

Global Detention Project Submission to the UN Committee on Migrant Workers

27th Session (4-13 September 2017)

List of issues under the simplified reporting procedure – Libya

Geneva, August 2016

Issues concerning immigration detention

The Global Detention Project (GDP) welcomes the opportunity to provide information relevant to the list of issues under the simplified reporting procedure for Libya with respect to the implementation of the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families, ratified by Libya in 2003. The GDP is an independent research centre based in Geneva that investigates immigration-related detention. Thus submission focuses on the State party's laws and practices concerning detention for immigration- or asylum-related reasons.¹

As Libya has not reported to the CMW since ratification - Libya's initial report has been due since 2005 - the GDP submission includes an introductory historical perspective and a review of key demographics with respect to migration in Libya.

Migration context and demographics

Among the top ten countries in the world for oil reserves, Libya began attracting migrants from neighbouring Arab countries in the 1960s. By 2009, there were around two million Egyptians in Libya, most of whom worked irregularly. In the late 1990s, Muammar Gaddafi's Pan Africanism drew a growing influx of Sub-Saharan migrants. A policy volte-face in 2007 led to the imposition of visas on both Arabs and Africans (the distinction between the two not always being clear), turning thousands of immigrants into "irregulars".

During the 2011 uprising in Libya, close to 800,000 people fled, mainly to Tunisia and Egypt. Libya has been engulfed in civil war since the overthrow of Muammar Gaddafi. This has led to a breakdown of government institutions. The UN Security Council recently "called on Libyan stakeholders to expedite their work on the creation of unified state institutions, including unified national security forces under appropriate civilian control, and to combine their efforts to jointly fight terrorism" in May 2017.²

The violence and insecurity have not deterred migrants and asylum seekers from arriving. Libya's lingering reputation as a wealthy country north of the Sahara desert and as a transit point to Europe continues to attract sub-Saharan. These people fall prey to smuggling and trafficking networks who often forcibly channel them to the Mediterranean coast to embark for Europe. According to UNHCR "around half of those travelling to Libya do so believing they can find jobs there, but end up fleeing onwards to Europe to escape life-threatening

¹ This submission is based on GDP research on immigration detention policies and practices in Libya (available at: <https://www.globaldetentionproject.org/countries/africa/libya>) and on updated information as referenced throughout the document.

² Security Council, Press Statement on Libya, United Nations, SC/12846, 26 May 2017, <https://www.un.org/press/en/2017/sc12846.doc.htm>.

insecurity, instability, difficult economic conditions plus widespread exploitation and abuse.”³ In 2016 an estimated 5,143 migrants died in the Mediterranean Sea including 4,581 in the “Central Mediterranean Route”. From 1 January to 6 August 2017, 2,405 deaths were recorded.⁴

The refugee agency reports that “the collapse of the justice system and reigning impunity have led many armed groups, criminal gangs and individuals to participate in the exploitation and abuse of refugees and migrants.”⁵ The UN High Commissioner for Human Rights has similarly declared that “The list of violations and abuses faced by migrants in Libya is as long as it is horrific. This is, quite simply, a human rights crisis affecting tens of thousands of people.”⁶

In September 2016 a related organization to the United Nations, the International Organization for Migration (IOM), identified 256,000 migrants in Libya, of which 28,031 were women (11 per cent) and 23,102 were children (9 per cent), with a third of this group including unaccompanied children. According to UNICEF “the real figures are believed to be at least three times higher”.⁷ As of May 2017 IOM identified 393,652 migrants in Libya, 9% of whom were children.⁸ The organization identified 38 nationalities: the top three from Egypt, Niger and Chad. Other nationalities on the increase respectively included Bangladesh, Ghana and Sudan; the largest decrease in numbers included Ethiopia, Burkina Faso, Nigeria, Tunisia, Niger and Eritrea. IOM classifies migrants as “Mobile & Visible” and “Mobile & Invisible”. The former reside in Libya for short to extended periods for work and are easiest to monitor and identify according to IOM. The latter are “primarily considered as transiting Libya through smuggling and trafficking networks” and are more difficult to track. IOM also classifies migrants as long-term (mainly nationals of Egypt, Niger, Chad and Sudan), circular (Niger, Egypt, Bangladesh, Chad, Sudan, Tunisia Algeria and Morocco) and transit (West and East Africa).

