

# NO WAY OUT: Migrants and Refugees Trapped in Libya Face Crimes Against Humanity





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# LIST OF ABBREVIATIONS

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AI	Amnesty International
CAT	UN Convention against Torture
CEN-SAD	Community of Sahel-Saharan States
CMR	Central Mediterranean Route
DCIM	Libya's Directorate for Combating Illegal Migration
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
EU	European Union
EU NAVFOR Med	EU Naval Force Mediterranean
FFM	UN Fact-Finding Mission on Libya
GDF	Gathering and Departure Facility
GDP	Gross domestic product
GI-TOC	Global Initiative against Transnational Organized Crime
GNA	Government of National Accord
GNU	Government of National Unity
HRW	Human Rights Watch
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
IHRL	International human rights law
IRC	International Rescue Committee
IMO	International Maritime Organization
IOM	International Organisation for Migration
JRCC	Joint Rescue Coordination Centre
LAAF	Libyan Arab Armed Forces

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<b>LCG</b>	Libyan Coast Guard
<b>MCC</b>	Maritime Coordination Centre
<b>MEDU</b>	Medici per i Diritti Umani (Doctors for Human Rights - Italy)
<b>MoU</b>	Memorandum of understanding
<b>MSF</b>	Médecins Sans Frontières
<b>NGO</b>	Non-governmental organisation
<b>OAU</b>	Organisation of African Unity
<b>OHCHR</b>	Office of the UN High Commissioner for Human Rights
<b>PTSD</b>	Post-traumatic stress disorder
<b>SAR</b>	Search and rescue
<b>SOLAS</b>	International Convention for the Safety of Life at Sea
<b>UDHR</b>	Universal Declaration of Human Rights
<b>UN</b>	United Nations
<b>UNCLOS</b>	UN Convention on the Law of the Sea
<b>UNHCR</b>	UN High Commissioner for Refugees
<b>UNSC</b>	UN Security Council
<b>UNSMIL</b>	UN Support Mission in Libya
<b>VHR</b>	Voluntary Humanitarian Return

# I. EXECUTIVE SUMMARY

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**“THE MAJORITY OF THE TORTURERS WERE THE GUARDS...[THEY] ALWAYS COME WITH THIS LONG WATER TUBE. THEY BEAT YOU WITH IT...WHILE YOU’RE IN THE TORTURE, SOME PEOPLE SCREAM “OK WE’LL PAY”. SO THE PERSON WHO’S SCREAMING, HE WOULD BE ISOLATED AND GIVEN THE PHONE TO SPEAK WITH HIS FAMILY. [FOR] THOSE WHO DON’T CRY OR SCREAM, THEY USE A SECOND METHOD OF TORTURE BY BURNING WITH PLASTIC.”**

**- Interview with “Yasir”, February 2021**

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For over a decade, the situation of migrants, refugees, and asylum seekers<sup>1</sup> in Libya has deteriorated to such levels that it has shocked the global conscience. As the country descended into conflict and chaos following the 2011 uprising, migrants and refugees experienced some of the worst atrocities at the hands of state and non-state actors alike. This report argues, firstly, that these atrocities may amount to crimes against humanity and, as such, should be investigated and prosecuted by the International Criminal Court (ICC). Secondly, it questions the role of the European Union (EU) and its member states in facilitating these crimes.

Criminal activity, including illicit trade, has thrived in Libya against the backdrop of protracted conflict, the crash of the economy, and the collapse of state institutions, including the security sector and the judiciary. In the aftermath of the 2011 uprising, militias and armed groups<sup>2</sup> became assimilated into the state security apparatus, while also turning to human smuggling and trafficking activities to generate power and revenue at the expense of a vulnerable population lacking legal protection. Migrants and refugees became commodified, through kidnapping, arbitrary detention, extortion and torture. In fact, the smuggling and trafficking economy grew to such levels that by 2015, it represented 3.4% of Libya’s gross domestic product (GDP).<sup>3</sup>

