



LIBYA'S DARK WEB OF COLLUSION

ABUSES AGAINST EUROPE-BOUND REFUGEES AND MIGRANTS

**AMNESTY
INTERNATIONAL**



Amnesty International is a global movement of more than 7 million people who campaign for a world where human rights are enjoyed by all.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

© Amnesty International 2017

Except where otherwise noted, content in this document is licensed under a Creative Commons (attribution, non-commercial, no derivatives, international 4.0) licence.

<https://creativecommons.org/licenses/by-nc-nd/4.0/legalcode>

For more information please visit the permissions page on our website: www.amnesty.org

Where material is attributed to a copyright owner other than Amnesty International this material is not subject to the Creative Commons licence.

First published in 2017

by Amnesty International Ltd

Peter Benenson House, 1 Easton Street

London WC1X 0DW, UK

Index: MDE 19/7561/2017

Original language: English

amnesty.org



Cover photo: A refugee captured by anti-immigration police in a regrouping house (a place where refugees are regrouped before being sent to boats) Suk Al Jomaa, Tripoli, Libya. 17 April 2016.

© TAHA JAWASHI

**AMNESTY
INTERNATIONAL**



CONTENTS

GLOSSARY	5
EXECUTIVE SUMMARY	6
METHODOLOGY	10
BACKGROUND	12
LIBYA: FROM DESTINATION TO TRANSIT COUNTRY	12
A FIRST ATTEMPT TO OUTSOURCE BORDER CONTROL TO LIBYA	14
AMID LAWLESSNESS, SMUGGLING THRIVES	15
THRIVING SMUGGLING ROUTES: A TALE OF THREE CITIES	15
ZUWARA	15
SABRATHA	16
ZAWIYA	17
THE EUROPEAN RESPONSE: FROM RESCUE TO EXTERNALIZATION	17
VIOLATIONS AGAINST REFUGEES AND MIGRANTS IN LIBYA	19
THE LEGAL FRAMEWORK	20
‘LIBYA IS HELL’	22
ABSOLUTE IMPUNITY	24
DCIM: ABUSIVE DETENTION	26
DCIM DETENTION CENTRES	26
INDEFINITE ARBITRARY DETENTION	28
CONDITIONS OF DETENTION	30
TORTURE AND EXTORTION	31
LIBYAN COAST GUARD: VIOLATIONS AND COLLUSION IN SMUGGLING	34
LCG STRUCTURE	35
VIOLENT AND RECKLESS CONDUCT DURING SEA INTERCEPTIONS	35

COLLUSION WITH CRIMINAL GANGS	37
LCG ESCORT AT DEPARTURE	38
BOATS MARKED FOR THE LCG	39
NAMING THE 'RIGHT' SMUGGLER FOR SAFE PASSAGE	39
FROM LCG TO DETENTION	40
EUROPEAN GOVERNMENTS: TRAPPING REFUGEES AND MIGRANTS IN LIBYA	42
ASSISTING LIBYAN AUTHORITIES RESPONSIBLE FOR UNLAWFUL DETENTION	43
SUPPORTING LCG INTERCEPTION AT SEA AND RETURNS TO LIBYA	44
ENHANCING THE LCG'S CAPACITY	45
CLAMPING DOWN ON NGO RESCUE OPERATIONS	47
ENGAGING LOCAL AUTHORITIES AND NON-STATE ACTORS IN LIBYA	49
EUROPEAN COMPLICITY IN VIOLATIONS	51
THE HUMAN COST OF EUROPEAN POLICIES	51
THE NATURE OF EUROPEAN POLICIES: UNLAWFUL AND UNJUSTIFIABLE	53
SLIDING SCALE OF <i>REFOULEMENT</i>	53
RESPONSIBILITY OF STATES FOR ACTS COMMITTED BY THEIR AGENTS ABROAD	54
RELEVANT IMPUTABLE KNOWLEDGE	56
CONCLUSIONS AND RECOMMENDATIONS	60
CONCLUSIONS	60
RECOMMENDATIONS	61

GLOSSARY

WORD	DESCRIPTION
DCIM	General Directorate for Combating Illegal Migration
EUBAM	EU Border Assistance Mission
EUNAVFOR MED	European Union Naval Force Mediterranean, later relabelled Operation Sophia, a joint EU military operation with the mission to “identify, capture and dispose of vessels used by smugglers and traffickers”
FRONTEX	European Border and Coast Guard Agency
GENERAL NATIONAL CONGRESS	Libya’s legislative authority between August 2012 and August 2014
GOVERNMENT OF NATIONAL ACCORD	An interim government for Libya established by the Libyan Political Agreement, a UN-led initiative signed in December 2015
IOM	International Organization for Migration, a UN body
LCG	Libyan Coast Guard
MRCC	Maritime Rescue Coordination Centre
OHCHR	Office of the UN High Commissioner for Human Rights
UNHCR	Office of the United Nations High Commissioner for Refugees, the UN Refugee Agency
UNSMIL	UN Support Mission in Libya
VHR	Voluntary Humanitarian Return Assistance and Reintegration Support, a programme run by IOM to assist migrants stranded in Libya to return to their country of origin

EXECUTIVE SUMMARY

“They brought us to Zawiya. There lots of police were waiting for us. They took us to Zawiya, an official centre, I stayed three months there, then I paid 500 Libyan dinars and they let me go. The police gave me the number of a Gambian man, said if you want to pay to leave (because they know I don’t have money) you can call him, he will help. The others arrested with me, they did the same thing. In the centre they don’t give food, they beat me with a rubber hose, because they want money to release me.”

“Bakary”, a Gambian man who was intercepted at sea by the Libyan Coast Guard and subsequently detained in a detention centre in Zawiya, December 2016

In the last few years, hundreds of thousands of refugees and migrants have braved the journey across Africa to Libya. Some have always intended to remain there, others have done so with the dream of reaching Europe. Nearly half a million have made the crossing in the last three years; over 10,000 have died in the attempt. A further half a million, maybe more, are currently stranded in Libya. Amnesty International has investigated the horrific abuses they face and the complex web of responsibility for their plight.

Refugees and migrants are routinely exposed to human rights violations committed by Libyan officials and security forces and abuses at the hands of armed groups and criminal gangs, who are often working in close co-operation and to mutual financial advantage. They suffer torture and other ill-treatment and arbitrary detention in appalling conditions, extortion, forced labour and killings at the hands of Libyan officials, militias and smugglers. In a lawless country, refugees and migrants have become a resource to be exploited – a commodity around which an entire industry has grown, as the shocking footage of a migrants being sold, aired in November 2017 highlighted.

Amnesty International’s findings do not only show how horrifically corrupt officials and callous smugglers have treated women, men and children. They also shine a light on Europe’s responsibilities. They reveal how the European Union (EU), its member states – and Italy in particular – have pursued their own goal of restricting the flow of refugees and migrants across the Mediterranean, with little thought, or seeming care, for the consequences for those trapped in Libya as a result.

EU member states have entered into a string of co-operation agreements with Libyan authorities responsible for grave human rights violations, in particular the Libyan Coast Guard (LCG) and the General Directorate for Combating Illegal Migration (DCIM) within the Ministry of Interior, with the aim of increasing their capacity to tackle smugglers, carry out search and rescue operations and prevent irregular departures. The policy has

been successful: the number of arrivals in Italy has fallen by 67% between July and November 2017, compared with the same period in the previous year, and deaths at sea have reduced commensurately. But EU countries should not feign shock or outrage when the human cost of these deals is laid bare.

EU and Italian officials cannot plausibly claim to be unaware of the grave violations being committed by some of the detention officials and LCG agents with whom they are so assiduously co-operating. Nor can they credibly claim to have insisted on key rights protection mechanisms and guarantees from their Libyan counterparts, as, in reality, they have not done so. They are, as a result, complicit in these abuses and in breach of their own human rights obligations.

Amnesty International's findings are based on interviews with 72 refugees, asylum-seekers and migrants in July 2017 in Italy and Tunisia, and meetings and exchanges with Libyan officials, including the official spokesperson for the Libyan navy, representatives of EU governments and institutions, representatives of the International Organization for Migration (IOM) and UNHCR, the UN Refugee Agency, in addition to other UN bodies, as well as non-governmental organizations (NGOs) operating in Libya, in the central Mediterranean and in Italy.

In addition to the meetings and interviews, Amnesty International reviewed relevant reports, statements and other documents issued by UN bodies, in particular IOM, UNHCR, the UN Support Mission in Libya (UNSMIL), the Office of the UN High Commissioner for Human Rights, the UN Special Rapporteur on the human rights of migrants, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Working Group on Arbitrary Detention; EU bodies, including the European Commission, the European Council and the European Parliament; the Italian government; international NGOs; as well as relevant declarations from informal intergovernmental meetings, and information on online media sources and social media platforms.

THE SITUATION IN LIBYA

Refugees and migrants in Libya are exposed to horrendous human rights violations in a country where institutions have been weakened by years of conflict and political division. Amnesty International has extensively documented the situation of refugees and migrants in Libya in recent years, including by collecting hundreds of testimonies from people who had spent time in Libya and who described in gruesome detail the abuse they had been subjected to or had witnessed.

IOM calculated that there were 416,556 migrants in Libya by the end of September 2017, but the real number is likely to be higher. According to IOM, over 60% of migrants in Libya are from sub-Saharan Africa, 32% from other North African countries, and around 7% from Asian and Middle Eastern countries. The number of those who are in need of international protection is hard to estimate, but UNHCR has stated that 44,306 people in Libya were registered as refugees or asylum-seekers as of November 2017. The actual number is probably much higher, but due to the agency's limited operations in Libya there is no way to know for sure.

Libyan law criminalizes irregular entry, stay and exit, which is punishable by a prison sentence, a fine and, ultimately, deportation. Although the right to asylum is set out in Article 10 of the Constitutional Declaration of 2011, the authorities have failed to reflect this right in national legislation, or set up any system to provide it. Libya is party to the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, but is in violation of its obligations under the Convention by failing to recognize the right to asylum and extend necessary protection to those fleeing persecution. Libya has consistently refused to sign the 1951 Refugee Convention and formalize the presence of UNHCR.

The criminalization of irregular entry, stay and exit, coupled with the absence of any legislation or practical infrastructure for the protection of asylum-seekers and victims of trafficking, has resulted in mass, arbitrary and indefinite detention becoming the primary migration management system in the country. This system, which lends itself perfectly to corrupt practices, has paved the way for horrendous violations to be perpetrated in places of detention, in which refugees and migrants are at the mercy of authorities, militias, and armed groups, often working seamlessly with smugglers for financial gain. The lack of any judicial oversight of the detention process and the near total impunity with which officials operate, has facilitated the institutionalization of torture and other ill-treatment in detention centres.

It is estimated that up to 20,000 refugees and migrants are currently being held in detention centres run by the DCIM, a division under the Ministry of Interior established in 2012 to tackle the migration flows into Libya. Thousands more are being held in places of captivity run by militias and criminal gangs. In both cases, people are unlawfully detained in inhuman conditions and subjected to torture and other cruel, inhuman and degrading treatment or punishment, including sexual violence.

DCIM officials in charge of managing and guarding detention centres are often directly involved in torturing and otherwise ill-treating refugees and migrants, in order to extort a ransom from them or their families in exchange for their release from indefinite arbitrary detention. Refugees and migrants detained in DCIM centres have described being held in degrading conditions, within ill-equipped and overcrowded structures. They are deprived of food and water, and exposed to undignified treatment, including strip-searches for any hidden amounts of money to be confiscated. Some have described being forced to call their families while guards torture them to coerce relatives to pay money for their release. Others have described being given the opportunity to speak with a fixer, who will pay DCIM officials for their release and pass them on to smugglers for departure by sea once the debt is paid off. Upon release from detention, the refugee or migrant is left with no money, no personal items including any identification papers or passport, leaving them at risk of facing detention or captivity again.

LCG officials are also responsible for human rights violations and are known to operate in collusion with smuggling networks. LCG officials conducting interception operations have used threats and violence against refugees and migrants on board boats in distress that is the very people they are supposed to rescue, sometimes in order to rob them of their few possessions. They have also caused deaths and put lives at risk by operating with blatant disregard for basic security protocols and standards. Collusion between the LCG and smugglers is frequently described by migrants Amnesty International interviewed. It consists primarily in the LCG allowing boats to depart in exchange for a fee: the LCG may escort one or more boats leaving the coast; or they may let them pass, after intercepting them at sea, if marked with an agreed symbol indicating to the LCG that payment has been provided; or they may let them pass when those on board can confirm payment of the passage fee and the name of the smuggler who has arranged their journey. It is unclear how many members of the LCG collaborate with smugglers and allow their boats safe passage through Libyan territorial waters. However, it is clear that, during 2016 and 2017, the LCG returned thousands of people they had intercepted at sea to Libya's shores and that the LCG's increased capacity, due to support from EU member states, has led to an increasing number of such pull-back operations. So far in 2017, 19,333 people have been intercepted by the LCG and taken back to Libya.

EUROPEAN COMPLICITY IN ABUSES IN LIBYA

Despite being fully aware of the serious violations to which refugees and migrants are subjected in Libya, European governments have decided to implement migration-control policies that, by reinforcing the capacity and commitment of Libyan authorities to stop sea crossings, are trapping thousands of women, men, and children in a country where they are systematically exposed to abuse and where they have little chance to seek and obtain protection. In the absence of any adequate mechanisms to monitor respect for and protection of the human rights of refugees and migrants in Libya, or any meaningful steps to improve the protection of their rights, these policies have directly contributed to worsening the situation of those now trapped in the country.

Since late 2016, Italy and other EU member states have implemented a series of measures aimed at closing off the migratory route through Libya and across the central Mediterranean. Their co-operation with Libyan actors has taken a three-pronged approach. Firstly, they have enabled the LCG to intercept increasing numbers of people at sea by providing them with training, equipment, including boats, and technical and other assistance. Secondly, they have committed to providing technical support and assistance to the DCIM, the Libyan authorities responsible for the management of detention centres where refugees and migrants are held and routinely exposed to serious human rights violations. Thirdly, they have struck deals with Libyan local authorities and the leaders of tribes and armed groups – to encourage them to stop the smuggling of people and to increase border controls in the south of the country.

By providing training, equipment and support in various forms to enhance the LCG's capacity, European governments have empowered the LCG to intercept refugees and migrants at sea, including in international waters, ferry them back to Libya and transfer them to detention centres where their human rights will almost certainly be violated. Furthermore, by hampering the monitoring and rescue operations of NGOs at sea, they have effectively side-lined actors that were disembarking those rescued at sea in safe ports in Italy.

The implementation of this strategy has resulted in a drop in the number of sea crossings, which started in July 2017. Whereas in the first half of 2017 a total of 83,754 people had reached Italy by sea – a significant increase over the same period in 2016, when 70,222 arrivals were recorded – between July and November 2017 a total of 33,288 refugees and migrants arrived in Italy, 67% less than in the same period of 2016. While the lower number of crossings has indeed achieved one of the stated goals of the co-operation – namely a reduction in the number of deaths at sea recorded during the period, on the other hand the increasing sealing of the central Mediterranean route has also led to the containment of refugees and

migrants in a country where they are exposed to violations and abuses and where they have no chance to seek asylum.

The European governments have taken such initiatives without creating safeguards to ensure the protection and human rights of refugees and migrants. Despite current efforts by UN agencies to provide assistance to refugees and migrants at 12 disembarkation points in Libya, the reality remains that those intercepted at sea and sent to Libya are transferred to detention centres where they are held in cruel, inhuman and degrading conditions, with no prospect of judicial review, and exposed to systematic, serious violations and abuses. Many centres remain out of reach to international agencies and where granted, access is on an ad hoc basis.

In the absence of a functioning judicial system and any legal framework or established process for authorizing the detention of migrants, they are deprived of any formal administrative or judicial means of challenging their detention. In light of this, the quickest and surest way to be released is to pay the ransom demands of detention guards. International agencies offer another route to some. UNHCR can secure the release of refugees from a few specific countries in exceptional cases. IOM runs a larger voluntary return programme and various announcements were made around the EU-African Union summit in November 2017 to expand it further. However, while this voluntary return programme certainly offers a lifeline to some, it should not be seen or promoted as the sole evacuation option for those stranded in Libya. Given the alternative of indefinite detention and the torture and other ill-treatment in detention, as well as the absence of an asylum system, the extent to which these returns are genuinely voluntary remains questionable, particularly for those with a claim to asylum. Amnesty International considers that, to ensure the voluntariness of any assisted return programme, there would need to be an end to the automatic detention policy; formal recognition of UNHCR and its mandate by Libya; a significant increase in UNHCR's capacity to conduct refugee status determination; and a large increase in the number of resettlement places and humanitarian visas offered by European – and indeed other – countries.

While European migration policies are clearly both facilitating abuses in Libya, and exposing an increasing number of people to them, it would be wrong to conclude that the alternative to bad co-operation is no co-operation. The situation for refugees and migrants in Libya will not be improved, nor the number of deaths at sea reduced, by the complete withdrawal of international engagement with the Libyan authorities on migration relation issues. However, it is essential – from a legal, practical, moral and political perspective – that the aims and nature of this co-operation be rethought; that the focus shift from preventing arrivals in Europe to protecting the rights of refugees and migrants.

Ultimately the misery of refugees and migrants in Libya is a by-product of bigger economic and political trends on the African continent and bigger flaws in Europe's migration policies. In the absence of adequate safe, legal routes into Europe (for both refugees and migrant workers) and, in light of the low prospect of being returned if found not to have a claim to protection, irregular journeys will continue to be seen both as the only choice and, ultimately, a rational choice by the ambitious and persecuted. This play of forces can only be addressed by increasing the number of safe and legal avenues of entry to – and return from – European countries. It cannot sustainably and conscientiously be addressed by enlisting the services of corrupt and abusive actors in transit countries to interrupt routes mid-way, without regard for how they do it, or the impact on those trapped as a result.

METHODOLOGY

This report is based primarily on research conducted by Amnesty International throughout 2017, but also draws on the findings of its investigations, most of which the organization has previously documented, in 2014, 2015 and 2016.

Amnesty International researchers conducted a total of 72 interviews with refugees, asylum-seekers and migrants in July 2017 in Italy and Tunisia. In all cases but one the interviews were conducted in person. The full names and other identifying details of individuals whose cases are featured in this report have been withheld to protect people from further abuse and reprisals or to respect their wishes.

On 6 and 7 July 2017, Amnesty International conducted 12 interviews with refugees and migrants in the Tunisian Red Crescent Centre in Medenine in the south of Tunisia. They were among 127 people who had set off in a rubber boat from Sabratha, Libya. When the boat ran out of fuel, they remained for two and a half days drifting in the Mediterranean sea towards Tunisian territorial waters and were then found by a Tunisian fishing boat, whose operators alerted the authorities, leading to their rescue by the Tunisian coastguard on 27 May 2017. All provided their consent for Amnesty International to use their testimonies as part of this report.

From 27 to 30 July Amnesty International researchers visited five different reception centres in four towns on the Italian island of Sicily, namely Città Giardino Melilli and Rosolini (Siracusa), Ragusa and Siculiana (Agrigento). There they conducted 60 interviews with refugees and migrants who had been rescued at sea and brought to Italy. The researchers chose all those interviewed at random and only spoke with them after they had provided consent to share their story.

In both Italy and Tunisia, Amnesty International was able to interview refugees and migrants on their own; no official or anyone else was present during the interviews. In some cases, Amnesty International could also see that the persons being interviewed carried on their bodies, scars or other signs consistent with the ill-treatment they spoke about. The interviews were all conducted in English, French or Arabic, with the exception of one interview where an interpreter was provided for a man who spoke in Bengali.

In addition, Amnesty International interviewed remotely by phone one man from Sierra Leone on 18 July. He was in a reception centre in Naples, Italy, at the time and had contacted the organization through its website, wanting to share details of the experiences he endured during his journey through Libya.

In total, Amnesty International spoke with 67 men and five women, aged between 17 and 47. The breakdown of these 72 individuals by nationality was as follows: three from Bangladesh, five from Cameroon, one from the Central African Republic, one from Chad, five from Côte d'Ivoire, one from Egypt, three from Eritrea, 10 from Gambia, six from Ghana, one from Guinea, two from Libya, three from Mali, two from Morocco, 15 from Nigeria, one from Palestine, four from Senegal, three from Sierra Leone, four from Sudan and two from Syria.

The details of the journeys undertaken by the refugees and migrants interviewed varied significantly, including the date of departure from their home countries and the period they spent in Libya before their departure. Moreover, none of those interviewed, with the exception of the group of 12 individuals interviewed in Medenine, had, to the best of Amnesty International's knowledge, travelled on the same boat in the Mediterranean. However, they had similar accounts of detention centres, as well as the guards and treatment received in them, in Libya.

The number of women interviewed compared to the number of men does not reflect the proportion of women among the refugees and migrants travelling through Libya and attempting to travel to Italy. It rather reflects the reality that many of the women in the reception centres visited by Amnesty International chose

not to speak about their experiences in Libya, even though the organization was able to offer an interview by a female researcher. Amnesty International considers that the prevalence of sexual violence against refugees and migrants in Libya, and the particular trauma and stigma attached to it, are crucial factors in this.

This report also includes information provided by A. A., an expert on migrants' issues who has personally visited detention centres in Libya, during interviews carried out on two separate occasions between July and November 2017 in Tunis. Amnesty International has not disclosed the identity of this individual to respect that person's wishes. This report also takes into account findings from hundreds of interviews with migrants and refugees conducted by Amnesty International between 2014 and early 2017. One interview referenced in this report was collected in Niger in July 2016. Some of these findings, such as those related to sexual violence and other abuse, have already been documented in previous documents published by Amnesty International in 2015 and 2016.¹

Amnesty International also gathered information through meetings and exchanges with Libyan officials, including the official spokesperson for the Libyan navy, representatives of European Union (EU) governments and institutions, representatives of the International Organization for Migration (IOM), UNHCR and other UN bodies, as well as non-governmental organizations (NGOs) operating in Libya, in the central Mediterranean and in Italy.

In addition to the meetings and interviews, Amnesty International reviewed relevant reports, statements and other documents issued by UN bodies, in particular IOM, UNHCR, the UN Support Mission in Libya (UNSMIL), the Office of the UN High Commissioner for Human Rights, the UN Special Rapporteur on the human rights of migrants, the UN Special Rapporteur on extrajudicial, summary or arbitrary executions and the UN Working Group on Arbitrary Detention; EU bodies, including the European Commission, the European Council and European Parliament; the Italian government; international NGOs, such as the International Crisis Group and Médecins Sans Frontières; as well as relevant declarations from informal intergovernmental meetings, and information on online media sources and social media platforms.

On 3 October 2017 Amnesty International sent a letter to Italian Prime Minister Paolo Gentiloni, summarizing its concerns and seeking information on a number of issues. On 17 October, it shared with Prime Minister Gentiloni and with four relevant Italian cabinet ministers a submission the organization had prepared for the UN Committee Against Torture, in view of its consideration of a periodic report by Italy. On 3 November 2017, the Diplomatic Counsellor to the Italian Prime Minister, Ambassador Mariangela Zappia, responded to these communications in a letter that did not dispute Amnesty International's findings or answer specific questions, but described the contribution offered by Italy to address the humanitarian challenges in Libya and the central Mediterranean. On 3 October and 24 November, Amnesty International wrote to the Italian Coast Guard, requesting information in relation to specific incidents at sea that had been reported to the organization. A similar request was also addressed to the Italian navy on 3 October 2017. On 1 December, the Italian Coast Guard wrote to Amnesty International providing some of the requested clarifications. On 7 December 2017, Amnesty International wrote to Italian Interior Minister Marco Minniti to share with him this report's findings.

In November 2017 Amnesty International requested a visa to visit Libya in order to complement the research it had already conducted and meet with officials in person to discuss its findings and recommendations, but was still awaiting a response at the time of writing. On 5 December it sent a letter to the Libyan authorities that included its key findings and recommendations, as well as questions. It will reflect any response received in future publications.

¹ Amnesty International, *'Libya is full of cruelty': Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015); Amnesty International, *Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya*, 1 July 2016, www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/

BACKGROUND

“In Libya, it’s either death, prison, or Italy. You cannot go back, you cannot turn around”²

“Edward”, from Cameroon, interviewed in Sicily in July 2017

Since the discovery of oil in Libya in 1959 foreign workers have flowed into the country, seeking economic opportunities from the wealth it has generated. Libya quickly became a destination country for migrants looking for job opportunities. Initially, Colonel Muammar al-Gaddafi, who ruled the country from 1969 to 2011, was influenced by pan-Arabism and particularly its articulation by Gamal Abdel Nasser, the president of neighbouring Egypt between 1956 and 1970, and allowed nationals from Arab states into Libya, granting them residence and employment rights similar to Libyan nationals.³ However, after UN sanctions were imposed on Libya in 1992, al-Gaddafi became disappointed at what he deemed to be the lack of support given to the country by Arab states in the face of this international punishment. He subsequently pivoted his foreign policy interests towards Africa in the late 1990s, motivated this time by a pan-African dream. This shift came with domestic law and policy changes as well, with al-Gaddafi opening Libya’s borders to African nationals by removing visa requirements. Thousands of African nationals arrived in the country, finding jobs in the service sectors in particular.⁴

LIBYA: FROM DESTINATION TO TRANSIT COUNTRY

From the late 1990s, smugglers began using Libya as a launching pad to transport people from Libya by boat to Europe.⁵ As a result, Libya gradually emerged as a transit country and gateway to Europe.⁶ Despite Libya’s repressive security apparatus, which would have otherwise made it difficult for alternative economies based on illicit trade to thrive, the authorities turned a blind eye towards the smuggling networks that were developing. This was mainly due to the strategic power politics the al-Gaddafi administration played, supporting southern tribes to gain their allegiance, while in turn allowing them to develop what over time would become a multibillion dollar alternative economy.⁷

² Interview with “Edward” (name has been changed to protect the interviewee’s anonymity), Sicily, 28 July 2017.

³ See, for example, Law no. 10 of 1989 on the Rights and Duties of Arabs in the Great Jamahiriya, security-legislation.ly/sites/default/files/959-Law%20No.%20(10)%20of%201989_AR.pdf

⁴ See, for example, International Detention Coalition, “Libya immigration detention profile”, *Global Detention Project*, February 2015, www.globaldetentionproject.org/wp-content/uploads/2017/08/Libya-Detention-Profile-2015.pdf

⁵ News articles reporting early crossings and incidents at sea are listed at: fortresseurope.blogspot.co.uk/2006/02/nel-canale-di-sicilia.html

⁶ See, for example, International Detention Coalition, “Libya immigration detention profile”, *Global Detention Project*, February 2015, www.globaldetentionproject.org/wp-content/uploads/2017/08/Libya-Detention-Profile-2015.pdf

⁷ Global Initiative Against Transnational Organized Crime, *The human conveyor belt: Trends in human trafficking and smuggling in post-revolution Libya*, March 2017, globalinitiative.net/wp-content/uploads/2017/03/global-initiative-human-conveyor-belt-human-smuggling-in-libya-march-2017.pdf

Libya's open door policy towards first Arab and then African nationals meant that the authorities encouraged free movement. It entered into both bilateral agreements and regional ones, such as by joining the Community of Sahel-Saharan States, which sought to create a regional bloc of free movement in that region.⁸ However, Libya did not consistently adhere to these in practice and subsequently reintroduced restrictions on free movement, eventually imposing visas on all nationals except those from the Maghreb countries.⁹ In addition, some of Libya's laws were contradictory and at times the authorities carried out arrests for illegal entry and mass expulsions of foreigners.¹⁰

Although there were thousands fleeing conflicts and persecution among those moving to Libya, the concept of asylum appeared contradictory to al-Gaddafi's transnational dreams, and for this reason the country never equipped itself with asylum legislation and never ratified the 1951 Refugee Convention. However, in response to Saudi Arabia's expulsion of hundreds of Somalis in 1991, Libya agreed to welcome the group and invited the Office of the United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency, to come to Libya to assist in managing the caseload.¹¹ UNHCR set up an office in Tripoli, but, given al-Gaddafi's aversion to the term "refugee", no formal agreement for its presence was established. UNHCR has struggled ever since to obtain official recognition in the country. The Libyan authorities briefly expelled UNHCR from the country in June 2010 stating that UNHCR was operating illegally there.¹² UNHCR returned to Libya following the uprising that began in February 2011. However, the continued lack of official recognition severely strains the agency's ability to carry out its mandate and offer necessary protection to refugees and asylum-seekers alike.