Immigration detention context

Since the beginning of the conflict in Libya tens of thousands of migrants, asylum seekers, and refugees have systematically been subjected to arbitrary and indefinite detention in conditions described as “abysmal”, “unacceptable” and “unimaginable” by UN and civil society observers.⁹ People from Sub-Saharan countries are most at risk of detention and ill

³ UNHCR. “Insecurity, economic crisis, abuse and exploitation in Libya push refugees and migrants to Europe, new study reveals.” 3 July 2017. <http://www.unhcr.org/news/press/2017/7/595a03bb4/insecurity-economic-crisis-abuse-exploitation-libya-push-refugees-migrants.html>.

⁴ Missing Migrants Project. Recorded deaths in the Mediterranean Sea by route, 2016. IOM. <https://missingmigrants.iom.int/mediterranean>.

⁵ UNHCR. “Insecurity, economic crisis, abuse and exploitation in Libya push refugees and migrants to Europe, new study reveals.” 3 July 2017.

⁶ United Nations Support Mission in Libya/United Nations Office of the High Commissioner for Human rights. “Detained and dehumanised” Report on Human Rights abuses against Migrants in Libya. United Nations. 13 December 2017. <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8>

⁷ UNICEF. “A Deadly Journey for Children : the Central Mediterranean Migration Route. ” February 2017. https://www.unicef.org/publications/index_94905.html .

⁸ International Organization for Migration. “Displacement Tracking Matrix (DTM). Libya’s Migrant Report - Round 10 April-May 2017. ” <http://www.globaldtm.info/dtm-libya-migrant-report-information-package-10-april-may/>.

⁹ Addressing Large Movements of Refugees and Migrants. “UN human rights report urges end to ‘unimaginable abuse’ of migrants in Libya.” United Nations. 13 December 2016. <https://refugeesmigrants.un.org/un-human-rights-report-urges-end-%E2%80%98unimaginable-abuse%E2%80%99-migrants-libya> ; United Nations Security Council. “Report of the Secretary-General on the United Nations; United Nations High Commissioner for Refugees. “UNHCR Position on Returns to Libya.” UN High Commissioner for Refugees. 12 November 2014. <http://www.refworld.org/docid/54646a494.html> United Nations High Commissioner for Refugees. Libya Factsheet. February 2015. <http://reliefweb.int/report/libya/unhcr-factsheet-libya-february-2015> Human Rights Watch Libya: Whipped, Beaten, and Hung from Trees. Human Rights Watch. June 22, 2014. <http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>; Amnesty International. (2013b). Scapegoats of fear: rights of refugees, asylum-seekers and migrants abused in Libya. MDE 19/007/2013

treatment as anti-black racism, endemic in Libya, has been exacerbated by the crisis.¹⁰ In the GDP's experience, based on ten years of researching detention systems in more than a 100 countries, persons in immigration detention in Libya are exposed to an extraordinary level of violence, suffering and impunity.

According to the UN migrants are held in 24 detention centres managed by the Department for Combatting Illegal Migration (DCIM): "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."¹¹ Information received by the UN Support Mission in Libya (UNSMIL, established in 2011 at the request of the Libyan transitional authorities to support their post-conflict efforts), "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. "Migrants are also held in detention centres run by armed groups, militias and "connection houses" by smugglers and traffickers during transit. Further, 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."

I. Concerning implementation of ICRMW Articles 16 and 17

There are no constitutional guarantees against arbitrary detention in Libya as of August 2017. A new Constitutional Drafting Assembly was formed in early 2014 to replace the 2011 transitional Constitutional Declaration amidst a volatile political and security context. The Libyan government fled Tripoli for Tobruk in the summer of 2014 to escape an Islamist led militia.¹² However, in November 2014, Libya's Tripoli-based Supreme Court declared the Parliament unconstitutional. In March 2016 the UN announced the creation of a Tunisia-based interim government which was neither recognized by the Tobruk nor the Tripoli parliaments.¹³ On 1 August 2017, the UN Support Mission in Libya (UNSMIL) welcomed progress by the Constitutional Drafting Assembly (CDA) as "the first milestone on the path towards a referendum of the Libyan people to determine a new constitution."¹⁴

