



DRAFT: Protection guidance: shelter for refugees and migrants in Libya
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Background

Since the escalation of hostilities in the outskirts of Tripoli on 4 April, over 59 thousands people are estimated to have been displaced from conflict-affected neighbourhoods while thousands of others remain trapped in conflict-affected areas, unable to escape to safety **Thousands of families remain stranded in conflict-affected areas** as not all parties responded to calls for humanitarian corridors. The indiscriminate attacks, shelling and use of medium and heavy weapons in populated areas continue and result in the loss of many civilians. Civilians trapped by frontline fighting face water and power cuts, as well as shortages of essential items such as food, safe drinking water, medicine and fuel. Armed clashes, random shelling, roadblocks and explosives placed on roads hamper the ability of humanitarian actors to evacuate civilians and to deliver needed aid, as well as the ability of civilians to move freely to safer areas and access vital goods and services

While thousands of Libyans displaced from the conflict affected areas to safer locations including 29 collective shelter in Tripoli area, migrants and refugees who have been displaced by the conflict are prevented from accessing collective shelters and are therefore cut-off from access to safety and essential services, only one collective shelter in Tripoli was opened for non-Libyans and hosted 30 person (Ahmed ben Shahwan schools).

It is important to remind as preamble that according to principles of humanitarian law Civilians are persons who are not members of the armed forces or any organized armed group. The civilian population comprises all persons who are civilians (customary principles of IHL), This includes nationals, refugees, asylum seekers, migrants and stateless persons.

The protection sector in Libya is introducing a guidance document based on International Human right Law, humanitarian and protection principles in order to ensure non-Libyans are provided with equal access to humanitarian assistance, including shelter services.

Rationale:



This guidance note drafted by the Protection Sector in Libya references the ethical and legal backdrop to the Protection Principles, as well as to minimum standards for access to humanitarian assistance in particular access to shelter, which is imperative to address the immediate lifesaving need of those affected by the ongoing armed conflict broke in Tripoli since April 4th. The note highlights the established legal rights, obligations, shared beliefs and commitments of humanitarian agencies that founded on the principle of humanity and the humanitarian imperative, these include the right to life with dignity, the right to receive humanitarian assistance and the right to protection and security, which enshrined in the international humanitarian law, human rights and refugee law. This draft note is subject to revision should the situation on the ground changes.

General principles:

- It's essential to note that the roles and responsibilities of humanitarian agencies in protection are, generally, secondary to the legal responsibility of the State or other relevant authorities. Such roles must be seen in relation to the primary duty of the State or other relevant authorities, e.g. parties to the conflict in Tripoli. Such authorities hold formal, legal responsibility for the welfare of people within their territory or control and, more generally, for the safety of civilians in armed conflict. Protection often involves reminding these authorities of their responsibilities.
- Humanitarian actors, including States, are considered duty-bearers under IHRL. As such they are also obligated to respect, protect and fulfil the rights of all persons within a State's territory, including citizens and foreigners who are lawfully present (e.g. asylum-seekers/refugees, foreign workers, tourists, etc.).
- Freedom from discrimination (e.g. in access to humanitarian assistance, etc.) is enshrined in many States' national constitutions, as well as in Articles 2(1) & 26 of ICCPR; Article 2(1) of ICESCR. The principle of non-discrimination applies to the implementation of all other civil, political, economic, social and cultural rights. As such, non-discrimination is considered a non-derogable right, which cannot be suspended especially in emergencies. In other words, when social rights such as the 'right to adequate housing' under the ICESCR (e.g. which includes access to collective shelters in displacement settings) are implemented in a particular State, they must be done so in a non-discriminatory manner, by States and by other actors (e.g. humanitarians).
- Humanitarian actors are also obliged to abide by the core humanitarian principles of:



- Humanity: Human suffering must be addressed wherever it is found. The purpose of humanitarian action is to protect life and health and ensure respect for human beings.
- Impartiality: Humanitarian action must be carried out on the basis of need alone, giving priority to the most urgent cases of distress and making no distinctions on the basis of nationality, race, gender, religious belief, class or political opinions.
- Promoting “meaningful access” is also a core protection mainstreaming principle, which requires all humanitarian partners to “Arrange for people’s access to assistance and services – in proportion to need and without any barriers (e.g. discrimination). Pay special attention to individuals and groups who may be particularly vulnerable or have difficulty accessing assistance and services.”