Despite the Libyan authorities' refusal to formally recognize refugee status, they have de facto acknowledged the need for protection of Eritreans, Ethiopians, Iraqis, Palestinians, Somalis, Sudanese of Darfuri origin and Syrians by adhering to the principle of *non-refoulement* – that is not returning them to their country of origin – and permitting UNHCR to offer them basic assistance.

From 2002 onwards there was a sharp increase in the number of refugees and migrants setting off from Libya to cross the Mediterranean sea in an attempt to reach Europe, a trend which continued in the following years.¹³ The pull towards Libya remained strong, as several civil wars raging in Africa were pushing thousands northwards¹⁴ and migratory routes to and through Morocco and Tunisia were proving more difficult for migrants to access. However, there was growing popular resentment and xenophobia linked to the increasing numbers of African nationals present in Libya. Back in 2000 such feelings had led to attacks on refugees and migrants in the cities of Zawiya and Tripoli that left dozens of sub-Saharan Africans killed.¹⁵ By 2007, al-Gaddafi had begun shifting his domestic policies away from the Community of Sahel-Saharan States, imposing visa regimes and introducing rigorous procedures for migrant workers that made it difficult for them to regularize their status.¹⁶ The Libyan authorities increasingly resorted to the use of detention as a means to contain the large migrant and refugee movements in the country.¹⁷

⁸ The Community of Sahel-Saharan States was established in 1998 with the aim of improving economic ties among its member states. Provisions in the treaty establishing the Community include ones related to open borders and visa-free country access with the right to work and residency. They also allow for freedom of movement of people, goods and capital. For more information, see www.uneca.org/oria/pages/cen-sad-community-sahel-saharan-states

⁹ Sara Hamood, *African Transit Migration through Libya to Europe: The Human Cost*, American University in Cairo, Forced Migration and Refugee Studies, January 2006, www.migreurop.org/IMG/pdf/hamood-libya.pdf (hereinafter: Sara Hamood, *African Transit Migration*).

¹⁰ Migration Policy Center, *Libya The Demographic-Economic Framework of Migration The Legal Framework of Migration The Socio-Political Framework of Migration*, June 2013, www.migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf

¹¹ Maja Janmyr, *Protecting Civilians in Refugee Camps: Unable and Unwilling States, UNHCR and International Responsibility*, 2013, p. 267.

¹² Amnesty International, *Country must allow UN refugee agency back in* (Press release, 9 June 2010), www.amnesty.org.uk/press-releases/libya-country-must-allow-un-refugee-agency-back

¹³ Paola Monzini, Nourhan Abdel Aziz, Ferruccio Pastore, *The Changing Dynamics of Cross-border Human Smuggling and Trafficking in the Mediterranean*, October 2015, www.iai.it/sites/default/files/newmed_monzini.pdf

¹⁴ Sara Hamood, *African Transit Migration*

¹⁵ "Libya unrest over immigration", *BBC*, 29 September 2000, news.bbc.co.uk/2/hi/africa/949208.stm; Hein de Haas, "Trans-Saharan migration to North Africa and the EU: Historical roots and current trends", *Migration Policy*, 1 November 2006, www.migrationpolicy.org/article/trans-saharan-migration-north-africa-and-eu-historical-roots-and-current-trends; Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013).

¹⁶ Sara Hamood, *African Transit Migration*.

¹⁷ Sara Hamood, *African Transit Migration*.

A FIRST ATTEMPT TO OUTSOURCE BORDER CONTROL TO LIBYA

Alarmed by the increase in the number of irregular sea arrivals from Libya, by 2007 European states – and Italy in particular – turned to al-Gaddafi to put an end to the migration flows.¹⁸ Al-Gaddafi in turn saw this as an opportunity to leverage migration to his advantage, as a bargaining chip he used to his last days.¹⁹

In 2008, the Libyan government concluded a 5 billion US dollar deal with the Italian government in the form of the Treaty of Friendship.²⁰ The agreement covered bilateral relations, co-operation and development assistance, as well as cultural, political and scientific exchanges, and the parties pledged “cooperation in the Fight against Terrorism, Organised Crime, Drug Trafficking, and Illegal Migration.”²¹ Ultimately, the deal was a “pushback” agreement, by which al-Gaddafi would keep the refugees and migrants in Libya, while the Italian authorities would return to Libya anyone engaging in an irregular sea crossing. Between 2009 and 2010, Italian authorities intercepted several boats carrying refugees and migrants in the central Mediterranean and transferred those on board back to Libya, where they were held in detention centres. Italy also delivered 10 fast patrol boats to the Libyan Coast Guard (LCG).

While detention was not an explicit part of the Treaty of Friendship, with the promise of joint projects, Libya increased its use of detention as a means to manage the migration flows and deter others from attempting to leave irregularly by sea.²² The deal was strongly criticized by human rights groups, including Amnesty International and Human Rights Watch, given the absence of an asylum system which would protect those fleeing persecution and the pervasive human rights violations the organizations had documented in government run detention centres for migrants.²³ The agreement not only blatantly disregarded international refugee and human rights law, but can also be considered the first step towards the institutionalization of illegal detention of migrants in Libya.²⁴

Despite the international criticism, the agreement and the system it created were maintained until the February 2011 uprising, when the balance of power in the country shifted and al-Gaddafi subsequently fell. The armed conflict that erupted resulted in serious damage to the ships Italy had donated to Libya, which were subsequently transferred to Tunisia and Italy for maintenance, where they were kept until 2017.

In the meantime in 2012, the European Court of Human Rights issued a judgement ruling that, by intercepting refugees and migrants at sea and forcibly returning them to Libya, where they would be exposed to serious abuse, Italy had violated Article 3 of the European Convention on Human Rights and Fundamental Freedoms, which prohibits torture and other ill-treatment, and specifically the principle of *non-refoulement*.²⁵ The uprising in Libya and the European Court decision brought to an end the “pushback” practices that had worked so well, in the eyes of the Italian government, in keeping refugees and migrants out of Europe.

¹⁸ Co-operation on migration between Libya and Italy had begun as early as 2000, at the level of police co-operation. By 2003 an Italian investigation unit had been set up in Tripoli. For more details, see www.mei.edu/content/readmission-relations-between-italy-and-north-african-mediterranean-countries#ednref12; France had also established a bilateral agreement in the form of the Libya-France Framework Agreement of a Global Partnership (2007), including active co-operation to combat illegal immigration, border co-operation and migration management, and work towards the establishment of readmission. For more information, see: www.migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf

¹⁹ In one of his final speeches at the onset of the uprising in 2011, al-Gaddafi, angered by the support Western countries were pledging to the “revolutionaries”, threatened to “turn Europe black” meaning he would allow migrants to travel freely to Europe’s shores.

²⁰ Treaty of Friendship, Partnership, and Cooperation between the Italian Republic and the Great Socialist People’s Libyan Arab Jamahiriya, 2008, www.perfar.eu/policies/treaty-friendship-partnership-and-cooperation-between-italian-republic-and-great-Q

²¹ Law no. 2 of 2009 on ratifying the Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People’s Libyan Arab Jamahiriya and the Republic of Italy, [security-legislation.ly/sites/default/files/files/lois/7-Law%20No.%20\(2\)%20of%202009_EN.pdf](http://security-legislation.ly/sites/default/files/files/lois/7-Law%20No.%20(2)%20of%202009_EN.pdf)

²² Amnesty International, *‘Libya of tomorrow’: What hope for human rights?* (Index: MDE 19/007/2010).

²³ Amnesty International, *Libya/Italy: Bilateral cooperation should not be at the price of human rights* (Index: MDE 19/017/2010); Amnesty International, *Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta* (Index: REG 01/004/2010); Human Rights Watch, *Pushed Back, Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers*, 21 September 2009, www.hrw.org/report/2009/09/21/pushed-back-pushed-around/italys-forced-return-boat-migrants-and-asylum-seekers

²⁴ Observers argued that these EU externalization efforts helped spur the creation of “one of the most damaging detention systems in the world”. Global Detention Project, “Libya”, www.globaldetentionproject.org/countries/africa/libya

²⁵ *Hirsi Jamaa and Others v. Italy*, European Court of Human Rights (2012).

AMID LAWLESSNESS, SMUGGLING THRIVES

Over a three-year period, following the uprising and the end of al-Gaddafi's regime in 2011, Libyan government institutions gradually weakened and fractured, exacerbating the problems of refugees and migrants even further. Today, three governments, divided along geographical and ideological lines, compete for power, each with limited control over parts of the country. The collapse of state security institutions left a gap that was filled by armed groups and militias. As part of attempts at security sector reform between 2011 and 2014, these militias were incorporated into or affiliated with the ministries of interior and defence, without thorough vetting, sometimes without any vetting.²⁶ Over the past three years, these militias have increasingly targeted lawyers and judges, threatening and intimidating them to the point where they have been unable to carry out their functions and leaving the judiciary severely weakened.²⁷ In addition, these groups continue to be responsible for the blocking of oil production and state-run services, such as the disruption of water supplies and electricity, alongside large-scale corruption, which has all but brought the economy to a halt. This environment has allowed armed groups, criminal gangs and militias to carry out crimes in total impunity, with many finding a highly lucrative business in trafficking and the illicit smuggling of fuel and people.²⁸

In the absence of a central state authority with effective control on the ground or a security apparatus able to counter the criminal gangs, smuggling of people has thrived as an industry, through deeply embedded and well-organized networks. In fact, crossings have significantly increased since 2013, due to external factors such as the high number of refugees fleeing conflicts – such as the civil war in Syria – and persecution in the region, and the increasing difficulties refugees and migrants face reaching Europe via other routes, because of border restrictions. Amid lawlessness and insecurity, even refugees and migrants who had lived in Libya for years have felt compelled to leave the country. As a result, hundreds of thousands of refugees and migrants have crossed the Mediterranean from Libya towards Italy to seek protection or a better life in Europe.

THRIVING SMUGGLING ROUTES: A TALE OF THREE CITIES

“Zawiya, Sabratha and Zuwara: they are all co-ordinated together especially since they [the smugglers] were pushed out of Zuwara because people no longer wanted them there... There are only two smugglers in Sabratha who control the boat smuggling; everyone else works for them.”

“Mamadou”, interviewed in Sicily in July 2017

Following the uprising in Libya in 2011, the north-western coastal towns of Zuwara, Sabratha and Zawiya became the three main smuggling hubs for people seeking to take boats irregularly to Europe.

ZUWARA

Sitting about 120km west of Tripoli, Zuwara is a home to the Amazigh minority. Given the proximity to the Tunisian border, the people of the city have been involved in cross-border smuggling, mainly in fuel and food, for a long time. In the years following 2011, they shifted to people smuggling using existing fishing boats. When conflict broke out in 2014, the security situation descended further into chaos, the security

²⁶ Hanspeter Mattes, “Rebuilding the national-security forces in Libya”, *Middle East Policy Council*, 2014, www.mepc.org/rebuilding-national-security-forces-libya

²⁷ Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013).

²⁸ UN, *Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*, 1 June 2017, undocs.org/en/S/2017/466 (hereinafter: UN, *Final report of the Panel of Experts on Libya*).

vacuum further emboldened the criminal networks in Zuwara, which became the lead hub for people smuggling in Libya.²⁹ The city's smuggling business peaked between 2014 and 2015.

However, residents of the city, horrified by the sight of the dead bodies of refugees and migrants increasingly washing up on their shores and the illicit business for which their city had become notorious, started to mobilize against the smugglers. On 27 August 2015, a boat with some 500 refugees and migrants capsized just five nautical miles off the shore of Zuwara. While 197 people survived, the majority drowned, with 183 bodies being recovered from the coast in the two weeks that followed.³⁰ This tragedy was the last straw for the residents of Zuwara, who went out onto the streets to protest, calling for an end to the smuggling business in their city.³¹ Local security officials responded by arresting three people accused of being smugglers responsible for the 27 August incident.³² During this period, there were also a number of attacks on smugglers by masked men from a group that formed to combat the smuggling networks in Zuwara.³³ As a result, the smugglers left Zuwara. However, since the demands from those seeking a way out of Libya remained high, many of those organizing and profiting from the business simply relocated to the next coastal city to the east, Sabratha.

SABRATHA

Once famous for its ancient Roman ruins, Sabratha, divided and weakened by the fighting between local militias and armed groups that had declared allegiance to the armed group calling itself the Islamic State,³⁴ became infamous in 2016 as the centre of people smuggling by boats to Italy. The smuggling industry in Sabratha quickly picked up where Zuwara left off. The move happened so quickly that there was no noticeable drop in operations nor in the numbers leaving.

Smugglers staked out vast areas of the city for their operations, renting out land or apartments and villas – whatever they could use to house thousands of people while they awaited their turn to leave. The smuggling network in the city operated like a well-oiled machine: bringing people into the city, placing them on lists, taking people out on boats and organizing the transfer of funds. A hierarchy within the smuggling network in Sabratha was established, with go-betweens, drivers and fixers all working together to sustain the lucrative business under the control of head smugglers.³⁵ One of the most powerful of these head smugglers was a man named Ahmed Debashi, who was also known as “Mohamed Sabratha” or simply “Al-Amou” among the refugees and migrants interviewed by Amnesty International.³⁶ Ahmed Debashi appeared to run his smuggling operation from what was known as the “White House”, an abandoned resort complex from the al-Gaddafi era, situated on the northern coast and used both to house those waiting to depart and as an embarkation point. The majority of the migrants interviewed by Amnesty International in 2017 had departed from Sabratha and referred to the “White House”, describing it as a vast space that could hold over a thousand individuals at any given time in conditions that were significantly better than those in other “connection houses”.³⁷ Those waiting were free to move around, but many did not out of fear of being kidnapped by criminal gangs. Each group held in that space had a

²⁹ Marine Olivesi, “In lawless Libya, human smuggling right out in the open”, *CBC*, 21 June 2015, www.cbc.ca/news/world/in-lawless-libya-human-smuggling-right-out-in-the-open-1.3120758

³⁰ “Migrant crisis: Libya boats sink off Zuwara carrying hundreds”, *BBC*, 28 August 2015, www.bbc.com/news/world-africa-34082304

³¹ Global Initiative Against Transnational Organized Crime, *The human conveyor belt: Trends in human trafficking and smuggling in post-revolution Libya*, March 2017, globalinitiative.net/wp-content/uploads/2017/03/global-initiative-human-conveyor-belt-human-smuggling-in-libya-march-2017.pdf (hereinafter: Global Initiative Against Transnational Organized Crime, *The human conveyor belt*).

³² “Libya arrests three suspected smugglers over migrant boat disaster”, *Reuters*, 29 August 2015, www.reuters.com/article/us-europe-migrants-libya/libya-arrests-three-suspected-smugglers-over-migrant-boat-disaster-idUSKCN0QY0BM20150829

³³ “Zuwara, the Libyan city working to stop migrant smuggling”, *Al-Monitor*, 5 July 2017, www.al-monitor.com/pulse/originals/2017/07/libya-war-illegal-migration-amazigh-zuwara.html; “Libyan Militia Confronts the World’s Migration Crisis”, *The Washington Post*, 16 October 2015, www.washingtonpost.com/sf/world/2015/10/16/libya-migrants/?utm_term=.3c9e7cdc6655

³⁴ Following the uprising, Sabratha became a training ground for groups affiliated to al-Qa’ida and later to the group calling itself the Islamic State.

³⁵ Global Initiative Against Transnational Organized Crime, *The human conveyor belt: Trends in human trafficking and smuggling in post-revolution Libya*, March 2017, globalinitiative.net/wp-content/uploads/2017/03/global-initiative-human-conveyor-belt-human-smuggling-in-libya-march-2017.pdf

³⁶ Francesca Mannocchi, “Italy accused of bribing Libyan militias to stop migrants reaching Europe”, *Middle East Eye*, 25 August 2017, www.middleeasteye.net/news/libyan-militias-being-bribed-stop-migrants-crossing-europe-2107168893

³⁷ “Connection houses” are places where smugglers keep migrants and refugees while in transit. They are located throughout the country, including in Sebha, Kufra and Beni Walid, as well as Sabratha. They can be apartments, abandoned resorts, other types of buildings or simply an abandoned piece of land.

special agent who was the intermediary between the group and Ahmed Debashi. In September 2017, clashes broke in Sabratha between opposing factions in the city that eventually led to the end of Ahmed Debashi's control over the smuggling operations there.

ZAWIYA

Located east of Sabratha and some 15km from Tripoli, Zawiya is the first major smuggling city one reaches when travelling west from the capital. Zawiya established its own status within the smuggling trade, around the same time as Sabratha, due to its strong and well-connected militia forces. According to the final report of the UN Panel of Experts on Libya published in 2017, fuel smuggling is a thriving business in Zawiya, given the local militia's control of western Libya's main oil refinery.³⁸ This has strengthened the militia's influence while allowing for other alternative industries in the city to flourish, including a people smuggling industry to rival that of Sabratha. According to one migration expert interviewed by Amnesty International who has regular access to detention centres, the detention centre in Zawiya, although officially a centre run by the General Directorate for Combating Illegal Migration (DCIM), is in fact controlled and operated by a well-established militia linked to a dominant tribe in Zawiya.³⁹

In terms of the smuggling operation, the city is almost entirely self-sufficient: it has its own DCIM detention centre, an LCG operations centre and, most importantly, a strong tribally affiliated militia to ward off interference and competition and the oil refinery to provide influence. However, they lack the expertise and know-how needed to run their operations on the same scale as Sabratha.

THE EUROPEAN RESPONSE: FROM RESCUE TO EXTERNALIZATION

Due to the inherent level of risk involved in all sea journeys organized by smugglers in the central Mediterranean – using utterly unseaworthy, overcrowded boats with no safety features, little fuel, no trained personnel and, often, no means to call for help – the increase in the number of crossings, especially since 2013, has led to hundreds of shipwrecks and other incidents at sea, causing thousands of deaths each year.⁴⁰ With so many lives being lost, the situation in the central Mediterranean presented European governments with a humanitarian crisis which they had a moral and legal obligation to address without delay, in compliance with the international law of the sea, as well as international human rights and refugee law.

For years Italy, and to a much lesser extent Malta, had rescued thousands of refugees and migrants. However, the obligation to disembark them and offer access to asylum procedures in their countries, in compliance with the Dublin Regulation,⁴¹ an EU law, had resulted in tensions between the two countries. After two major shipwrecks claimed over 560 lives on 3 and 11 October 2013, in the latter case partly due to delays in rescue operations stemming from disagreements between the rescue authorities of Italy and Malta as to which country should intervene,⁴² Italy launched the Mare Nostrum mission on 18 October 2013. The primary aim of Mare Nostrum was to ensure the proactive patrolling of the central Mediterranean and the prompt rescue of refugees and migrants in danger at sea. Between 18 October 2013 and 31 October 2014, Mare Nostrum ensured the rescue of 166,000 people.⁴³ With a few exceptions, generally due to medical evacuations, those rescued were disembarked in Italy. Indeed, as a result of the European Court of Human

³⁸ UN, *Final report of the Panel of Experts on Libya*.

³⁹ Interview with A. A. (name has been abbreviated to protect the interviewee's anonymity), Tunis, 10 October 2017.

⁴⁰ IOM, *Missing Migrants database, Mediterranean region*, missingmigrants.iom.int/region/mediterranean; UNHCR, *Operational portal, Mediterranean situation*, data2.unhcr.org/en/situations/Mediterranean

⁴¹ Regulation (EU) no. 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the member state responsible for examining an application for international protection lodged in one of the member states by a third-country national or a stateless person, [eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604](https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604&from.do=1)

⁴² Amnesty International, *Lives adrift: Refugees and migrants in peril in the central Mediterranean* (Index: EUR 05/006/2014); "Naufragio dei bambini, nuove verità sulla strage", *L'Espresso*, 13 September 2017, espresso.repubblica.it/attualita/2017/09/13/news/indagine-negli-abissi-1.309437

⁴³ Amnesty International, *Europe's sinking shame: The failure to save refugees and migrants at sea* (Index EUR 03/1434/2015).

Rights ruling in the case of *Hirsi Jamaa and Others v. Italy* in 2012, it had become entirely clear to all relevant authorities that disembarking any refugees and migrants in Libya would be unlawful.

As tens of thousands of people who disembarked in Italy then continued their journey towards other European countries, European leaders, motivated by the fear of political backlash, started to criticize Mare Nostrum. The operation began to be wrongly regarded as a pull factor for refugees and migrants, as governments argued that the increased safety of the crossing provided for by Mare Nostrum was encouraging more and more people to risk the journey.⁴⁴ This led to the calamitous decision by European leaders and the Italian government to end the operation by the end of 2014.

To assist Italy with patrolling Europe's southern sea borders, European leaders set up Frontex Joint Operation Triton, and mandated it to patrol at about 30 nautical miles from Maltese and Italian shores starting on 1 November 2014. Triton's resources, in quality and quantity, were proportionate to the limited scope of its mandate, but manifestly insufficient to address the humanitarian crisis that was unfolding in the central Mediterranean.

Contrary to European leaders' assumptions regarding the pull factor presented by Mare Nostrum, at the beginning of 2015 departures, notably from Libya, continued, and deaths at sea predictably soared.⁴⁵ Two major shipwrecks in the space of one week in April 2015, claiming over 1,200 lives, finally brought home to European leaders that the decision to end Mare Nostrum had been wrong and that Triton was an inadequate response to the situation in the central Mediterranean. Between April and June 2015, European leaders agreed to expand the resources and operational area of Triton, as well as to deploy military vessels in the central Mediterranean, and to launch European Union Naval Force Mediterranean (EUNAVFOR MED), later relabelled Operation Sophia, a joint EU military operation with the mission to "identify, capture and dispose of vessels used by smugglers and traffickers" in order to "disrupt the business model of human smuggling and trafficking networks in the Southern Central Mediterranean". Sea patrolling to find boats carrying refugees and migrants in distress and assist them was not included in the mandate of EUNAVFOR MED; however, as EUNAVFOR MED was deployed in areas of the central Mediterranean where incidents were commonly reported, its naval and aerial assets contributed from the beginning of the operation to saving lives. NGOs also started to set up private rescue operations funded by civil society.⁴⁶ These initiatives led to the rescue of tens of thousands of lives in the following months, and their disembarkation in Italy.

However, with the increasing number of refugees and migrants crossing into Europe via the eastern Mediterranean and Balkan routes (over 1 million between June 2015 and February 2016)⁴⁷ and growing public concern about their reception and integration, the political priorities of European governments changed. EU member states intensified action aimed at reducing the number of people arriving in Europe, and moving across Europe. Some went as far as constructing fences along their borders and ushering in measures resulting in violent pushbacks of refugees and migrants from the borders, unlawful detentions and poor living conditions for those left to languish at the borders.⁴⁸ In this context, EU governments prioritized countering smuggling over rescue operations in the central Mediterranean, exploring ways to outsource border control and asylum processing to transit countries outside of Europe, with the aim of preventing refugees and migrants from entering Europe. In March 2016 EU governments closed a deal with Turkey to return there anyone irregularly arriving on the Greek islands, outsourcing to Turkey the responsibility over refugees and migrants trying to reach Europe. In exchange, EU governments committed to provide funds of up to 6 billion euros to assist refugees in Turkey.⁴⁹

Amnesty International has repeatedly expressed concern towards EU's policies aimed at externalizing border control and asylum processing to countries outside its borders.⁵⁰ The use of aid, trade and other leverage to push transit countries, including some where widespread and systematic human rights violations against refugees and migrants have been documented, to implement stricter border control measures, in the absence of adequate human rights guarantees, risks trapping thousands of refugees and migrants in countries where they are exposed to serious human rights violations and abuses and where they have no access to effective protection.

⁴⁴ Amnesty International, *Lives adrift: Refugees and migrants in peril in the central Mediterranean* (Index: EUR 05/006/2014).

⁴⁵ Amnesty International, *Europe's sinking shame: The failure to save refugees and migrants at sea* (Index: EUR 03/1434/2015).

⁴⁶ Amnesty International, *A safer sea: The impact of increased search and rescue operations in the central Mediterranean* (Index: EUR 03/2059/2015).

⁴⁷ UNHCR, "Operational Portal: Refugee Situations: Mediterranean Situation", data2.unhcr.org/en/situations/mediterranean?id=83

⁴⁸ Amnesty International, *Stranded hope: Hungary's sustained attack on the rights of refugees and migrants* (Index: EUR 27/4864/2016); Amnesty International, *Trapped in Greece: An avoidable refugee crisis* (Index: EUR 25/3778/2016).

⁴⁹ Amnesty International, *A blueprint for despair: Human rights impact of the EU-Turkey deal* (Index: EUR 25/5665/2017).

⁵⁰ Amnesty International, *Human Rights risks of external migration policies* (Index: EUR POL 30/6200/2017).



A refugee weeps after been captured by anti-immigration police on board a boat bound for Italy. Tripoli, Libya. 6 June 2016.
© TAHA JAWASHI

VIOLATIONS AGAINST REFUGEES AND MIGRANTS IN LIBYA

“The international community cannot continue to turn a blind eye to the unimaginable horrors endured by migrants in Libya, and pretend that the situation can be remedied only by improving conditions in detention”

UN High Commissioner for Human Rights, November 2017⁵¹

⁵¹ UN High Commissioner for Human Rights, *UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity*, 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

THE LEGAL FRAMEWORK

In Libya the suffering of refugees and migrants starts with the domestic legislation: vague provisions that criminalize any irregular entry, stay or exit are compounded by the lack of domestic asylum legislation and the absence of protection for victims of trafficking. As a consequence, thousands are stuck in Libya, vulnerable to arrest at any time and at the mercy of armed groups, militias and criminal gangs.