Key norms. Provisions for the deprivation of liberty of non-citizens for immigration-related violations are contained in two laws: Law No. 6 (1987) Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya as amended by Law No. 2 (2004) and Law No. 19 of 2010 on Combating Irregular Migration. Under both laws, violations of migration provisions are criminalized and sanctioned with fines and imprisonment. According to an unofficial translation of Law No. 19, Article 6 provides that "The illegal migrant will be put in jail and condemned to forced labour in jail or a fine of 1,000 Libyan dollars. ... The person must be expelled from Libyan territory once he finishes his time in prison." However, the Global Detention Project has not been able to identify legal provisions unambiguously providing for administrative forms of immigration detention. It appears that detention for immigration

<https://www.amnestyusa.org/reports/scapegoats-of-fear-rights-of-refugees-asylum-seekers-and-migrants-abused-in-libya/> .

¹⁰ Seymour, Richard. "Libya's spectacular revolution has been disgraced by racism." The Guardian. 30 August 2011. <http://www.theguardian.com/commentisfree/2011/aug/30/libya-spectacular-revolution-disgraced-racism>; Amnesty International. 2012. "Libya: Rule of Law or Rule of Militias?" Amnesty International. MDE 19/012/2012. 5 July 2012. <http://www.amnesty.org/en/library/info/MDE19/012/2012> ; Aljazeera. "Libya: The migrant trap." Aljazeera. People & Power. 8 May 2014. <http://www.aljazeera.com/programmes/peopleandpower/2014/05/libya-migrant-trap-20145483310400633.html> .

¹¹ UNSMIL/OHCHR . <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8> .

¹² Stephen, Chris. "Libyan parliament takes refuge in Greek car ferry." The Guardian. 9 September 2014. <http://www.theguardian.com/world/2014/sep/09/libyan-parliament-refuge-greek-car-ferry>.

¹³ BBC. Libya profile – Timeline. 13 July 2017. <http://www.bbc.com/news/world-africa-13755445>.

¹⁴ United Nations Support Mission in Libya. "Statement from UNSMIL on the Draft Constitution Vote." United Nations. 1 August 2017. <https://unsmil.unmissions.org/statement-unsmil-draft-constitution-vote>;

reasons that is not part of a criminal process occurs in a legal vacuum and is usually “arbitrary.”¹⁵

Law No. 6 (1987) amended by Law No. 2 (2004) provides visa and travel document requirements for all non-citizens entering Libya. As of 2004, all nationals from Arab states—as well as from the Sudan, Ethiopia, and Eritrea—were allowed to enter Libya without a visa, excluding Iraqis and Palestinians. All other non-citizens had to obtain a valid visa through the General Directorate of Passports and Nationality, as specified in Law No. 4/1985.¹⁶

However, under Article 11 of Law No 19 of 2010, all foreigners residing in Libya had to legalize their stay in Libya within a period of two months after entry into force of the law; otherwise they were to be considered as illegal migrants and were to be subject to penalties (Art. 6). Law No. 10 of 2013 concerning the Criminalization of Torture, Forced Abduction, and Discrimination protects detainees from physical and mental torture (Article 2) and from restriction on personal liberty by force, threat, or treachery (Art. 1). The Code on Criminal Procedure prohibits arbitrary arrest and detention (see below under “Procedural standards”).

Grounds for deportation and detention. Article 17 of Law No. 6 (1987) establishes grounds for the deportation of non-citizens who have entered the country without a valid visa; overstayed their residence permit; had their visa revoked; and/or been sentenced to expulsion by a court. Under Article 19 of Law No. 6 (1987) immigration-related infractions that carry penalties, such as fines and/or imprisonment, include: providing false information or documents; entering the country or residing in it illegally; violating the conditions/regulations of a visa and/or overstaying residence visa; and remaining in the country after having been ordered to leave.

