UNITED NATIONS
SUPPORT MISSION IN LIBYA

UNITED NATIONS
HUMAN RIGHTS
OFFICE OF THE HIGH COMMISSIONER

"DETAINED AND DEHUMANISED"
REPORT ON HUMAN RIGHTS ABUSES AGAINST MIGRANTS IN LIBYA

13 December 2016

United Nations Support Mission in Libya

Office of the United Nations High Commissioner for Human Rights

“Detained and dehumanised”

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1. Executive summary

The situation of migrants in Libya is a human rights crisis. The breakdown in the justice system has led to a state of impunity, in which armed groups, criminal gangs, smugglers and traffickers control the flow of migrants through the country. The United Nations Support Mission in Libya (UNSMIL) has also received credible information that some members of State institutions and some local officials have participated in the smuggling and trafficking process. Libya is a destination and transit country for migrants. Many suffer human rights violations and abuses in the course of their journeys. They are subjected to arbitrary detention, torture, other ill-treatment, unlawful killings, sexual exploitation, and a host of other human rights abuses. Migrants are also exploited as forced labour and suffer extortion by smugglers, traffickers, as well as members of State institutions. Women migrants are the most exposed, amidst numerous and consistent reports of rape and other sexual violence.

Migrants are held arbitrarily in detention centres run mostly by the Department for Combatting Illegal Migration (DCIM). They are brought to the centres where there is no formal registration, no legal process, and no access to lawyers or judicial authorities. Conditions in detention are generally inhuman: severely overcrowded, without adequate access to toilets or washing facilities, food, or clean water. In several detention centres visited by UNSMIL, migrants were observed in large numbers in a single room without even sufficient space to lie down. Amidst severe challenges faced by the health sector in Libya as a result of the conflict, some hospitals have refused to treat migrants, citing a lack of payment and fear of infectious diseases. Information received by UNSMIL shows a consistent and widespread pattern of guards beating, humiliating and extorting migrants, including by taking money for their release. A number of migrants interviewed by UNSMIL had sustained gunshot or knife injuries; several migrants had visible wounds and head injuries.

UNSMIL also received reports that groups pledging allegiance to the so-called Islamic State in Iraq and the Levant (ISIL) have been involved in the abduction and abuse of migrants in Libya.

Migrants, as well as representatives of international non-governmental organizations that carry out search and rescue operations, have also recounted dangerous, life-threatening interceptions by armed men believed to be from the Libyan Coast Guard. After interception, migrants are often beaten, robbed and taken to detention centres or private houses and farms, where they are subjected to forced labour, rape, and other sexual violence.

From 1 January to 22 November 2016, 168,542 migrants arrived in Italy from Libya and 4164

are known to have died at sea. The actual number is likely to be higher. The European Union is seeking to disrupt the smuggling of migrants and trafficking of humans by a number of means including through its naval Operation Sophia[1]. Lifesaving search and rescue operations are carried out by ships belonging to the European Union Operations Sophia and Triton[2], and ships of individual European States such as the Italian Coast Guard, non-governmental organizations, and merchant ships[3]. Rescued migrants are taken to Italy. Some senior government officials in Europe have called for the establishment of migrant camps in North Africa and the return of boats to Libya. However, European Union policy and international law prohibits the return of any individual to a place where she or he is at risk of torture or other serious human rights abuses. The Libyan Coast Guard has also carried out limited search and rescue operations in Libyan territorial waters.

The Libyan authorities, with the support of the international community, must do all in their power to address this human rights crisis, starting as a matter of urgency with the situation of migrants in detention. In addition, as the issue of migration has a wider regional and international dimension, countries of origin and destination need to play their role in addressing the crisis. In this present report, UNSMIL and the Office of the United Nations High Commissioner for Human Rights (OHCHR) propose immediate and mid-term recommendations, with a view to addressing this situation in a manner which is both comprehensive and human rights-based.

In this regard, recommendations addressed to the Libyan authorities include, with a view to urgently ending the arbitrary detention of all migrants, to release immediately migrants who are in the most vulnerable situations; reduce the number of detention centres; ensure female detainees are held separately from male detainees; improve conditions of detention; facilitate the work of the office of the United Nations High Commissioner for Refugees (UNHCR) and the International Organization for Migration (IOM) in the country; and, in the medium-term, to amend Libyan legislation in order to decriminalize irregular migration; ratify the 1951 Refugee Convention and its 1967 Protocol and adopt a national asylum law.

In addition, OHCHR and UNSMIL recommend that countries of destination beyond Libya, including Member States of the European Union, expand safe and regular entry channels and the availability of durable solutions; continue search and rescue operations; and ensure that training and support for Libyan institutions which engage with migrants is accompanied by

[1] See European Union Naval Force - Mediterranean Operation Sophia, Fact Sheet, 30 November 2016, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf

[2] Operation Sophia and Operation Triton (the latter conducted by Frontex, the European Border and Coast Guard Agency) form part of the European Union strategy for managing migration, based on the European Agenda on Migration, the Valletta Summit and the Partnership Framework approach, including through promoting cooperation with countries of origin, transit, and destination. Further information is available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm

[3] The 1979 International Convention on Maritime Search and Rescue requires States parties to ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of the person or the circumstances in which the person is found and to provide for his or her initial medical or other needs and deliver him or her to a place of safety.

comprehensive efforts to address the human rights of migrants, including through ending their arbitrary detention and improving their treatment in detention. A number of recommendations are also directed to migrants' countries of origin including to facilitate voluntary, humanitarian and sustainable repatriation of migrants and to work on human rights and development programmes aimed at providing alternatives to irregular migration.

2. Introduction and methodology

This report is published by UNSMIL in accordance with its mandate[4], in cooperation with OHCHR. It summarizes information on the human rights situation of migrants in Libya, including on abuses and violations of international human rights law, committed in the course of 2016.

The report is based on information gathered primarily in the course of the human rights monitoring activities of UNSMIL. Since its establishment in 2011, UNSMIL has carried out a number of visits to DCIM detention centres in various locations in Libya, although since 2014 the security situation has curtailed UNSMIL's ability to carry out such visits. These challenges notwithstanding, four visits to DCIM detention centres in Tripoli and Misrata were conducted in 2016.

In addition, UNSMIL and OHCHR undertook a monitoring mission to Italy, including Lampedusa, between 27 June and 1 July, visiting the Center for Identification and Expulsion in Ponte-Galeria (Rome); "hotspots" at Lampedusa, Trapani and Pozzallo; the House of Cultures Shelter (Scicili, Sicily); the ex-Casa Marconi (Palermo); and the Rainbow center for unaccompanied minors (Palermo). UNSMIL staff met with rescued migrants, Italian and European Union officials, staff from various United Nations agencies and representatives of international and national non-governmental organizations. UNSMIL interviewed over 50 individuals who described having been subjected to human rights violations and abuses during their transit through Libya. Victims included women, men and children. The majority of those interviewed were nationals of Eritrea, Nigeria, Gambia, Somalia, Côte d'Ivoire, Guinea, Sudan, Mali, Senegal, Bangladesh and Egypt.

UNSMIL also received information from a range of other sources, including media professionals, medical and humanitarian workers, and local authorities. Specific sources are often not indicated and identifying details have been removed in order to protect the safety of witnesses and survivors. Information collected from victims reflected a high level of consistency

[4] The mandate of UNSMIL, renewed most recently by United Nations Security Council resolution 2291, includes the undertaking of "human rights monitoring and reporting". The Director of the Human Rights, Transitional Justice and Rule of Law Division of UNSMIL is the representative of the High Commissioner for Human Rights in Libya.

with information collected from other sources, corroborating the patterns of violations and abuse described in this report[5]. The findings of this report are consistent with the findings of the OHCHR investigation on Libya, which conducted monitoring missions to Italy and Malta in 2015[6]. The findings are also consistent with information collected by UNSMIL in 2014 and 2015. UNSMIL raised its concerns and discussed recommendations with the Director of DCIM, over a number of meetings in 2016, as well as with other Libyan officials.

