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?

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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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