Length of detention. According to observers, the 2010 Law on Combating Irregular Migration (Law No. 19) allows for indefinite detention, followed by deportation, of those considered to be irregular migrants.¹⁷ While the provisions of this law do not state precisely that indefinite detention is allowed, it appears to be implied. As noted previously, Article 6 provides that unauthorized migrants are to “be put in jail” and then deported after they serve their sentences. In 2013, non-governmental researchers on mixed migration flows interviewed more than 1,000 foreign nationals in the country who claimed to have been arrested as they were walking on the street. The majority had been detained between two weeks and three months and two had remained in detention for two years.¹⁸ In 2008, former detainees reported that people were sometimes detained for years.¹⁹

Procedural standards. According to Article 14 of Law No. 20 of 1991 on Promoting Freedoms “No person may be deprived of his freedom, or have it restricted; neither can he be searched or questioned unless charged with an act punishable by law, or by order of a competent judicial authority within the terms and reasons set out by law. Other safeguards include the requirement for security officers to hold a warrant from the competent authority

¹⁵ Danish Refugee Council . “We Risk Our Lives for Our Daily Bread” Findings of The Danish Refugee Council Study of Mixed Migration in Libya. Danish Refugee Council. December 2013. <http://drc.dk/news/news/artikel/new-report-on-mixed-migration-in-libya-reveals-serious-protection-gaps/> .

¹⁶ European Commission. Technical Mission to Libya on Illegal Immigration 27 Nov – 6 Dec 2004. European Commission. Doc 7753/05.

¹⁷ Amnesty International. “Libya: Rule of Law or Rule of Militias?” Amnesty International. MDE 19/012/2012. 5 July 2012. <http://www.amnesty.org/en/library/info/MDE19/012/2012> ; Amnesty International. Amnesty International Report 2013. The State of the World’s Human Rights. London: Amnesty International. http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf .

¹⁸ Danish Refugee Council . “We Risk Our Lives for Our Daily Bread” Findings of The Danish Refugee Council Study of Mixed Migration in Libya. Danish Refugee Council. December 2013. <http://drc.dk/news/news/artikel/new-report-on-mixed-migration-in-libya-reveals-serious-protection-gaps/> .

¹⁹ Asinitas Onlus. Come un uomo sulla terra (like a man on earth). A documentary by Riccardo Biadene, Andrea Segre, Dagmawi Yimer. Directed by Andrea Segre, Dagmawi Yimer in collaboration with Riccardo Biadene. 2008.

when arresting or detaining a suspect (Article 30 of the Code of Criminal Procedure), the requirement to detain suspects only in “prisons designed for that purpose” (Article 31), the right of detainees to challenge the legality of their detention (Article 33), the right to have lawyers present during interrogation in criminal cases (Article 106), and the right to be assigned a lawyer if none was appointed by the defendant (Article 321).

According to the European Commission, immigration detention generally occurs without a judicial order.²⁰ NGO researchers found that detainees in most detention facilities do not receive consular assistance and do not have access to UNHCR.²¹ Mobile phones are reportedly often confiscated from people who cannot contact family members or Embassy personnel.²² Article 53 of Law No. 47 of 1975 on prisons provides the right to lawyers to visit their clients in custody. In practice, immigration detainees cannot challenge the grounds of their detention or of deportation decisions and are handed over to “holding centres” [as called by the Libyan authorities] after serving prison sentences, usually for ordinary criminal offences such as theft. According to Amnesty International and the Danish Refugee Council they are hardly ever brought before a judicial authority and do not have access to a lawyer or interpreter.” There are also many reports that refugees and migrants “rescued” or intercepted by the Libyan Coast Guards in the Mediterranean are placed in detention once returned to the coastal areas.²³

However, the International Committee of the Red Cross (ICRC) reported that in 2013, it enabled foreign detainees to inform their consular representatives of their situation and notified embassies of the whereabouts of 1,507 foreign detainees at the detainees’ request (ICRC information does not specify if the foreign detainees were convicted on immigration related grounds or for other offences).²⁴ Due to worsening security conditions ICRC temporarily moved its international staff to Tunis in July 2014 but kept responding to emergencies and assisting internally displaced persons through local staff in cooperation with the Libyan Red Crescent. In 2016 it reported that it had been able to facilitate family contacts between more than 240 persons detained in Libya and their families.²⁵

According to a recent UN report “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.”²⁶

Apprehending authorities, custodial authorities, and militias. “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 (a Ministry of Interior agency established in 2012 to oversee places of immigration detention),

²⁰ European Commission. “Annex of the Commission Implementing Decision on the Annual Action Programme for 2013 (part 2) in favour of Libya [C(2013) 9196 final]. Action Fiche for Support to rights-based migration management and asylum system in Libya.” European Commission. December 2013.