For the purposes of this report, "migrant" is used as an umbrella term to cover the categories of refugee and asylum seeker, as well as international migrants in an irregular situation, trafficked persons, smuggled migrants, and other categories, unless specified otherwise. In the absence of a universal legal definition, OHCHR defines an "international migrant" as "any person who is outside a State of which he or she is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence".[7] A refugee is defined as a person outside of his or her own country who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion"[8] and requires international protection as a substitute to the protection of his or her country of origin. An asylum seeker is someone who is seeking protection as a refugee, but for whom a determination of status has not yet been made. An asylum seeker may in fact already be a refugee even before a state has granted recognition, since being a refugee is based on the facts of his or her situation, rather than on the granting of status.

[5] Others have also published information on the situation of migrants transiting Libya. See, for example, "Trapped in Transit: Refugees, Migrants and Asylum Seekers Stranded and Suffering in Libya", Médecins Sans Frontières, 22 July 2016, http://www.doctorswithoutborders.org/article/trapped-transit-refugees-migrants-and-asylum-seekers-stranded-and-suffering-libya ; "Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya", Amnesty International, 1 July 2016, https://www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/ ; and "EU/NATO: Europe's Plan Endangers Foreigners in Libya" , Human Rights Watch, 6 July 2016, https://www.hrw.org/news/2016/07/06/eu/nato-europes-plan-endangers-foreigners-libya

[6] The OHCHR investigation on Libya was established pursuant to Human Rights Council resolution 28/30. For more information see A/HRC/31/CRP.3, paras 246-271.

[7] See Situation of migrants in transit, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/31/35, para.8, and OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014, p. 4.

[8] 1951 Convention relating to the Status of Refugees, article 1. See also article 1 of the Organization of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa adopted by the Heads of State and Government in Addis Ababa on 10 September 1969 to whi7ch Libya is a party.

3. Background

Libya is both a transit and destination country for migrants.[9] People on the move include individuals migrating because of conflict and persecution, but also, inter alia, extreme poverty, and lack of access to decent work, education, and healthcare.

From the 1970s to the 1990s, the Government of Libya encouraged migration from other Arab countries but also from all of Africa, to help meet the domestic labour needs. Since the early 2000s, Libya has been a key transit country for reaching Europe irregularly, particularly for migrants from sub-Saharan African countries including Burkina Faso, Ethiopia, Eritrea, Ghana, Mali, Niger, Nigeria, Somalia and Sudan, as well as other countries in North Africa and western Asia. From the 2000s onwards, Libya began to be more restrictive in its approach to migrants, in part in response to pressure from European countries. Visa requirement for all nationalities, except for those from countries in the Maghreb region, were introduced, along with policies of detention and deportation of irregular migrants.[10]

Bilateral agreements signed between Italy and Libya from 2007 to 2009 included provisions to address irregular migration, which led to migrants being intercepted in international waters and returned to Libya (otherwise known as "pushbacks"). In 2012, the European Court of Human Rights found that in returning migrants arbitrarily from international waters to Libya and by exposing migrants from Somalia and Eritrea to the risk of ill-treatment in Libya, Italy had violated the European Convention on Human Rights, specifically the right to *non-refoulement* and collective expulsion.[11] The current policy of Italy as a State, and the European Union as a regional organisation, is that no person rescued by an Italian or a European Union vessel shall be taken to Libya. As articulated in relation to Operation Sophia, "all of the activities undertaken in each phase adhere to and respect international law, including human rights, humanitarian and refugee law and the '*non-refoulement'* principle meaning that no rescued persons can be disembarked in a third country".[12]

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[9] For further information see "*DTM Libya Flow Monitoring Analysis, September – October 2016*" report, p.9, International Organization for Migration, which notes that ""Libya was the destination country for the majority of migrants surveyed. 56% of all respondents reported Libya as their destination country, while 17% reported Italy as the country of intended destination. The remaining 27% reported 34 other countries". The report is available at http://www.globaldtm.info/dtm-libya-flow-monitoring-survey-analysis-september-october-2016/

[10] For further background, see *Assessment of Priorities for the Development of Libya's Migration Policies: A Strategic Vision*, Final Report to the International Organization for Migration (IOM) by Eurasylum Ltd., November 2014 and *Immigration Detention in Libya* by Mariette Grange and Michael Flynn, Global Detention Project, February 2015, and *Migration Policy Centre- Migration Profile, Libya*, Migration Policy Centre, June 2013.

[11] The Case of Hirsi Jamaa and Others v. Italy (Application No. 27765/09), Judgement, European Court of Human Rights, Strasbourg, 23 February 2012. See also Intervener brief filed on behalf of the United Nations High Commissioner for Human Rights (filed pursuant to leave granted by the Court on 4 May 2011), Hirsi et al v Italy (Application No. 27765/09), European Court of Human Rights.

[12] See European Union Naval Force - Mediterranean Operation Sophia, Fact Sheet, 30 November 2016, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf

The deterioration in the security environment in Libya, starting with the 2011 conflict and followed by a further deterioration in 2014, has led to increasing numbers of migrants smuggled or trafficked through Libya into Europe. The breakdown in the justice system has led to a state of impunity, in which armed groups, criminal gangs, smugglers and traffickers control the movement of migrants through the country.

Bilateral agreements with Chad, Sudan, Algeria, and Tunisia in 2012 and with Egypt in 2013 on security and border controls have not apparently led to systematic cooperation and have had little impact on the flow of migrants and the operation of criminal networks to smuggle and traffic migrants across land borders.[13]

While overall numbers of migrants in Libya are not known, it is estimated that the majority are irregular, arriving in particular from Egypt, Chad and Nigeria.[14] The Displacement Tracking Matrix of IOM tracked 276,957 migrants in the month of August 2016.[15] This figure includes migrants as well as possible refugees and asylum seekers. As at the time of writing UNHCR had registered approximately 38,000 refugees and asylum-seekers, half of whom are from Syria. It is estimated that the total number of migrants, refugees, and asylum seekers currently present in Libya is much higher than these figures.

According to IOM, between 1 January and 22 November 2016, 168,542 migrants reached Italy from North Africa, most from Libya, compared to 144,205 migrants for a similar period in 2015. From 1 January to 22 November 2016, 4,164 migrants who travelled through Libya are known to have died at sea along the central Mediterranean Sea route, compared to 3,565 for a similar period along the Central, Eastern and Western Mediterranean Sea routes.[16] The number of migrants who have died during land journeys while travelling to and through Libya is unknown, although the numbers are thought to be significant.

In June 2015, the European Union launched Operation Sophia in the Mediterranean Sea off the coast of Libya. The core mandate of the operation is to "undertake systematic efforts to identify, capture and dispose of vessels and enabling assets used or suspected of being 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".[17] Since the operation's inception to November 2016, 101 suspected smugglers and traffickers have been prosecuted by the Italian authorities and 344 boats removed from criminal organization availability.[18] By 27 October 2016 the Operation had also rescued

[13] *Assessment of Priorities for the Development of Libya's Migration Policies: A Strategic Vision*, Final report to IOM by Eurasylum Ltd. 2014, p. 41
[14] Ibid. p. 6
[15] See IOM DTM Libya at www.globaldtm.info/libya/
[16] See IOM Missing Migrants Project for further information at https://missingmigrants.iom.int/
[17] See European Union Naval Force - Mediterranean Operation Sophia, Fact Sheet, 30 November 2016, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/pdf/factsheet_eunavfor_med_en.pdf
[18] See "*Farewell to the French ship Enseigne de vaisseau Jacoubet*", press release, 9 November 2016, http://eeas.europa.eu/csdp/missions-and-operations/eunavfor-med/news/20161109_en.htm

over 29,300 persons in 200 rescue operations and had supported other organizations in the rescue of more than 41,200 persons.[19] Rescued migrants are disembarked in Italy.[20]

In October 2015, the Security Council authorized Member States to inspect and seize vessels in the Mediterranean that are suspected of being used for migrant smuggling or human trafficking.[21] The authorization was extended for a further year following the adoption of resolution 2312 on 6 October 2016. The Foreign Affairs Council of the European Union decided on 20 June to add two supporting tasks to the mandate, effectively allowing it to contribute to the capacity building and training of the Libyan Coast Guard and Navy and the implementation of the United Nations arms embargo on the high seas off the coast of Libya. Following a request for support from the Libyan authorities, an initial training course took place in October and November 2016 on board two naval assets on the high seas for 78 embarked trainees and their mentors.[22] Following a vetting procedure undertaken by the European Union, participants received training in seamanship, coast guard skills, and international human rights and refugee law, the latter with the support of UNHCR.