The organization of the entry, residence and exit of foreign nationals in Libya is overseen by the General Directorate of Passports and Nationality, as stipulated by Law no. 6 of 1987 Organizing the Exit, Entry and Residence of Foreign Nationals in Libya, which criminalizes the “illegal” entry, stay or exit of foreign nationals.⁵² Article 17 of the law stipulates that any foreigner who has entered the country without a valid visa, or whose legal residency has expired, will be subject to deportation. Article 18 allows for those who are subject to deportation procedures to be detained until the deportation takes place. The law provides for imprisonment for an undefined period of time, along with a fine of 200 Libyan dinars (146 US dollars),⁵³ for anyone who has entered the country “illegally” and then remains or attempts to exit the country without a valid residency document or exit visa. The law criminalizes not only the individual but also persons who have assisted or facilitated in their irregular entry, stay or exit. Law no. 6 of 1987 was later amended by Law no. 2 of 2004, which punishes the act of “smuggling immigrants by any means” with at least a one-year prison sentence and or a maximum fine of 1,000 Libyan dinars (809 US dollars). In 2010 Law no. 19 on Combating Illegal Migration was introduced, which sought to impose harsher punishment on perpetrators of the crime of smuggling. The law defines the act of “illegal” migration as covering anyone who entered the country “illegally” and also criminalizes persons who transport or facilitate the transport, or the harbouring, of irregular migrants knowingly and those who provide counterfeit documents for such purposes. The law punishes the act of smuggling with up to five years’ imprisonment and a fine of 5,000 Libyan dinars. Should the smuggler belong to a smuggling network, a harsher punishment ensues, including a fine of 30,000 Libyan dinars, or double that should the perpetrator be entrusted to guard ports of entry.⁵⁴ Article 6 of the law penalizes irregular entry with an undefined prison sentence with “hard labour” and/or a fine not exceeding 1,000 Libyan dinars (809 US dollars) and eventually deportation once the sentence is complete. Article 10 does, however, require that the dignity, rights and property of an irregular migrant be protected.

The Libyan authorities have consistently refused to sign or ratify the 1951 Refugee Convention and its 1967 Protocol. Although the right to asylum is set out in Article 10 of the Constitutional Declaration of 2011, which also guarantees the protection of political refugees from forceful return, the authorities have failed to reflect this right in national legislation.⁵⁵ A project to develop a draft law on asylum, which was conducted through the efforts of UNHCR, in collaboration with a Libyan NGO called the Organization for International Peace, Care and Relief, between 2006 to 2008, never moved beyond the drafting phase and was later abandoned. In 2013 a joint drafting committee established on the initiative of a Libyan NGO called the International Organization for Cooperation and Emergency Aid, along with UN agencies, brought together independent lawyers, judges and parliamentarians, as well as a representative from the Ministry of Justice, to draft an asylum law. The draft law was then submitted for review and endorsement to the Ministry of Justice in order for it to then be proposed to the General National Congress for adoption. However, the conflict in 2014 disrupted the political as well as legislative process in the country.

Libya is not party to the Refugee Convention, but is a party to the 1969 Convention Governing the Specific Aspects of the Refugee Problem in Africa, a legally binding treaty of the Organization of African Unity (the predecessor organization of the African Union), which upholds the right to asylum. The Convention also encourages state parties to accede to the 1951 Refugee Convention and requires that they co-operate with UNHCR. Libya is in violation of its obligations under the Convention, having never established an asylum procedure or taken other measures to implement the Convention. Libya has additional obligations set out in the UN treaties it has ratified, including the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child,

⁵² Law no. 6 of 1987 Organizing the Exit, Entry and Residence of Foreign Nationals in Libya, 20 June 1987.

⁵³ The exchange rate used is the official exchange rate, which does not account for the liquidity crisis in the country.

⁵⁴ Law no. 19 of 2010 on Combating Illegal Immigration.

⁵⁵ Libya’s Constitution of 2011, www.constituteproject.org/constitution/Libya_2011.pdf

the Convention on the Elimination of all Forms of Discrimination Against Women, the Convention on the Elimination of Racial Discrimination and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers Convention). Moreover, Libya is party to the Palermo Protocols, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, as well as the Protocol against the Smuggling of Migrants by Land, Sea and Air, both of which it signed in 2001 and ratified in 2004.

The absence of a legal framework for asylum and for the protection of victims of trafficking is detrimental to the rights of those in need of protection. The existing laws on irregular entry and stay make no exception to safeguard people who have entered the country irregularly for the reason of fleeing conflict or persecution, or people subjected to trafficking, meaning that they are identified as irregular migrants and may be indefinitely detained. In 2012, the Ministry of Justice prepared a draft law on trafficking under the guidance of the UN Office on Drugs and Crime and the UN Support Mission in Libya (UNSMIL), which was later submitted to the General National Congress, Libya's legislative authority between August 2012 and August 2014. However, the law was never adopted. The General National Congress enacted a law on Torture, Enforced Disappearances and Discrimination in April 2013.

The use of detention as a means to control the irregular entry of migrants and asylum-seekers is discouraged under international law: detention should only be used as a last resort and while adhering to basic human rights standards. The right to liberty of person and prohibition of arbitrary detention is stipulated in Article 9 of the International Covenant on Civil and Political Rights. A report released in June 2017 by the UN Special Rapporteur on the human rights of migrants calls for an end to the use of detention as a means of migration management and border control and emphasizes that detention should only be used as a last resort and on a case-by-case basis.⁵⁶ Moreover, international standards identify vulnerable groups who should not be subjected to detention, including refugees, children, pregnant and nursing women, victims of trafficking, survivors of violence and torture, the elderly and those with special physical and mental needs.⁵⁷ This is further emphasized under the UNHCR Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, issued in 2012.

Under international law, individuals subjected to deportation are entitled to procedural safeguards, including the ability to challenge deportation decisions and access to interpretation and legal services. They also have the right to appeal against the decision to deport them. These safeguards are neither enshrined in Libyan law nor respected in practice. In conducting arbitrary or collective expulsions, the Libyan authorities are in breach of their international obligations under Article 13 of the International Covenant on Civil and Political Rights, Article 12 of the African Charter of Human and Peoples' Rights, and Article 22 of the Migrant Workers Convention. Furthermore, Libya is obliged to respect the principle of *non-refoulement* and to identify, or permit UNHCR to identify, those in need of international protection.

Trafficking and smuggling are both prohibited by the UN Convention against Transnational Organized Crime. They are covered by two different protocols to the Convention and – though sometimes difficult to distinguish in practice – are defined as distinct phenomena.⁵⁸ People smuggling is understood as a consensual transaction; the Smuggling Protocol defines it as “the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national.”⁵⁹ Those fleeing conflict and persecution in different parts of the world often resort to paying people smugglers to cross borders irregularly, when they cannot find any legal route to reach safe countries. Scholars have recognized that “most asylum-seekers require smugglers at some, if not all, stages of their journey.”⁶⁰ The Smuggling Protocol obliges states to prevent and combat people smuggling while protecting the rights of smuggled persons.⁶¹ Smuggling is not in and of itself a human rights abuse, though it may involve abuses. The UN Office on Drugs and Crime recognizes that trafficking and smuggling can overlap and that the distinctions between the two are often subtle. The key legal criteria for distinguishing smuggling

⁵⁶ UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, 28 April 2017, www.ohchr.org/sites/default/files/our_work/ODG/GCM/A_HRC_35_25_EN.pdf

⁵⁷ International Detention Coalition, *Legal framework standards relating to the detention of refugees, asylum seekers and migrants*, 2011, idcoalition.org/wp-content/uploads/2011/07/IDC-Legal-Detention-Framework-Guide_Final.pdf

⁵⁸ Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the UN Convention against Transnational Organized Crime, 2004 (hereinafter: Smuggling Protocol); Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, 2003 (hereinafter: Trafficking Protocol).

⁵⁹ Smuggling Protocol, Article 3.

⁶⁰ Sharon Pickering, “Transnational Crime and Refugee Protection”, *Social Justice*, 2009, p. 53, www.socialjusticejournal.org/archive/108_34_2/108_05Pickering.pdf

⁶¹ Smuggling Protocol, Article 2.

from trafficking is that smuggling involves consent even when undertaken in dangerous or degrading conditions, and is not for the purpose of exploitation.⁶²

‘LIBYA IS HELL’

According to IOM, as of August-September 2017, there were over 416,556 migrants in Libya, but some estimates put the real number much higher.⁶³ Over 44,306 people were registered as refugees or asylum-seekers with UNHCR as of November 2017, but the actual number of such individuals is again likely to be much higher, given UNHCR’s limited mandate in the country.⁶⁴ For decades, thousands of refugees and migrants have flowed into Libya each year, fleeing war and persecution or extreme poverty and hunger, seeking refuge or to improve their livelihood. Once they have arrived in Libya, they have had to confront a reality remarkably different from their dreams and expectations.

Amnesty International has extensively documented the situation of refugees and migrants in Libya in recent years.⁶⁵ The expression “Libya is hell” has recurred regularly during interviews with refugees and migrants who had spent time there, giving an idea of the scale and gravity of human rights abuses perpetrated against women, men and children stranded in the country.

In his update to the Security Council in September 2017, the UN Secretary-General highlighted the abuse and dire circumstances facing refugees and migrants in Libya, as reports by the UN High Commissioner for Human Rights have also done.⁶⁶ In her statement to the UN Security Council in May 2017, the Prosecutor of the International Criminal Court also highlighted the dire situation of refugees and migrants in Libya.⁶⁷

Across Libya, it is estimated that at present about 20,000 refugees and migrants are detained in centres formally managed by the General Directorate for Combating Illegal Migration (DCIM), a division within the Libyan Ministry of Interior, in execution of legislation that criminalizes entering, staying in or leaving Libya irregularly, described above.⁶⁸

In these detention centres, women, men and children are subjected to unlawful and indefinite detention, without access to any judicial oversight or remedy.⁶⁹ They are held in horrific conditions which amount to cruel, inhuman or degrading treatment or punishment under international law due to profound overcrowding, lack of access to medical care and inadequate nutrition. And they are systematically exposed to torture and other ill-treatment, including sexual violence and severe beatings, and extortion. They are also at times killed or left to die after being tortured, exploited, abused, or sold on for forced labour and other forms of exploitation to other militias, armed groups or criminal gangs.⁷⁰ These violations are described in detail in the following chapter.

Similar abuses are also routinely committed against men, women and children who are held captive by militias and armed groups outside state control or oversight. Refugees and migrants in Libya, some of whom have been returned to Libya, are also exposed to the risk of kidnapping by these groups and gangs, as

⁶² UN Office on Drugs and Crime, “Migrant smuggling FAQs”, www.unodc.org/unodc/en/human-trafficking/faqs-migrant-smuggling.html

⁶³ IOM, *IOM Libya Update, 24 October – 5 November 2017*, reliefweb.int/sites/reliefweb.int/files/resources/IOM%20Libya%20Newsletter%2024%20October%20-%206%20November.pdf

⁶⁴ UNHCR, *Flash Update 16 November – 1 December 2017*, data2.unhcr.org/en/documents/download/61097

⁶⁵ See, in particular, the following documents by Amnesty International: *A perfect storm: The failure of European policies in the central Mediterranean*, 6 July 2017 (Index: EUR 03/6655/2017) (hereinafter: Amnesty International: *A perfect storm*); *Libya: Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya* (Press Release, 1 July 2016), www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/; *EU risks fuelling horrific abuse of refugees and migrants in Libya* (Press Release, 14 June 2016), www.amnesty.org/en/latest/news/2016/06/eu-risks-fuelling-horrific-abuse-of-refugees-and-migrants-in-libya/; *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015); *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013).

⁶⁶ UN, *Report of the secretary-general pursuant to security council resolution 2312 (2016)*, 7 September 2017, www.un.org/ga/search/view_doc.asp?symbol=S/2017/761; OHCHR, “*Detained and dehumanised*”: *Report on human rights abuses against migrants in Libya*, 13 December 2016, www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf (hereinafter: OHCHR, “*Detained and dehumanised*”).

⁶⁷ International Criminal Court, *Statement of ICC Prosecutor to the UNSC on the Situation in Libya*, 8 May 2017, www.icc-cpi.int/Pages/item.aspx?name=170509-otp-stat-lib

⁶⁸ OHCHR, *UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity*, 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

⁶⁹ Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013).

⁷⁰ Amnesty International, *‘We are foreigners, we have no rights’: The plight of refugees, asylum-seekers and migrants in Libya* (Index: MDE 19/020/2012); Amnesty International, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015).

“Mohamed”, a 26-year-old steel worker who moved from Bangladesh to Libya at the beginning of 2016, told Amnesty International:

“A group of Libyans came in the shop one day and said they had work for us. Three of us went with them. There were three of them. We got in the car with them. They told me to put my head down, and not look; they became aggressive. They took us to a place, next to a factory. When they took us inside, there were about 500 people – it was one big place filled with people. They kept us there and asked us for 5,000 US dollars each to be released. They beat me once. When I first got there they didn’t beat me right away, only after four or five days. They began demanding money and told me to call my friends but not a Libyan. They said, ‘Call anyone for money.’ They beat me with a metal rod; it broke my fingers [he showed deformed fingers on his right hand]. I have problems with my right leg also and my shoulder because of the beating. One guy was beaten to death in front of my eyes. I stayed there for 20 days. I then paid 2,000 US dollars to get out; my friends managed to collect the money.”⁷¹

Those who are not held captive are nonetheless constantly at risk of being unlawfully killed, tortured, ill-treated or exploited, and are exposed to the generalized lawlessness and violence generated by the armed conflicts raging in different parts of the country. Many are fearful of “Asma Boys”, a term used to refer to young members of armed criminal gangs, who are known for kidnapping and torturing refugees and migrants for money. Refugees and migrants of sub-Saharan African origin are particularly vulnerable to abuses due to the rampant racism and xenophobia in Libya. A report published by Amnesty International in 2015 highlighted the racism and accompanying level of abuse carried out by officials, employers, criminal gangs and others in Libya against refugees and migrants.⁷²

Some Libyans attribute what they see as an increase in crime and “moral corruption” to the influx of African migrants in Libya, a sentiment that existed during the al-Gaddafi era.⁷³ There appears to be general acquiescence towards detaining sub-Saharan Africans as a means of deterrence as well as to prevent the risk of a “demographic transformation in the country”, as one state official who wishes not to be identified told Amnesty International off the record. He added that, even if the general sentiment were not in favour of detention, “they [refugees and migrants of sub-Saharan origin] cannot be left to roam freely, and they will swarm the country.”

The journey from the south of Libya, through the desert, to the north is marked by its own challenges.⁷⁴ Refugees and migrants remain at the mercy of smugglers and traffickers: they are often left with little food or water, held in captivity in cities in the south, extorted for money, and at times trafficked for periods before being released to continue their route to the north. Some have reported being sexually abused in the desert. The grim reality for most refugees and migrants is that, once they manage to make their way up to the north of Libya, they feel their only way out of Libya is by sea towards Europe, since neighbouring African countries shut their borders to non-Libyan nationals who do not have valid visas and travel documents to enter.

“Obeya” from Nigeria explained to Amnesty International the hardship he faced on his journey within Libya:

“We arrived in Gatroun where we stayed three days; it was hell. We saw the ‘Ghetto boys’ – they are Africans – and they beat us with sticks wanting us to move like cows. They worked there. They collected money from us and said it’s the ghetto fee. Those who couldn’t pay were beaten with a wire or the flat side of a machete. They kept us inside in a zanzana [cell]. Once I was in line, then someone pushed me. I complained and they whipped me on my buttock. I saved my money in dollars so I could hide it easily (Libyan money is large). That day, the second day, we were left without water or food; I was so weak, I just slept. Ten the next day a lorry came and took us to the outskirts of Tripoli, where we got out. There they call our names to distribute us, me to Gargaresh. It was the only place blacks could walk freely.”⁷⁵

“Mariam” from Eritrea recalled how, on her journey from Sudan to Sabratha, she was held with others in an unknown location in Libya for around a month until enough people had been gathered to continue the next leg of the journey. The place was a large shed used as a holding house. “Mariam”, who arrived in Sicily nine months pregnant, told Amnesty International what she witnessed during her time there:

⁷¹ Interview with “Mohamed” (name has been changed to protect the interviewee’s anonymity), Sicily, 27 July 2017.

⁷² Amnesty International, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015).

⁷³ Amnesty International, *Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta* (Index: REG 01/004/2010); Amnesty International, *‘We are foreigners, we have no rights’: The plight of refugees, asylum-seekers and migrants in Libya* (Index: MDE 19/020/2012); Amnesty International, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015).

⁷⁴ Libya shares borders with Sudan, Chad and Niger in the south. All three countries serve as access points into the country.

⁷⁵ Interview with “Obeya” (name has been changed to protect the interviewee’s anonymity), Sicily, 27 July 2017.

“They [the guards] were hard; they were drunk all the time. Then one day there were four Somalis who tried to escape. The Eritrean smugglers told us they killed them, three of them; the fourth [was] in the hospital. Then they beat the rest of the Somalis. [They were] getting tortured; you could hear the screaming. They used electric[ity] and beat them with Kalashnikov, very bad suffering.”⁷⁶

ABSOLUTE IMPUNITY

The justice system in Libya is weak and has been further constrained by the security situation in the country, in which state authorities have very little effective control. Courts have been unable to process thousands of untried cases of detainees, some dating from 2011. Judges and lawyers have been threatened and harassed, leading many to flee the country and leaving a void in the state prosecutorial and judicial systems.⁷⁷ The judiciary is largely not functioning in most of the country, Tripoli and Misratah being partial exceptions.

Cases of irregular entry should be overseen by the judiciary and the Public Prosecutor formally has the power to suspend criminal proceedings against those detained on grounds of irregular entry. However, refugees and migrants are placed outside judicial procedures by being held in DCIM detention centres indefinitely and without the ability to legally challenge their detention or seek other legal remedies. In addition, as a result of the criminalization of illegal entry, stay and exit, victims of human rights violations in Libyan detention centres have no viable means to seek redress. Approaching a police station once released would simply place the migrant or refugee in immediate danger of being re-arrested.

Libyan authorities have called for investigations into incidents such as the abuses, including the sale of migrants depicted in recent footage released by the broadcaster CNN.⁷⁸ However, it is yet to be seen whether this will materialize into arrests of any of those involved in the smuggling and trafficking networks in the country. The Public Prosecutor's Office currently lacks the resources to carry out investigations and is also severely constrained by the security situation.⁷⁹ In July 2017, Amnesty International contacted the Public Prosecutor's office in Tripoli by phone with regard to information the organization had received that a group of Somali nationals were being held captive by an unidentified armed group at an undisclosed location and had been exposed to torture as a means to extract large sums of money from them. Amnesty International learnt from another source that they provided the Public Prosecutor with a phone number used by someone to communicate from the location to the outside world, which could be used to help locate the place of captivity. However, it is not aware of any steps being taken by the Public Prosecutor's office.

Amnesty International is aware of a few cases where the judiciary has been able to examine cases involving refugees and migrants. In March 2017, after the end of the fighting in Sirte, a court in Misratah ordered the release of 24 Eritrean women who had been detained. The group of women had been arrested and prosecuted in Misratah on charges of being affiliated to the armed group calling itself the Islamic State armed group, of which they were acquitted by the court. The fact that the women were of Eritrean nationality, one of the seven nationalities to which the Libyan authorities extend protection from *refoulement* on a de facto basis, was likely to be a contributing factor.

One of the few legal remedies available for crimes in Libya is the International Criminal Court, which has had an active investigation into Libya since 2011.⁸⁰ Initially, arrest warrants were only issued for former officials from the era of Muammar al-Gaddafi, including Saif al-Islam al-Gaddafi, son of the former leader, and Abdallah al-Senussi, his director of military intelligence. However, in June 2017 an arrest warrant was also issued for war crimes against Mahmoud al-Werfalli, commander of the Special Forces under General Khalifa Haftar, who is now the head of the self-styled Libyan National Army and currently controls the east of the country. In May 2017 the Prosecutor of the International Criminal Court announced an interest in principle in

⁷⁶ Interview with “Mariam” (name has been changed to protect the interviewee's anonymity), Sicily, 30 July 2017.

⁷⁷ UNSMIL, *Report on the trial of 37 former members of the Qadhafi regime (case 630/2012)*, 21 February 2017, www.ohchr.org/Documents/Countries/LY/Trial37FormerMembersQadhafiRegime_EN.pdf

⁷⁸ “Libya opens investigation into slave auctions following CNN report”, CNN, 17 November 2017, edition.cnn.com/2017/11/17/africa/libya-slave-auction-investigation/index.html

⁷⁹ UN Human Rights Council, *Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya Report to the General Assembly by the Human Rights Council*, 15 February 2016, www.ohchr.org/Documents/Countries/LY/A_HRC_31_CRP_3.pdf

⁸⁰ UN Security Council referral under Resolution 1971.

opening investigations into migrant-related crimes in Libya, “should the Court’s jurisdictional requirements be met”.⁸¹

⁸¹ International Criminal Court, *Statement of ICC Prosecutor to the UNSC on the Situation in Libya*, 8 May 2017, www.icc-cpi.int/Pages/item.aspx?name=170509-otp-stat-lib



Refugees in Tarik Al Sika detention center, Tripoli, Libya. 22 September 2017.
© TAHA JAWASHI

DCIM: ABUSIVE DETENTION

Over the past decade, tens of thousands of refugees and migrants who have spent time in Libya have been exposed to arbitrary detention, torture and other ill-treatment, including sexual violence, extortion, and forced labour and other exploitative labour practices including in DCIM detention centres.

As indicated above, it is estimated that up to 20,000 refugees and migrants are currently being held in detention centres run by the DCIM across the country. Based on testimony received through interviews conducted by Amnesty International, this chapter describes how some DCIM guards arbitrarily detain those women, men and children in horrific conditions in these centres and are themselves directly involved in torturing and otherwise ill-treating refugees and migrants, very often in order to extort a ransom from them or their families in exchange for their release from indefinite arbitrary detention.

DCIM DETENTION CENTRES

The DCIM was established as a division of the Ministry of Interior in 2012 to tackle the large migration flows into the country.⁸² Prior to its establishment, migration was managed mainly by the Passport and Nationality

⁸² Cabinet Decree no. 145 of 2012 on adopting the organizational structure and powers of the Ministry of Interior and the organization of its administrative unit, security-legislation.ly/node/32243; the establishment of the DCIM was not formalized by a law until 2014 under Decree no. 386 on the establishment of an agency to combat illegal migration, security-legislation.ly/node/34979

Directorate.⁸³ With the establishment of the DCIM, irregular migration management was placed under its authority. DCIM's mandate is to tackle irregular migration flows by acting as a quasi-law enforcement body and, more specifically, by arresting anyone who has entered 'illegally', by organizing the deportation of irregular migrants and by managing the detention centres where they are held.⁸⁴ It is not always clear how much effective control the Ministry of Interior has over DCIM centres given the opaqueness of the command hierarchy, particularly as the centres themselves are really only nominally under the control of the DCIM's central authority. In addition, there are dozens of places of captivity where refugees and migrants are held by militias not affiliated to any state institution.

According to UNHCR, the DCIM has 33 active detention centres officially under its control.⁸⁵ However, according to other sources, the number of detention centres is anywhere between 17 and 36.⁸⁶ One of the reasons the numbers are difficult to confirm is the fact that the DCIM frequently close centres and open others. An additional complication is the factual determination of whether a given centre is actually operated by or even under the control of the DCIM.

With its headquarters in Tripoli, the DCIM's leadership has limited oversight over its detention centres. Infrequent visits by DCIM officials and the lack of a clear reporting structure have left the centres operating with near autonomy in many cases. Where these centres are in reality only nominally under the control of the DCIM, they are run by independent militias affiliated to the city or town in which they operate. For example, the Nasser detention facility in Zawiya, often referred to as the "Ossama centre" by refugees and migrants, operates officially under the DCIM, but is in fact run by the head of a local militia and is one of the centres used to detain people intercepted at sea by the LCG, as illustrated in the next chapter. The militia's headquarters is located in the same premises as the detention centre, as is an affiliated humanitarian organization, the al-Nassr International Organization for Development and Relief, which was founded on 14 December 2015 and is headed by Fathi al-Far. According to the UN Panel of Experts on Libya, Fathi al-Far is an army colonel involved in the selling of migrants to other smugglers.⁸⁷

Lack of funding has also put a massive strain on the detention centres, which translates into even worse living conditions for the detainees.⁸⁸ In recent months, however, the DCIM has begun taking steps to shut down centres under its control in response to reports of abuses submitted by various organizations and frequent reports on abhorrent conditions and treatment. It appears to be moving towards a more centralized detention strategy in Tripoli. This is no easy process when in many cases the militias running the centres do not really associate themselves with any official authority.

Since its establishment in 2012 the DCIM has requested that all governmental and non-governmental organizations wishing to assist detained migrants do not engage with detentions that take place DCIM centres that are operated by militias rather than the DCIM itself. The logic is that visits by international organizations would legitimize these detention centres and the DCIM instead wants to marginalize the militias. However, this has resulted in a complete lack of scrutiny or oversight of these centres. Refugees and migrants who had been held in centres not operated by the DCIM told Amnesty International that they felt completely off the radar with no external oversight of conduct or treatment.

Armed groups or criminal gangs operating without affiliation to the DCIM or any other state institution have over the past three years increasingly detained refugees and migrants as a means of generating cash by extorting ransom payments. They hold them in houses or farms or warehouses. Of the 72 refugees and migrants interviewed by Amnesty International for this report, 30 had been detained at some point by armed

⁸³ This was delegated under Law no. 6 of 1987.

⁸⁴ European External Action Service, *EUBAM-Libya initial mapping report*, 25 January 2017, statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf (hereinafter: European External Action Service, *EUBAM-Libya initial mapping report*).

⁸⁵ UNHCR, *Libya: Detention centres – Active Official Detention Centres*, 21 September 2017, data2.unhcr.org/en/documents/download/61006

⁸⁶ Altai Consulting, *UNHCR and Impact, Mixed migration trends in Libya: Changing dynamics and protection challenges*, 2017, www.altaiconsulting.com/wp-content/uploads/2017/07/LIB-HCR-MAS-Final-Report.pdf; IOM, *Libya: Voluntary humanitarian return (VHR) assistance & reintegration support to stranded migrants in Libya*, 10 - 23 October 2017, www.iom.int/sitreps/libya-voluntary-humanitarian-return-vhr-assistance-reintegration-support-stranded-migrants-4; UNHCR, *Central Mediterranean situation: UNHCR calls for an additional 40,000 resettlement places*, 11 September 2017, www.unhcr.org/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html; Médecins Sans Frontières, *MSF warns of inhumane detention conditions in Libya as EU discusses migration*, 2 February 2017, www.doctorswithoutborders.org/article/msf-warns-inhumane-detention-conditions-libya-eu-discusses-migration

⁸⁷ UN, *Final report of the Panel of Experts on Libya*, p. 103.

⁸⁸ Médecins Sans Frontières, *MSF warns of inhumane detention conditions in Libya as EU discusses migration*, 2 February 2017, www.doctorswithoutborders.org/article/msf-warns-inhumane-detention-conditions-libya-eu-discusses-migration

groups or criminal gangs outside of DCIM detention centres. “Demba” from Gambia, who spent a year and a half in Libya, told Amnesty International:

“You see there are many [detention] centres. In Sorman there are three centres: two unofficial and one official. In Zawiya, there are three centres: two unofficial and one official. Ossama runs the official centre for the government and then there is Salah Amran. In Sabratha there are many unofficial centres and one official.”⁸⁹

Given the nature, it may be more accurate to describe these locations as “places of captivity” rather than even “unofficial detention centres”.⁹⁰



Satellite image of Al Nasser detention center in Zawiya, Libya, where hundreds of migrants and refugees face horrific human rights abuses.

INDEFINITE ARBITRARY DETENTION

Given Libya’s criminalization of irregular entry and exit, any refugee or migrant found in Libya is potentially at risk of being apprehended and taken to a detention centre at any time. This also applies to those who attempt the crossing of the central Mediterranean; when the LCG intercept people fleeing the country by boat, they routinely transfer them to a DCIM detention centre, where they are held indefinitely.