²¹ Amnesty International. Amnesty International Report 2013. The State of the World’s Human Rights. London: Amnesty International. http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf .

²² Danish Refugee Council and Danish Demining Group. “2014: Strategic Programme Document – DRC/DDG in Libya and Tunisia.”

²³ Izza Leghtas. “Hell On Earth”: Abuses Against Refugees And Migrants Trying To Reach Europe From Libya.” Refugees International. June 2017.

<https://www.refugeesinternational.org/reports/2017/libya>.

²⁴ International Committee of the Red Cross “Libya: What the ICRC did in 2013.” International Committee of the Red Cross .31 March 2014.

<http://www.icrc.org/eng/where-we-work/africa/libya/facts-figures-libya-long.html>

²⁵ ICRC in Libya. Facts & Figures 2016. <https://www.icrc.org/en/document/providing-food-and-essential-hygiene-items-thousands-displaced-libyans-2016> .

²⁶ UNSMIL/OHCHR . <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8> .

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.” According to Article 21 of Law No.6 (1987) Regulating Entry Residence and Exit of Foreign Nationals to/from Libya, “specified employees within the immigration authority are authorized to execute this law.” Article 17 establishes grounds for the deportation by the Director of Passports and Nationality. Until 2011 immigration policies were jointly managed by the Ministry of Foreign Affairs, the Ministry of Interior (MOI), the Ministry of Justice, and the Ministry of Defence, with the MOI serving as the overall coordinator. The police carried out immigration controls, with support from the army, the air force, and the navy. Since 2007, the navy provided backup assistance to the Coastguard Department, which is responsible for Maritime border management and surveillance. The MOI’s departments of Anti-Infiltration and Illegal Immigration “investigated” and “processed” undocumented migrants.

In 2012 officials from the Ministry of Justice and Ministry of Interior acknowledged to Amnesty International “that they had little involvement in the arrest and detention of migrants and that the Ministry of Interior has oversight over detention centres for migrants, but said that since the conflict the Ministry had had no capacity or resources to continue doing so” (AI 2012). In 2014, however, Human Rights Watch (HRW) was allowed to visit nine of the country’s 19 migrant detention centres allegedly run by DCIM.²⁷

Following the 2011 uprising and armed conflict, some detention centres have reportedly been managed by revolutionary brigades or militias, known as katibas. There are reportedly some 1,700 militias in Libya in 2014, split along regional lines.²⁸ International NGOs, the UN and EU institutions have urged the Libyan government to regain control of all detention facilities.²⁹ But implementation is delayed due to the on-going lack of a political settlement.

Women. Women migrants and asylum seekers are particularly vulnerable to abuse and ill treatment in detention in Libya, especially in the absence of female guards, which is a violation of international norms for the treatment of prisoners.³⁰ Women and unaccompanied minors are not recognised as vulnerable groups requiring greater attention.³¹ UNSMIL has received a witness account from a detainee about armed men taking away women and very young girls at night who get raped and are beaten and threatened with guns if they resist.

Children. According to IOM’s latest DTM report above, 63% of the migrant children identified in Libya from April to May 2017 were reported as accompanied and 37% as unaccompanied. Children are at risk of arrest and indefinite detention in Libya. According to UNHCR, there were more than 100 children in detention centres in May 2014. Children do not receive any preferential treatment and are often in cells with adult detainees, which increases the risk of abuse.³²

²⁷ Whipped, Beaten, and Hung from Trees. Human Rights Watch. June 22, 2014.

<http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees> .

²⁸ Farouk Chothia. “Why is Libya Lawless?” BBC News. 15 July 2014, <http://www.bbc.com/news/world-africa-24472322>

²⁹ UNSMIL/OHCHR . <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8> .