Operation Sophia forms one element of the migration strategy of the European Union[23]. The strategy also includes, inter alia, a partnership framework approach with countries of origin and transit[24]; the delivery of capacity-building programmes to the Libyan Government; and support for the work of United Nations organizations in the region, including IOM and UNHCR, as well as to other international organizations and non-governmental organizations operating in Libya.

In recent months, some senior government officials in Europe have suggested that refugees and asylum seekers should be held in camps in Libya or elsewhere in North Africa. In September 2016, the Prime Minister of Hungary was quoted as saying that the European Union should establish a "*giant refugee city*" in Libya to process asylum seekers from Africa before they reach Europe.[25] In October, the Foreign Secretary of the United Kingdom reportedly said that boats

[19] See "*EUNAVFOR MED Operation Sophia starts training of Libyan Navy Coast Guard and Libyan Navy*", press release, 27 October 2016", https://eeas.europa.eu/headquarters/headquarters-homepage/13195/eunavfor-med-operation-sophia-starts-training-of-libyan-navy-coast-guard-and-libyan-navy_en

[20] Rescues are also undertaken by the Italian Coast Guard, non-governmental organizations such as Sea Watch and MSF, and merchant vessels among others.

[21] Security Council resolution 2240, adopted on 9 October 2015, authorized Member States to inspect and seize vessels suspected of migrant smuggling and trafficking for a period of one year.

[22] See "*EUNAVFOR MED Operation Sophia starts training of Libyan Navy Coast Guard and Libyan Navy*", press release, 27 October 2016", https://eeas.europa.eu/headquarters/headquarters-homepage/13195/eunavfor-med-operation-sophia-starts-training-of-libyan-navy-coast-guard-and-libyan-navy_en

[23] See Communication on a European Agenda on Migration, COM(2015) 240 final of 13.05.2015, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/index_en.htm

[24] See Communication on establishing a new Partnership Framework with third countries under the European Agenda on Migration, COM (2016) 385 final of 07.06.18, available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160607/communication_external_aspects_eam_towards_new_migration_ompact_en.pdf

[25] See "*Hungary PM suggests giant migrant city in Libya*", BBC News, 24 September 2016, http://www.bbc.com/news/world-europe-37463386

should be turned back as close to Libya as possible.[26] In November, the Ministry of Interior of Germany reportedly proposed that rescued migrants be sent to North African States to apply for asylum there.[27] However these declarations do not reflect European Union policy which prohibits the return of any individual to a place where she or he is at risk of torture or other serious human rights abuses.

The United Nations considers that migrants should not be returned to Libya since it is not a safe country for return. IOM has suspended its returns programs to Libya since August 2014, including for Libyan nationals. UNHCR has urged all States to suspend forcible returns to Libya, including Tripoli, until the security and human rights situation has improved considerably. Given the volatility of the current situation, the fragmentation of control, and the plethora of armed groups, UNHCR considers that, in the current circumstances, the relevance and reasonableness criteria for an internal flight or relocation alternative are unlikely to be met. UNHCR also does not consider that Libya meets the criteria for being designated as a place of safety for the purpose of disembarkation following rescue at sea.[28] OHCHR considers migrants to be at high risk of suffering serious human rights violations, including arbitrary detention, in Libya and thus urges States not to return, or facilitate the return of, persons to Libya.

In the context of increasing global attention to the plight of migrants, on 19 September 2016, the United Nations General Assembly adopted the New York Declaration for Refugees and Migrants, which initiated a process of intergovernmental negotiations to conclude with the adoption of a global compact on safe, orderly and regular migration, as well as a global compact on refugees based on a comprehensive refugee response framework by 2018.[29]

4. International legal framework

Libya is a party to the International Covenant on Civil and Political Rights (ICCPR) and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; and the Convention on the Rights of the Child and its Optional Protocols on the

[26] See "*'Turn them back' Boris Johnson says migrant boats should be sent straight back to Libya*", Sunday Express, 16 September 2016, www.express.co.uk/news/world/711131/Boris-Johnson-says-migrant-boats-should-be-sent-straight-back-to-Libya

[27] See "*German ministry wants to return asylum seekers to Africa*", Independent, 6 November 2016, www.independent.co.uk/news/world/europe/german-ministry-refugee-migrants-asylum-seekers-africa-libya-tunisia-egypt-australia-a7400681.html

[28] See UNHCR Position on Returns to Libya- Update 1, UNHCR, October 2015, http://www.refworld.org/docid/561cd8804.html

[29] A/RES/71/1

Involvement of Children in Armed Conflict, and on the Sale of Children, Child Prostitution and Child Pornography.

Libya is also a party to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Libya has not ratified and is not a party to the 1951 Convention relating to the Status of Refugees or its Protocol. It has however ratified the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa (OAU Convention), which adopts the same definition of a refugee as the 1951 Convention and its 1967 protocol. However, Libya has yet to implement the OAU Convention through the adoption of asylum legislation or establish asylum procedures.

Under international human rights law, the detention of migrants solely for reasons related to their immigration status should never be mandatory or automatic. Migrants have a right to security and liberty of person.[30] Irregular entry or stay within a country should not constitute a criminal offence as the individual has not committed a crime against the person, property or national security.[31] Detention should always be a measure of last resort, imposed only where less restrictive alternatives were found inadequate to meet legitimate purposes. It is only permissible on lawful grounds (such as national security, public health, verification of identity); decided on an individual basis; when strictly necessary and proportionate; for the shortest possible time;[32] in humane conditions; and under judicial supervision. Children should never be detained on the basis of their or their parents' migration status as detention is never in the best interest of the child,[33] and always constitutes a violation of the rights of the child.[34] Women in detention should be held separately from men and be guarded by female guards.[35]

[30] See for example ICCPR, art. 9

[31] The United Nations Committee on Migrant Workers, General Comment No. 2, para. 24, states: "crossing the border of a country in an unauthorized manner or without proper documentation, or overstaying a permit of stay does not constitute a crime. Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention. While irregular entry and stay may constitute administrative offences, they are not crimes per se against persons, property or national security".

[32] See Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/20/24, para. 68 which notes that "Detention for immigration purposes should never be mandatory or automatic. According to international human rights standards, it should be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available. Governments have an obligation to establish a presumption in favour of liberty in national law, first consider alternative non-custodial measures, proceed to an individual assessment and choose the least intrusive or restrictive measure". See also Communication No. 560/1993, A. v. Australia, Views adopted by the Human Rights Committee on 30 April 1997, paras. 9.3-9.4; Communication No. 794/1998, Jalloh v. Netherlands, Views adopted by the Human Rights Committee on 15 April 2002, para. 8.2; Communication No. 1557/2007, Nystrom v. Australia, Views adopted by the Human Rights Committee on 18 July 2011, paras. 7.2-7.3; Committee against Torture, concluding observations: Poland, CAT/C/POL/CO/5-6, para. 13; and Concluding Observations: Sweden CAT/C/SWE/CO/6-7, para. 10. This principle was also highlighted in para. 33 of the New York Declaration for Refugees and Migrants in which Member States pledged to consider reviewing policies that criminalize cross-border movements and to pursue alternatives to detention while the assessments were under way.

[33] See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, para. 80 which notes that "Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration

The principle of *non-refoulement* is a fundamental principle of international law. This principle prohibits the return of any individual to a place where she or he is at risk of torture or other serious human rights violations.[36] Refugees and asylum seekers are protected from being returned to their country of origin where they would face persecution, either directly or indirectly. The principle of *non-refoulement* is applicable not only to refugees but to any migrant at risk.[37] Everyone has a right to leave any country, including their own.[38] This right shall not be subject to any restriction except those which are provided by law, are necessary to protect national security, public order, public health, or morals or rights and freedoms of others, and are consistent with other rights.[39] No one shall be arbitrarily deprived of the right to enter one's own country.[40]

Libya is also a State party to the 1979 International Convention on Maritime Search and Rescue, which requires States parties to ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of the person or the circumstances in which the person is found and to provide for his or her initial medical or other needs and deliver him or her to a place of safety.