During their journey through Libya, migrants and refugees often find themselves held in either official detention centres nominally under the control of the Directorate for Combatting Illegal Migration (DCIM) or in unknown locations held by traffickers, armed groups and militias affiliated to the state. The irregular status of migrants and refugees, due to the criminalisation of irregular entry and exit under Libyan law, provides a basis for their apprehension by authorities, often at sea, and their transfer to detention centres. Current estimates suggest that 7,000 migrants and refugees are detained at DCIM detention centres alone, although the actual number is likely to be much higher.<sup>4</sup>

Human rights and humanitarian organisations, as well as UN agencies, have repeatedly called attention to the horrific conditions inside DCIM detention centres, where migrants and refugees are forced to endure severe overcrowding in structures that are unfit for human habitation. There is often insufficient access to hygiene and sanitation facilities, inadequate ventilation and lighting, including daylight, and a lack of adequate access to food and water leading to the severe malnourishment of those being held captive. Our research reveals that DCIM centres are operated in cooperation with, and in some cases by non-state actors with known involvement in human trafficking and other crimes.

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1 In this report, the terms “migrants and refugees” are used in a broad sense to also include asylum seekers. Where “asylum seekers” are not explicitly mentioned in the report, they should be understood as covered by the terms “migrants and refugees”. For more information on each term, see the *Key Terms* table below.

2 In the Libyan context, the term “militia” covers those armed groups that are affiliated to the state, often on the state payroll. The term “armed group” refers to those not affiliated to the state which operate independently and are not on the state payroll.

3 Tim Eaton, “Libya’s War Economy: Predation, Profiteering and State Weakness”, Chatham House, April 2018, p. 10, available at: <https://www.chatham-house.org/sites/default/files/publications/research/2018-04-12-libyas-war-economy-eaton-final.pdf>.

4 Human Rights Council, Report of the Independent Fact-Finding Mission on Libya, A/HRC/48/83, 1 October 2021, available at: [https://www.ohchr.org/EN/HRBodies/HRC/FFM\\_Libya/Pages/Index.aspx](https://www.ohchr.org/EN/HRBodies/HRC/FFM_Libya/Pages/Index.aspx).

Migrants and refugees are sometimes transferred from DCIM centres or are otherwise detained and taken to places of captivity outside of state oversight, such as hangars, open land, abandoned factories or empty buildings, and subjected to torture and abuse, forced prostitution and extortion. These places of captivity are located largely in the south of Libya, although their exact locations are difficult to identify due to the lack of access to that region.

This report is based on research developed over the course of several years carried out by the European Center for Constitutional and Human Rights (ECCHR), the International Federation for Human Rights (FIDH) and Lawyers for Justice in Libya (LFJL) (together, the Organisations), and complements a joint Communication submitted by the Organisations with the collaboration of survivors in November 2021 to the Office of the Prosecutor of the ICC pursuant to Article 15 of the ICC Rome Statute (the ICC Communication). The ICC Communication calls for the opening of an investigation by the ICC into these crimes as a step towards ensuring accountability, and ultimately justice for the victims of these crimes.

The Organisations argue that the widely documented violations of international human rights law may amount to crimes against humanity under the Rome Statute, the founding treaty and guiding legal instrument of the ICC.<sup>5</sup> Many of the aspects presented in the Communication are beyond the scope of this report which focuses primarily on the analysis of the crimes against humanity identified.<sup>6</sup> It should be noted, however, that while the focus of this report is on crimes against humanity, these crimes have also taken place over the past ten years within the context of a non-international armed conflict and, therefore, many of the crimes detailed in this report may also amount to war crimes, although they are not analysed as such in this report.

A crime against humanity is a criminal act committed in the context of a widespread or systematic attack on the civilian population undertaken pursuant to a state or organisational policy, which either affects a large number of people, is spread over a significant area or is committed repeatedly, meaning that the crimes were not a random occurrence.<sup>7</sup> Several witness testimonies collected for the purpose of the ICC Communication and reflected in this report support existing documentation of the crimes against migrants and refugees in Libya. They clearly depict a pattern of multiple acts committed against them by state authorities, militias, armed groups and private individuals that constitute an attack against an identifiable group of civilians – migrants and refugees – who are targeted because of their migration status and vulnerability resulting from the absence of legal status in the country. The violations against migrants and refugees in Libya do not happen at random but exhibit a consistent pattern of conduct. The cycle of exploitation and abuse that they face, in combination with a hostile legal framework prescribing automatic and indefinite detention for every migrant or refugee present on Libyan territory, meet the threshold for crimes against humanity.