³⁰ Amnesty International. “Amnesty International’s Submission to the Council of Europe Committee of Ministers: Hirsi Jamaa and Others V. Italy (Application No. 27765/09).” Amnesty International. Ref: B1525. 11 February 2014 <http://www.amnesty.eu/en/news/statements-reports/all/%28%286%29%29/> .

³¹ European Commission. “Annex of the Commission Implementing Decision on the Annual Action Programme for 2013 (part 2) in favour of Libya [C(2013) 9196 final]. Action Fiche for Support to rights-based migration management and asylum system in Libya.” European Commission. December 2013.

³² United Nations High Commissioner for Refugees. “UNHCR Position on Returns to Libya.” UN High Commissioner for Refugees. 12 November 2014. <http://www.refworld.org/docid/54646a494> .

During a 2013 visit to the Tweisha “holding centre” outside of Tripoli, Amnesty International found that most of the children held at the facility were at least 16, although it found two unaccompanied Somali children aged 10 and 13. AI researchers also identified approximately 20 unaccompanied children, some as young as 12, from Somalia and Eritrea, detained alongside adults at one of the largest immigration detention centres in the country near Gharyan, which as of November 2014 was run by the 9th Brigade a militia nominally under the control of the Ministry of Defence.³³

Corruption and ill treatment. Corruption is endemic in Libya. Transparency International’s Corruption Perception 2016 Index ranks Libya 170 out of 176 countries. HRW reports that corruption is also rife in Libya’s detention facilities and that smugglers even run some facilities. Former detainees have said that they were forced to pay bribes of around \$500 to officials to be released. One ex-detainee told HRW, “The police said they would deport us, but then they took us to pay money to smugglers to take us to Tripoli. Those without money stayed in Kufra. ... Everything depends on money.”³⁴

Detention Infrastructure. Libya does not appear to have an official catalogue of places of immigration detention (often referred to as “holding centres”). However, according to various sources of information, including lists supplied by DCIM to AI and HRW researchers in 2013 and 2014, and recent information from UNHCR, IOM and UNSMIL/OHCHR some two-dozen facilities have been used since 2013. According to the UN DCIM reportedly managed 24 detention centers for a total capacity of 4,000 to 7,000 persons in 2016.³⁵ UN, civil society and media observers also record two centres run by the Passport Investigation Department and many unofficial detention centres run by armed groups and militias and “connection houses” run by smugglers and traffickers during transit. A UNHCR map issued in January 2017 features 34 detention centres, 15 of which with ongoing activities by UNHCR and partners.³⁶ There are 10 detention centres on the Mediterranean Coast in the Tripoli area next to the Tunisian border and another 10 around Benghazi in the eastern part of the coast.

UNHCR and partners conducted 825 visits to detention facilities in 2016. UNHCR conducted 15 monitoring visits to 30 detention centres from January to 7 August 2017 and recorded the release of 376 detained refugees/asylum seekers.³⁷

Conditions in detention. Detention conditions have been described as “abysmal”, “unacceptable” and “unimaginable” by UN, civil society and media observers. There are reports of torture and ill-treatment of detainees. After visits to nine centres in 2014, HRW reported on allegations that male guards in centres under government control strip-searched women and girls, brutally attacked men and boys, including severe whippings, beatings, and electric shocks. Several dozen detainees, including boys as young as 14, reported being assaulted regularly by guards in eight facilities. In one centre “five detainees said guards suspended them upside down from a tree and then whipped them”.³⁸ Detainees also reported being beaten upon arrest by militiamen and during their first days in detention if they were not

³³ Amnesty International. “Amnesty International’s Submission to the Council of Europe Committee of Ministers: Hirsi Jamaa and Others V. Italy (Application No. 27765/09).” Amnesty International. Ref: B1525. 11 February 2014 <http://www.amnesty.eu/en/news/statements-reports/all/%28%286%29%29/> .

³⁴ 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. Human Rights Watch. September 2009. www.hrw.org/en/reports/2009/09/21/pushed-back-pushed-around-0

³⁵ UNSMIL/OHCHR <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8> .

³⁶ UNHCR. Libya, Detention Centres. January 2017.

³⁷ UNHCR. Libya Response in 2017. 7 August 2017. <http://reporting.unhcr.org/node/12003> .