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status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children.". This principle was also highlighted in para. 56 of the New York Declaration for Refugees and Migrants in which Member States affirmed that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents.

[34] See Convention on the Rights of the Child, art. 3. See also Report of the UN Committee on the Rights of the Child: Day of General Discussion on the rights of all children in the context of migration; and Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/20/24, para. 41.

[35] See the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Rules 11(a) and 81, General Assembly resolution 70/175, annex, adopted on 17 December 2015. See also the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), General Assembly resolution 65/229, Annex, adopted on 21 December 2010, which states that in order for the principle of non-discrimination to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules.

[36] The prohibition of *refoulement* is explicitly included in the 1951 Convention Relating to the Status of Refugees (1951 Convention) as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The principle has been interpreted by international human rights bodies, regional human rights courts, as well as national courts to be an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights.

[37] CAT, art. 3

[38] ICCPR, art. 12 (2)

[39] ICCPR, art. 12 (3).

[40] ICCPR, art. 12(4)

5. National legal framework and practice

5.1. National legal framework

Libya does not have a comprehensive migration governance framework. Existing laws and regulations, some of which date back to the 1950s, contain significant gaps. They are not sufficient to address the current situation and fall short of international standards.

Law No. 6 of 1987 Regulating Entry, Residence and Exit of Foreign Nationals criminalizes irregular entry into and stay in Libya. It does not distinguish between migrants, refugees, asylum seekers, victims of trafficking,[41] migrants in vulnerable situations, migrant children, or other migrants in need of international human rights protection. Law No. 6 was amended by Law No. 2 of 2004 to tighten visa requirements. The amendment required all non-nationals, with some Arab states excepted, to obtain a valid visa to enter the country. Law No. 6 also regulates the deportation of non-nationals.

In 2010, Law No. 19 on Combatting Irregular Migration was adopted. According to this law, the provisions laid down by previous laws on migration will be voided in case of contradiction. It stipulates that when arrested, migrants are to be treated "in a humane manner, keeping their dignity and rights, without assault on their money or assets" (Article 10). Migrants are allowed two months to regularize their stay from entry into force of the law. After this time, according to the provisions of the law, they face criminal penalties, which include "imprisonment with labour or by a fine not exceeding 1,000 Libyan Dinars" (Articles 6 and 11). It further states that "in all cases, a foreigner convicted of any of the crimes set forth in this law shall be expelled from the territory of the Great Jamahiriya immediately upon execution of the sentence" (Article 6). The person convicted could be exempt from punishment if he/she takes the initiative of informing the authorities provided the information leads to the prosecution of the criminals (Article 8). In addition, Law No. 6 of 1987 stipulates that entry, stay, or exit without a valid visa could be punishable with a sentence of imprisonment. The Penal Code stipulates that a sentence of imprisonment is up to three years (Article 22).

It appears that there are no legal provisions that empower State institutions to undertake the administrative detention of irregular migrants.[42] However, the public prosecution has the power to suspend criminal actions against any defendant, including those detained under immigration-related criminal proceedings. Therefore, administrative measures foreseen in other laws, such as deportation, can be still implemented.

[41] A draft law on human trafficking was prepared by the Ministry of Justice in 2013. It provided for protection of victims of human trafficking. However, the law has not been adopted.
[42] See Immigration Detention in Libya, Global Detention Project, February 2015, p 4. http://www.refworld.org/pdfid/5567387e4.pdf

Migrant labour laws place a particular burden on employers to ensure compliance with heavy administrative requirements, reportedly leading to high levels of non-compliance and employment of irregular migrants outside of a legal framework.[43]

While article 10 of the 2011 interim Constitutional Declaration provides that "the State shall guarantee the right to asylum in accordance with the law. The extradition of political refugees shall be prohibited", Libya has not established an asylum system in law or practice. As a result, asylum seekers or refugees in Libya without appropriate documentation, including those rescued and disembarked, face detention for illegal entry under Law No. 19 of 2010.

5.2. Practice

Increasingly since 2011, and particularly since 2014, the Libyan justice system has been severely hampered due to ongoing fighting and insecurity. Many courts have not been functioning or only partially function. Armed groups have threatened and attacked judges, lawyers, prosecutors and law enforcement officials. Human rights violations and abuses have not been addressed adequately by the formal justice system, impeding the right of victims to effective remedy.[44]. Armed groups have also taken on law enforcement functions, and effectively control many official detention centres or run their own unofficial detention centres, further increasing the vulnerability of those detained.

Armed groups, criminal gangs and networks, smugglers, traffickers have cooperated and competed in the smuggling and trafficking of migrants through Libya, while carrying out serious human rights abuses and violations against migrants. UNSMIL has also received credible information that some members of State institutions and some local officials have participated in the smuggling and trafficking process. Exploitation and the buying and selling of individuals have taken place frequently. Such individuals are often subject to labour exploitation. In the case of those migrants who wish to travel across the sea to Europe, many are compelled to work to earn their onward transport. They are also subjected to extortion by smugglers and traffickers who force them to request additional money from their families though a complex system of money transfers. Migrants are among the most vulnerable people in Libya, as they do not have tribal or other community protections to which others may have recourse. Women are often the most exposed, amidst numerous and consistent reports of rape and other sexual violence.

During the Qadhafi period, the Passport Investigations Department, under the General People's Committee for Public Security, managed a number of immigration detention facilities, holding thousands of individuals suspected of being irregular migrants, including refugees. Others were

[43] See *Assessment of Priorities for the Development of Libya's Migration Policies: A Strategic Vision*, Final report to IOM by Eurasylum Ltd. 2014, p. 31
[44] ICCPR, art. 2

held in regular prisons across Libya. In early 2012, the Passport Investigations Department was largely replaced by DCIM. According to the information available to UNSMIL at least two detention facilities in western Libya are still under the control of the Passport Investigations Department.

DCIM, which operates under the Ministry of Interior, bears the main responsibility for management of migrant detention centres, and represents the key national institution which works with migrants in Libya. Another key institution is the Libyan Coast Guard which is part of the Libyan Navy and operates under the Minister of Defence.[45] It is responsible for search and rescue at sea operations. Both institutions are subjected to pressure from armed groups, which have proliferated since 2011 and appear to be the most powerful actors in the system of smuggling, trafficking, and abuse. Armed groups have threatened Libyan Coast Guard and DCIM staff to hand over migrants. UNSMIL has received reports indicating that Libyan Coast Guard and DCIM staff members have worked with armed groups, smugglers and traffickers to exploit migrants for profit. Inadequate resources and working conditions, lack of sufficiently trained and disciplined staff, and the activities of armed groups and criminal networks, have contributed to the worsening of conditions in DCIM centres and have affected operations at sea, exposing migrants to further risks and abuses.

Migrants in detention in Libya are usually held arbitrarily for indefinite periods, during which their detention is not reviewed by competent judicial authority. They also have no due process guarantees or access to legal counsel to seek legal recourse. They are held in DCIM immigration detention centres as well as in at least two centres run by the Passport Investigation Department and in unofficial detention centres run by armed groups. There are 24 detention centers run by the DCIM but not all are functional. They hold between 4,000 to 7,000 detainees in total, with numbers varying significantly from one centre to the next. DCIM has granted IOM, UNHCR, and other agencies and NGOs access to detention centres to provide humanitarian assistance such as hygiene kits and other items of immediate necessity, as well as basic medical care.[46]

[45] In addition to the Libyan Coast Guard, a civilian Shore and Port Security department operates under the Minister of Interior. It does not carry out search and rescue operations at sea.