The crimes against humanity identified include imprisonment or severe deprivation of liberty, enslavement, murder, torture and other inhumane acts, rape, sexual slavery, enforced prostitution, other forms of sexual violence, and persecution. This report focuses specifically on the crimes of enslavement, murder, torture and rape.

The commission of these crimes is closely related to the broader context of EU migration management and border policies. Over the years, migration through Libya and the onward journey to European shores has been a point of concern for European states and the EU, especially since the so-called “migration crisis” of 2015. Despite a decade of conflict, breakdown in the rule of law and the security vacuum in Libya, the EU and its member states have continued to turn a blind eye to the devastating impact of this context on the situation of migrants and refugees in the country and have persevered with their migration policies.

Driven by the politically expedient desire to limit the number of arrivals to European countries, the EU and its member states have implemented a series of radical measures to contain migrants and refugees in Libya, despite being fully aware of the crimes committed against them in the country. In cases where migrants and refugees do manage to escape to the Mediterranean Sea, policies have been put in place to ensure that migrants and refugees are *returned* to Libya.

Measures by European actors aimed at trapping migrants and refugees in Libya, in breach of their international legal obligations, have included entering into agreements and arrangements, whether or not legally binding, with Libyan authorities on providing financial and technical support to Libyan institutions involved in migration management; cooperation with the Libyan Coast Guard (LCG), including by providing them with training, equipment and financial support; the transfer of search and rescue (SAR) responsibilities to Libya through assistance in declaring the Libyan SAR zone; and harassment of NGOs conducting SAR operations that would result in migrants and refugees disembarking in Europe. Such actions effectively closed all pathways to

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<sup>5</sup> The Rome Statute was adopted on 17 July 1998 and entered into force on 1 July 2002. At the time of writing, it had been ratified by 120 states.

<sup>6</sup> A redacted version of the Communication can be made available upon request addressed to ECCHR, FIDH, and LFJL.

<sup>7</sup> Rome Statute, art. 7(1).

Europe, leading to a major drop in the number of sea arrivals from Libya by 2017. These measures have trapped vulnerable migrants and refugees, including children, in Libya, where they are abused and exploited. As Libya is not a safe place for migrants and refugees, Libyan and European policies and actions that return migrants and refugees to Libya and trap them there are not only morally wrong and unlawful, but also raise the question of possible European responsibility in the commission of crimes that may amount to crimes against humanity.

Therefore, European states and institutions should immediately end all cooperation with, and support and assistance to Libyan authorities, aimed at containing migrants and refugees in Libya. Libyan authorities must also take immediate action to put an end to the crimes committed against migrants and refugees by ending their detention, dissolving the DCIM, as well as conducting serious investigations into, and ensuring accountability for, the crimes committed against them. States and UN bodies should also deploy coordinated efforts to establish a body to identify the fate of the missing and disappeared to guarantee the families' rights to truth, justice and reparations, in line with international standards.

## II. INTRODUCTION

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In Libya, migrants and refugees face a litany of gross human rights violations in an often endless cycle of violence in which they are passed from one intermediary to another. There is no shortage of reports detailing the extreme violence, degrading treatment and inhuman conditions that they are forced to endure as soon as they enter the country. This report argues that the well-documented abuses against migrants and refugees in Libya may amount to crimes against humanity.