Given the lack of an official registration process, whether at points of disembarkation or within detention centres, including ones operated by the DCIM, it is not possible to say how many people are being held in detention centres at any given time or for how long they have been there. The numbers in the centres fluctuate, as centres release individuals at their discretion, usually following the payment of a ransom. In fact, with no legal oversight by Libyan prosecutors or any other legal remedy to challenge detention, there is no system to allow for official release or to track the length of detention. This enables the managers and guards of detention centres to engage in extortion and torture with total impunity. The only other ways refugees and migrants are able to leave the detention centres are through deportation, Voluntary

⁸⁹ Interview with “Demba” (name has been changed to protect the interviewee’s anonymity), Medenine, 7 July 2017.

⁹⁰ Médecins Sans Frontières, *Trapped in Transit: Refugees, Migrants, and Asylum Seekers Stranded and Suffering in Libya*, 22 July 2016, www.doctorswithoutborders.org/article/trapped-transit-refugees-migrants-and-asylum-seekers-stranded-and-suffering-libya

Humanitarian Return operations organized by IOM or, in rare cases, a release negotiated by UNHCR for individuals of concern to them.

In the period between 2012 and 2014, mass detention and mass deportation served as the key elements of Libya's migration management system, both of which were implemented by the DCIM. During this period, the DCIM detention centre in Sebha, in the south of Libya, functioned as the collection point for deportation. DCIM centres throughout the country transferred detained refugees and migrants to Sebha for onward movement to the border with Niger, where they would be released. A July 2017 report by Altai Consulting, and Impact, for UNHCR, estimates that 40,000 people were deported this way during that period.⁹¹ These mass expulsion breached the basic principle of *non-refoulement*, given Libya's lack of an asylum processing system to identify refugees and asylum-seekers and prevent the forceful return of those in need of international protection. With the outbreak of renewed conflict in 2014, the Sebha detention centre was shut down and the mass deportations came to a standstill.⁹²

In 2016, after a period of interruption, IOM restarted its Voluntary Humanitarian Return operations from DCIM centres. As of 29 November 2017, IOM had assisted 13,000 individuals to return home to at least 24 different countries.⁹³ On that date, the UN, EU and the African Union announced that they had agreed to expand and accelerate the programme.⁹⁴ While this programme may offer a way out for those migrants who would otherwise remain trapped in horrific conditions in detention centres in Libya – and who would not face human rights violations once returned to their home country – IOM's assisted returns take place in the absence of a registration system for refugees and asylum-seekers in detention or a framework that would allow them to apply for asylum. Given the alternative of indefinite detention and the torture and other ill-treatment in detention, the extent to which these returns are voluntary remains questionable: there is a risk that people potentially in need of international protection may, for lack of better options, accept to return to a country where they may be exposed to persecution, torture or other human rights violations. Amnesty International considers that, to ensure the voluntariness of the Voluntary Humanitarian Return programme, the Libyan authorities would need to end their policy of mass detention of refugees and migrants and allow UNHCR to carry out its mandate to undertake refugee status determinations and process resettlement requests and humanitarian visas.⁹⁵

As mentioned above, the Libyan authorities accord only people belonging to seven nationalities (Eritreans, Ethiopians, Iraqis, Palestinians, Somalis, Sudanese of Darfuri origin and Syrians) de facto recognition as refugees. Although these people continue to face arbitrary arrest and indefinite detention, UNHCR is allowed to advocate for their release and process their asylum claims. As of 1 December, UNHCR had secured the release of 950 people of those nationalities from DCIM detention centres during 2017.⁹⁶ Refugees and asylum-seekers from other nationalities are treated as irregular migrants, regardless of their personal circumstances, in clear violation of international law. The negative consequences of this policy are illustrated by UNHCR's inability to provide assistance to a group of 19 Yemeni asylum-seekers who were detained in October 2017 in a detention facility in eastern Libya run by the DCIM and then transferred to a DCIM detention centre in Tripoli, where they are currently being held. Despite the fact that UNHCR has an official position against the return of Yemenis to Yemen due to the current armed conflict in the country, Yemenis are not one of the nationalities to which the Libyan authorities accord protection from deportation, and the agency has therefore to date, not been able to secure their release. Ultimately, protection based on nationality profiling is a dangerous precedent to establish, ultimately diluting the core principles of international protection and the right to asylum.

For the many who have no relative or friend able to secure their release by paying a ransom, who cannot return home through IOM's Voluntary Humanitarian Return programme, or who do not belong to the few nationalities for whom UNHCR can advocate a release, the daunting prospect is to remain detained

⁹¹ Altai Consulting, UNHCR and Impact, *Mixed migration trends in Libya: Changing dynamics and protection challenges*, July 2017, www.altaiconsulting.com/wp-content/uploads/2017/07/LIB-HCR-MAS-Final-Report.pdf

⁹² Lack of financial resources, the inaccessibility of roads in the south of Libya and the departure of all foreign embassies from the country all contributed to the end of mass deportations.

⁹³ IOM, *Libya: Voluntary humanitarian return (VHR) assistance & reintegration support to stranded migrants in Libya, 10 - 23 October 2017*, www.iom.int/sites/libya-voluntary-humanitarian-return-vhr-assistance-reintegration-support-stranded-migrants-4

⁹⁴ European Commission, *Joint press release of the United Nations, the African Union and the European Union*, 29 November 2017, europa.eu/rapid/press-release_STATEMENT-17-5029_en.htm

⁹⁵ "UNHCR has called for an additional 40,000 resettlement slots to cover the Central Mediterranean Route, to be distributed amongst 15 key hosting countries: Algeria, Burkina Faso, Cameroon, Chad, Djibouti, Egypt, Ethiopia, Kenya, Libya, Mali, Mauritania, Morocco, Niger, Sudan and Tunisia", UNHCR, *Central Mediterranean situation: UNHCR calls for an additional 40,000 resettlement places*, 11 September 2017, www.unhcr.org/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html

⁹⁶ UNHCR, *UNHCR Flash Update: Libya, 16 November – 1 December 2017*, data2.unhcr.org/en/documents/details/61097

indefinitely. Faced with such a predicament, it is not uncommon for refugees and migrants to attempt to break out and flee from the detention centres; DCIM guards have often responded with excessive or unnecessary use of force, sometimes lethally. In April 2016, IOM joined a UN call for an independent, impartial investigation into an incident where guards shot dead five migrants within the Nasser detention centre, a facility in Zawiya nominally operated by the DCIM but actually run by a local militia.⁹⁷ Amnesty International interviewed one survivor, a Guinean man who witnessed the incident, and said that some of those who tried to escape were brought back blindfolded to a room in the detention centre. Once in the room, two guards opened fire at them. He told Amnesty International that three Guinean nationals, including one child, were amongst those killed. According to him, the child and one of the two adults were shot dead while attempting to escape, while the other adult was killed after he was brought back to the room. Amnesty International wrote to the Libyan authorities to raise its concern over the incident and request clarification, but did not receive a response.⁹⁸

CONDITIONS OF DETENTION

Individuals arbitrarily detained in DCIM centres are held in deplorable conditions. It is estimated that DCIM detention centres currently hold about 20,000 individuals. UNHCR had previously estimated that DCIM detention centres held anywhere between 4,000 to 8,000 individuals, but an additional 15,000 were transferred to existing centres after being assisted by international organizations following the clashes that took place in the city of Sabratha in September 2017. Consequently, the numbers in the centres today have led to severe overcrowding in already horrid conditions. These centres hold women, men and children, some of them sick or elderly, sometimes altogether, depending on the physical structure of the centre. All rooms, including those housing women, are guarded by men.⁹⁹ In some cases, the physical structure is nothing but an abandoned warehouse or factory.¹⁰⁰ For example, the DCIM's Nasser detention centre in Zawiya is in fact the premises of an old factory from the al-Gaddafi era and therefore not designed to house detainees, but holds as many as a thousand individuals at any given time. The windows in the rooms where the refugees and migrants are detained are mostly sealed off to prevent escape, leaving little ventilation and access to sunlight. Very little food is provided; those detained receive mainly bread and water, sometimes pasta.

In an interview, “Mumin” described to Amnesty International the conditions he was detained in while in the Nasser detention centre:

“It is like hell – it’s a very big warehouse with small buildings inside. You never see the light of the sun. You are closed in a room, locked, each with a toilet. Rooms are packed – no space to sleep on the floor at the same time. Some people came visit, from IOM; they were three or four, both men and women. They would not be given access to speak with us. They would bring food and other things – for example there were bowls with ‘IOM’ written on. I only saw them once.”¹⁰¹

In a 2017 briefing Médecins Sans Frontières, which visits seven centres in and around Tripoli, described the conditions as inhumane: “cells without light or ventilation, horrible hygiene and sanitation, often less than 2 litres of water per person, and a calorie intake as low as 800 calories per day.”¹⁰² The Office of the UN High Commissioner for Human Rights has also reported on the inhumane conditions in the detention centres, including overcrowding and poor hygiene conditions, which has led to the spread of disease.¹⁰³ In his update to the UN Security Council in September 2017, the UN Secretary-General also raised concerns about the detention of refugees and migrants in Libya:

“The conditions of detention in most facilities are characterized by chronic severe overcrowding, poor hygiene, and a lack of access to basic necessities or adequate medical care. Undernutrition in adults and children is rampant, particularly in facilities outside Tripoli. In some facilities, the conditions of detention in themselves may amount to torture or other ill -treatment. Detainees are commonly denied the opportunity to

⁹⁷ IOM, *IOM Joins UN Call for Investigation into Migrant Deaths in Libyan Detention Centre*, 6 April 2016, iom.int/news/iom-joins-un-call-investigation-migrant-deaths-libyan-detention-centre

⁹⁸ Letter to Libyan Acting Public Prosecutor, 31 January 2017.

⁹⁹ European External Action Service, *EUBAM-Libya initial mapping report*.

¹⁰⁰ Detention in inhuman conditions, including in warehouses and other facilities “unfit to hold people”, was documented in OHCHR, *“Detained and dehumanised”*.

¹⁰¹ Interview with “Mumin” (name has been changed to protect the interviewee’s anonymity), Sicily, 28 July 2017.

¹⁰² Médecins Sans Frontières, *MSF warns of inhumane detention conditions in Libya as EU discusses migration*, 2 February 2017, www.doctorswithoutborders.org/article/msf-warns-inhumane-detention-conditions-libya-eu-discusses-migration

¹⁰³ OHCHR, *“Detained and dehumanised”*.

communicate with their relatives and severe delays in visits by consular representatives have been reported.”¹⁰⁴

TORTURE AND EXTORTION

Libya’s sweeping detention policy facilitates not only the arbitrary and indefinite detention of mainly sub-Saharan African nationals, but also an environment of impunity for torture and other ill-treatment, exploitation and other abuse.

Amnesty International’s research indicates that very often guards perpetrate torture and other ill-treatment on refugees and migrants detained in both DCIM centres and other places of captivity with the aim of extorting money from them or their relatives. In addition, interviews gathered by Amnesty International in 2016 and 2017 consistently described how, in order to extort a ransom from the relatives of detained refugees and migrants, guards forced them to listen to the screams of their loved ones, tortured while on the phone. Thirty-three of the 72 people interviewed by Amnesty International in July 2017 said they had been tortured or otherwise ill-treated for the purpose of money being extracted from them. Forty-two said that they had been detained at some point during their journey in Libya. Twelve said they knew that they were in a DCIM detention centre, while 30 said they were held by criminal gangs. According to those held in DCIM detention centres, the torture and extortion was carried out by both DCIM officials and members of militias.

At times, detained refugees and migrants are unable to raise the funds needed from relatives or friends to pay detention centre guards the ransom to secure their release. In such cases, DCIM guards normally give refugees and migrants two options. One is for the detainee to contact a former employer to request them to pay the ransom in exchange for the detainee working for them for free until they have paid off their debt. The other is for the detainee to contact a fixer known to the guards who will perform the same role. Such fixers are among the very few individuals allowed into detention centres. Such practices of bonded labour were documented by IOM in 2017.¹⁰⁵

“Samir”, an 18-year-old Sudanese man who was held in the DCIM’s Nasser detention centre in Zawiya in October 2016, where he remained for 17 days before he managed to escape, told Amnesty International what happened when he and five Sudanese friends were unable to pay the ransom for their release. “Samir” managed to escape with two others, but three of his friends were left behind. A Sudanese fixer paid the ransom for them, meaning that they were released by the guards but then forced to work to pay off their debt. He said:

“... the electricity was out and there was no water, so they took us outside to gather water. Me and two other friends – we ran; they shot after us but we were fast. We ran, we went back to the *campo* [camp]. The other three were bailed out by the Sudanese man and they have to work to pay off 4,500 Libyan dinars to the factory owner.”¹⁰⁶

Refugees and migrants detained in DCIM centres described horrific accounts of abuse. Some were deprived of food or prevented from calling their families until they paid a ransom. Others were permitted to call their families but then tortured while on the phone. Some described undignified treatment where they were strip-searched for any hidden amounts of money to be confiscated. Once detained, the refugee or migrant had their money, phones, passports and identification papers removed. Upon release, they were therefore in an even more vulnerable situation.

“Ousman”, an 18-year-old man from Gambia, still has on his body the signs of the torture he suffered while in a DCIM detention centre in Tripoli, where he spent five months in 2016. He told Amnesty International:

“In prison they would hit us often. You see these marks? [He took his hat off to show big scars on both the right and left sides of his head.] They did it with a metallic net, rolled as a baton to hit me on the head. I fainted – I was told that others started crying and thought I was dead, because plenty of blood [was flowing] from my head. It was the only time I was beaten this way, but they beat me many other times. And they killed many boys, many... I saw many people dying in prison, either because they fell sick or were beaten... Guards were Libyan – they used to beat everybody, without a reason. Before entering the prison, police

¹⁰⁴ UN Security Council, *Report of the Secretary-General pursuant to Security Council resolution 2312 (2016)*, 7 September 2017, www.statewatch.org/news/2017/sep/un-2017-09-report-libya-implementation-resolution-2312.pdf

¹⁰⁵ IOM, *IOM Learns of ‘Slave Market’ Conditions Endangering Migrants in North Africa*, 11 April 2017, iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa

¹⁰⁶ Interview with “Samir” (name has been changed to protect the interviewee’s anonymity), Sicily, 30 July 2017.

search you and take away all money, phone, everything. They asked me to call my family to ask for money, but I had lost all contacts so I never called. But I saw one boy in the prison – they gave him a phone to call the family, and they beat him with a metal stick while [he was] on the phone, on arms and everywhere... After five months I escaped with other people, but the guards started shooting and many were killed. I don't know how many were killed, but I saw some falling and screaming.”¹⁰⁷

Many of those interviewed by Amnesty International referred to having been detained in the DCIM's Nasser detention centre in Zawiya and, of them, two recounted stories of a Sudanese man who they said supervised the detainees in the centre in Zawiya and is responsible for the torture and other ill-treatment of refugees and migrants. This information has been corroborated by a source who is an expert on migration issues in Libya and frequently visits these centres.¹⁰⁸

One former detainee, “Edward”, told Amnesty International:

“There was a Sudanese [man], his task was to always hit, hit, hit. He beats you until you drool like a dog. They hit me. I had blood flowing from my nose. And the handle – that hurts. There were people with tuberculosis in the centre.”¹⁰⁹

“Mumin” told Amnesty International that, after being intercepted by the Libyan Coast Guard and taken back to Libya, he had also been detained in the Nasser detention centre, where he and others were mistreated and forced to pay money for their release.

“We were taken to a navy camp, where there were many people, perhaps 15 boats. From there, with a truck to carry sand, they took us to the Zawiya prison. I spent about five days in prison in Zawiya. Others four or five months. You have to stay three days in prison before being able to call. To be released we were asked for 700 dinars. After you have eaten, they take you back to your room... A guard took me back and beat me. After, I called my employer in Libya. I cried on the phone. He paid money to get me released.”¹¹⁰

In another interview, “Bakary”, a Gambian man, was also intercepted at sea by the Libyan Coast Guard and subsequently detained in the DCIM's Nasser detention centre in Zawiya. He told Amnesty International:

“They brought us to Zawiya. There lots of police were waiting for us. They took us to Zawiya, an official centre, I stayed three months there, then I paid 500 Libyan dinars and they let me go. The police gave me the number of a Gambian man, said if you want to pay to leave (because they know I don't have money) you can call him, he will help. The others arrested with me. They did the same thing.”¹¹¹

“Bakary” went on to explain the ill-treatment and other abuse he faced during the three months he spent in Zawiya, but also how easily a migrant can fall from the hands of DCIM guards into the hands of smugglers and traffickers:

“In the centre they don't give food. They beat me with a rubber hose, because they want money to release me. They call the family while beating [you] so the family send money. They beat me a lot. I still have scars and they broke my wrist. I took my trousers and wrapped my wrist; I had to treat myself. Then I paid and they let me go. They gave me to an Arab driver. I had to pay 300 Libyan dinars from Zawiya to Tripoli. ‘If you don't pay, you don't go’: that is what they used to say. In Tripoli, the black man paid the driver. Now I had to stay with him until I pay the money back, otherwise he will sell me.”¹¹²

“Demba” left his home country, Gambia, in May 2015 with the aim of going to Italy. He spent a year and a half in Libya and was detained in both Sabratha and in Zawiya. “Demba” recounted that he was detained for one month in Zawiya. He said that after leaving by boat from Sabratha he and his companions were stopped at sea:

“In Zawiya, I was detained by Salah Amran (the area was called Zawiya Midhrouf): he is a former Libyan soldier of al-Gaddafi. He has a military boat that stopped us and took us back to Zawiya. There you have to pay; they can push you [take you out by boat]. From Sabratha we went out and were captured by Zawiya [Coast Guard]. Twice this happened, then I gave up. Zawiya is very hard. Nigerians work for him; they came

¹⁰⁷ Interview with “Edward” (name has been changed to protect the interviewee's anonymity), Sicily, 28 July 2017.

¹⁰⁸ Interview with A. A. (name has been abbreviated to protect the interviewee's anonymity), Tunis, October 2017

¹⁰⁹ Interview with “Edward” (name has been changed to respect the interviewee's anonymity), Sicily, 28 July 2017.

¹¹⁰ Interview with “Mumin” (name has been changed to respect the interviewee's anonymity), Sicily, 28 July 2017.

¹¹¹ Interview with “Bakary” (name has been changed to respect the interviewee's anonymity), Medenine, 7 July 2017.

¹¹² Interview with “Bakary” (name has been changed to respect the interviewee's anonymity), Medenine, 7 July 2017.

in the morning beat us to put pressure to get money. You give the money to Bobo, a Gambian man... He works with Salah Amran; he then gives the money to Salah to be released from prison.”¹¹³

“Gabriel”, also detained in Zawiya, recounted the following:

“The ‘Ossama prison’ is in Zawiya, near the sea. I was detained there for two weeks. I stayed there for three days before they gave me a chance to call. ‘Boggers’ are the only people allowed into the prison, to speak with you and bail you. They make a profit, sometimes doubling the price. One ‘bogger’ came and gave me a phone. I called Rida [my former employer] and told him I was in ‘Ossama’. Now if you had someone to call and bail you, they would release you. The next day I called Rida; he came and got me released and back to his workshop... I believe the UN are in support of the prison. They came to visit but they didn’t bail anybody.”¹¹⁴

¹¹³ Interview with “Demba” (name has been changed to respect the interviewee’s anonymity), Medenine, 7 July 2017.

¹¹⁴ Interview with “Gabriel” (name has been changed to respect the interviewee’s anonymity), Sicily, 27 July 2017.



Libyan coastguard, aboard of boat donated by Italy, fails to deploy its rigid-hulled inflatable boat (RHIB) to help migrants and refugees. 50 people are estimated to have died at sea as a result of this interception at sea. Only 5 bodies were retrieved. 6 November 2017 © L Hoffman/Sea Watch.

LIBYAN COAST GUARD: VIOLATIONS AND COLLUSION IN SMUGGLING

Following the 2011 uprising, militias refusing to lay down their weapons were integrated into the state security structure as part of a reform project. As a result of such initiatives, the groups still operating under militia command found themselves well-paid and given the protection of legitimacy through affiliation to state institutions.¹¹⁵ The Libyan Coast Guard (LCG) was not initially affected as it had not historically been perceived as prestigious or lucrative; instead, most of the militias sought to gain control of strategic locations on land, including the airports, which had the benefit of facilitating control of the smuggling. This allowed the weak and under-resourced LCG to carry out its functions, even if to only limited effect. However, once large-scale migration movement gained momentum, militia members turned their attention to the control of the coast. One expert on migration with regular access to the three main smuggling cities – Zawiya, Sabratha and Zuwara – told Amnesty International that a number of militia members had joined the LCG seeking

¹¹⁵ Hanspeter Mattes, “Rebuilding the national-security forces in Libya”, *Middle East Policy Council*, 2014, www.mepec.org/rebuilding-national-security-forces-libya

official status and control over the sea and its illicit smuggling trade route, while continuing to report to militia leaders rather than to central LCG command.¹¹⁶

Between 2016 and 2017 the LCG heavily increased its capacity to operate at sea, due to the support provided by EU member states – Italy in particular – and institutions, in the form of ships, training and funding. This chapter focuses on three main aspects of the LCG's actions: violent and reckless conduct during interceptions at sea; collusion with criminal gangs smuggling refugees and migrants; and the transfer of people intercepted at sea to detention centres.

LCG STRUCTURE

The LCG is formally part of the Libyan navy, operating under the Ministry of Defence.¹¹⁷ Prior to this, there was a separate customs and harbour police, but they were later joined together within the navy.

The LCG operates in co-ordination with the General Administration for Coastal Security, a division of the Ministry of Interior.¹¹⁸ Both the General Administration for Coastal Security and the LCG are mandated as counter-trafficking and smuggling bodies and have created a joint operations room on counter-trafficking activity.¹¹⁹ The LCG, whose mandated zone of operation is larger than that of the General Administration for Coastal Security, carries out surveillance in Libyan territorial waters, but also operates in international waters.

The LCG headquarters is located some 20km outside of Tripoli on navy premises. The LCG's coverage of the northern coast of Libya is divided into six sectors. Three of the six sectors fall under the command of the Government of National Accord in the west of the country and the other three under the command of the rival Tobruk-based government in the east.¹²⁰ However, despite this split, at an operational level, the political divisions in the country have had limited impact on the LCG and co-ordination continues between all sectors. All search and rescue activities are co-ordinated from the Coast Guard Operational Maritime Centre in Tripoli. In August 2017, the Libyan authorities established an official search and rescue zone, but to date have not made public its exact delineation. The declaration of the established zone is still under review by the International Maritime Organization and has yet to be formally confirmed.¹²¹ The LCG station in Zawiya is tasked with patrolling the western coast of Libya, covering the area between Zawiya, Sabratha and Zuwara, where the people smuggling business has been flourishing.

VIOLENT AND RECKLESS CONDUCT DURING SEA INTERCEPTIONS

Over the past year, the LCG has been responsible for several incidents at sea that have endangered the lives of refugees and migrants on the boats as well as the lives of NGO humanitarian workers at sea.

LCG officials conducting interception operations have used threats and violence against refugees and migrants on board boats in distress – the very people they are supposed to rescue – sometimes in order to rob them of their few possessions. For example, on 23 May 2017, rescue ship *Aquarius*, jointly operated by NGOs Médecins Sans Frontières and SOS Méditerranée, engaged in the rescue of 1,004 people at sea. During the operation, refugees and migrants on a boat were approached by the LCG, demanding phones and money from them, while firing shots in the air. This caused panic, and over 60 individuals fell into the

¹¹⁶ Interview with A. A. (name has been abbreviated to protect the interviewee's anonymity), Tunis, 10 October 2017.

¹¹⁷ It was established under Government Decision no. 372 of 1996.

¹¹⁸ Law no. 10 of 1992 on Security and Police limited the scope of operations of the General Administration for Coastal Security to within three nautical miles from the coast; European External Action Service, *EUBAM-Libya initial mapping report*. Cabinet Decree no. 145 of 2012 and Ministry of Interior Instruction no. 982 of 2012 extended it to 12 nautical miles; beyond this limit, the LCG is responsible. It is also responsible for a 30km-deep band of land along Libya's coastline, which is around 1,700 km long.

¹¹⁹ European External Action Service, *EUBAM-Libya initial mapping report*.

¹²⁰ European External Action Service, *EUBAM-Libya initial mapping report*.

¹²¹ Information provided via email by the International Maritime Organization upon Amnesty International's request, 14 September 2017 and 24 November 2017.

water. This incident placed the lives of those being rescued in the high seas at risk. Despite this, the entire group were eventually rescued by the *Aquarius* crew.¹²²

During several other interceptions, LCG officials put in danger the lives of refugees and migrants, as well as those of NGO crews engaged in rescue operations, because of their disregard for basic security protocols and standards while operating at sea.

On 6 November 2017, the vessel *Sea-Watch 3*, acting on the instructions of the Italian Coast Guard's Maritime Rescue Coordination Centre in Rome, approached a sinking inflatable boat in international waters, about 30 nautical miles north-east of Tripoli.¹²³ A LCG patrol boat arrived on the scene shortly before *Sea-Watch 3*. As depicted in footage released by the NGO Sea-Watch and available online,¹²⁴ *Sea-Watch 3* put its rigid-hulled inflatable boats (RHIBs)¹²⁵ in the water to approach the boat in distress. The crew of *Sea-Watch 3* started to rescue the people they were coming across in the water and to hoist them inside the RHIBs. An Italian navy helicopter present on the scene was also ready to assist. In the meantime, the LCG ship approached the rubber boat and started taking people aboard. People were made to climb the high side of the LCG ship, as the LCG did not deploy the ship's RHIB to facilitate a safer rescue. As refugees and migrants attempting to climb onto the LCG ship started falling into the water, RHIBs deployed by *Sea-Watch 3* approached to save as many people as possible. From available video footage and the statements of the *Sea-Watch 3* crew, LCG officials appear to have thrown objects at the RHIBs deployed by *Sea-Watch 3* in an attempt to keep them away and to have whipped people on board their vessel with a rope. Some refugees and migrants aboard the LCG vessel started jumping into the water to reach the RHIBs deployed by *Sea-Watch 3*, likely because they were afraid of the consequences of being returned to Libya or because they did not want to be separated from relatives already on board *Sea-Watch 3*. As one man tried to climb down a ladder hanging down the side of the LCG ship in order to reach a RHIB, the LCG ship took off at high speed, despite the repeated warnings to stop from both *Sea-Watch 3* and the Italian navy helicopter. The man, who was apparently attempting to reach his wife on one of the RHIBs deployed by *Sea-Watch 3*, disappeared at sea as a consequence of the dangerous manoeuvre.¹²⁶ At the end of the operation, 62 refugees and migrants were disembarked in Italy, and 47 were taken back to Libya and held in the Tajura detention centre. While five bodies were recovered, including one of a small child, it is estimated that up to 50 people disappeared at sea as a result of the incident.¹²⁷ The LCG ship whose crew was responsible for this incident appears to be *Ras Jadir*, one of the Classe Bigliani fast patrol boats donated by Italy to the Libyan authorities. The ship appears to have been handed over to the LCG in two ceremonies: the first in the port of Gaeta in Italy on 21 April 2017, the second in the port of Abu Sittah in Libya on 15 May 2017. The boat is clearly visible in audiovisual materials, accessible online, from both ceremonies, which include the presence of Italian Minister of Interior Marco Minniti.¹²⁸ During the ceremony the Minister said he was "impressed" by the "motivation and resolve" of the patrol boats' crews.¹²⁹ When the boat arrived in Libya from Italy, on 5 May 2017, it was portrayed on the official Twitter account of the Italian embassy in Libya, with the following description: "First patrol boats w/ trained crews arriving from [Italian flag] to #Tripoli. Building #Libya's capacity to fight illegal #migration & human smuggling."¹³⁰

During 2017, the LCG has also repeatedly harassed, intimidated and threatened NGO boats providing rescue services to refugees and migrants in distress in the central Mediterranean. While incidents of this kind have been documented in previous years, as well as in early 2017,¹³¹ the attitude of the LCG seemed to become

¹²² Médecins Sans Frontières, *MSF accuses Libyan coastguard of endangering people's lives during Mediterranean rescue*, 24 May 2017, www.msf.org/en/article/msf-accuses-libyan-coastguard-endangering-people%E2%80%99s-lives-during-mediterranean-rescue

¹²³ Sea-Watch, *Breaking: Dramatic first rescue operation for Sea-Watch 3*, 6 November 2017, sea-watch.org/en/dramatic-rescue-operation-sea-watch-3/

¹²⁴ Sea-Watch, "Exclusive: Full incident of 6 November 2017 with the Libyan coast guard", 13 November 2017, www.youtube.com/watch?v=pHl-f_yFXQ

¹²⁵ Rigid-hulled inflatable boats (RHIBs) are small, lightweight but powerful boats constructed with a solid hull surrounded by inflatable tubes. It is common for bigger patrol boats or rescue vessels to host one or more RHIBs on their deck, to be rapidly lowered in the water in case of need. Due to their characteristics, RHIBs are commonly used during rescue operations, to ensure people in danger at sea can be safely picked up and promptly transferred onto larger rescue vessels.