[46] IOM and UNHCR are working with the Libyan Coast Guard and DCIM to establish a "Contact Group" for information sharing and to coordinate the response to refugees or asylum seekers and migrants rescued at sea and brought into Libyan territory. The Contact Group will consist of interlocutors at the front-line from the Libyan Coast Guard, the Libyan Red Crescent Society, affected Municipalities, and various other national and international actors. In addition, a Detention Task Force co-chaired by IOM and UNHCR and including UNSMIL and other international organizations meets regularly to coordinate work in detention centres including those managed by DCIM.

6. Human rights violations and abuses against migrants in Libya

Many migrants have described to UNSMIL and others their time in Libya as "*hell*". They have been subjected to arbitrary detention, torture – including rape and sexual violence – and other ill-treatment, unlawful killings, and forced labour.

6.1. Arbitrary detention and inhuman conditions of detention

International human rights law prohibits arbitrary detention.[47] Detention is arbitrary if it is not in accordance with the legitimate purpose and procedures established by law, or is otherwise inappropriate, unjust, unreasonable, or unnecessary in the circumstances.[48] A detained person has a range of due process guarantees , including the right to be informed of the reason of arrest at the time of arrest, to be brought promptly before a judicial authority and trial within a reasonable period or release, as well as the right to prompt and regular access to legal representation and advice.[49] Persons deprived of their liberty must be treated with humanity and with respect for their inherent dignity.[50]

As stated by the Special Rapporteur on the Human Rights of Migrants, "irregular entry or stay should never be considered criminal offences: they are not per se crimes against persons, property or national security. It is important to emphasize that irregular migrants are not criminal per se and should not be treated as such."[51] The Committee on the Protection of the Rights of All Migrant Workers and Members of their Families also emphasizes that while irregular entry and stay may constitute administrative offences, they are not crimes: "crossing the border of a country in an unauthorized manner or without proper documentation, or overstaying a permit of stay does not constitute a crime. Criminalizing irregular entry into a country exceeds the legitimate interest of States parties to control and regulate irregular migration, and leads to unnecessary detention."[52]

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[47] ICCPR, art. 9 (1). See Human Rights Committee, General Comment No 35, Article 9 (Liberty and security of person), CCPR/C/GC/35. See also the procedural safeguards for persons in detention under the Body of Principles of the Protection of all Persons under any Form of Detention or Imprisonment adopted the General Assembly in its resolution 47/173 on 9 December 1988.

[48] The Human Rights Committee has clarified that the meaning of the term "arbitrary" must be interpreted "broadly to include elements of inappropriateness, injustice and lack of predictability": Communication No. 305/1998, Hugo van Alphen v The Netherlands, Views adopted by the Human Rights Committee on 23 July 1990, para. 5.8.

[49] ICCPR, art. 9 (3). Article 9 outlines other due process rights that relate to arrest and detention.

[50] ICCPR, art. 10.

[51] A/HRC/20/24, para. 13.

[52] General Comment No. 2, CMW/C/GC/2, para. 24., The United Nations Working Group on Arbitrary Detention has also noted that "criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate irregular immigration and leads to unnecessary detention", A/HRC/7/4, para. 53

According to information received by UNSMIL, armed groups, smugglers and traffickers, private employers, police, the Libyan Coast Guard, and DCIM staff have brought migrants into DCIM detention centres, with no formal registration, no legal process, and no access to lawyers or judicial authorities. Usually their documents and belongings are confiscated. Migrants have been found in detention while still in possession of required documents such as work permits, passports, and visas. Migrants are held indefinitely for periods varying from days to months. The detention of migrants under these circumstances is arbitrary, contravening both Libyan national law and international human rights standards.

Migrants are also held in unofficial places of detention while transiting through Libya, including in detention centres run by armed groups and "connection houses" – places where smugglers and traffickers hold migrants during transit before transfer onto the next location. Migrants are also held in farms, warehouses, houses and apartments secured by smugglers, traffickers and armed groups.

According to information received by UNSMIL, on 19 October, armed men abducted a man from Bangladesh along with a number of other Bangladeshi nationals before they reached passport control at Mitiga international airport in Tripoli before they reached passport control. According to his account, he was held in a warehouse for 12 days where he was beaten and subjected to other forms of ill-treatment. He was released after a payment of 5,000 Libyan Dinars was made by his family through a money transfer. He said there were around 300 people of different nationalities, the majority from Bangladesh, held with him in the warehouse.

Conditions of detention in DCIM centres are generally inhuman, falling far short of international human rights standards. Many of the centres are warehouses or other structures unfit to hold people, characterized by severe overcrowding, lack of light, and very little ventilation. In a number of centres, the overcrowding and a lack of sanitation facilities has led to the spread of infectious diseases, including scabies and chickenpox. Acute diarrhea and respiratory tract infections are common and directly related to the living conditions. Infestation by lice and fleas are often observed. In one centre, more than 200 men were held in a room that could reasonably hold less than 40. Due to lack of access to toilets, detainees were forced to openly defecate and urinate in their cells. Sometimes detainees used cups or other containers for such purpose and waited for an opportunity to empty them outside, or threw urine against walls that are heated by the sun thus facilitating the evaporation of the urine.

Malnutrition is widespread due to the lack of adequate food. Credible reports received by UNSMIL indicated that in some centres, approximately fifty per cent of the detainees were found to be suffering from malnutrition, with ten per cent of male adult detainees suffering acute malnutrition. Information received by UNSMIL indicated that the average number of calories provided to migrants on daily basis recently in detention centres in Tripoli is 35 per cent of the quantity actually required for an adult male. The levels of malnutrition increase with the length of stay in the centres. Migrants have described the water that they receive as salty, dirty, and undrinkable. In some centres, for example the DCIM detention centre in Al-Fallah, a lack of

payment to the food catering providers led to food distribution being suspended, sometimes for days, or to the quantity and quality of the food being reduced.

Access to medical care is generally limited to that provided by international organizations, some of which operate through local implementing partners, and is grossly inadequate in light of the needs. Local hospitals require payment to treat foreign nationals and UNSMIL has received reports that some have refused to treat migrants, citing a lack of payment and fear of infectious diseases. In general, the health system in Libya is close to collapse and faces severe challenges as a result of infrastructural damage, lack of medicines, medical equipment, and personnel.[53]

Many of the migrants that UNSMIL staff interviewed in Italy were reluctant to talk about their experience in Libya. As one explained: "*We don't want to remember it, we turned the page of Libya*".

A 28-year-old migrant from Cameroon told UNSMIL staff that at the end of 2015 he was detained twice in the Al-Zawiya DCIM detention center. He described detention conditions as very crowded, dark, and lacking ventilation. He and the other migrants were usually forbidden to leave their cells. When the guards did allow them to leave, the guards spat on their faces, humiliated them, and beat them. He said the guards forced them to stand still in the sun and punished them if they moved.

A 17-year-old orphan migrant from Guinea said that while he was in Libya in early 2016, he was detained in Al-Qatrun DCIM detention center for three weeks. He said he was beaten and humiliated, but managed to escape when officials forced him to work on a farm.

A 16 year-old boy from Eritrea told UNSMIL staff that he had travelled through Sudan and Libya to Italy, arriving at Pozallo, Sicily on 28 June 2016. He spent a month and a half in Libya, mostly in a detention facility in Tripoli, after being caught by armed and uniformed men. He could not identify the detention facility where he was held, but described his experience. He was held in a metal hangar with approximately 200 men, women and children who were mainly from Somalia and Eritrea. There were no windows and very little ventilation. There was only one toilet, forcing those detained to use bottles for urination. The odor was overwhelming, and many detainees were ill. Some had scabies and others had breathing problems. They were given very little food. He said, "*we black-skinned Africans, we are called animals and are treated as animals.*"

On 29 November, the bodies of 28 migrants were buried in the city of Bani Walid. The bodies were found in the area and the victims appeared to have died from malnutrition. Reports received

[53] 80 percent of healthcare workforce, mainly foreign workers, has fled the country; over 60 percent of health facilities have been closed or work on reduced capacity due to infrastructural damage, lack of medicines, medical equipment and medical personnel. This leaves nearly 2 million people (one-third of the population) in need of assistance to access life-saving health services. Humanitarian Bulletin Libya, Issue 08, October 2016, available at https://unsmil.unmissions.org/Portals/unsmil/Documents/Humanitarian%20Bulletin%20Libya%20Issue%208_October%202016_EN.pdf

by UNSMIL indicate that several dead bodies of migrants are found every week in the area. Bani Walid is on one of the smuggling routes from the south to the northern coastal areas.