In addition, the Sphere standards set out four protection principles that should inform humanitarian response: 1) avoid exposing people to further harm as a result of our actions; 2) protect people from physical and psychological harm arising from violence and coercion; 3) ensure people’s access to impartial assistance; 4) assist with rights claims, access to remedies and recovery from abuse.

Agencies promote equitable access to shelter and settlement programmes.

Key Actions:

- Identify local authorities responsible for shelter provision and strengthen and support their role where possible;
- Assess whether access to shelter is causing tension or conflict between different IDPs groups or between different groups (migrants VS migrants) or refugees Vs. IDPs; the local authorities and humanitarian partners shall look into possible mitigation measures to absorb or reduce the tension
- Monitor whether any individuals or groups control shelter materials (including and not limited NFIs, shelter kits and other humanitarian assistance) and/or discriminate against certain individuals or groups gaining access;
- Treat displaced persons equitably, whether they are living in host-family arrangements, collective centres, are self-settled in urban or rural locations, are self-settled in camps, or are living in planned camps;
Prioritise people and groups on the basis of need and not nationalities, including Libyan
- Recognise the joint ownership rights of both male and female heads of household.



- Strong control on the aid assistance provided to the shelters in order to prevent situations at risk of sexual exploitation or abuse (reference to the SG Special bulletin)
- Identify mitigation measures for wash facilities when they are not gender separated in order to prevent SGBV risks

Guidance:

1. Access to shelter can be a strong contributing factor to local conflicts. Agencies must assess and analyse any existing tensions or conflict over shelter within conflict-affected populations and ensure that agency actions reduce, rather than increase those tensions. In case of local community will not accept the fact they share the shelter with non-Libyans, actors shall find alternatives for non-Libyans to ensure the safety of displaced non Libyans; Agencies may choose to conduct a Do No Harm (DNH)/ assessment implemented by trained staff to ensure shelter programmes are implemented in a conflict-sensitive manner;
2. Agencies should avoid prioritising certain individuals and groups such as displaced Libyans over other individuals and groups. All people have the right to housing, including Libyans, migrants and refugees. Agencies should avoid assisting only those groups perceived to have 'easier' solutions or they have pressure from authorities and should instead work to find solutions for all affected populations;
3. It may be that different religious, ethnic, racial or national groups may choose to locate together in certain areas of the collective shelter area causing geographical divisions. If these divisions have been developed in agreement with the community and there is no significant difference in the quality of the shelter or services provided to the different groups, this is acceptable;
4. **Local authorities and humanitarian actors who implementing shelter and rehabilitation shall** ensure that separate living areas for groups such as women, people with disabilities and children are 'safe' include: safe central location within the residential area such as near families; lighting of entry point to the building; higher windows that cannot be looked into; lockable doors; and water and sanitation facilities in close proximity. All decisions on design of the services in the shelter should be taken in consultation with the relevant groups;

Selection of safe and secure relocation sites



Shelter solutions must provide protection, privacy, emotional security and a space to live, selection of the collective shelter/ alternative shelter needs to be aligned, to the extent possible, with the intended destinations of the individuals concerned as well as the current location of immediate family members and members of the community who may have already fled and reached safety. Essential services, including food, water, shelter, medical care, etc. will need to be available in these locations.

Relocation areas will likewise need to be secure and at a safe distance from hostilities, besieged or hostile areas as well as border areas. All of these elements should be part of consultations with vulnerable groups and persons and negotiations with the host government and relevant non-state armed actors, who must remain the guarantors of the physical security of the evacuated refugees and migrants.