¹²⁶ Daniele Biella, "Ministro Minniti mi incontra, le racconto l'orrore", *Vita*, 7 November 2017, www.vita.it/it/article/2017/11/07/ministro-minniti-mi-incontra-le-racconto-lorrore/145020/

¹²⁷ Reply by the Minister of Interior, *Parliamentary Question Time (3-03357)*, 15 November 2017, www.camera.it/leg17/410?idSeduta=0886&tipo=stenografico

¹²⁸ "Migranti, Minniti: dieci motovedette alla Libia entro giugno", *Euronews*, 21 April 2017, it.euronews.com/2017/04/21/migranti-minniti-dieci-motovedette-alla-libia-entro-giugno; "Minniti ad Abu Sittah consegna altri due pattugliatori ai libici", *Analisi difesa*, 16 May 2017, www.analisidifesa.it/2017/05/minniti-ad-abu-sittah-consegna-altri-due-pattugliatori-ai-libici/; twitter.com/ItalyinLibya/status/864126514190839808

¹²⁹ "Min #Minniti to the patrol boats crews: impressed by your motivation and resolve. We trust your efforts and professionalism. #Libya", Twitter, 15 May 2017, twitter.com/ItalyinLibya/status/864131903602995201

¹³⁰ twitter.com/ItalyinLibya/status/860452910517415937

¹³¹ Amnesty International, *A perfect storm*.

particularly aggressive against NGOs in mid-2017. By then, NGOs were already the object of a slur campaign by Italian authorities and commentators as well as of threats and harassment by the crew of vessel *C-star*, chartered by the anti-migrant NGO Defend Europe.¹³²

At a press conference in Tripoli on 10 August 2017, spokespersons for the Libyan naval authorities announced the establishment of a Libyan search and rescue zone and stated that foreign vessels, and in particular NGO vessels, would not be allowed to enter the zone without prior authorization from the Libyan authorities.¹³³ This condition, which is a clear violation of humanitarian provisions within the law of the sea, under which any shipmaster has the obligation to assist boats in distress, including by entering territorial waters of a state if necessary to save lives,¹³⁴ was used in the following days and weeks to harass and threaten NGO vessels, including in international waters. For example, the crew of rescue vessel *Golfo Azzurro*, operated by Spanish humanitarian organization Proactiva Open Arms, reported that the LCG threatened them in international waters, including by shooting in the air in order to make them leave the area, on both 7 and 15 August 2017.¹³⁵ As a result of these and other incidents, several of the NGOs operating in the central Mediterranean, including Médecins Sans Frontières, Save the Children, Sea-Eye and Migrant Offshore Aid Station (MOAS) suspended their ships' operations, out of concern for the safety of their crews and fearing that they might ultimately be forced to hand people they have rescued over to the LCG, which would return them to Libya.¹³⁶ Save the Children and Sea-Eye subsequently resumed operations, and NGO SOS Méditerranée continued to operate throughout, but they had to limit their operational areas to avoid exposing themselves to confrontations with the LCG,¹³⁷ as happened with the newly established NGO Mission Lifeline. On 26 September 2017, immediately after conducting its first rescue at sea, co-ordinated by the Maritime Rescue Coordination Centre in Rome for the benefit of refugees and migrants on two boats found in distress in international waters, Mission Lifeline was approached by an LCG patrol boat. According to information shared by Mission Lifeline with Amnesty International, the boat approached through a dangerous manoeuvre and fired one shot, before two LCG officials jumped on board the NGO ship and said they wanted to take those rescued back to Libya. The NGO crew explained that they could not comply with the request because they were bound by the principle of *non-refoulement*. The Libyan officials threatened that they would sink the ship the next time they found it in "their waters".¹³⁸

COLLUSION WITH CRIMINAL GANGS

"If they [LCG] take a boat, it means that this boat did not pay."

"Edward", from Cameroon, interviewed in Sicily in July 2017

¹³² twitter.com/PacoHansel84/status/894261800111362048; www.youtube.com/watch?v=fg30dSRCBaM

¹³³ "Libya navy bars foreign ships from migrant 'search and rescue' zone", *Arab News*, 10 August 2017, www.arabnews.com/node/1142751/middle-east

¹³⁴ UN Convention on the Law of the Sea, Article no. 98; International Convention for the Safety of Life at Sea, Chapter V.

¹³⁵ twitter.com/openarms_fund/status/894835757675933697; Yannis Behrakis, "Spanish migrant rescue ship threatened by Libyan coastguard: Witness", *Reuters*, 15 August 2017, www.reuters.com/article/us-europe-migrants-libya-ngo/spanish-migrant-rescue-ship-threatened-by-libyan-coastguard-witness-idUSKCN1AV20Q

¹³⁶ Médecins Sans Frontières, *Hindrance of humanitarian assistance will create a deadly gap in the Mediterranean Sea*, 12 August 2017, www.msf.org/en/article/hindrance-humanitarian-assistance-will-create-deadly-gap-mediterranean-sea; Save The Children, *Save the Children's search and rescue vessel to dock in Malta, as Libyan navy assume control of international waters*, 13 Aug 2017, www.savethechildren.net/article/save-children-s-search-and-rescue-vessel-dock-malta-libyan-navy-assume-control-international; MOAS, *MOAS shifts operations to South East Asia*, www.moas.eu/moas-shifts-operations-south-east-asia/; Sea-Eye, *Sea-Eye suspends planned missions*, sea-eye.org/en/sea-eye-unterbricht-rettungseinsatze/

¹³⁷ For example, Sea-Eye limited operations to an area of 70-90 nautical miles from Libya, sea-eye.org/en/sea-eye-nimmt-rettungsmissionen-wieder-auf/

¹³⁸ Information shared by Mission Lifeline via email on 5 October 2017. See also Steve Scherer, "Rescue ship says Libyan coast guard shot at and boarded it, seeking migrants", *Reuters*, 26 September 2017, www.reuters.com/article/us-europe-migrants-libya-ngo/rescue-ship-says-libyan-coast-guard-shot-at-and-boarded-it-seeking-migrants-idUSKCN1C12I4

¹³⁹ UN, *Final report of the Panel of Experts on Libya*.

“Edward” from Cameroon is one of a group of refugees and migrants Amnesty International interviewed in Sicily in July 2017. He, along with 15 others interviewed, described how smugglers have been working hand in hand with the LCG. This section sets out the forms of that collaboration.

A report published on 1 June 2017 by the UN Panel of Experts on Libya contains serious allegations of collusion between factions of the LCG and smugglers:

“Abd al-Rahman Milad (alias al-Bija) is the head of the Zawiya branch of the coast guard. He obtained this position thanks to the support of Mohammad Koshlaf and Walid Koshlaf. Both had leverage over the coast guard hierarchy, according to internal sources in the coast guard... Criminal networks tip off the coastguard to prevent rival gangs from carrying out successful smuggling operations. The coastguard in Zawiya is also involved in the smuggling business.”¹³⁹

Amnesty International’s documentation reveals that some members of the LCG collude with smugglers by providing safe passage in return for payment. Of the 72 individuals interviewed by Amnesty International for this report, seven confirmed that they had been stopped by the LCG while at sea and were allowed through after their smuggler was identified as someone who had paid for safe passage of his boats.

Given the size and sophistication of the smuggling operation, and the fact that hundreds of boats depart every year from well known smuggling hubs within the LCG’s zone of operation and near their base in Zawiya, it is difficult to see how the LCG could not know of the smugglers’ operations. At a minimum, the acquiescence of key LCG members was needed to ensure the massive scale of movement by sea witnessed from 2014 onwards.

Dozens of the refugees and migrants who had taken the journey told Amnesty International that departures would occur throughout the day in broad daylight, with as many as 10 boats setting out at once, given the boldness of the smugglers, who no longer felt they needed to wait for nightfall to send out boats discreetly. This could only occur if the smugglers were confident that the LCG would not interfere in their business.

“Samuel”, a Gambian man who had spent four months in Sabratha at the departure camp, worked at a food stall until he made enough money to pay for his onward journey. He told Amnesty International:

“At the *campo* [camp] we see sometimes the navy come. They gather [meet] with the *coxeurs* [smugglers], who pay the navy. They don’t come by the car, they come by boat.”¹⁴⁰

At least 17 refugees and migrants told Amnesty International in separate interviews that the reason certain smugglers became successful, that is that they could guarantee that their boats would make it to Italy, was that they were known to have cut deals with members of the LCG. Smugglers seek that deal to obtain an umbrella of protection for the boats they push out to sea. While payment guarantees access, the method of collaboration varies. The collusion between the smugglers and the LCG occurs through three main methods: members of the LCG escort boats until they reach international waters; boats are marked to show that they belong to a smuggler who has already paid; or the name of the “right” smuggler is communicated to LCG officials conducting interceptions.

LCG ESCORT AT DEPARTURE

As a means to ensure safe passage and secure their own cut, some members of the LCG escort migrant boats departing for Italy for the initial part of the journey. This form of co-operation is only offered by the LCG to smugglers who have paid for this service. Seven of the refugees and migrants interviewed by Amnesty International said that, once their boat left from Sabratha, they saw a patrol boat with armed men with guns – some uniformed, some in civilian clothing – that would accompany the boats for a few hours or to the edge of Libyan territorial waters. They said that, after escorting them for some time, the boat would then turn back towards the Libyan shore, notably before being noticed by the NGO ships patrolling outside of Libyan territorial waters.

¹³⁹ UN, *Final report of the Panel of Experts on Libya*.

¹⁴⁰ Interview with “Samuel” (name has been changed to respect the interviewee’s anonymity), Sicily, 29 July 2017.

Three of the migrants interviewed told Amnesty International that the smugglers themselves would sometimes reassure the people on the boat that they would be escorted by the LCG as a means of protection.

“Kotos”, a Senegalese national who had travelled through Libya and arrived in Italy in March 2017, told Amnesty International:

“Bobo [the smuggler] assured us that the navy would not stop us in the sea. He works with the navy. The departure was at 3pm. There was a naval ship that accompanied us. The navy boss was on the boat; he has a small hand. They were six of them; one was on our boat, seated in the back with the captain. The little boat was coming and going. They gave directions on where to go. When we arrived to the international waters, the one in our boat went up with them. They told us a big boat will come and save you. They showed us the way and they left.”¹⁴¹

“Edward”, from Cameroon, interviewed by Amnesty International on a separate occasion, had been detained in Libya after a first failed attempt to reach Italy. After paying his way out of detention, he departed by boat and was escorted by the LCG. **“Edward”** also referred to the same navy officer with the small hand:

“The person who drives first is an Arab. A boat of the police escorted us. They said, ‘We are the navy, we will escort you.’ There was a flag on their boat. The one who rolled had a small left hand, bare torso. He asked for money and phones.”¹⁴²

“Mohamed” from Sudan told Amnesty International that the LCG had also escorted his boat. He said:

“We went out to sea: two boats were pushed and one escort that had three Libyans with guns. They followed for two hours to make sure the boat is OK and functions properly. They don’t want anyone to die in Libyan water, so the sea doesn’t push them [back] onto the Libyan shore. They want them to die in international waters. The escorts after two hours said anyone with mobiles and money hand over now. They shot in the air, took everything. They threatened if you don’t take out [belongings] and hand over we will send you to Zawiya [the detention centre].”¹⁴³

BOATS MARKED FOR THE LCG

Another way the collaboration between smugglers and LCG takes place is that, once smugglers have paid off the LCG, they will then mark their departing boats so that they can be easily identified at sea. They mark them with a pre-agreed symbol, sometimes in red, as an indicator to the LCG that this boat belongs to a particular smuggler who has paid to secure safe passage.

“Samuel”, from Cameroon, told Amnesty International, **“Mohamed marks his boats”**, referring to **“Mohamed Sabratha”**, a recurring name among those interviewed, it being an alias of Ahmed Debashi, the head of a smuggling network in Sabratha.¹⁴⁴ This is corroborated by **“Marvin”**, from Senegal, who had been held in Libya for three months prior to his departure from Sabratha with the aid of Ahmed Debashi’s network. He told Amnesty International:

“If ‘Mohamed Sabratha’ pushes you, you’re going to go. They made a sign in red on the boat. If the navy sees that, it means they paid. With ‘Mohamed Sabratha’ they work together, they do the same work.”¹⁴⁵

“Obeya”, from Nigeria, told Amnesty International:

“I was taken and pushed from Sabratha... The police won’t stop boats that have a stamp on it. The stamp is an indicator that the debt has been settled.”¹⁴⁶

NAMING THE ‘RIGHT’ SMUGGLER FOR SAFE PASSAGE

Mentioning the name of the “right” smuggler is another way the LCG confirms whether the smuggler sending out the boat has paid for safe passage. Seven of those interviewed by Amnesty International said that they

¹⁴¹ Interview with “Kotos” (name has been changed to respect the interviewee’s anonymity), Sicily, 27 July 2017.

¹⁴² Interview with “Edward” (name has been changed to respect the interviewee’s anonymity), Sicily, 28 July 2017.

¹⁴³ Interview with “Mohamed” (name has been changed to respect the interviewee’s anonymity), Sicily, 27 July 2017.

¹⁴⁴ Interview with “Samuel” (name has been changed to respect the interviewee’s anonymity) Sicily, 29 July 2017.

¹⁴⁵ Interview with “Marvin” (name has been changed to respect the interviewee’s anonymity), Sicily, 28 July 2017.

¹⁴⁶ Interview with “Obeya” (name has been changed to respect the interviewee’s anonymity), Sicily, 28 July 2017.

had been stopped at sea by the LCG, which asked to whom their boat belonged, and, when they mentioned the right name, allowed them to pass. A recurring name in the interviews conducted was again that of “Mohamed Sabratha”.

“Jacob”, from Nigeria, explained his experience while departing from Sabratha:

“We were pushed on Eid. We were stopped by a flying boat [patrol boat]. He asked us, ‘Are you from so and so?’ (are we pushed by a specific person). We hadn’t heard of him, but we said ‘yes’ anyway, so he said, ‘Go!’ Then we saw a big ship with a Libyan flag; they waved and we continued.”¹⁴⁷

This pattern was further corroborated by “Moussa” from Gambia, who, along with a group of 260 others, was rescued by the Tunisian Coast Guard in May 2017 after his boat ran out of fuel and drifted into Tunisian waters. Moussa told Amnesty International:

“Five mins after leaving Sabratha, 10 boats from the same centre left as well. We were the last boat. When we departed a speedboat stopped us. They wore uniforms. It was the Libyan Coast Guard and they asked us, ‘From which man do you come?’ We told them ‘Mohamed Sabratha’ and they said, ‘OK, go!’”¹⁴⁸

For “Moussa” this was his fifth attempt, following four failed attempts to reach Italy. After being rescued by the Tunisian navy, he was weary and ready to go home.

Another migrant from Senegal, “Marvin”, told Amnesty International that he had also left from the “White House” in Sabratha and that he had been on the boat with around 150 people accompanied by Mohamed Sabratha:

“He [‘Mohamed Sabratha’] went out with us to accompany us. Then I saw a naval ship that came – a boat that goes very fast. They wore official clothes, stars, a hat, the Libyan flag on the jacket... ‘Mohamed Sabratha’ saw this ship of the navy. They said ‘OK?’ and he replied *alhamdulillah* [yes, thank God]. They said, ‘Is the sea good?’ and he said, ‘Yes’. Then they said, ‘Italy is straight ahead.’ ‘Mohamed Sabratha’ escorted us from 6am to 9am and then got back. He gave us a big phone with an antenna and a number. If you dial this number, big boats will recognize you. He left before international water.”¹⁴⁹

“Marvin”, along with everyone else on the boat reached Italy on 17 February 2017.

In another testimony, “Bernard” from Ghana described the level of collaboration between the smugglers and the LCG:

“[In Sabratha] I was in a big compound, 300-400 people. The boss, Libyan, called ‘Bolo’. I pay 350 dinars to go to the sea. I waited one week. We were 120 on the boat, wood boat. We left at 6.30pm. Police with blue light came. They have one big boat, covered of glass. They say, ‘Who pushed you?’ We said ‘Bolo’. They said, ‘Go, go, quickly!’¹⁵⁰

FROM LCG TO DETENTION

It is unclear how many members of the LCG collaborate with smugglers and allow their boats safe passage through Libyan territorial waters. However, it is clear that, during 2016 and 2017, the LCG returned thousands of people they had intercepted at sea to Libya’s shores and that the LCG’s increased capacity, due to support from EU member states, has led to an increasing number of such pull-back operations. So far in 2017, 19,452 people have been intercepted by LCG and taken back to Libya.¹⁵¹

When the LCG intercept boats at sea, they bring refugees and migrants back to Libyan shores and routinely transfer them to DCIM detention centres, where they face serious human rights violations including torture and other ill-treatment.

In eight of the 72 interviews conducted by Amnesty International in July 2017, survivors confirmed that, after interception by the LCG, they were taken to the DCIM’s Nasser detention centre in Zawiya.¹⁵² In two cases,

¹⁴⁷ Interview with “Jacob” (name has been changed to respect the interviewee’s anonymity), Sicily, 28 July 2017.

¹⁴⁸ Interview with “Moussa” (name has been changed to respect the interviewee’s anonymity), Medenine, 7 July 2017.

¹⁴⁹ Interview with “Marvin” (name has been changed to respect the interviewee’s anonymity), Sicily, 28 July 2017.

¹⁵⁰ Interview with “Bernard” (name has been changed to respect the interviewee’s anonymity), Sicily, 31 July 2017.

¹⁵¹ IOM, *Maritime Update Libyan Coast (25 October-28 November 2017)*.

¹⁵² The relationship between the LCG division based in Zawiya and the DCIM’s Nasser detention centre is one grounded in tribal and family alliances. See UN, *Final report of the Panel of Experts on Libya*.

migrants said that, after their boat was intercepted by the LCG, they were handed back to the smugglers instead of being transferred to DCIM detention centres. There are no procedures to track those intercepted, given the lack of a registration system at disembarkation.

There are 16 disembarkation points in western Libya. While UNHCR and IOM are each present at points to provide emergency assistance, they are not permitted to conduct official registration and have no power to avoid the immediate transfer of those disembarked to DCIM centres. Although UNHCR is authorized to carry out a preliminary protection assessment to determine if there are people of concern, that is whether there are any individuals belonging to the seven nationalities identified by the Libyan government as meriting de facto protection, and may subsequently be able to secure their release from DCIM centres, there is very little space for them to advocate against their transfer to detention in the first place.

There is a symbiotic relationship between the LCG and local militias that are involved in the smuggling business. Given Zawiya's influence, sea access and smuggling business, the LCG division in the city works with the militias. The local LCG carry out interceptions at sea, bringing back those intercepted to the DCIM detention centre. Detention authorities profit by extorting payment from the refugees and migrants in their custody in exchange for release. They also help support the local smuggling industry by releasing the groups of migrants into the hands of smugglers. A number of those interviewed confirmed to Amnesty International that, upon securing their release from detention centres, after paying the ransom, the guards provided them with the phone number of an individual who would take them directly to the smugglers for sea departures.

"Edward" from Cameroon told Amnesty International that, when he was on a boat departing from Libya with around 150 people, he was given a quick demonstration and then told to pilot the boat. The smugglers escorted them briefly out to sea but then ordered them to hand over all their possessions, including their phones, money and any other valuables, and disappeared. Shortly after that the LCG appeared, intercepted the boat and took them back to the DCIM's Nasser detention centre in Zawiya. **"Edward"** was detained there along with the others in his group until he could pay the guards to release him so that he could be smuggled again. While in the Nasser detention facility, **"Edward"** recognized one of the soldiers who had initially intercepted them at sea and was this time wearing civilian clothing and accompanying foreigners visiting the detention centre. **"Edward"** recounted:

"We were asked to pay 1,000 dinars to go out. If we wanted to go out and depart at sea, you have to pay 2,500 dinars. The police will take care of that. They are the ones who organize the convoy. They escort and then leave... A soldier wearing military outfits – he has two fingers cut. They stopped us on the sea. One day he came in with the UN people – Americans, Italians... He was in civilian clothes. They come and did not ask us questions. He made the visit. Everyone said that he was the one organizing the departure. Some friends there told me: as soon as they have paid 2,500 dinars, they wait for the navy to launch them. In order to get out, you have to pay 1,000 for men and 1,500 for women. Three girls and one boy refused to go out with a *coxeur* [smuggler]. They paid the police to go out directly, because they themselves will launch them [take them out by boat]. Personally, if I had the money I could have given it to the police directly... I was in cell nine, in 'Ossama prison'..."¹⁵³

In another interview with Amnesty International, **"Moussa"**, a Gambian man, recounted that he had attempted to depart by sea on four separate occasions.¹⁵⁴ During his second attempt, **"Moussa"**, along with around 120 other individuals, had departed from Sabratha but then their dinghy deflated and they were stranded at sea.

"The boat lost air, we didn't have telephones, the water came in and about six hours later fishermen found us and brought us back to shore, to the police. The police gave us back to the man who pushes the boat (Mohamed Zwara is his name). He pays them. They called him when they took us and the smuggler brought a big *camion* [lorry] and took us back to the camp. He took us back to the camp and beat us. He was very angry, said he will stop this [smuggling] work. They beat us all the time."¹⁵⁵

Many of those interviewed described being detained and nearly all described being subjected to extortion by the guards, who demanded money in order to secure their release.

¹⁵³ Interview with **"Edward"** (name has been changed to respect the interviewee's anonymity), Sicily, 28 July 2017.

¹⁵⁴ Other incidents are also mentioned in this report under separate sections relevant to that particular area of collusion.

¹⁵⁵ Interview with **"Moussa"** (name has been changed to respect the interviewee's anonymity), Medenine, 7 July 2017.



A Libyan Coastguard counting the number of migrants just been intercepted at sea in their way to Italy. Zawiya Jun 6-2016. © TAHA JAWASHI

EUROPEAN GOVERNMENTS: TRAPPING REFUGEES AND MIGRANTS IN LIBYA

In the light of the well-documented abuse of refugees and migrants in Libya, the European Court of Human Rights ruled back in 2012 that it would be unlawful, including as a violation of the prohibition of torture and other ill-treatment, for those states or organizations operating any vessel rescuing people at sea to return refugees and migrants to Libya. Italian and other ships that have been operating in the central Mediterranean since 2013, when crossings increased dramatically, have therefore consistently brought those people who have been rescued at sea to Europe and, in the vast majority of cases, to Italy.

Since 2016, however, faced with the reluctance of other EU member states to share responsibility for the reception of refugees and migrants crossing the central Mediterranean from Libya to Italy, the Italian government's position has shifted from prioritizing the saving of lives at sea to reducing the number of crossings. This change in approach has been fully backed by other European governments.

Between late 2016 and 2017, Italy and other EU member states, intent on reducing arrivals to European shores, have implemented measures aimed at closing off the migratory route through Libya and across the central Mediterranean. Such measures were stepped up on 2 February 2017, when the Italian government and Libya's Government of National Accord concluded a bilateral Memorandum of Understanding (MoU),¹⁵⁶ which was fully integrated in the Malta Declaration adopted by the members of the European Council the following day.¹⁵⁷

Italy and other EU member states and institutions have implemented a three-pronged strategy to reduce the number of refugees and migrants crossing the central Mediterranean and arriving in Europe. First, they have committed to provide technical support and assistance to Libyan authorities responsible for the management of detention centres where refugees and migrants are held and routinely exposed to serious human rights violations. Second, they have enabled the LCG to intercept increasing numbers of people at sea and take them back to Libya, where they are placed in detention centres. They have done so by providing the LCG with training; equipment, including boats; and technical and other assistance. They have also actively obstructed and undermined the work of NGOs conducting rescue operations in the central Mediterranean, in an apparent attempt to pave the way for an increased engagement at sea by the LCG. Third, they have struck deals with Libyan local authorities and the leaders of non-state entities, such as tribes and armed groups, to enable these entities to stop the smuggling of people and to increase border control, greatly diminishing options available to refugees and migrants attempting to flee the country.

The implementation of this strategy has resulted in a drop in the number of crossings between July and November 2017. In the first semester of 2017 a total of 83,754 people had reached Italy by sea, a significant increase over the same period in 2016, when 70,222 arrivals were recorded. However, the trend then changed dramatically: between July and November 2017 a total of 33,288 refugees and migrants arrived in Italy, 67% fewer than in the same period of 2016, when 102,786 arrived.¹⁵⁸ If, on the one hand, the lower number of departures from Libya has led to a significantly lower number of deaths at sea being recorded during the period,¹⁵⁹ on the other hand, the increasing sealing of the central Mediterranean route has led to the containment of migrants, refugees and asylum-seekers in a country where they are exposed to gross human rights violations and abuses and where they have no chance to seek asylum.

ASSISTING LIBYAN AUTHORITIES RESPONSIBLE FOR UNLAWFUL DETENTION

On 3 February 2017, members of the European Council meeting in Malta adopted a Declaration (the Malta Declaration) focusing on the central Mediterranean route.¹⁶⁰ EU leaders agreed to prioritize the provision of "training, equipment and support to the Libyan national coast guard and other relevant agencies". They also agreed to implement measures "to ensure adequate reception capacities and conditions in Libya for migrants, together with the UNHCR and IOM"; and to support IOM in "significantly stepping up assisted voluntary return activities".

In the Malta Declaration, EU leaders also welcomed and affirmed their support for Italy's bilateral efforts to co-operate with Libya in the area of migration, through the implementation of the MoU signed a day prior to the Declaration, on 2 February 2017, by the Italian government and the Chairman of Libya's Presidential Council, Fayez al-Serraj.¹⁶¹ The MoU, which revitalized and updated agreements concluded between the two

¹⁵⁶ Memorandum of understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf; an unofficial translation in English is available at www.statewatch.org/news/2017/oct/it-memorandum-of-understanding-libya-migration-deal.pdf

¹⁵⁷ European Council, *Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route*, 3 February 2017, www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/#

¹⁵⁸ Amnesty International's elaboration on data sourced from the Italian Ministry of Interior, *Cruscotto statistico giornaliero*, 1 December 2017, www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_1-12-2017.pdf

¹⁵⁹ It is estimated that a total of 2,824 people had died or disappeared at sea in the central Mediterranean between 1 January and 30 November 2017, as opposed to 4,392 during the same period in 2016, and 2,869 during the same period in 2015. Data sourced from IOM, "Missing Migrants database, Mediterranean region", missingmigrants.iom.int/region/mediterranean, accessed on 4 December 2017.