6.2. Torture and other ill-treatment

UNSMIL has documented numerous accounts of migrants detained in DCIM centres who were subjected to torture and other ill-treatment by DICM guards, compounding the impact of the inhuman conditions described in this report. One migrant interviewed in Italy described being held in a "connection house" and detained in a DCIM detention centre in al-Gwia'. He told UNSMIL staff: "Sometimes we are beaten for no reason, we don't know whether it's the effect of alcohol, drugs or they just do it for fun…"

Many of the migrants interviewed by UNSMIL in Italy bore signs of serious injuries. They explained that the injuries had been caused by guards in DCIM detention centres, employers, and those in charge of "connection houses," beating them with items such as sticks, rocks, and metal bars. A child migrant interviewed in Sicily told UNSMIL staff that "*they beat us with what falls to their hands… it can be a rock, a stick, a brick…*"

A number of migrants interviewed by UNSMIL staff had sustained gunshot or knife injuries; several migrants had visible wounds and head injuries. Some complained that they had lost their eyesight and had hearing problems because of beatings to their heads and ears.

Half of the migrants interviewed who had been detained in official and unofficial places of detention in Libya said that they had witnessed the deaths of other migrants. They attributed the fatalities to the conditions of detention, including severe malnutrition, illness, beatings, or other violence.

Migrants interviewed by UNSMIL staff reported that extortion in DCIM detention centres is often accompanied by violence. Guards would provide a mobile phone and force detainees to call their relatives and ask them to transfer a sum of money, usually to secure their release. During the call the migrants may be tortured to compel their families to transfer the money. Interviewees recounted that several migrants were shot dead or died as a result of torture when they or their families could not pay the amount requested.

A 16-year-old boy from Senegal, who arrived in Italy on 25 May 2016, said that he had been detained for four months in the Garabulli DCIM detention center in greater Tripoli with other migrants, including adults and children. Guards threatened to kill him, beat him, and repeatedly demanded money. He described how DCIM guards cooperated with a group of four Nigerians and three Libyans in extortion and forced labour. He said that the detention center was overcrowded and lacked adequate food and health services.

A 17-year-old boy from Guinea described how he was detained at the Al-Fallah DCIM centre in Tripoli in November 2015. In the following two months he said that he was handed over by

DCIM guards to smugglers for money, returned to the DCIM centre for an unknown reason, and was then handed over to another group of smugglers again for money.[54] While in detention, he witnessed guards beating his friend, a boy from Senegal aged approximately 17, because his friend was too weak to work hard and so could not be sold for forced labour. DCIM guards demanded that his friend call home to ask relatives to transfer money to them. His friend refused, explaining that his family did not have enough money. The guards beat his friend with sticks, kicked, and punched him. He was then left with the other migrants, unable to move and barely breathing. The guards then took him and never brought him back. The boy assumed his friend had died.

A similar account was given by a 16-year-old boy from Eritrea who was detained in Al-Fallah DCIM detention facility. He told UNSMIL staff that guards beat him and told him to call his family so that they would send money. A few weeks later, his family sent the money. He was then handed over to a smuggler who took him to Sabrata. The boy was told by other detainees that in April 2016, Al-Fallah DCIM centre guards beat a young Eritrean man to death when his family was not able to send him any money.

6.3. Forced labour

The overwhelming majority of migrants interviewed, including those who paid smugglers in other countries, described experiences in Libya of being forced to work in farms, as domestic workers, construction and road paving workers, and rubbish collectors. Those who were forced to work said that they did not receive payment. Others in detention centres were forced to work in order to save enough funds to buy their way out of detention. After working during the day, some are taken back to the detention centres in the evenings; others are held at the workplace for weeks or months at a time. In some cases, employers gave money to smugglers, traffickers, or DCIM guards as payment for the work. Working conditions were often unbearable, with little or no protection against the elements in winter or summer. Employers often provided inadequate food and unpotable water. As a result, the health conditions of these workers deteriorate rapidly.

Migrants also recounted that in order to force them to work, employers, smugglers, traffickers and DCIM staff often threatened to kill them, beat them with sticks, metal bars and gun butts, or shot at them. Survivors also witnessed the killing of friends who were unable to work or had attempted to escape.

A 16-year old boy from Senegal told UNSMIL staff that he was held in a warehouse for a month in Sabha, in southern Libya, with another 80 migrants, including 42 women and children from Mali, Nigeria, and Senegal. He had been looking for a job in Sabha when armed men, some in

[54] UNSMIL understands that smugglers are prepared to pay DCIM or others in order to take back migrants since they only receive full payment from intermediaries once the migrant arrives in Europe.

uniform and some in civilian clothes, forcibly took him to the warehouse. He described the conditions as inhuman, and explained that there was very little food or potable water. He observed the guards beating people, in particular those who refused or were too weak to work. He said: "*... At night, some armed men come and take away women and 13-year old girls. They bring them back either a few hours later or on the following day. The women and the very young girls are raped, and if they resist, they are beaten and threatened with guns.*"

He recounted that guards took his 16-year-old Senegalese friend to work on a construction site outside. However, in a few days his friend became weak and sick and could not work and so was brought back to the detention centre. An armed guard came and asked his friend to stand up, but he could not. He was lying on the ground. The guard struck his chest with his feet. His friend was crying and begged the guard to leave him alone. A few minutes later, he could neither move nor talk. Then the guard left. The boy said that his friend later died. A few hours later, the guards asked the migrants to take his friend's body to the courtyard. He did not know what happened to his friend's body. He said: "*They treated us like animals. This is what they call us, 'animals'… for our captors it does not matter if we die.*"

Another migrant from Gambia told UNSMIL staff that while he was traveling by road in southern Libya, smugglers forced a group of 23 migrants to work on a farm for three weeks. When one of the migrants attempted to escape because of the ill-treatment and harsh conditions of work, armed men shot him in the leg. He was sent to a hospital in Sabha and survived. He was left at the hospital with no documents, money, or clothes. With the support of a smuggler, he stayed in the hospital for ten days and then left for Sabrata.

In September 2016, UNSMIL received reports that migrants from the Tajura detention centre which is managed by the Passport Investigation Department were forced to collect the bodies of migrants that had washed up on the beach, presumably after drowning during their attempt to cross the Mediterranean Sea.

6.4. Violations related to interception at sea

The boats on which migrants sail are usually unseaworthy, lack standard life-saving equipment, and do not have sufficient fuel to reach European shores. During 2016, inflatable dinghies were the most common types of boats used. They are more prone to sinking or capsizing than wooden boats which are usually old fishing trawlers. Smuggled migrants - who are usually unskilled in crewing boats - are instructed to manoeuver the boats, which usually carry communication equipment such as a satellite phones to dispatch distress calls directly to rescue centres.

When migrant boats have been intercepted by the Libyan Coast Guard, migrants are typically transferred to DCIM detention facilities or to private houses and farms, sometimes for a fee, where they are often subjected to forced labour and, in the case of women, rape and other sexual

violence. Libyan Coast Guard staff have apparently also seized boats and engines, and then sold them onwards.

A number of migrants interviewed by UNSMIL who were intercepted at sea by armed men believed to be members of the Libyan Coast Guard, said that some were in military camouflage uniforms and others were in civilian clothes. The migrants were brought back to shore and made to queue, sometimes for many hours without adequate shelter. Several migrants recounted being beaten with sticks or gun butts, and robbed of their belongings, usually mobile phones and money.

A 16-year-old boy from Eritrea told UNSMIL staff that in Sabrata he secured passage on a boat with others, including women and girls. A few hours after setting out to sea, a boat carrying armed men in military uniforms intercepted them. The armed men searched the migrants and confiscated their money and other belongings. The migrants were returned to the shore, and after disembarking, they were beaten by the men with metal bars. The men then took the migrants to the DCIM detention centre in Al-Zawiya where DCIM guards beat them again.