The report complements the ICC Communication submitted by the Organisations in November 2021 to the Office of the Prosecutor of the ICC. The thorough 250-page Communication is based on research conducted by the Organisations over the course of several years and provides a detailed legal analysis of the crimes committed against migrants and refugees in Libya, with the aim of supporting the opening of an investigation by the ICC into these crimes and taking serious steps towards ensuring accountability, and ultimately justice for the victims of these crimes.<sup>8</sup>

The report also aims to counter the misleading narrative according to which migrants and refugees allegedly leave their country of origin and cross Libya with the sole objective of travelling to Europe through smuggling networks. This narrative is inaccurate, ignoring the real horror and violence that migrants and refugees experience in Libya, and conflates the terms “smuggling” and “trafficking”, obscuring the exploitation to which many are subjected. The interchangeable use of the terms “smuggling” and “trafficking” reveals a perspective focused exclusively on preventing the arrival of migrants and refugees on European shores which ignores the fact that some migrants and refugees never intended to cross the Mediterranean but were forced to do so. In fact, the two terms are not interchangeable: unlike smuggling, trafficking lacks consent and is characterised by the ongoing exploitation of the person trafficked. The Organisations’ analysis has shown that migrants and refugees often turn to smugglers to enter Libya because of a lack of legal pathways to protection. Once in the country, they face gross abuses, often becoming victims of trafficking and different forms of exploitation and slavery.

After providing an overview of the migration situation in Libya, including the impact of the conflict on migrants and refugees and the development of the smuggling and trafficking industries in the country, the report draws on the ICC Communication’s legal analysis of the crimes committed against migrants and refugees and summarises its key findings: in Libya, migrants and refugees face a multitude of crimes that may amount to crimes against humanity. The crimes identified are committed in a widespread and systematic manner pursuant to a state policy and therefore meet the contextual element for crimes against humanity. These

**“PUSHBACKS MANIFEST AN ENTRENCHED PREJUDICE AGAINST MIGRANTS AND DEMONSTRATE A DENIAL OF STATES’ INTERNATIONAL OBLIGATIONS TO PROTECT THE HUMAN RIGHTS OF MIGRANTS AT INTERNATIONAL BORDERS.”<sup>9</sup>**

- UN Special Rapporteur on the human rights of migrants, May 2021

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crimes include imprisonment or severe deprivation of liberty, enslavement, murder, torture, rape, sexual slavery, enforced prostitution, other forms of sexual violence, persecution, and other inhumane acts. This report focuses specifically on the crimes of enslavement, murder, torture and rape.

While the underlying ICC Communication does not touch upon possible criminal responsibility of European actors under the Rome Statute, this report conducts further analysis to highlight the role of European policies in the commission of these crimes. Despite the well-documented abuses against migrants and refugees in Libya over recent years, migrants and refugees have become increasingly trapped in the country as the result of extreme migration management practices by European states and the EU, implemented in cooperation with Libyan actors

known to be implicated in criminal activities and gross human rights violations. The EU and its member states continue to use a problematic security narrative to justify their migration policies in the Mediterranean relying on “**border externalisation**” tactics

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<sup>8</sup> The ICC has had jurisdiction over crimes listed in the Rome Statute and committed on the territory of Libya since February 2011 when the UN Security Council (UNSC) referred the situation in Libya to the Court.

<sup>9</sup> Human Rights Council, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, 12 May 2021, p. 4, available at: [https://reliefweb.int/sites/reliefweb.int/files/resources/A\\_HRC\\_47\\_30\\_E.pdf](https://reliefweb.int/sites/reliefweb.int/files/resources/A_HRC_47_30_E.pdf).

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– sometimes involving “**pushbacks**” focused on containing migrants and refugees within Libyan borders. The report addresses the role of European actors in contributing to the situation that migrants and refugees face in Libya, and their responsibility in crimes that may amount to crimes against humanity – in breach of their international obligations.

## KEY TERMS

### **Migrant**

A person staying outside their country of origin who is not an asylum seeker or a refugee. Reasons for leaving the country of origin may include: work, study, joining family, poverty, political unrest, different forms of violence, natural disasters or other serious circumstances that exist there.<sup>10</sup>

### **Refugee**

“A person who has fled their own country because they are at risk of serious human rights violations and persecution there.”<sup>11</sup>

### **Asylum seeker**

“A person who has left their country and is seeking protection from persecution and serious human rights violations in another country, but who hasn’t yet been legally recognized as a refugee.”<sup>12</sup>