¹⁶⁰ Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route, 3 February 2017, www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/#

¹⁶¹ Memorandum of understanding on co-operation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic, 2 February 2017, www.governo.it/sites/governoNEW.it/files/Libia.pdf; the MoU repeatedly uses the terms "clandestine" and "illegal" when referring to migrants and does not mention refugees or asylum-seekers.

countries at the time of al-Gaddafi,¹⁶² committed Italy to provide technical and technological support, as well as training and financial support, not only to the LCG and border guards but also to the Libyan Ministry of the Interior, which is responsible for migrants' detention centres.

Specifically, under Article 1, among other things, Italy committed to provide technical and technological support to Libyan institutions tasked with combating "clandestine migration" such as the Ministry of Defence's border guards and coast guard, and "the competent departments of the Ministry of Interior", which include the DCIM, the division responsible for managing detention centres, albeit this is not explicitly mentioned in the MoU.

Under Article 2, the parties committed, among other things, to take action with regard to the "upgrading and financing of the above mentioned reception centres already active in compliance with relevant legislation, using available Italian and EU funds". The preamble to the MoU refers to "temporary reception camps under the exclusive control of the Libyan Ministry of Interior" rather than to reception centres. As no open reception centres or camps exist in Libya, Amnesty International considers that the MoU is referring in fact to the existing DCIM detention centres for refugees and migrants. Also under Article 2, "Italy contributes through the provision of medicines and medical equipment for the health reception centres [sic], to meet the medical needs of illegal migrants, for the treatment of transmissible and grave chronic illnesses." Further, the parties committed to take action with regard to the "training of Libyan personnel in the above-mentioned reception centres to cope with the conditions of illegal migrants, supporting Libyan research centres operating in this sector, so that they can contribute to identify the most adequate methods to face the phenomenon of clandestine migration and human trafficking."

Under Article 4, Italy agreed to fund the measures mentioned in the MoU, or proposed by a committee set up under the MoU, using EU funds.

In addition to Italy's assistance promised in the MoU, in July 2017, the EU Trust Fund for Africa adopted a programme of work with 46.3 million euros in funding "to reinforce the integrated migration and border management capacities of the Libyan authorities". While the programme mostly focuses on action to strengthen the capacity of the LCG, described below, it emphasizes how this is to be done in ways that facilitate synergies and co-ordination among different Libyan agencies involved in border surveillance and control. The programme funds the feasibility study for and design of an Interagency National Coordination Centre under the control of the Ministry of Interior, and the strengthening of the operational capacity of the Libyan border guards along Libya's southern borders.¹⁶³

The EU is also assisting Libyan authorities through its European Border and Coast Guard Agency (Frontex), which since September 2017 has a Liaison Officer deployed to EUBAM, based in Tunis. EU operation EUBAM Libya has been active since 2013, supporting the Libyan authorities in developing border management and security at the country's land, sea and air borders.¹⁶⁴

SUPPORTING LCG INTERCEPTION AT SEA AND RETURNS TO LIBYA

The centrepiece of Italy's and the EU's strategy to reduce migration towards Europe from or through Libya has been enhancing the operational capacity of the LCG. To this end, since late 2016 and increasingly in 2017, Italy and other EU member states and institutions have been providing the LCG with training, patrol boats and other equipment, and financial and other support.

While this co-operation is sometimes referred to as instrumental in saving lives, in reality it is being extended with the clear expectation that Libyan authorities will intercept refugees and migrants attempting the sea crossing and bring them back to Libya, and therefore "to stem the flows of illegal migrants"¹⁶⁵ arriving in Italy.

¹⁶² Treaty of Friendship, Partnership, and Cooperation between the Italian Republic and the Great Socialist People's Libyan Arab Jamahiriya, 2008, www.perfar.eu/policies/treaty-friendship-partnership-and-cooperation-between-italian-republic-and-great-o

¹⁶³ European Commission, *EU Trust Fund for Africa adopts 46 million programme to support integrated migration and border management in Libya*, 28 July 2017, europa.eu/rapid/press-release_IP-17-2187_en.htm

¹⁶⁴ EU Border Assistance Mission in Libya (EUBAM), *About EU Border Assistance Mission in Libya (EUBAM)*, 20 June 2016, eeas.europa.eu/csdp-missions-operations/eubam-libya/3859/about-eu-border-assistance-mission-libya-eubam_en

¹⁶⁵ Memorandum of understanding between Libya and Italy, Article 1a.

Amnesty International is deeply concerned that Italy and other European governments have substituted clearly prohibited push-back measures with subsidized, or subcontracted, pull-back measures.¹⁶⁶

To effectively ensure that the LCG can be the primary actor to intercept refugees and migrants and bring them back to Libya, Italy has also acted to restrict the work of NGOs conducting rescue operations at sea, again with the backing of other EU governments and institutions.

ENHANCING THE LCG'S CAPACITY

During 2016 and 2017, EU member states and institutions have implemented a number of measures to strengthen the capacity of the LCG, and the Libyan navy of which it forms part, including through training, assistance in the establishment of a co-ordination centre, provision of equipment, and other forms of support.

In June 2016, the EU amended the mandate of the European naval operation EUNAVFOR MED¹⁶⁷ to include capacity-building and training of the Libyan navy, including the LCG.¹⁶⁸ As of November 2017, 195 Libyan personnel had undergone training,¹⁶⁹ with the latest group of 59 graduating on 16 November.¹⁷⁰ The training covers basic nautical skills, more advanced specialist skills, as well as human rights and international law.

Italian Coast Guard officials at the Maritime Rescue Coordination Centre in Rome confirmed to Amnesty International in March 2017 that the Italian government had requested them to assist the Libyan authorities in setting up a Libyan Maritime Rescue Coordination Centre, with the aim of enabling Libya eventually to co-ordinate search and rescue activities within its own search and rescue zone.¹⁷¹

Between April and May 2017, Italy provided the Libyan navy, including the LCG, with “patrolling assets”, namely four fast patrol boats, with a further six to be delivered in the near future.¹⁷² Some of these had initially been donated to Libya during Colonel Muammar al-Gaddafi's rule, but were then transferred back to either Italy or Tunisia, where they remained for years under maintenance, as they had been severely damaged during the conflict.

The Italian government provided for part of the necessary funding, including using part of a special 200 million euro “Africa fund” created in the 2017 budget for “extraordinary projects to reinvigorate the dialogue and co-operation with African countries particularly important in relation to migratory routes”.¹⁷³ For example, a 2.5 million euro grant from this fund was approved in August 2017 for the maintenance of Libyan boats and the training of Libyan crews.¹⁷⁴ The 46.3 million euro programme approved in July 2017 by the EU Trust Fund for Africa also largely focused on increasing the operational capacity of the LCG through the provision of training; equipment, repair and maintenance of the existing fleet; the setting up of operational rooms to enable the LCG to co-ordinate operations; and assistance with the establishment of a Libyan Maritime Rescue Coordination Centre and demarcating and declaring a Libyan search and rescue zone.¹⁷⁵ The EU Trust Fund for Africa is therefore financing the implementation of Italy's commitments towards Libya

¹⁶⁶ *Hirsi Jamaa and Others v Italy* (27765/09), European Court of Human Rights, Grand Chamber, Judgment, Strasbourg, 23 February 2012, hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109231

¹⁶⁷ EUNAVFOR MED was launched in mid-2015 with a core mandate to identify, capture and dispose of vessels and assets used by migrant smugglers or traffickers, in order to contribute to wider EU efforts to disrupt the business model of human smuggling and trafficking networks in the southern central Mediterranean and prevent the further loss of life at sea. See eeas.europa.eu/csdp-missions-operations/eunavfor-med_en

¹⁶⁸ EUNAVFOR MED, *EU extends anti-people smuggling Operation Sophia for a year*, 20 June 2016, eeas.europa.eu/csdp-missions-operations/eunavfor-med/3943/eu-extends-anti-people-smuggling-operation-sophia-year_en

¹⁶⁹ EUNAVFOR MED, *Operation SOPHIA: new training modules for the Libyan Coastguard and Navy arranged in Italy*, 18 September 2017, eeas.europa.eu/csdp-missions-operations/eunavfor-med/32315/operation-sophia-new-training-modules-libyan-coastguard-and-navy-arranged-italy_en

¹⁷⁰ www.facebook.com/EunavforMed/posts/1518004711608771

¹⁷¹ On 1 December 2017, the Italian Coast Guard wrote to Amnesty International, in reply to a request for updated information, indicating that work towards the establishment of a Maritime Rescue Coordination Centre in Libya was still at an initial stage, focusing on the evaluation of needs and identification of stakeholders. Letter dated 1 December 2017, Ref. 0149176.

¹⁷² Italian Ministry of Interior, *Contro il traffico dei migranti: consegnate le prime motovedette alla Marina libica*, 21 April 2017, www.interno.gov.it/it/notizie/contro-traffico-dei-migranti-consegnate-prime-motovedette-alla-marina-libica; *Minniti in Libia: fronte comune contro il traffico di migranti*, 16 May 2017, www.interno.gov.it/it/notizie/minniti-libia-fronte-comune-contro-traffico-migranti

¹⁷³ Law no. 232, 11 December 2016, Article 1 c.621

¹⁷⁴ Italian Ministry of Foreign Affairs, Director General for Italians abroad and migration policies, Decree 4110/47 of 28 August 2017, www.asgi.it/wp-content/uploads/2017/11/Allegato_2.pdf; see also Associazione per gli Studi Giuridici sull'Immigrazione (ASGI), *Depositato il ricorso di ASGI contro lo sviamento di 2,5 milioni di euro dal c.d. Fondo Africa*, 14 November 2017, www.asgi.it/asilo-e-protezione-internazionale/libia-italia-ricorso-fondi-cooperazione/

¹⁷⁵ European Commission, *EU Trust Fund for Africa adopts €46 million programme to support integrated migration and border management in Libya*, 28 July 2017, europa.eu/rapid/press-release_IP-17-2187_en.htm

as provided in the February 2017 MoU. Indeed, Article 4 of the MoU expressly provides that EU funds would finance the measures agreed within it.¹⁷⁶

On 2 August 2017, further to a request from the Libyan government, Italy launched a naval operation in Libyan waters and deployed navy officials on Libyan soil to support the Libyan authorities in their activities against irregular migration and human smuggling. The Italian mission, which is ongoing at the time of writing, aims at providing technical and logistical support and advice to the Libyan navy, including the LCG; protection for Libyan vessels involved in activities against irregular migration; reconnaissance capabilities to determine what operations should be carried out; and support to set up a centre for co-ordinating operations.¹⁷⁷

As previously mentioned, the Libyan authorities notified the International Maritime Organization in early August 2017 that it had established a search and rescue zone, but, at the time of writing, the latter was yet to confirm the zone's existence because it was still waiting for clarifications it had requested from the Libyan authorities. Details about the establishment of a Maritime Rescue Coordination Centre were also not yet officially available at the time of writing.

As a result of these measures, the number of people intercepted at sea by the Libyan naval authorities and taken back to Libya has increased significantly in 2016 and 2017. According to IOM, 18,405 people were intercepted and disembarked in Libya in 2017 as of 6 October.¹⁷⁸ The LCG's operations intensified in September 2017; its representatives told Amnesty International that about 3,000 people had been intercepted and taken to Libya in just one week in mid-September.¹⁷⁹

Amnesty International's research indicates that, over the course of 2017, LCG actions have been increasingly conducted with the co-operation of the Italian authorities, which have in some cases alerted them of the presence and position of boats in distress, and even directly participated in operations at sea. For example, on 27 September 2017, an LCG vessel intercepted two boats carrying refugees and migrants in international waters, 20 nautical miles off Tripoli's coast. Having received an SOS call from the people on the two boats, the Italian Maritime Rescue Coordination Centre informed ships in the area as well as Libyan authorities of the presence of the two boats in distress. An LCG crew, who was testing a boat recently repaired with the assistance of Italian navy officials in Libya, intervened and reached the boat first. The LCG vessel claimed on scene command for the search and rescue operation involving the two boats and requested the assistance of the Italian warship *Andrea Doria*, which was in the area and provided lifejackets for the refugees and migrants. The LCG took all of the approximately 200 people back to Libya, where they were disembarked.¹⁸⁰ Amnesty International wrote to the Italian navy and Maritime Rescue Coordination Centre to request information on the incident and on the reasons why the warship *Andrea Doria* did not take refugees and migrants on board in order to allow for their disembarkation in a place of safety. The Italian Maritime Rescue Coordination Centre replied, confirming it had informed the Libyan authorities of the boats in distress, and stating that under international law it cannot stop other countries' authorities when these decide to intervene in international waters outside the Italian search and rescue zone.¹⁸¹ The organization had not received a reply from the Italian navy at the time of writing.

During 2017, Italian authorities requested a higher degree of co-operation not only from the LCG, but also from other EU member states' coastal authorities.¹⁸² Problems in the co-ordination of rescue operations with Malta appeared to re-emerge: in early August 2017, Italy and Malta argued for three days over which country should allow the rescue boat *Golfo Azzurro*, operated by the NGO Proactiva Open Arms, to disembark three

¹⁷⁶ Memorandum of understanding between Libya and Italy, Article 4.

¹⁷⁷ Italian Chamber of Deputies, *Deliberazione del consiglio dei ministri in merito alla partecipazione dell'Italia alla missione internazionale in supporto alla guardia costiera libica*, 28 July 2017, www.camera.it/_dati/leg17/lavori/documentiparlamentari/IndiceETesti/250/002/INTERO.pdf

¹⁷⁸ The Displacement Tracking Matrix (DTM), *Maritime update Libyan coast, 7 - 21 September 2017*, www.globaldtm.info/maritime-update-libyan-coast-7-21-september-2017/

¹⁷⁹ Interview with LCG spokesperson. See also "Libyan coastguard intercepts more than 3,000 migrants in past week", *Middle East Eye*, 17 September 2017, www.middleeasteye.net/news/libyan-coastguard-intercepts-more-3000-migrants-past-week-2014774729

¹⁸⁰ Italian Ministry of Defence, *Difesa – Marina Militare: unità della Guardia Costiera libica effettua prima operazione di salvataggio dopo le verifiche di efficienza*, 27 September 2017, www.difesa.it/SMD/Comunicati/Pagine/guardia_costiera_libica_prime_operazioni_salvataggio.aspx

¹⁸¹ Letter dated 1 December 2017, Ref. 0149176.

¹⁸² "Migranti, al vaglio il sequestro delle navi di ONG e gli sbarchi in altri Paesi. Lo stop di Tallin", *Rai News*, 1 July 2017, www.rainews.it/dl/rainews/articoli/migranti-vertice-tallin-accoglienza-chiusura-porti-sequestro-navi-sbarchi-975949bf-3f13-4d63-be86-eed408150cca.html

Libyan asylum-seekers rescued on a small boat in the central Mediterranean. Eventually the boat was allowed to disembark in Italy.¹⁸³

Despite the significant support received, the LCG has failed to carry out search and rescue functions in accordance with international law and standards. Amnesty International has documented several incidents, in this and previous reports,¹⁸⁴ where the LCG's conduct at sea has been reckless, including repeatedly endangering refugees and migrants in boats in distress, as well as the crews of other rescue boats, by resorting to violence (shooting, flogging, threatening and robbing from refugees and migrants) and operating at sea in plain disregard for basic security protocols and international standards.¹⁸⁵ Detailed UN reports have also described the serious human rights violations to which refugees and migrants are exposed at the hands of the LCG.¹⁸⁶

To Amnesty International's knowledge, no independent monitoring or accountability mechanism has been established either by Italy or by the EU to ensure that resources provided to the Libyan authorities to strengthen their overall capacity for search and rescue operations and migration control are not contributing to human rights violations and abuses. In July 2017, EUNAVFOR MED did establish a mechanism to monitor the conduct of LCG personnel, but only those who had specifically taken part in EUNAVFOR MED training.¹⁸⁷ To date, neither details of the operation of that mechanism nor any results of its monitoring have been made public. EU member states and institutions have even failed so far to ensure the establishment of a system to register and trace all people sent back to Libya, including as a condition of their assistance to the Libyan authorities. Foreign nationals intercepted at sea by the LCG are disembarked in Libya, often in one of 16 disembarkation points where UNHCR or IOM are present,¹⁸⁸ and then transferred to detention centres where they are exposed to serious human rights violations and abuses, as detailed in previous chapters.

CLAMPING DOWN ON NGO RESCUE OPERATIONS

NGOs have played an important role in saving lives in the central Mediterranean, especially in 2016 and in the first half of 2017, when governments failed to prioritize search operations to rescue refugees and migrants. Faced with increasingly dangerous practices employed by smugglers (for example, using increasingly overcrowded boats; not providing sufficient fuel or water; not supplying satellite phones on board to facilitate calls for help), NGOs deployed their ships near Libyan territorial waters in an effort to maximize rescues at sea.¹⁸⁹

At the end of 2016, reports by Frontex began describing NGO presence at sea as contributing to irregular migration by encouraging departures and in some cases by facilitating smugglers' operations.¹⁹⁰ At the beginning of 2017, a number of representatives of Italian institutions, including a public prosecutor and various members of parliament, as well as commentators, made baseless accusations in public against NGOs operating in the central Mediterranean, suggesting, among other things, that they operated in collusion with smuggling networks. The claims were the subject of a parliamentary inquiry in Italy, which failed to uncover any evidence of wrongdoing. Officials called upon to address the inquiry confirmed that NGOs had operated during search and rescue incidents under the co-ordination of the Italian Coast Guard and in full compliance with the law of the sea. Nevertheless, in May 2017 the Italian Senate Defence Committee recommended stricter regulation of NGO activities at sea.¹⁹¹

¹⁸³ twitter.com/openarms_fund/status/894843816943001600; "Italy-Malta migrant standoff ends as humanitarian boat docks in Sicily", *Reuters*, 9 August 2017, www.reuters.com/article/us-europe-migrants-italy-malta/italy-malta-migrant-standoff-ends-as-humanitarian-boat-docks-in-sicily-idUSKBN1AP28Q

¹⁸⁴ Amnesty International, *A perfect storm*.

¹⁸⁵ Amnesty International, *A perfect storm*.

¹⁸⁶ OHCHR, "Detained and dehumanised".

¹⁸⁷ A monitoring mechanism for trainees of the EUNAVFOR MED programme was set up in July 2017 following repeated requests by NGOs. See European Council, *EUNAVFOR MED Operation Sophia: mandate extended until 31 December 2018*, 25 July 2017, www.consilium.europa.eu/en/press/press-releases/2017/07/25-eunavformed-sophia-mandate-extended/

¹⁸⁸ UNHCR, *Libya: Disembarkation points*, 27 September 2017, data2.unhcr.org/en/documents/download/61005

¹⁸⁹ Amnesty International, *A perfect storm*.

¹⁹⁰ Frontex, *Biweekly Analytical Report*, 9 December 2016, www.documentcloud.org/documents/3531244-Frontex-Triton-Analytical-Report-December-2016.html; *Risk Analysis for 2017*, February 2017, frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2017.pdf

¹⁹¹ Italian Senate of the Republic, *Documento approvato dalla 4ª commissione permanente*, 16 May 2017, www.senato.it/application/xmanager/projects/leg17/attachments/dossier/file_internets/000/002/115/doc_XVII_n._9.pdf

With the backing of other European governments,¹⁹² in July 2017 the Italian Ministry of Interior drafted a code of conduct and requested that NGOs sign and abide by it.¹⁹³ The code includes provisions that do not comply with international human rights law or with humanitarian provisions within the law of the sea, exacerbating the risk to the life of refugees and migrants. For example, it restricts search and rescue activities in Libyan waters and limits the possibility of transferring rescued people from one rescue vessel to another. These restrictions are inconsistent with the principle of safe passage in territorial waters to provide help to boats in distress, as well as with practices, standards and regulations which govern search and rescue activities at sea, all informed by the principle that the safety of life must be prioritized at all times.¹⁹⁴ While the code of conduct is not legally binding, the Italian government has warned that failure to sign the code or to comply with it “may result in the adoption by the Italian authorities of measures addressed to the relevant vessels”.¹⁹⁵ The Italian Ministry of Interior also stated that NGOs’ refusal to sign the code of conduct would place them “out of the rescue system” – an undefined statement with unpredictable consequences, whereas all shipmasters have a legal obligation to rescue boats in distress.¹⁹⁶ Failure to sign the code could also result in other, unspecified consequences, “starting with the security of their ships”.¹⁹⁷ Five NGOs¹⁹⁸ signed the code of conduct, in some cases introducing notes interpreting the text of the code, while two, Médecins sans Frontières (MSF) and Jugend Rettet refused to sign.¹⁹⁹

On 2 August 2017, the Trapani tribunal’s public prosecutor ordered the seizure of the rescue boat *Iuventa*, operated by NGO Jugend Rettet,²⁰⁰ as part of an ongoing investigation into the crime of “aiding and abetting irregular immigration”.²⁰¹ A week later it emerged that the same prosecuting office had opened a criminal investigation for the same crime into the actions of Don Mussie Zerai, a well-known Eritrean priest based in Switzerland who for over a decade had liaised with the Italian Coast Guard to help locate refugee boats in distress in the Mediterranean.²⁰²

From August 2017, NGOs operating at sea started reporting that in some instances they were receiving instructions from the Italian Maritime Rescue Coordination Centre to wait before conducting certain rescue operations, to facilitate the intervention of the LCG. On 15 August 2017, a vessel run by NGO Migrant Offshore Aid Station (MOAS) initiated a rescue operation but the Maritime Rescue Coordination Centre in Rome reportedly requested that the crew wait for the LCG to intervene before taking people on board. The LCG failed to intervene and after two hours the Maritime Rescue Coordination Centre in Rome authorized MOAS to take people on board and transfer them to Italy. On 24 November 2017, NGO SOS Méditerranée reported that its rescue vessel *Aquarius* had been instructed by the Italian Maritime Rescue Coordination Centre to stand by as the LCG co-ordinated the interception of three rubber boats in distress in international waters, which would result in refugees and migrants being returned to Libya.²⁰³

¹⁹² “In occasione della riunione informale dei Ministri della Giustizia e degli Affari Interni, tenutasi il 6 luglio a Tallinn, sotto la presidenza estone, i Ministri dell’Interno dell’UE hanno accolto con favore l’iniziativa delle autorità italiane intesa a garantire che le navi delle ONG impegnate in attività di Search and Rescue (SAR) operino secondo una serie di regole chiare da rispettare...” See:

www.interno.gov.it/sites/default/files/codice_condotta_ong.pdf

¹⁹³ Code of conduct for NGOs engaging in operations to rescue migrants at sea, July 2017,

www.interno.gov.it/sites/default/files/codice_condotta_ong.pdf

¹⁹⁴ See for instance Article 2.1.1. of the International Convention on Maritime Search and Rescue, adopted 27 April 1979, entered into force 22 June 1985 (as subsequently amended); Article 98 of the UN Convention on the Law of the Sea, adopted 10 December 1982, A/CONF.62/122, entered into force on 16 November 1994 (as subsequently amended). Italy has ratified the latter Convention, while Libya has only signed it. However, many of the Convention’s provisions, not least Article 98, are accepted as reflecting rules of customary international law binding on all nations irrespective of whether or not they are party to it. See for instance J. Ashley Roach, “Today’s Customary International Law of the Sea, Ocean,” 45(3) *Development & International Law* 239 (2014).

¹⁹⁵ Code of conduct for NGOs engaging in operations to rescue migrants at sea, July 2017,

www.interno.gov.it/sites/default/files/codice_condotta_ong.pdf

¹⁹⁶ UN Convention on the Law of the Sea, Article 98.

¹⁹⁷ Italian Ministry of Interior, *Codice di condotta per le Ong, terzo incontro al Viminale*, 8 August 2017, www.interno.gov.it/it/notizie/codice-condotta-ong-terzo-incontro-viminale

¹⁹⁸ Migrant Offshore Aid Station (MOAS), Save the children, Proactiva Open Arms, SOS Méditerranée and Sea-Eye. See Italian Ministry of Interior, *Codice di condotta per il salvataggio dei migranti, arriva la firma della Ong Sos Mediterranée*, www.interno.gov.it/it/notizie/codice-condotta-salvataggio-dei-migranti-arriva-firma-ong-sos-mediterranee; and Sea-Eye, *Sea-Eye signed the Code of Conduct*, 4 August 2017, sea-eye.org/en/sea-eye-signed-the-code-of-conduct/

¹⁹⁹ Italian Ministry of Interior, *Codice di condotta per le Ong, terzo incontro al Viminale*, 8 August 2017, www.interno.gov.it/it/notizie/codice-condotta-ong-terzo-incontro-viminale

²⁰⁰ Italian Ministry of Interior, *Lampedusa: sequestrata la motonave Iuventa della ong Jugend Rettet*, 8 August 2017, www.interno.gov.it/it/notizie/lampedusa-sequestrata-motonave-iuventa-ong-jugend-rettet

²⁰¹ Legislative Decree 25 July 1998, no. 286, Article 12.

²⁰² Fulvio Fulvi, “Migranti. Avviso di garanzia per don Zerai”, *Avvenire*, 9 August 2017, www.avvenire.it/attualita/pagine/padre-zerai-indagato-per-favoreggiamento

²⁰³ Daniela Fassini and Nello Scavi, “Tripoli. Roma ferma in mare la nave Aquarius. Migranti riportati in Libia”, *Avvenire*, 25 November 2017, www.avvenire.it/attualita/pagine/migranti-nuovo-giallo-sui-soccorsi See also: twitter.com/SOSMedFrance/status/934018861480980481

These measures, coupled with the continued threats against NGOs by the LCG, pushed NGOs to reconsider their presence in the central Mediterranean. With several NGOs having suspended their operations, and restrictions placed on the others regarding their presence near Libyan waters, the additional assets for search and rescue once available are now in short supply, particularly in the areas of the central Mediterranean where most shipwrecks happen, ultimately increasing the risk of death at sea for those who manage to leave Libya.²⁰⁴ Although sea crossings plummeted in the third quarter of 2017, thousands of people are still attempting to reach Italy by boat – and thousands more are still waiting to take the journey. The number may rise at any given moment due to the provisional solutions and the ongoing instability of the situation on the ground. However, people attempting the crossing will most likely be pushed to use more dangerous routes and practices to flee the dangers of Libya while avoiding interception by the LCG, while European ships may be too far away to help. In a dramatic reminder of such risks, on 21 September 2017, about 90 people were feared to have died in a shipwreck near Zuwara, which left only 40 survivors. Their boat had apparently run out of fuel and had been at sea in distress for at least a week before it capsized.²⁰⁵

By providing training, equipment and support in various forms to enhance the LCG's capacity, European governments have designated and empowered the LCG as a proxy with the job of intercepting refugees and migrants at sea, including in international waters, to then ferry them back to Libya where their human rights will almost certainly be violated. Furthermore, by hampering the work of NGOs at sea, they have effectively sidelined actors that could disembark any person found in distress at sea in Europe, leaving the LCG in the position to intercept an increasing number of people and return them to Libya. Ultimately, Italian and Libyan authorities have ensured the LCG could operate undisturbed in returning refugees and migrants back to Libya, including by tolerating the LCG's reckless behaviour at sea endangering the lives of refugees and migrants as well as those of NGO workers.