A 17-year-old boy from Guinea explained that his first trip in a rubber boat was in March 2016 with approximately 125 other passengers. The boy said they were intercepted by a boat that he believed to be from the Libyan Coast Guard. He described five men in camouflage uniforms shooting at the migrants randomly. At least three migrants were shot dead and several others were injured. Those who survived were then taken to a DCIM detention centre in Al-Zawiya.

In another case, a 14-year-old girl from Eritrea travelled to Libya with her aunt in October 2015. In her first attempt to reach Italy, men believed to be members of the Libyan Coast Guard intercepted the boat she was travelling in. Those on board were beaten upon disembarkation. One man presumed to be the captain was shot in the neck and died. The survivors were then taken to a DCIM detention centre in Al-Zawiya.

On 17 August 2016, forces allegedly belonging to the Coast Guard attacked a boat 24 nautical miles off the Libyan coast. The boat, operated by Médecins Sans Frontières (MSF), rescues migrants in international waters. According to MSF,[55] a group of armed men in an unidentified speedboat fired shots towards the window of the bridge and boarded the boat for less than one hour before leaving, while the crew locked itself in a safe room. A spokesperson for the Libyan Navy (which oversees the Coast Guard) later reportedly admitted intercepting the boat, but said that they fired warning shots in the air and denied boarding it.[56]

On 21 October 2016, according to the German non-governmental organization Sea Watch,[57] men

[55] See *Central Mediterranean: MSF condemns attack on rescue vessel*, Press Release, 25 August 2016, http://www.msf.org/en/article/central-mediterranean-msf-condemns-attack-rescue-vessel

[56] See *Libya navy thought migrant rescuers were smugglers, fired warning shots: spokesman*, Reuters, 30 August 2016, www.reuters.com/article/us-libya-security-migrants-idUSKCN1152Q6

[57] See *Breaking News: Libyan Coast Guard attack on Sea-Watch rescue operation causes multiple dead*, Press Release, 21 October 2016, Sea Watch, http://sea-watch.org/en/breaking-news-libyan-coast-guard-attack-on-sea-watch-rescue-operation-causes-multiple-dead/

onboard a speedboat labelled "Libyan Coast Guard" attacked 150 migrants on board a rubber boat, in international waters 14 nautical miles out to sea. The men boarded the boat hitting the migrants with sticks. The attack caused one of the air-filled tubes to collapse and the migrants fell into the sea. After the attack, Sea-Watch said they were able to rescue 120 persons and recover four bodies. 26 other migrants are presumed to have died. A spokesperson for the Libyan Navy which oversees the Coast Guard, in Tripoli reportedly denied that the boat was attacked, but admitted an incident with Sea-Watch on 21 October whilst maintaining that the boat was in Libyan waters.[58]

6.5. Sexual violence

Survivors and eyewitnesses have described to UNSMIL staff how migrant women and girls have been raped and otherwise sexually abused during their transit through Libya. Survivors have been threatened with guns and knives, and beaten when they resisted. They described their rapists as extremely violent. Survivors also indicated that abuses, including sexual abuse, by armed men and guards became worse noting that: "*once they consume alcohol and drugs. They become unbearable…*". Women and girls reported that smugglers in Sudan and those in their community appear to be aware of the risks of rape and sexual violence in Libya, and some explained that they had been advised to take a three-month contraception injection before departure.

Abuses also included sexual exploitation. Migrant women travelling without male relatives in Libya are particularly vulnerable to such abuses, including being forced to work as sex workers. The majority of men interviewed by UNSMIL staff who had been detained in "connection houses", farms and DCIM detention centers, said that they had seen armed men and guards take women and girls away for periods that varied between a few hours and a few days before bringing them back. The interviewees believed that those girls and women had been raped and otherwise sexually abused.

Cultural mediators from UNHCR and international non-governmental organizations in Italy have also reported that boys and men described being subjected to rape and other sexual abuse. They reported that doctors and psycho-social support staff had provided support to migrant men and boys who had been subjected to sexual violence.

A 32-year-old woman from the Comoros Islands told UNSMIL staff that she flew to Tripoli in early 2016 with the intention of travelling to Europe. She contacted a smuggler who was referred to her by a friend. She went to Sabrata where she was held for two weeks on a farm with many other women. Three of the women were from the Comoros Islands; the others were from

[58] Interview with Navy Spokesperson on Nabaa television at 10 p.m., available at https://www.youtube.com/watch?v=htcXXCWewnw

Somalia, Nigeria, Ethiopia, Syria and other countries. One night, two men came to the woman's room and asked her to follow them. They were armed with guns and knives. When she refused to go with them, one of them put a knife to her neck. They dragged her to another room and the two men repeatedly raped her. They kept her there for a week. She had no food and only salty and dirty water to drink. After a week, she began to menstruate and was moved to another room. A week later she boarded a boat to Italy, arriving at Lampedusa in May 2016. She told UNSMIL: "*I can't be expelled back home, for if my brothers figure out that I am no longer a virgin, they will kill me… it does not matter if I was raped or not… it's a matter of honor for them.*"

A 27-year-old woman from Cameroon who arrived in Palermo on 22 June 2016, told UNSMIL staff that she left her home to escape forced marriage. She spent three months in Libya in a number of "connection houses" until she reached Sabrata. She was held there in another "connection house" among approximately 25 women from different African countries. Every night, Libyan men came to choose several women and took them to other rooms where they raped them. If a woman resisted she would be forcibly dragged by the armed men. She said that she was forcibly taken at least five times by the men and raped by one of them. Once she was raped by two men at the same time. The men were armed with guns and knives. She also said that she heard other women and girls screaming while they were being sexually abused. At the time of the interview, she was two months pregnant, the result of being raped.

A 27-year-old migrant from Gambia said that he worked in Libya for two years to save money to be smuggled to Italy. He paid a smuggler in Zuwara for travel to Italy. He was housed in a hangar with hundreds of other sub-Saharan Africans, including boys, girls and women for almost a month. At times, he observed the men taking women and girls away and then bringing them back. He believed they were raped.

A 19-year-old woman, part of a group of four women and 10 men from Eritrea, told UNSMIL staff that she left Khartoum for Libya in the first half of 2016. When they reached Sabha, they were held in a "connection house" where they met the Eritrean smuggler who had arranged their travel from Khartoum. Women and men were housed separately. The woman said that the Eritrean man came to their room and raped her and another woman. He threatened to burn them, not let them travel further, and deliver them to Libyans. He raped them several times. A few days later, they all moved to Al-Shuweiref in small cars, hidden among various goods, and covered by a tarpaulin. They were taken to a farm and the women were kept in a barn. During the night a group of Libyan men broke into the barn and raped the four young women, while men with knives and guns guarded them. This was repeated for three nights until they were moved to Tripoli. The smugglers then arranged their transfer to Sabrata where they stayed for three weeks before boarding a boat to Italy. They reached Italy on 26 June 2016.

6.6. Abuses by groups pledging allegiance to ISIL

UNSMIL has received reports that groups pledging allegiance to the so-called Islamic State in Iraq and the Levant (ISIL) have also been involved in the abduction and abuse of migrants in Libya.

In November 2016, UNSMIL staff met with 20 Eritrean women and girls who were smuggled into Libya as part of two groups of migrants in June and August 2015. They said that during their journey, armed men stopped one group in Sirte and the other in Nofliya. In both cases, the armed men separated the women and girls from the men. The fate of the men is unknown. One group of women and girls was taken from Sirte to Hrawa and the other from Nofliya to Sirte. During the next three to five months, they were taught about Islam, forced to convert from Christianity, and were then handed over to ISIL fighters.

The women and girls said that in the course of the following 12 months, they were repeatedly raped. When they sought to resist they were severely beaten, tied up, and raped again. Those that tried to escape were also beaten and denied food and/or water for periods of up to two days. Several times, they were also handed or "lent" to other men who raped them or forced them to do household chores. Some were provided with contraceptives, upon their request. In September and October 2016, the women and girls managed to escape and were taken to Misrata by the Al-Bunian al-Marsus force which has been fighting groups pledging allegiance to ISIL in Sirte. UNSMIL staff visited the women and girls where they were being held in Al-Jawiyyah prison in Misrata pending investigation. They wished to apply for asylum. One of the survivors, a 16-year-old girl, explained that she was pregnant as a result of having been raped by ISIL fighters and was seeking an abortion.

