status determination and resettlement with respect to their selection criteria and decision-makers. While the humanitarian evacuation centred on vulnerability and was the responsibility of UNHCR, the asylum adjudication relied on a perceived fear of return to the country of origin and was ultimately Niger's responsibility. Resettlement offers, on the other hand, were decided by resettlement countries based on their own interests and capacities. With these conflicting logics of evacuation, refugee status determination and resettlement, exclusions were inevitable. As these cases were more numerous and complex than initially expected, the search for solutions exposed conflicting interests between African actors (both Nigerien officials and ETM asylum seekers), UNHCR and the EU. Asylum seekers and Nigerien officials believed that a decent life lay outside Niger (in the Global North), while Nigerien officials and politicians refused, for security issues, to allow Niger to become a holding country. These conflicts of interest manifested themselves against a backdrop of strong asymmetries of power. These structural tensions challenge the viability of these forms of extraterritorial asylum processing.

Those introducing an ETM in Rwanda in 2019 appeared to have learned from experiences in Niger and as a result included alternative solutions in the initial agreement, namely local integration in Rwanda and voluntary return to countries of origin.[6] However, although the process is more transparent, it shifts the burden to asylum seekers in difficult situations

in Libya for accepting an evacuation to Rwanda despite the risk of an unwanted solution (local integration in Rwanda or voluntary return), and it does not solve the structural tensions that are inherent in the Emergency Transit Mechanism.

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1. My analysis is based on fieldwork undertaken in Niger in 2018-19 and interviews conducted remotely in January 2021.

2. Markous A (2019) 'Humanitarian Action and Anti-migration Paradox: A case study of UNHCR and IOM in Libya', Master's thesis. CERAH Genève, 26f bit.ly/Markous-thesis-2019

3. Initially Niger was responsible for the asylum decision. In June 2018, this shifted to a recognition under UNHCR's mandate. If UNHCR rejected a case, then Niger would be responsible for the asylum decision. See Lambert L (2020) 'Who is Doing Asylum in Niger? State Bureaucrats' Perspectives and Strategies on the Externalization of Refugee Protection', *Anthropologie et Développement* Issue 51, 87–103
https://journals.openedition.org/anthropodev/976

4. On earlier schemes see UNHCR (2011) 'Guidance Note on Emergency Transit Facilities. Timisoara, Romania/Manila, Philippines/ Humenné, the Slovak Republic'
bit.ly/UNHCR-Niger-ETM-overview-Aug2019

5. On corruption and identification issues in the profiling see endnote 2.

6. Jegen L and Zanker F (2019) 'Spirited away: The fading importance of resettlement in the emergency transit mechanism in Rwanda' bit.ly/Jegen-Zanker-2019-ETM-Rwanda