³⁸ Whipped, Beaten, and Hung from Trees. Human Rights Watch. June 22, 2014. <http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees> .

immediately transferred to migrant “holding centres.”³⁹ Human rights violations continued throughout 2016 and are best illustrated by a testimony received by UN officials:

“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 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.*”⁴⁰

In addition UN and NGO reports describe severe overcrowding, lack of ventilation, no outdoor exercise, and inadequate access to food and clean water. UNSMIL has received reports of widespread malnutrition. Medical care is only delivered by international organisations, often through local partners. According to the UN Support Mission this assistance is “grossly inadequate in light of the needs.” Violence is widespread and takes place in impunity due to the breakdown of the justice system. Sub-Saharan migrants report ill-treatment and abuse by guards during detention in AL-Zawiya and Al-Qatrun and other DCIM detention centres: “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...*”

II. Concerning implementation of ICRMW Part VI – Promotion of sound, equitable, humane and lawful conditions in connection with international migration

Italy began making “often secretive agreements” with Libya as early as 2003 and financed “ex-territorialized migration detention camps near Tripoli in 2003, and in later years in the south at Sebah and Kufra.”⁴¹ Such “cooperation measures” have led to increasing mistreatment of refugees, asylum-seekers, and migrants.⁴² Prior to 2011, Italy’s and the European Union’s arrangements with Colonel Muammar Gaddafi, including multi-million-Euro “migration management” projects, led to mass expulsions and an increase in detention.⁴³ Academic observers argued that these EU externalisation efforts helped spur the creation of “one of the most damaging detention systems in the world.”⁴⁴

In February 2012, in its first judgment on interception-at-sea in *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights ruled that acts performed by a member State or producing effects outside its territory could constitute an exercise of jurisdiction by this State. It condemned Italy for exposing migrants to the risk of being subjected to ill treatment in Libya and being repatriated to Somalia and Eritrea and observed that “Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with Libya.”

³⁹ Amnesty International. Amnesty International Report 2013. The State of the World’s Human Rights. London: Amnesty International. Available:

http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf .

⁴⁰ UNSMIL/OHCHR <http://www.un.org/apps/news/story.asp?NewsID=55793#.WYxnGWjj-M8> .

⁴¹ Mason L. Richey. “The North African Revolutions: A Chance to Rethink European Externalization of the Handling of Non-EU Migrant Inflows.” Hankuk University of Foreign Studies: 16 February 2012.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2109199 .

⁴² Council of Europe. Secretariat of the Committee of Ministers. “Communication from a NGO (Amnesty International) in the case of Hirsi Jamaa against Italy (Application No. 27765/09) and reply of the government (original text in Italian available at the Secretariat).” DH-DD(2012)744. 24 August 2012.

<https://wcd.coe.int/ViewDoc.jsp?Ref=DH-DD%282012%29744&Language=lanEnglish&Site=CM> .

⁴³ Global Detention Project. Libya Immigration Detention Profile. February 2015.

<https://www.globaldetentionproject.org/countries/africa/libya> .

⁴⁴ Hélène Van Aelst, “The Humanitarian Consequences of European Union Immigration Policy’s Externalisation in Libya: The Case of Detention and its Impact on Migrants’ Health.” In the BSIS Journal of International Studies, Vol 8 (2011). University of Kent, Brussels School of International Studies. 2011.

Despite this ruling, Italy signed an agreement with Libya in April 2012, covering training programmes, the detention of migrants, and voluntary return. The agreement reportedly lacked any concrete measures to uphold international human rights and refugee law standards.⁴⁵ However, in October 2013, responding to steep increases in sea crossings and ship wreckages off the island of Lampedusa, the Italian government established Operation Mare Nostrum, a €9-million-a-month sea rescue mission. According to government estimates, during the one-year operation, the Italian Navy rescued 150,810 migrants and prosecuted 330 smugglers.⁴⁶