In November 2016 in Al-Jawiyah prison, UNSMIL staff also spoke to three women from Nigeria and seven women from the Philippines, who recounted having also escaped from Sirte after having been held captive there by members of ISIL. The three Nigerians said they had been abused during their captivity, including by being forced into marriage with some of the ISIL fighters. As in the aforementioned case of the women and girls from Eritrea, the Libyan authorities had still to decide their legal status at the time of the UNSMIL visit.

7. Recommendations

The situation of migrants in Libya is a human rights crisis. In order to properly respond to the current situation, a comprehensive solution is required in line with international law which addresses not only the situation in Libya but also countries of origin and destination beyond Libya. In this regard, cooperation and coordination at the regional and international level is critical.[59]

UNSMIL and OHCHR make the following recommendations to urgently improve the situation of migrants in Libya:

To the Libyan authorities:

Immediate measures

1. With a view to urgently ending the arbitrary detention of all migrants, release immediately:
    a. those most vulnerable, in particular women at risk, including pregnant women; families and children especially if unaccompanied or separated; persons with particular health concerns; and persons with disabilities;
    b. individuals identified by UNHCR to be in need of international protection as asylum seekers and refugees, and protect them from *refoulement*.
2. Close all detention centres not managed by DCIM, and reduce the number of DCIM detention centres in the country. Consider relocating all detainees in western Libya into a single detention centre in Tripoli.
3. Ensure that female detainees are held separately from male detainees, and are guarded only by adequately trained female officers.
4. Pending the abolition of mandatory detention of migrants, the Libyan authorities should:
    a. improve conditions of detention immediately, and specifically provide adequate food, medical care, water and sanitation;

[59] As an illustration, the General Assembly adopted the New York Declaration for Refugees and Migrants which sets out a commitment to launch a process of intergovernmental negotiations leading to the adoption of a global compact for safe, orderly and regular migration. The declaration notes that the compact will set out a range of principles, commitments and understandings among Member States regarding international migration in all its dimensions. It would make an important contribution to global governance and enhance coordination on international migration. It would present a framework for comprehensive international cooperation on migrants and human mobility. See Annex II, A/71/L.

b. protect detainees from torture and all other forms of abuse, including by investigating allegations of abuse and deaths in detention;

c. remove from duty suspected perpetrators and prosecute them where appropriate;

d. provide adequate medical care to the victims;

e. take specific measures to ensure those in detention are protected from unlawful killing, rape and other sexual violence, and forced labour, and that their privacy is respected;

f. resume a formal registration process of migrants in detention to ensure their presence and status is properly recorded;

g. facilitate further access to detention centres by national and international organizations in order to monitor the human rights situation and provide humanitarian assistance to detainees, including that offered by IOM and UNHCR and their partners;

h. facilitate the activities of IOM aimed at ensuring voluntary, humanitarian and sustainable repatriation of stranded migrants;

i. facilitate the activities of UNHCR aimed at identifying and providing protection to asylum seekers and refugees;

j. ensure full respect for the principle of non-refoulement and the prohibition of arbitrary and collective expulsions;

k. exercise all efforts to ensure due process and fair trial guarantees.

In addition, the Libyan authorities should:

5. Improve conditions at disembarkation points, including by taking proactive measures to protect disembarking migrants from abuses. Register and conduct human rights-based screenings to identify health and other vulnerabilities of those disembarked, and allow UNHCR, IOM, and other organizations to assist in this regard.

6. Ensure DCIM has adequate resources and improve conditions of work for DCIM personnel, including through ensuring adequate health insurance and access to training, whilst ensuring that the training has a strong human rights component.

7. Consider establishing the post of Minister for Migration, responsible for developing a comprehensive strategy on migration, coordinating the work of the Government on all aspects of migration in Libya, and liaising with international counterparts on issues related to migration.

8. Support initiatives aimed at coordinating the response to those rescued in Libyan waters and brought to Libyan territory such as the Contact Group, including DCIM, the Libyan Coast Guard, relevant municipalities, UNHCR, IOM, and national and international organizations.

Also establish a Libyan Maritime Rescue Coordination Centre to better coordinate search and rescue operations off the coast of Libya.

9. Support DCIM and the Libyan Coast Guard in combating any involvement of their members in abuses carried out by armed groups.

Medium-term measures

10. Amend Libyan legislation to de-criminalize irregular migration and abolish the mandatory detention of migrants in an irregular situation.
11. Prohibit automatic expulsions without conducting individual assessments in accordance with the prohibition of arbitrary and collective expulsions and the prohibition of *refoulement*.
12. Facilitate the issuance of proper documentation to all migrants inside Libya, issue work permits to those migrants who are eligible under Libyan law.
13. Establish safe and regular channels and facilitate entry and work opportunities for migrants, in accordance with the right to decent work.
14. Ratify the 1951 Refugee Convention and its 1967 Protocol and adopt a national asylum law. Formalize relations with UNHCR by fully recognizing UNHCR's presence and operations in Libya in order to increase protection of asylum seekers and refugees.
15. Investigate and, where appropriate, prosecute human trafficking and smuggling offences while ensuring respect for the human rights of those accused as well as the smuggled and trafficked persons.

To countries of destination beyond Libya:

1. Ensure that irregular migration is de-criminalized and ensure that migrants can effectively access justice and human rights protection, and can effectively report abuses by smugglers and contribute to efforts against trans-national organized crime.
2. Expand safe and regular entry channels for refugees and for other migrants. This includes increasing the availability of durable solutions such as resettlement opportunities (including through private sponsorship); humanitarian admission schemes; family reunification; educational visas; labor mobility at all skill levels; visas for people in need of international protection; and ensuring that everyone has effective access to an individual assessment, including to asylum procedures at borders.
3. Continue search and rescue at sea operations, ensuring that they are on a scale commensurate with departure trends.

4. Engage Libyan authorities and those with effective control on the ground in Libya to ensure respect for the rights of migrants. In particular, ensure that any training and support for Libyan institutions which engage with migrants is accompanied by comprehensive efforts to address the human rights of migrants, including through ending their arbitrary detention and improving their treatment in detention.
5. Ensure that due diligence policies and measures are in place to mitigate the risk that support to Libyan individuals or institutions results in violations and abuses of the human rights of migrants. In this regard, the European Union should further evaluate its program of training and support to the Libyan Coast Guard and Navy to ensure that its vetting procedures are stringent and its human rights component is comprehensive, including to ensure the protection of migrants at disembarkation points. The European Union should also establish a follow-up monitoring and support mechanism upon completion of the training to assist the Libyan Coast Guard in protecting the rights of those rescued.
6. Continue to support the lifesaving, human rights and other humanitarian activities of international organizations working on behalf of those in detention.
7. Continue to support the activities of IOM aimed at ensuring voluntary, humanitarian and sustainable repatriation of migrants, and continue to support the activities of UNHCR aimed at identifying and providing protection to asylum seekers and refugees.
8. Ensure that migrant victims of physical and mental abuse, exploitation as well as other traumatic experiences are referred as a matter of priority to the appropriate services, including medical and psychosocial services. In particular, provide survivors of rape and other forms of sexual violence with the protection and treatment appropriate to their circumstances, including sexual and reproductive health services.

To countries of origin:

1. Facilitate the voluntary, humanitarian and sustainable repatriation of stranded migrants, in full respect of migrants' human rights.
2. Work with donors on human rights and development programs aimed at making returns sustainable and providing alternatives to irregular migration.
3. Engage with communities of origin, and where appropriate carry out community-based education campaigns, to develop greater understanding of the risks associated with travelling through Libya, including by supporting the IOM campaign entitled "Aware Migrants" the UNHCR campaign entitled "Know before you go".

4. Investigate and, where appropriate, prosecute human trafficking and smuggling offences, while ensuring respect for the human rights of those accused as well as the smuggled and trafficked persons.