ENGAGING LOCAL AUTHORITIES AND NON-STATE ACTORS IN LIBYA

Throughout 2017, Italy has increasingly engaged in co-operation with local authorities and tribal leaders and informal groups in Libya, not all under the control of the Government of National Accord, thereby sidestepping the government, to halt the flow of refugees and migrants to Europe.²⁰⁶

In March 2017, the Italian Minister of Interior met in Rome with representatives of the Awlad Suleiman, Tebu and Tuareg tribes, which control territories in southern Libya. A peace and reconciliation agreement was negotiated,²⁰⁷ which, according to the Italian Minister of Interior, was necessary to create a border guard to control Libya's southern borders.²⁰⁸

On 13 July 2017 the Italian Minister of Interior met in Tripoli with the mayors of 14 Libyan towns. Another meeting between the Italian and Libyan Ministers of Interior and mayors of Libyan towns took place in Rome on 26 August 2017. Italian officials promised, through access to the EU Trust Fund for Africa,²⁰⁹ financial and other assistance to Libyan local authorities, in exchange for their commitment to tackle irregular migration.²¹⁰ Italy's Minister of Interior pledged to support the mayors by creating new economic opportunities in their territories "if they help us in the fight against smuggling of human beings and in the management of migration from central Africa".²¹¹

²⁰⁴ Amnesty International, *Europe's sinking shame: The failure to save refugees and migrants at sea* (Index EUR 03/1434/2015).

²⁰⁵ UNHCR, *Flash Update Libya (18 - 29 September 2017)*, 29 September 2017, reliefweb.int/report/libya/unhcr-flash-update-libya-18-29-september-2017

²⁰⁶ "Tebu body rejects Rome deal with Tuareg and Awlad Suleiman", *Libya Herald*, 6 April 2017, www.libyaherald.com/2017/04/06/tebu-body-rejects-rome-deal-with-tuareg-and-awlad-suleiman/

²⁰⁷ Federica Gaida, "It's Peace! Awlad Suleiman and Tebu Tribes of the Libyan South sign reconciliation agreement in Rome", *Ara Pacis Initiative*, 30 March 2017, www.arapacisinitiative.org/news/its-peace-awlad-suleiman-and-tebu-tribes-of-the-libyan-south-sign-reconciliation-agreement-in-rome/

²⁰⁸ Grazia Longo, "Libia, le tribù del Sud siglano la pace e si impegnano a bloccare i migranti", *La Stampa*, 2 April 2017, www.lastampa.it/2017/04/02/esteri/libia-le-trib-del-sud-siglano-la-pace-e-si-impegnano-a-bloccare-i-migranti-gzNs23DGe00SdJi7G285FK/pagina.html

²⁰⁹ Italian Ministry of Interior, *Immigrazione, riunione al Viminale della "Cabina di Regia" tra Ciad, Italia, Libia, Mali e Niger*, 11 September 2017, www.interno.gov.it/it/notizie/immigrazione-riunione-viminale-cabina-regia-ciad-italia-libia-mali-e-niger

²¹⁰ Italian Ministry of Interior, *Minniti e i sindaci delle comunità libiche: i trafficanti sono un nemico comune*, 5 September 2017, www.interno.gov.it/it/notizie/minniti-e-i-sindaci-comunita-libiche-i-trafficanti-sono-nemico-comune

²¹¹ "Minniti: 'Sui migranti ho temuto per la tenuta democratica Paese'", *Repubblica*, 29 August 2017, www.repubblica.it/politica/2017/08/29/news/minniti_sui_migranti_ho_temuto_per_la_tenuta_democratica_paese_-174164861/

According to media reports, Italy also struck a deal involving representatives of the Libyan Government of National Accord and the Anas Debashi and Brigade 48 militias, which controlled Sabratha and the smuggling business in the town at the time, as well as militias from neighbouring towns.²¹² At a meeting in Sabratha, the militias committed to preventing migrants from attempting the crossing, while the Italian authorities committed to provide them with equipment, boats and salaries channelled through the Government of National Accord. The militias would be formally integrated into the ranks of the Libyan Government of National Accord as a result of the negotiations.²¹³ The Italian government did not clarify the terms of its contacts with the militias, though it denied having struck a deal with smugglers.²¹⁴

Italian government representatives also discussed measures to reduce irregular migratory movements with Khalifa Haftar, the head of the self-styled Libyan National Army, which controls the east of the country. Haftar visited Italy on 26 September 2017 to meet with the Italian Ministers of Interior and Defence.²¹⁵

Amnesty International considers that, as a result of such deals, in August and September 2017 Libyan authorities, tribes and militias took action to stop refugees and migrants from attempting sea crossings, from travelling from the south of Libya towards the northern coasts and from entering Libya from the south.

Amnesty International is concerned that there is a considerable risk that whatever assistance Italy is providing to Libyan authorities could be contributing to human rights violations and abuses, particularly because of the lack of a protection framework in the country. Moreover, assistance to non-state actors renders the pursuit of accountability for those abuses almost impossible, while increasing the risk of destabilizing the country. These concerns are aggravated by the lack of transparency of deals the Italian government has made, particularly with non-state actors who may have been involved in human rights abuses. In September 2017, shortly after the Sabratha meeting, clashes among militias spread in Sabratha, leaving scores of civilians dead and displacing hundreds of families.²¹⁶ The Anas Debashi and Brigade 48 militias lost control of Sabratha to other militias. Once the clashes were over, about 14,000 refugees and migrants found themselves stranded in the town.²¹⁷ While international agencies worked to provide them immediate assistance, they were subsequently transferred to DCIM detention centres.

It therefore appears that Italy has set out to enhance the capacity of non-state actors to assume the role of state agents, and to carry out border control and other policing functions that have exposed refugees and migrants to widespread and systematic human rights violations and abuses. Amnesty International is deeply concerned that the Italian authorities have made stopping the flow of refugees and migrants from Libya an end, in the service of which all means including the violation of its own international human rights obligations, have become justified.

²¹² Maggie Michael, "Backed by Italy, Libya enlists militias to stop migrants", *AP News*, 29 August 2017, www.apnews.com/9e808574a4d04eb38fa8c688d110a23d;

Matthew Herbert and Jalel Harchaoui, "Italy claims it's found a solution to Europe's migrant problem. Here's why Italy's wrong", *The Washington Post*, 26 September 2017, www.washingtonpost.com/news/monkey-cage/wp/2017/09/25/italy-claims-its-found-a-solution-to-europes-migrant-problem-heres-why-italys-wrong/?utm_term=.c3a50555dc4b; "Italy's Dodgy Deal on Migrants", *The New York Times*, 25 September 2017, www.nytimes.com/2017/09/25/opinion/migrants-italy-europe.html?mwrsm=Faceb

²¹³ Francesca Mannocchi, "Italy accused of bringing Libyan militias to stop migrants reaching Europe", *Middle East Eye*, 25 August 2017, www.middleeasteye.net/news/libyan-militias-being-bribed-stop-migrants-crossing-europe-2107168893; Maggie Michael, "Backed by Italy, Libya enlists militias to stop migrants", *AP News*, 29 April 2017, www.apnews.com/9e808574a4d04eb38fa8c688d110a23d

²¹⁴ "Libia: Farnesina, l'Italia non tratta con i trafficanti", *Ansa*, 30 August 2017, www.ansa.it/sito/notizie/cronaca/2017/08/30/libia-farnesina-italia-non-tratta-con-i-trafficanti_b481a800-9dc5-49cb-be23-0c505e2a629c.html; Patrick Wintour, "Italian minister defends methods that led to 87% drop in migrants from Libya", *The Guardian*, 7 September 2017, www.theguardian.com/world/2017/sep/07/italian-minister-migrants-libya-marco-minniti

²¹⁵ "Libia, Haftar a Roma: incontri su migranti e impegno militare italiano", *Il Sole 24 Ore*, 26 September 2017, www.ilssole24ore.com/art/notizie/2017-09-26/libia-haftar-roma-incontri-migranti-e-sicurezza-130850.shtml?uuid=AEBoJvZC

²¹⁶ "Civilians among dozens of casualties from clashes in Libyan smuggling hub", *Reuters*, 2 October 2017, reuters.com/article/us-libya-security-sabratha/civilians-among-dozens-of-casualties-from-clashes-in-libyan-smuggling-hub-idUSKCN1C7242

²¹⁷ IOM, *UN Migration Agency Providing Emergency Support to Thousands of Migrants Affected by Sabratha Conflict*, 17 October 2017, iom.int/news/un-migration-agency-providing-emergency-support-thousands-migrants-affected-sabratha-conflict



A migrant woman in Al Goyaa detention center, Garaboli (60km East of Tripoli), March 2-2016.
© TAHA JAWASHI

EUROPEAN COMPLICITY IN VIOLATIONS

“Before leaving, fear was growing inside me because I had heard stories of Libyans arresting people at sea and taking them to prison – and from there asking them to call their families to make them send money; and stories of people who had died in the sea. But I feared Libya more; in Libya they treat anyone with a dark skin as an animal...”

“Victor”, from Nigeria

THE HUMAN COST OF EUROPEAN POLICIES

Hundreds of thousands of foreign nationals are currently trapped in Libya, including an estimated 20,000 being arbitrarily detained in DCIM detention centres. Some migrants may be able to benefit from IOM Voluntary Humanitarian Return programmes, which have been expanded with financial contributions from

the EU, although the number of returns remains low in proportion to those who are trapped in Libya. The EU and other stakeholders have focused recent commitments on the further expansion of these programmes.²¹⁸ However, among those stranded in Libya are tens of thousands of people in need of international protection for whom return is not an option.²¹⁹ They cannot apply for asylum because Libya is not party to the 1951 Refugee Convention, does not recognize UNHCR and has no national asylum system. In the absence of serious commitments by European governments to offer them international protection and resettlement, they risk remaining stuck in Libya indefinitely and remain vulnerable to the grave human rights violations at the hands of the state and abuses at the hands of a range of non-state actors that are described in this report.

Faced with the prospect of continuing to suffer violations, particularly in detention centres, some may choose to avail themselves of “voluntary” return programmes to their countries of origin despite the risk of violations they would face there. Thousands more may be unable or unwilling to return home due to specific vulnerabilities or personal circumstance that would give them grounds to be granted leave to remain in Europe for humanitarian reasons if they were to access the territory of a European country, but that cannot be addressed in Libya.²²⁰

The number of refugees and migrants stranded in Libya, their constant exposure to human rights violations and abuses, the deteriorating security conditions in the country, the impossibility for them to enjoy the protection of the law, and the lack of safe and regular pathways enabling them to reach safety and protection in other countries are all factors that have pushed hundreds of thousands to embark on the dangerous crossing of the central Mediterranean in the hope of finding safety and protection in Europe.

However, in response to this situation, Italy and other EU governments, in co-operation with Libyan actors responsible for human rights abuses, have prioritized actions against refugees and migrants that have resulted in their containment in the country and exposed them to further abuses. A case in point is the co-operation with the LCG, which has been enabled and supported to intercept an increasing number of people at sea, pull them back to Libya’s shores, and transfer them to DCIM centres where they have been exposed to torture and other ill-treatment. Dozens of people interviewed by Amnesty International in 2016 and 2017 recounted how they were subjected to human rights violations as a consequence of their interception at sea.

“Samir”, from Sudan, detailed his experience once he was intercepted at sea and taken back to detention:

“The day of departure [we were] 160 people on the same boat... We left at 9pm, three boats were pushed that night: two were caught, one reached Italy... We had one escort who gave us the wrong directions, instead of going straight towards Europe, he took us east towards Zawiya, and then he had left right away and we followed his directions and found ourselves with the police... The boat was armed. There were three officers; they were in uniform and beret, wearing the one of the navy... One got onto our boat, yelled at us, told us to lay on our stomachs. When they first saw us they started shooting in the air. Once we were on our stomachs we were beaten. One, his head was beaten; he began bleeding. Another, his foot was broken. We were taken to the police in Zawiya. No NGO arrived at the land. Then we were transferred to a prison in Zawiya. We stayed eight hours in the water. I stayed in detention for 17 days. It seems the escort who gave wrong direction had arranged with the police... In prison they beat us; they asked for 1,500 Libyan dinars per head to be released. I saw one Sudanese who paid; they gave him a phone to call his family and then they give a number of someone in Sudan. The family pays him and they release [him] in Libya. They asked for money. I told them I don’t have anyone to call; my father is dead and [I have] no one to call. They said, ‘Stay here, after three months we will get money out of you.’ In prison they would beat us with a water hose. There was about over a thousand people in this place. The food was little; they give us macaroni and sometimes one loaf of bread for two people and no water. There was a tap in the bathroom; we use if we want water to drink – it was salty.”²²¹

The European governments have taken irresponsible initiatives without creating safeguards to ensure the protection and human rights of refugees and migrants. Despite current efforts by UN agencies to provide assistance to refugees and migrants at 12 disembarkation points in Libya – as well as to contribute to the EU-organized training of the LCG – the reality remains that those intercepted at sea and sent to Libya are

²¹⁸ European Commission, *Joint press release of the United Nations, the African Union and the European Union*, 29 November 2017, european-council.europa.eu/media/175029/en/statement-17-5029-en.htm

²¹⁹ UNHCR had registered 43,133 refugees and asylum-seekers as of August 2017. However, Amnesty International believes the actual number to be considerably higher, due to the extreme difficulty UNHCR is having in conducting registrations in many parts of the country where refugees and migrants are present. UNHCR, *Libya: Registration - Fact sheet*, August 2017, reporting.unhcr.org/sites/default/files/UNHCR%20Libya%20Registration%20Fact%20Sheet%20-%20August%202017.pdf

²²⁰ Out of 74,184 status determination decisions adopted by Italian authorities in 2017 (as of 24 November), leave to stay on humanitarian grounds was granted in 25% of cases, while 8% of applicants were recognized as refugees and 9% were granted subsidiary protection. Italian Ministry of Interior, National Commission for the right to asylum.

²²¹ Interview with “Samir” (name has been changed to protect the interviewee’s anonymity), Sicily, 30 July 2017.

transferred to detention centres where they are held in cruel, inhuman and degrading conditions, with no prospect of judicial review, and exposed to systematic, serious violations and abuses. Many centres remain out of reach to international agencies.

While acknowledging current efforts by UNHCR and IOM to address the needs of those stranded in Libya, and the recent decision to open a “transit and departure facility” in Tripoli to temporarily accommodate people in need of international protection,²²² Amnesty International notes the extreme limitations – logistical, political and security-related – that these organizations are facing in Libya.

In August 2017, the UN Special Rapporteur on extrajudicial, summary or arbitrary execution,²²³ as well as the Special Rapporteur on the human rights of migrants and the Special Rapporteur on torture,²²⁴ all expressed their concern about the situation of refugees and migrants in Libya especially as a result of Italy’s measures to assist the LCG to carry out interceptions resulting in disembarkation in Libya.

Speaking at the UN Human Rights Council, on 11 September 2017, the UN High Commissioner for Human Rights denounced the “horrific abuses migrants face after being intercepted and returned to Libya.”²²⁵ He added that “Extra-judicial killings, slavery, torture, rape, human trafficking and starvation are only some of the abuses reportedly inflicted on migrants in both official and informal detention centres in the country.” In a public statement issued on 14 November 2017, shortly after UN human rights monitors had visited four DCIM detention centres in Tripoli, he confirmed that “[t]he increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants... Our monitoring, in fact, shows a fast deterioration in their situation in Libya.”²²⁶

Amnesty International is extremely concerned that, rather than focusing on eradicating horrific human rights violations and abuses, Europe’s actions are leading to increasing numbers of people being stopped or intercepted, as they attempt to flee Libya, and transferred to detention centres or places of captivity where they are subjected to torture and other ill-treatment and extortion. Europe’s actions to strengthen the capacity of Libyan state and non-state actors to control Libya’s borders have resulted in the trapping of hundreds of thousands of women, men and children in a country where they are constantly exposed to the risk of serious human rights violations and abuses and where they have no access to any form of protection or redress.

THE NATURE OF EUROPEAN POLICIES: UNLAWFUL AND UNJUSTIFIABLE

The following sections are devoted to analysing to what extent the actions described above engage the responsibility under international law of the states that have realized them.

SLIDING SCALE OF *REFOULEMENT*

The prohibition on returning or otherwise transferring any person forcibly to another country or territory where he or she would be at risk of torture or other serious human rights violations (known as *refoulement*) is absolute, and well-established in both international treaty law²²⁷ and customary international law.²²⁸

²²² UNHCR, *UNHCR welcomes Libya’s transit facility to expedite third country solutions for vulnerable refugees*, 29 November 2017, www.unhcr.org/uk/news/press/2017/11/5a1edc7c4/unhcr-welcomes-libyas-transit-facility-expedite-third-country-solutions.html

²²³ OHCHR, *Italy-EU search and rescue code could increase Mediterranean deaths, UN expert warns*, 15 August 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21971&LangID=E

²²⁴ OHCHR, *EU ‘trying to move border to Libya’ using policy that breaches rights – UN experts*, 17 August 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21978&LangID=E

²²⁵ Human Rights Council, 36th session, *Opening Statement by Zeid Ra’ad Al Hussein, United Nations High Commissioner for Human Rights*, 11 September 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22041

²²⁶ OHCHR, *UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity*, 14 November 2017, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E

²²⁷ See for instance Article 33(1) of the Convention Relating to the Status of Refugees; Article 3 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

²²⁸ See for instance UNHCR: The Principle of Non-refoulement as a Norm of Customary International Law: Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93 (1994); Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol (2007), para. 15; UNHCR EXCom, Conclusion No. 6 (XXVIII) Non-refoulement (1977) para. a; A. Duffy, “Expulsion to Face Torture? Non-Refoulement in International Law”, 20(3) in *International Journal of Refugee Law*.

To the extent that Italian naval ships or crews are directly involved in operations whose clear and predictable end result is that refugees and migrants are returned to Libya, to face torture, other ill-treatment, extortion and other human rights violations, Italy is directly engaged in *refoulement* and is violating its obligations under international law, including the absolute prohibition on torture.²²⁹

Italy's other forms of support for operations by the LCG to force refugees and migrants back to Libya may be, legally, a less clear case of violation of the principle of *non-refoulement*, even though the result for the victims is very much the same. Nevertheless, such actions may give rise to legal responsibility under international law even if its involvement is indirect, provided that a sufficient level of legal proximity, foreseeability or control have been established.

Amnesty International is specifically concerned that Italy's actions entail legal responsibility for torture and other ill-treatment of refugees and migrants who are forced back to Libya, where such violations are the foreseeable result of its rendering support to LCG operations without ensuring that robust and efficient safeguards against such violations are in place, so that no one is forcibly returned to Libya to face serious human rights violations.

RESPONSIBILITY OF STATES FOR ACTS COMMITTED BY THEIR AGENTS ABROAD

In general, rules of state responsibility are rules of customary international law, which are now reflected in the Articles on Responsibilities of States for Internationally Wrongful Acts developed by the International Law Commission in 2001.²³⁰ They have been endorsed by the UN General Assembly in a number of Resolutions, and approved *ad referendum*, that is, without prejudice to the question of their future adoption or other appropriate action.²³¹

The issue of state responsibility for actions of its agents abroad has been widely discussed in various jurisdictions across the world.

In the *Trail Smelter Case (US v. Canada)*, which was subject to international arbitration, it was recognized that customary international law prohibits a state from allowing its territory to be used to cause damage on the territory of another state.²³² Reaffirming this principle, the International Court of Justice in the *Corfu Channel Case* stated that if an activity committed on a territory of a state resulted in damage abroad, "a State on whose territory or in whose waters an act contrary to international law has occurred, may be called upon to give an explanation."²³³

Opponents of extraterritorial obligations of states have usually relied on Article 29 of the Vienna Convention of the Law of Treaties, which reads that "unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of *its entire territory*",²³⁴ implying that treaty obligations stop at states' borders.

However, more recently the International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* stated that with regards to human rights obligations the situation may be different in favour of the extraterritorial application. With regards to the International Covenant on Civil and Political Rights, the International Court of Justice observed that state jurisdiction may sometimes be exercised outside the national territory. It noted that "the constant practice of the Human Rights Committee is consistent with this. Thus, the Committee has found the Covenant applicable where the State exercises its jurisdiction on foreign territory." The International Court of Justice further noted that "the Covenant did not intend to allow States to escape from their obligations when they exercise their jurisdiction outside their national territory. They only intended to prevent persons residing

²²⁹ See for instance *Hirsi Jamaa and Others vs Italy* (27765/09), European Court of Human Rights, Grand Chamber Judgement of 23 February 2012.

²³⁰ *Responsibility of States for Internationally Wrongful Acts*, Yearbook of the International Law Commission 2001, vol. II (Part 2).

²³¹ UN General Assembly, *Responsibility of States for internationally wrongful acts, UNGA Resolution 71/133*, 13 December 2016, www.un.org/en/ga/search/view_doc.asp?symbol=A/RES/71/133

²³² *Trail Smelter Case (US v. Canada)*, 16 April 1938 and 11 March 1941, *Reports of International Arbitral Awards*, Vol. III, pp. 1905-1982, legal.un.org/riaa/cases/vol_III/1905-1982.pdf

²³³ *The Corfu Channel Case, United Kingdom v. Albania*, International Court of Justice, Judgment, Merits, General List no. 1 (1949), Rep 4, p. 18.

²³⁴ Vienna Convention on the Law of Treaties, Article 29.

abroad from asserting, vis-à-vis their State of origin, rights that do not fall within the competence of that State, but of that of the State of residence.”²³⁵

Regional human rights bodies have adopted a similar approach. For example, the Inter-American Commission on Human Rights established, in relation to rights under the American Convention on Human Rights, that jurisdiction is “a notion linked to authority and effective control, and not merely to territorial boundaries.”²³⁶ The European Court of Human Rights in the case of *Iliascu and others v. Moldova and Russia* stated that the question of extraterritorial obligations of a state may arise “on account of acts which have sufficiently proximate repercussions on the rights guaranteed by the [European] Convention [on Human Rights and Fundamental Freedoms], even if those repercussions occur outside its jurisdiction.”²³⁷ Subsequently, in *Al-Skeini and others v. UK*, the European Court of Human Rights reconfirmed this principle and developed it, stating that extraterritorial obligations under the European Convention on Human Rights may accrue “whenever the State through its agents exercises control and authority over an individual, and thus jurisdiction.”²³⁸

In September 2011, a group of international law experts, including current and former members of international human rights treaty bodies, regional human rights bodies and former and current Special Rapporteurs of the UN Human Rights Council, adopted the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights (Maastricht Principles).²³⁹ Although the Maastricht Principles are not a legally binding document they serve as an authoritative interpretation of international law and standards in the area they cover. They are based on more than a decade of legal research and considered customary international law, treaty law as well as jurisprudence of international courts and tribunals, regional and international human rights bodies, as well as work of international law scholars and practitioners. Although the principles deal with economic, social and cultural rights the legal concepts underpinning them are also applicable to other areas of human rights and public international law.

The Maastricht Principles recognize that state responsibility is engaged by conduct which is attributable to a state both within its territory and extraterritorially.²⁴⁰ In certain situations state responsibility may also be attributed to conduct by non-state actors, especially when they act on instruction, under control or are otherwise empowered by state institutions.²⁴¹

The Maastricht Principles maintain, crucially, that all states, alongside their obligation to respect, protect and fulfil human rights within their own territories, also have extraterritorial obligations in this regard.²⁴² The Maastricht Principles recognize two kinds of extraterritorial obligations. First, they extend to acts and omissions by states which affect the enjoyment of human rights outside of their territory.²⁴³ Secondly, they encompass obligations of a global character deriving from the UN Charter and relating to actions taken by states separately or jointly through international co-operation.²⁴⁴

The scope of states’ jurisdiction, and thereby responsibility, is defined in Principle 9, which recognizes the following three types of situations in which states have obligations to respect, protect and fulfil economic, social and cultural rights:

- situations over which it *exercises authority or effective control*, whether or not such control is exercised in accordance with international law;
- situations over which *state acts or omissions bring about foreseeable effects* on the enjoyment of economic, social and cultural rights, whether within or outside its territory;
- situations in which the state, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.

The first of the three types of situations pertains where the requirement of “authority or effective control” is met. It is consistent with the view of the UN Human Rights Committee which has stated that states “must

²³⁵ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 9 July 2004, www.icj-cij.org/files/case-related/131/1677.pdf

²³⁶ *Saldado v. Argentina*, Individual Petition no. 38/99, OEA/Ser.LV/II.95 Doc. 7 rev., para. 19.

²³⁷ *Iliascu and Others v. Moldova and Russia* (48787/99), European Court of Human Rights, para. 317.

²³⁸ *Al-Skeini and Others v. United Kingdom* (55721/07), European Court of Human Rights, para. 133.

²³⁹ ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, January 2013, www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUId%5D=23

²⁴⁰ Principle 11.

²⁴¹ Principle 12.

²⁴² Principle 3 and 4.

²⁴³ Principle 8 (a).

²⁴⁴ Principle 8 (b).

respect and ensure the rights laid down in the [International] Covenant [on Civil and Political Rights] to anyone within the *power or effective control* of that State Party, even if not situated within the territory of the State Party.”²⁴⁵ Similarly, the UN Committee against Torture defined the scope of territory in the meaning of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as to include “situations where a State party exercises, directly or indirectly, *de facto* or *de jure* control over persons in detention.”²⁴⁶ Similarly, the requirement of “authority or effective control” has been recognized by the European Court of Human Rights and the Inter-American Commission on Human Rights.²⁴⁷

However, Principle 9(b) of the Maastricht Principles also mentions situations in which there may be an absence of an effective control and authority where states may nevertheless have obligations for their actions or omissions as long as their effects are foreseeable. The authors of the Commentary to the Maastricht Principles, who were also their drafters, are clear on this.²⁴⁸ In the case of *Manuf v. Romania* the UN Human Rights Committee stated that “a State party may be responsible for extraterritorial violations of the [International] Covenant [on Civil and Political Rights], if it is a link in the causal chain that would make possible violations in another jurisdiction. Thus, the risk of an extraterritorial violation must be a necessary and foreseeable consequence and must be judged on the knowledge the State party had at the time.”²⁴⁹

RELEVANT IMPUTABLE KNOWLEDGE

Amnesty International considers that Italy and all other EU member states are and have been well aware of the widespread human rights violations and abuses suffered by refugees and migrants in Libya, including in the detention centres run by the Libyan Government of National Accord where refugees and migrants are forcibly taken immediately after being apprehended by the LCG and other border control authorities and non-state actors.

Since the fall of Muammar al-Gaddafi’s government in 2011, reports by international organizations, governmental bodies, UN expert bodies and individuals, NGOs and numerous media outlets have exposed the widespread human rights violations committed by Libyan state actors and the abuses perpetrated by armed groups, criminal gangs and militias against refugees and migrants in Libya. Detailed and consistent testimonies about the horrific treatment of refugees and migrants in detention have been regularly reflected in such reports. These have included, among others:

- UN Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/726, 22 August 2017²⁵⁰
- UN Security Council, Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011), S/2017/466, 1 June 2017²⁵¹
- UN Security Council, Report of the Secretary-General on the United Nations Support Mission in Libya, S/2017/283, 4 April 2017²⁵²
- UNICEF, A Deadly Journey for Children: The Central Mediterranean Migration Route, February 2017²⁵³
- UN General Assembly, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and

²⁴⁵ UN Human Rights Committee, *General comment No. 31, The nature of the general legal obligation imposed on States Parties to the Covenant*, UN Doc. CCPR/C/21/Rev.1/Add.13, 26 May 2004, para. 10.