### **Human smuggling**

“The procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”<sup>13</sup>

### **Human trafficking**

“The recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”<sup>14</sup>

### **Border externalisation**

Measures taken by states beyond their borders to obstruct or deter the arrival of migrants, refugees, or asylum seekers.<sup>15</sup>

### **Pushbacks**

“Various measures taken by States, sometimes involving third countries or non-State actors, which result in migrants, including asylum seekers, being summarily forced back, without an individual assessment of their human rights protection needs, to the country or territory, or to sea, whether it be territorial waters or international waters, from where they attempted to cross or crossed an international border.”<sup>16</sup>

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10 Amnesty International (AI), “Refugees, asylum-seekers and migrants”, available at: <https://www.amnesty.org/en/what-we-do/refugees-asylum-seekers-and-migrants/>.

11 Ibid.

12 Ibid.

13 *Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime*, art. 3(a), available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/TransnationalOrganizedCrime.aspx>.

14 *Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime*, art. 3(a), available at: <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>.

15 Dr Jeff Crisp, “What is Externalization and Why is it a Threat to Refugees?”, Chatham House, 14 October 2020, available at: <https://www.chatham-house.org/2020/10/what-externalization-and-why-it-threat-refugees>.

16 Human Rights Council, ‘*Report on means to address the human rights impact of pushbacks of migrants on land and at sea*’, *ibid.*, p. 4.

### III. METHODOLOGY

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This report is primarily based on joint research and analysis conducted by the Organisations over the past two years. The Organisations have been working on the human rights situation in Libya over the past decade and this project therefore also builds on each of the Organisations' previous research, first-hand knowledge and expertise.

The Organisations conducted in-depth, remote and in-person, semi-structured interviews for this report and the ICC Communication. The ICC Communication sought to support the opening of an investigation by the ICC into the identified crimes, as a step towards ensuring accountability for these crimes, and ultimately, justice for the victims. The Organisations reviewed a wide range of documentation and witness accounts from which 21 individuals were selected for further in-depth interviews: 14 migrants and refugees (referred to as witnesses throughout the report), and seven experts including aid workers and researchers currently working in and on migration in Libya. Each of the witness interviews was conducted over the course of multiple sessions and resulted in detailed testimonies that have been attached in full as confidential annexes to the ICC Communication.

Of the 14 witnesses, three individuals are from Cameroon, three from Sudan, three from Eritrea, two from The Gambia, one from Ethiopia, one from Guinea and one from Mali. Eleven of the witnesses interviewed are male, and three are female. The number of women interviewed compared to the number of men is not a proportionate representation of the number of women among the migrants and refugees travelling through Libya, rather it is an underrepresentation of the reality on the ground. The Organisations faced numerous barriers while attempting to access women for interviews. This is due in part to the nature of the abuse that women and girls experience in Libya, notably sexual violence, and the stigma that is still associated with this type of abuse.

Due to the COVID-19 pandemic and the subsequent travel restrictions and social distancing measures, as well as the Organisations' own selection considerations based on a risk assessment (outlined below), outreach to witnesses was limited and most of the interviews were conducted remotely across several sessions via a secure video conferencing platform. Three interviews were conducted in-person and two were hybrid, including both in-person and remote conversations.

The Organisations jointly established the selection criteria for witnesses to be interviewed for the project. Individuals under the age of 18 were not considered for interview due to the high risk of re-traumatisation and the particular difficulty that such interviews would present in a remote setting where the Organisations would not have direct access and the ability to intervene with the necessary support for minors should the need arise. Out of concern for the safety of witnesses who were willing to share their experiences, migrant and refugee participants were selected on the condition that they had travelled through Libya at any point after 2011 but were no longer located in the country and were in safe places, where the researchers could guarantee access to assistance, including psycho-social support, should the need arise. Each participant gave informed consent,<sup>17</sup> and the information they shared has been stored securely and confidentially. Participation was entirely voluntary; no financial rewards, nor any other incentives were provided by the researchers on behalf of the Organisations. Interpreters were used when necessary, in limited instances. Identifying information about the participants has been withheld and their names have been changed to protect their privacy and their safety as well as that of their communities.