European Union countries have also continued to negotiate deals providing tens of millions of Euros to Libya to process asylum seekers and irregular migrants expelled from or intercepted en route to Europe.⁴⁷ According to the European External Action Service in 2017, the EU adopted “a [new programme of €46 million](#) under the EU Trust Fund for Africa on Friday 28 July, to reinforce the integrated migration and border management capacities of the Libyan authorities. It aims at stepping up activities in support of the Libyan Border- and Coast Guards to enhance their capacity to effectively manage the country's borders. It complements the [€90 million package adopted in April 2017](#) focused on country stabilization and protection of IDPs, migrants, refugees and host communities in Libya.⁴⁸ The European Council also extended the EU Border Assistance Mission in Libya (EUBAM). EUBAM is recruiting 19 international staff positions in August 2017. None of the 19 job descriptions—including those of Maritime Border advisers, Political adviser, Gender and Human Rights adviser, Legal Reform adviser, and Ministry of Interior Reform adviser—make any reference to the presence, conditions or protection needs of migrants, asylum seekers and refugees or require knowledge of this issue in the requested skills and knowledge for the positions.⁴⁹

Key issues for the Libyan authorities concerning implementation of ICRMW Articles 16 and 17:

- Immediately end detention in arbitrary conditions.
- Implement the recommendations from the joint UNSMIL/OHCHR December 2016, particularly those concerning the situation of women and children.
- Immediately end the immigration detention of children to ensure implementation of best interest determination and recommendations by the UN Treaty Monitoring Bodies overseeing human rights treaties ratified by Libya.⁵⁰
- Implement provisions of Law No. 10 of 2013 to protect detainees from torture and restrictions on personal liberty by force and Law No. 20 of 1991, which provides for a detention order.
- Reform immigration legislation to bring it in line with Libya's obligations under the international human rights treaties it has ratified. Reforms should include as a priority de-criminalisation of irregular migration, abolition of mandatory detention, safeguards

⁴⁵ Amnesty International. Amnesty International Report 2013. The State of the World's Human Rights. London: Amnesty International. Available:

http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf .

⁴⁶ Marina Militare. “Mare Nostrum”. Ministero della Difesa. 2014.

<http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx> .

⁴⁷ Global Detention Project. Libya Immigration Detention Profile. February 2015.

<https://www.globaldetentionproject.org/countries/africa/libya> .

⁴⁸ European External Action Service. EU confirms its engagement in support of Libyan institutions. 02/08/2017.

https://eeas.europa.eu/delegations/libya/30640/eu-confirms-its-engagement-support-libyan-institutions_en .

⁴⁹ EU Border Management Assistance Mission in Libya (EUBAM). Call for Contributions for the European Union Border Assistance Mission in Libya (EUBAM Libya) 01/08/2017 - 17:36. Deadline for application 21 August 2017.

https://eeas.europa.eu/csdp-missions-operations/eubam-libya/30607/call-contributions-european-union-border-assistance-mission-libya-eubam-libya_en .

⁵⁰ Mariette Grange and Izabella Majcher. “When Is Immigration Detention Lawful? The Monitoring Practices of UN Human Rights Mechanisms.” Global Detention Project Working Paper No. 21. February 2017.

<https://www.globaldetentionproject.org/when-is-immigration-detention-lawful-monitoring-practices-of-un-human-rights-mechanisms> .

against arbitrary detention and protection and remedies against torture, abuse and ill-treatment.

- Ensure that those drafting new legislation have human rights legal and protection backgrounds.

Key issues for countries and international and regional organisations involved in agreements with and providing financial assistance to the Libyan authorities:

- Ensure that any bilateral or multilateral agreement concluded with the current and future Libyan authorities support the implementation of the above key issues for the Libyan authorities.
- Implement the recommendation to the European Union by the Special Rapporteur on the Human Rights of migrants in relation to the external management of migration: “Improve the coherence of the Global Approach to Migration and Mobility, integrate rigorous human rights, due diligence, monitoring and oversight mechanisms into all external agreements and prioritize projects in countries of origin and transit that will improve the human rights of migrants. For example, as suggested by the European Union Agency for Fundamental Rights, prioritize support that improves search and rescue operations within efforts to build the border management capacity of non-European Union States, as well as support for national human rights institutions.”⁵¹

⁵¹ Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, François Crépeau “Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants*.” United Nations. A/HRC/29/36, 8 May 2015. <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/AnnualReports.aspx> .