²⁴⁶ UN Committee Against Torture, *General Comment No. 2: Implementation of Article 2 by States Parties*, UN Doc. CAT/C/GC/2, 24 January 2008, para. 16.

²⁴⁷ See for example *Saldado v. Argentina*, Individual Petition no. 38/99, OEA/Ser.L/V/II.95 Doc. 7 rev; *Ilascu and Others v. Moldova and Russia* (48787/99), European Court of Human Rights; *Al-Skeini and Others v. United Kingdom* (55721/07), European Court of Human Rights.

²⁴⁸ Oliver de Schutter, Asbjorn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights”, 34 *Human Rights Quarterly* 1084 (2012), p. 1108.

²⁴⁹ *Munaf v. Romania*, Human Rights Committee, Communication no. 1539/2006.

²⁵⁰ UN, *Report of the Secretary General on the United Nations Support Mission in Libya*, 22 August 2017, www.un.org/ga/search/view_doc.asp?symbol=S/2017/726

²⁵¹ UN, *Letter Dated 1 June 2017 from the Panel of Experts on Libya Established Pursuant to Resolution 1973 2011 addressed to the president of the security council*, 1 June 2017, www.un.org/ga/search/view_doc.asp?symbol=S/2017/466

²⁵² UN, *Report of the Secretary General on the United Nations Support Mission in Libya*, 4 April 2017, www.un.org/ga/search/view_doc.asp?symbol=S/2017/283

²⁵³ UNICEF, *A deadly journey for children*, February 2017, www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf

capacity-building measures received by the Government of Libya, A/HRC/34/42, 13 January 2017²⁵⁴

- UN Support Mission in Libya and Office of the UN High Commissioner for Human Rights, *“Detained and dehumanised”: Report on human rights abuses against migrants in Libya*, 13 December 2016²⁵⁵
- UN General Assembly, Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya, A/HRC/31/47, 15 February 2016²⁵⁶
- UN Support Mission in Libya and Office of the UN High Commissioner for Human Rights, *Report on the human rights situation in Libya*, 16 November 2015²⁵⁷
- UNHCR, UNHCR position on returns to Libya – Update 1, October 2015²⁵⁸
- Council of Europe, Commissioner for Human Rights, Letter to the Italian Minister of Interior seeking clarifications over Italy's maritime operations in Libyan territorial waters, 28 September 2017²⁵⁹
- Council of Europe, Commissioner for Human Rights, *EU agreements with third countries must uphold human rights*, 2 February 2017²⁶⁰
- US Department of State, Country Reports on Human Rights Practices for 2016 – Libya²⁶¹
- Amnesty International, *A perfect storm: The failure of European policies in the central Mediterranean*, 6 July 2017²⁶²
- Amnesty International, *Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya*, 1 July 2016²⁶³
- Amnesty International, *EU risks fuelling horrific abuse of refugees and migrants in Libya*, 14 June 2016²⁶⁴
- Amnesty International, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants*, 11 May 2015²⁶⁵
- Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya*, 20 June 2013²⁶⁶
- Human Rights Watch, *Italy: Navy Support for Libya May Endanger Migrants*, 2 August 2017²⁶⁷
- Human Rights Watch, *EU: Shifting Rescue to Libya Risks Lives*, 19 June 2017²⁶⁸

²⁵⁴ OHCHR, *Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity building measures received by the Government of Libya*, 13 January 2017, documents-dds-ny.un.org/doc/UNDOC/GEN/G17/006/12/PDF/G1700612.pdf?OpenElement

²⁵⁵ OHCHR, *“Detained and dehumanised”*.

²⁵⁶ OHCHR, *Report on the Situation of Human Rights in Libya*, 13 January 2017, ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/34/42

²⁵⁷ OHCHR, *Report on the human rights situation in Libya*, 16 November 2015, www.ohchr.org/Documents/Countries/LY/UNSMIL_OHCHRJointly_report_Libya_16.11.15.pdf

²⁵⁸ UNHCR, *UNHCR Position on returns to Libya – Update 1*, October 2015, www.refworld.org/docid/561cd8804.html

²⁵⁹ Council of Europe, *Commissioner seeks clarifications over Italy's maritime operations in Libyan territorial waters*, 11 October 2017, www.coe.int/en/web/commissioner/-/commissioner-seeks-clarifications-over-italy-s-maritime-operations-in-libyan-territorial-waters

²⁶⁰ Council of Europe, *EU agreements with third countries must uphold human rights*, 2 February 2017, www.coe.int/en/web/commissioner/-/commissioner-seeks-clarifications-over-italy-s-maritime-operations-in-libyan-territorial-waters, www.coe.int/en/web/commissioner/-/eu-agreements-with-third-countries-must-uphold-human-rights

²⁶¹ US Department of State, *Country Reports on Human Rights Practices for 2016*, www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2016&dliid=265510

²⁶² Amnesty International, *A perfect storm*.

²⁶³ Amnesty International, *Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya* (Press Release, 1 July 2016), www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/

²⁶⁴ Amnesty International, *EU risks fuelling horrific abuse of refugees and migrants in Libya* (Press Release, 14 June 2016), www.amnesty.org/en/latest/news/2016/06/eu-risks-fuelling-horrific-abuse-of-refugees-and-migrants-in-libya/

²⁶⁵ Amnesty International, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from refugees and migrants* (Index: MDE 19/1578/2015).

²⁶⁶ Amnesty International, *Scapegoats of fear: Rights of refugees, asylum-seekers and migrants abused in Libya* (Index: MDE 19/007/2013).

²⁶⁷ Human Rights Watch, *Italy: Navy Support for Libya May Endanger Migrants*, 2 August 2017, www.hrw.org/news/2017/08/02/italy-navy-support-libya-may-endanger-migrants

²⁶⁸ Human Rights Watch, *EU: Shifting Rescue to Libya Risks Lives*, 19 June 2017, www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives

- Médecins Sans Frontières, Libya: Open letter – European governments are feeding the business of suffering, 6 September 2017²⁶⁹
- Médecins Sans Frontières, MSF warns EU about inhumane approach to migration management, 3 February 2017²⁷⁰
- Médecins Sans Frontières, Libya: MSF Teams Providing Medical Care to Detained Refugees and Migrants, 13 December 2016²⁷¹
- Médecins Sans Frontières, Turning a blind eye: How Europe ignores the consequences of outsourced migration management, November 2015²⁷²

Representatives of Italian and European governments, institutions and agencies have in fact acknowledged the gravity of the human rights situation in Libya and, more specifically, the human rights violations perpetrated against refugees and migrants in detention centres or places of captivity, in a number of meetings with Amnesty International during the research for this report. They have also done so on several other occasions, including the following.

In response to a letter from Amnesty International to Italy's Prime Minister Paolo Gentiloni, in which Amnesty International expressed concern for the human rights violations in Libya's detention centres and the negative consequences of Italy's co-operation with Libya on border control, Ambassador Mariangela Zappia, Diplomatic Councillor to the Prime Minister, wrote to Amnesty International on 3 November 2017. The letter said, among other things: "We are on the front line for the improvement of living conditions in the reception centres for migrants in Libya – *whose problems have been well known to us for a long time* – in co-operation with the main actors and international agencies."²⁷³ [emphasis added]

On 15 August 2017, Italy's Minister of Interior, Marco Minniti, said during a press conference: "When the Libyan Coast Guard's control over the Libyan territorial waters will become stable, there is an issue of primary importance, and that is the issue of the living conditions of those who are saved by the Libyan Coast Guard and taken back to Libya."²⁷⁴ This appears to indicate that the Minister, albeit conscious of the situation in the detention centres, was nonetheless implementing a strategy under which the outsourcing of border control functions to the LCG would take place *before* any action to address human rights violations suffered by refugees and migrants in Libya.

In an interview published by the Italian newspaper *La Stampa* on 6 August 2017, the Deputy Minister for Foreign Affairs, signalling partial disagreement with decisions of the government, stated: "Our ships will keep collecting migrants. Preferably, also those present in boats blocked by the Libyan Coast Guard, when our ships are in a condition to do so. Because taking them back to Libya, at this moment, means taking them back to hell."²⁷⁵

A review by the UK Independent Commission for Aid Impact²⁷⁶ in March 2017, while noting that the UK and EU work to build the capacity of the LCG aims to increase the likelihood that refugees and other irregular migrants are intercepted by the LCG, and that those intercepted are placed in detention, expressed concern "that the programme delivers migrants back to a system that leads to indiscriminate and indefinite detention and denies refugees their right to asylum." The body also concluded that the risk of UK aid causing

²⁶⁹ Médecins Sans Frontières, *Libya: Open letter – European governments are feeding the business of suffering*, 6 September 2017, www.msf.org/en/article/libya-open-letter-european-governments-are-feeding-business-suffering

²⁷⁰ Médecins Sans Frontières, *Migration: MSF Warns EU about inhumane approach to migration management*, 3 February 2017, www.msf.org/en/article/migration-msf-warns-eu-about-inhumane-approach-migration-management

²⁷¹ Médecins Sans Frontières, *Libya MSF Team Providing Medical Care to Detained Refugees and Migrants*, 13 December 2016, www.doctorswithoutborders.org/article/libya-msf-teams-providing-medical-care-detained-refugees-and-migrants

²⁷² Médecins Sans Frontières, *Turning a blind eye: How Europe ignores the consequences of outsourced migration management*, November 2015, www.msf.org.uk/sites/uk/files/turning-a-blind-eye.pdf

²⁷³ Original in Italian: "Siamo inoltre in prima linea per il miglioramento delle condizioni di vita dei centri di accoglienza dei migranti in Libia – la cui criticità ci è da tempo ben nota – in cooperazione con i principali attori ed agenzie internazionali."

²⁷⁴ Original in Italian: "Nel momento in cui dovesse stabilizzarsi il dato dell'azione di controllo delle acque territoriali libiche da parte della guardia costiera, si pone una questione di grandissimo rilievo, e cioè il tema delle condizioni di vita di coloro che vengono salvati dalla guardia costiera e riportati in Libia. Come voi sapete questo è l'assillo personale mio, ed è l'assillo dell'Italia." video.repubblica.it/cronaca/migranti-minniti-condizioni-di-chi-e-riportato-in-libia-sono-mio-assillo/282714/283328

²⁷⁵ Original in Italian: "Le nostre navi continueranno a raccogliere i migranti. Sarebbe auspicabile, anche quelli ospitati da imbarcazioni bloccate dalla Guardia costiera libica, quando le nostre imbarcazioni siano in condizione di poterlo fare. Perché riportarli in Libia, in questo momento, vuol dire riportarli all'inferno." www.lastampa.it/2017/08/06/italia/cronache/giro-fare-rientrare-quelle-persone-vuol-dire-condannarle-allinferno-SXnGzVlzfF7fNGFCMADN/pagina.html

²⁷⁶ The UK Independent Commission for Aid Impact is an UK official body responsible for conducting independent reviews on UK aid spending and reporting findings to the UK parliament.

unintended harm to vulnerable migrants, or preventing refugees from reaching a place of safety, had been inadequately assessed.²⁷⁷

A leaked report by the EU Border Assistance Mission to Libya (EUBAM), dated 25 January 2017, confirms, among other things, that “[t]here are reports about these DCs [detention centres] which describe gross human rights violations and extreme abuse and mishandling of detainees, including sexual abuse, slavery, forced prostitution, torture and maltreatment.”²⁷⁸

Also in January 2017, extracts from an internal report by the German embassy in Niger to the German Ministry of Foreign Affairs, titled *Return from hell*, were leaked by the German newspaper *Die Welt*.²⁷⁹ According to the newspaper, the report compared holding places to “concentration camps”, and included interviews with refugees and migrants who had described suffering or witnessing gross human rights violations including torture, rape, and executions.

Several resolutions of the European Parliament have highlighted the critical situation in Libya in the past few years, including one from 2012 already indicating that “human rights abuses and violations are committed regularly in Libya against migrants, asylum seekers and refugees, and... undocumented foreigners continue to be at risk of exploitation, racism, arbitrary detention, beatings and torture, including while in detention...”, and expressing “deep concern about the extreme conditions of detention to which foreign persons, including women and children, are subjected – many of them victims of sexual and gender-based violence – and about their lack of recourse to an adequate legal framework and protection...”²⁸⁰

Italy and other European governments have nevertheless chosen to co-operate and provide assistance to Libyan authorities, not only by tolerating violations and abuses but – with regard to specific co-operation measures aimed at interceptions at sea – also by proactively contributing to violations and abuses, in particular by providing funds, training, equipment and other forms of assistance to enhance the capacity of Libyan security agencies to intercept and detain refugees and migrants, which has led to the arbitrary detention and ill-treatment of women, men, and children. Italy and other European governments have also failed to take any reasonable measure to prevent and end violations and abuses and to require Libyan counterparts to take adequate steps towards ending such violations and abuses as a condition underpinning the implementation of any co-operation measure.

²⁷⁷ Independent Commission for Aid Impact, *The UK's aid response to irregular migration in the central Mediterranean*, 10 March 2017, icai.independent.gov.uk/report/uks-aid-response-irregular-migration-central-mediterranean/

²⁷⁸ European External Action Service, *EUBAM Libya Initial Mapping Report Executive Summary*, 25 January 2017, statewatch.org/news/2017/feb/eu-eeas-libya-assessment-5616-17.pdf

²⁷⁹ “Flüchtlinge in Libyen: ‘Wir sind weniger wert als Hunde’”, *Welt*, 29 January 2017, www.welt.de/politik/ausland/article161608446/Wir-sind-weniger-wert-als-Hunde.html

²⁸⁰ European Parliament, *Resolution on the situation of migrants in Libya (2012/2879(RSP))*, 22 November 2012, www.europarl.europa.eu/cmsdata/40865/att_20121128ATT56804-7744803661669500636.pdf

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

Hundreds of thousands of migrants, refugees and asylum-seekers are trapped by a web of complicities in which collusion between Libyan authorities and traffickers or smugglers, on the one hand, and between European governments and Libyan authorities and other actors, on the other, expose them to an array of human rights violations and abuses.

Refugees and migrants are subjected to widespread and systematic abuse across Libya – inflicted with total impunity. They are constantly at risk of being unlawfully killed, tortured, otherwise ill-treated and exploited, and cannot avail themselves of the protection of the law or seek international protection. Thousands are detained in centres managed by the Libyan Ministry of Interior; thousands more are held in places of captivity run by militias and criminal gangs. In both cases, people are unlawfully detained in inhuman conditions, and systematically exposed to torture and other cruel, inhuman and degrading treatment or punishment, including sexual violence, often to extort a ransom to be paid by relatives to those guarding the detention centres. In fact, Libyan authorities who should be responsible for protecting the rights of refugees and migrants – and in particular DCIM and LCG officials – are widely subjecting them to human rights violations, including torture and other ill-treatment, often operating in collusion with traffickers and smugglers.

Despite being fully conscious of this situation, European governments have decided to implement migration-control policies essentially aimed at stopping irregular border crossings, by strengthening the capacity and commitment of various Libyan actors to control borders. This is trapping hundreds of thousands of women, men, and children in a country where they are systematically exposed to abuse and where they have virtually no chance to seek protection, in the absence of any guarantees or mechanisms to concretely improve and monitor the respect for and protection of human rights in Libya. European governments have enhanced the capabilities of Libyan authorities managing migration and guarding borders, without prioritizing the protection of refugees and migrants by conditioning support and assistance on human rights standards and recognition of the basic principle of asylum. This is facilitating and perpetuating the horrific human rights violations from which foreign nationals in Libya are desperately seeking to flee. European governments, and Italy in particular, are breaching their international legal obligations and becoming complicit in such violations, sharing with Libya the responsibility for the arbitrary detention and ill-treatment of refugees and migrants who have been contained on Libyan territory, intercepted while attempting to flee and held in inhumane conditions in detention centres and places of captivity where torture and other ill-treatment are widespread and systematic.

Amnesty International considers that European governments and institutions must fundamentally rethink their external policies on migration and asylum. It is high time for them to acknowledge the critical shortcomings of policies focusing on the outsourcing of border control and asylum processing to third countries – and particularly to countries of transit with extremely problematic human rights records. These must be replaced with human rights-compliant policies that focus primarily on safe and legal pathways for refugees and would-be migrants, and that seriously address the root causes of forced displacement: conflict, human rights violations, and poverty.

In relation to Libya, EU governments must realize the horrific consequences of their policies of containment, recognize their unlawful nature, and reset their co-operation with Libya. This must focus first and foremost on protecting human rights, and in particular those of migrants, refugees and asylum-seekers trapped in Libya. Preventing deaths in the Mediterranean must remain a priority, but this should not and does not need to come at the expense of the rights of the people fleeing Libya. A very different approach to the one adopted currently, which appears almost exclusively driven by the desire to reduce departures from Libya, is required. A detailed list of recommendations is offered below.

RECOMMENDATIONS

Amnesty International urges the Libyan authorities to protect the rights of foreign nationals in Libya, be they refugees, asylum-seekers or migrants. Amnesty International also urges the EU and its member states to immediately reset their co-operation with Libya on migration, focusing on protecting the human rights of refugees, asylum-seekers and migrants rather than on their containment in the country.

In particular, in light of the findings set out in this report, Amnesty International makes the following recommendations:

TO THE LIBYAN AUTHORITIES

- Promptly locate, register and release any foreign nationals arbitrarily held in DCIM detention centres or held captive by militias and armed groups and provide them with adequate assistance and access to rights, including the ability to obtain international protection in countries other than Libya or to return safely to their countries of origin.
- End arbitrary arrests of foreign nationals.
- Put in place a mechanism to issue documentation to all refugees and migrants inside Libya, particularly to ensure they are not vulnerable to arrest or deportation while their case is under assessment.
- Decriminalize irregular entry, stay and exit, and end the policy and practice of mandatory detention of refugees and migrants considered to be in an irregular situation. Amend Law no. 19 of 2010 on Combating Irregular Migration and Law no. 6 of 1987 to make irregular entry, stay and exit only an administrative offence.
- Formally recognize and facilitate the mandate and work of UNHCR in Libya by allowing the organization unhindered access to detention centres to register people of concern, conduct refugee status determination, accept asylum claims from anyone wishing to apply and to provide protection and assistance as necessary – regardless of the nationality of the beneficiary.
- Adopt a national asylum law that is consistent with international asylum and refugee standards in light of Libya's obligations under the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa, which recognizes the right to asylum. Sign and ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol.
- Allow humanitarian agencies unrestricted access to all places where refugees and migrants are being held or disembarked.
- Initiate independent, impartial investigations into all allegations of torture and other ill-treatment – including rape and sexual violence – and any other crimes by DCIM officials and LCG officials, and ensure that those reasonably suspected of ordering, committing or allowing such acts are removed from positions where they can repeat these violations and prosecuted in a transparent and fair trial.
- Instruct the LCG to:
 - limit their search and rescue activities to Libyan waters;
 - allow search and rescue operations by civilian vessels, including boats operated by NGOs, to take place unhindered, including in the proximity and, if necessary, inside Libyan territorial waters;
 - commit not to claim and exercise on scene command during a search and rescue operation;

- transfer any rescued person onto EU or foreign vessels participating in a rescue operation in the Mediterranean.
- Remove from duty those members of the LCG found to have carried out actions that have endangered the lives of refugees and migrants, as well as towards NGO rescue boats at sea.
- Take steps to counter racism, xenophobia and discrimination against foreign nationals by actively challenging public perceptions about refugees, asylum-seekers and migrants, in particular those from sub-Saharan Africa, by designing public awareness-raising campaigns, delegating this to the Ministry of Social Affairs and ensuring the full co-operation of the state media.
- End financial support to and remove official recognition of militias responsible for human rights violations.
- Work towards dissolving the DCIM under the Ministry of Interior and establishing a new ministry for refugees, asylum-seekers and migrants that would be responsible for the overall migration and asylum policy. This ministry should co-ordinate with the Ministry of Interior and Ministry of Defence to implement migration policy and facilitate the full recognition and respect of the mandate of UNHCR.

TO EU GOVERNMENTS AND INSTITUTIONS

- Reset all co-operation with Libya on migration – in the form of financial, institutional, material, policy and/or capacity support – focusing it on the priority of protecting the human rights of refugees, asylum-seekers and migrants in the country.
- Work with Libyan authorities to achieve, and consistently and publicly call on them to take immediate steps to ensure:
 - the prompt release of all refugees, asylum-seekers and migrants being arbitrarily detained, and the end of the system of automatic detention;
 - the full and formal recognition of UNHCR, in the form of a memorandum of understanding that guarantees the organization's full access to people of concern across the country and the possibility to carry out its full mandate, irrespective of the nationality of beneficiaries;
 - the adoption and enactment of new legislation and policies on migration and asylum, providing for the decriminalization of irregular entry, stay and exit; an end to automatic detention; and the creation of an asylum system.
- Ensure that any form of co-operation does not lead or contribute to human rights violations, in particular by:
 - establishing an independent human rights monitoring mechanism, with full unhindered access to oversee the conduct of the LCG and the DCIM, which would report jointly to the Libyan authorities and the EU on a regular basis on any human rights violations, with a view to ensuring that adequate investigations and prosecutions are initiated and that those alleged to have perpetrated human rights violations are promptly removed from their post;
 - asking the Libyan authorities to ensure that the LCG limits its search and rescue activities to Libyan waters; allows search and rescue operations by civilian vessels to take place unhindered; commits not to claim and exercise on scene command during a search and rescue operation; transfers any rescued person onto EU or foreign vessels participating in a rescue operation in the Mediterranean since Libya is not a place of safety;
 - carrying out a transparent and thorough vetting process for members of the LCG to ensure that those who are trained have not been involved in carrying out human rights violations;
 - pausing plans and the provision of any support for the creation of a Libyan Maritime Rescue Coordination Centre until Libya has stable and reliable institutions which can credibly deliver search and rescue coordination to the standard required by the relevant international law and until Libya can be regarded as a safe port of disembarkation for refugees and migrants;

- ensuring that NGOs rescuing lives at sea can continue to contribute to rescuing refugees and migrants, in compliance with relevant international law and standards;
- Ceasing all forms of co-operation, funding, support or assistance to militias, armed groups and other non-state actors implicated in committing abuses against migrants and other serious human rights abuses and violations of international humanitarian law.
- Ensure, including through a review of current naval operations, that an adequate number of vessels with search and rescue as their primary purpose are deployed along the routes taken by boats carrying refugees and migrant, including near Libyan territorial waters, for as long as departures of refugees and migrants from Libyan shores continue, and that these vessels can disembark those rescued in an appropriate place of safety in Europe.
- Open safe and legal routes into Europe, in particular by offering a meaningful number of places for resettlement and alternative pathways to protection to the thousands of people in need of protection and stranded in Libya, and by reviewing migration policies with a view to facilitate regular pathways for would-be migrants.

TO THE ITALIAN AUTHORITIES (IN ADDITION TO THE ABOVE)

- Replace as a matter of urgency the February 2017 Memorandum of Understanding with an agreement informed by the above mentioned human rights priorities and focused on action to achieve them. All forms of migration-related co-operation based on the Memorandum of Understanding – including programmes funded by the EU but led by Italy – with Libyan authorities involved in the detention of refugees and migrants should be reviewed and amended accordingly. To this end, Italy should publicly clarify all co-operation measures and projects based on the Memorandum of Understanding and establish a system to verify the compatibility of such measures and projects with human rights protection in Libya.
- Review and amend the mandate of the naval operation, currently in place to support the LCG in combating irregular migration, to ensure that it focuses on search and rescue activities leading to disembarkation in Europe of refugees and migrants rescued at sea.
- Ensure that the co-ordination of any rescue operation in the central Mediterranean by the Italian Maritime Rescue Coordination Centre is carried out in compliance with obligations arising from the law of the sea and international human rights and refugee law in such a way as to reduce to a minimum the involvement of the LCG and leads to the transfer of those rescued to a boat that will disembark them in a place of safety, which cannot be Libya.

TO THE AFRICAN UNION AND MEMBER STATES

- Urge the Libyan authorities to fully respect international and regional human rights commitments towards refugees and migrants, including by taking immediate measures to release all refugees, asylum-seekers and migrants being arbitrarily detained; decriminalize irregular entry, stay and exit; and end the policy and practice of mandatory detention of refugees and migrants considered to be in an irregular situation.
- Ensure all ongoing and planned operations to evacuate migrants and refugees currently trapped in Libya comply with relevant international and regional human rights obligations, including the prohibition of *refoulement* and the obligation to ensure effective refugee status determination, as well as the provision of all necessary protection and assistance to all irrespective of nationality or origin.
- Urge the Libyan authorities to comply with their obligations under the 1969 Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa and to recognize and facilitate the mandate and work of UNHCR in the form of a memorandum of understanding that guarantees the organization's full access to people of concern across the country and the possibility to carry out its full mandate, irrespective of the nationality of beneficiaries.
- Urge the EU and EU member states to open safe and legal routes for migrants and refugees into Europe by reviewing migration policies, in particular by offering a meaningful number of places for resettlement and alternative pathways to the thousands of people in need of protection stranded in Libya.

- Urge the EU and EU member states to review all co-operation agreements with Libya on migration – in the form of financial, institutional, material, policy or capacity support – to ensure full compliance with international obligations and regional standards on protection of the human rights of refugees, asylum-seekers and migrants in the country.
- Request the government of Italy to publicly clarify all ongoing co-operation projects it supports in Libya based on the Memorandum of Understanding it signed with the government of Libya in February 2017, and establish a system to verify the compatibility of such measures and projects with its human rights obligations.

TO THE AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

- Further to the request of the Chairperson of the African Union Commission, expedite steps to carry out a fact-finding mission to Libya to investigate all allegations of abuses and violations against migrants and refugees, including allegations of torture and other ill-treatment and other abuses documented in this and other reports.

**AMNESTY INTERNATIONAL
IS A GLOBAL MOVEMENT
FOR HUMAN RIGHTS.
WHEN INJUSTICE HAPPENS
TO ONE PERSON, IT
MATTERS TO US ALL.**

CONTACT US



info@amnesty.org



+44 (0)20 7413 5500

JOIN THE CONVERSATION



www.facebook.com/AmnestyGlobal



[@Amnesty](https://twitter.com/Amnesty)

LIBYA'S DARK WEB OF COLLUSION

ABUSES AGAINST EUROPE-BOUND REFUGEES AND MIGRANTS

In recent years, hundreds of thousands of refugees and migrants have braved the journey across Africa to Libya and often on to Europe. In response, the Libyan authorities have used mass indefinite detention as their primary migration management tool. Amnesty International's research reveals how refugees and migrants have been subjected to a wide array of violations and abuses at the hands of Libyan officials, militias and smugglers, who are often working in close co-operation. They suffer torture and other ill-treatment and arbitrary detention in appalling conditions, extortion, forced labour and killings. Some have been exposed to abuses during interceptions at sea.

Despite being fully aware of this, the European Union and its member states, and Italy in particular, have decided to reinforce the capacity of Libyan authorities to intercept refugees and migrants at sea and transfer them to detention centres where their human rights will almost certainly be violated. Amnesty International has concluded that they are therefore complicit in these abuses and in breach of their own human rights obligations.

It is essential that the aims and nature of this co-operation be rethought; that the focus shift from preventing arrivals in Europe to protecting the rights of refugees and migrants.