All interviews were carried out in accordance with a strict risk assessment to recognise and prevent the risk of re-traumatisation as well as external risk factors, including security from retaliation. Throughout the process, the Organisations followed security and safeguarding measures that conform to the 'Do No Harm' principle. These included, but were not limited to, training interviewers to recognise signs of trauma; conducting the interviews via secure channels and storing information securely and confidentially; giving the interviewee the option to stop the interview or to withdraw their consent at any time; and putting in place a referral system for mental health, psychosocial and legal support where necessary.

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<sup>17</sup> During all the interviews conducted for this report, informed consent was obtained from each participant by informing the participant of the purpose of the interview, the confidentiality procedures, all possible uses of the information gathered and how it would be shared with third parties. No financial reward was given in exchange for participation and witness testimony was provided on a strictly voluntary basis. Throughout the interview, participants were reminded that they may withdraw consent at any point, in which case all records would be destroyed.

In addition to testimonies from witnesses, information was collected and analysed from reliable reports and open-source data, including court documents and reports from UN bodies, such as the International Organization for Migration (IOM), the UN High Commissioner for Refugees (UNHCR), the UN Support Mission in Libya (UNSMIL), the Office of the UN High Commissioner for Human Rights (OHCHR) and the UN Special Rapporteur on the human rights of migrants. Other sources included reports and statements from EU institutions and NGOs working on the ground, as well as third-state government statements on violations of international human rights law and international criminal law committed against migrants and refugees on Libyan territory. The Organisations also analysed audio-visual evidence provided by the experts interviewed or publicly available on social media, as well as information relevant to the cross-border dynamics of enslavement and human trafficking.

## IV. BACKGROUND

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### A. MIGRATION IN LIBYA: FROM DESTINATION TO TRANSIT COUNTRY

Before becoming a transit country, Libya was a destination country with a long history of receiving migrant workers. This goes back to the period following the discovery of oil in 1959 when Libya, previously an impoverished nation, became a wealthy, oil-rich rentier state and attracted foreign workers in search of job opportunities.

In the period through the early 1990s, most migrant workers were from neighbouring Arab countries. However, with Muammar Gaddafi's pan-African aspirations, a series of bilateral agreements between Libya and several African states were adopted, and the Community of Sahel-Saharan States (CEN-SAD), which sought to open borders and build economic ties between African nations, was established. This marked a new era of foreign policy for Libya and with it, a new type of migration,<sup>18</sup> as sub-Saharan Africans were expressly encouraged to come to Libya.<sup>19</sup>

However, the lack of a coherent immigration policy, exacerbated by arbitrary rules on regularisation, rapidly led to an uncertain status for those in Libya. In addition, the growing presence of sub-Saharan migrants in conservative coastal cities began to provoke hostile reactions among the local populations, which culminated in autumn 2000, with the killing of 130 sub-Saharan nationals in anti-African riots in Tripoli and Zawiya.<sup>20</sup> Libya progressively introduced stricter measures of control, with its migration policy oscillating between phases of open-door policy and the expulsion of migrants.<sup>21</sup>

As Gaddafi began to shift his foreign policy focus towards the West, the time when foreign nationals from African countries were allowed to enter Libya without visas came to an end. As visa and documentation restrictions were imposed on most foreigners entering and staying in Libya, many attempted to depart by sea to Europe. Italy, alarmed by the growing number of sea arrivals from Libya, sought to thwart border crossings. In 2008, Italy and Libya signed the Treaty of Friendship, Partnership and Cooperation,<sup>22</sup> a 50-million-euro agreement which, among other things, aimed to stop the flows of migrants and refugees to Europe, in part by having Italian ships intercept those crossing the Mediterranean Sea in an attempt to reach Europe and return them to Libya. This practice, which has become known as “pushbacks”,<sup>23</sup> was found by the European Court of Human Rights (ECtHR) in 2012 to breach Italy's human rights obligations,<sup>24</sup> yet similar tactics remain integral to Europe's border externalisation policy to this day.

Moreover, in 2010, Libya adopted a new legal framework by introducing Law No. 19 of 2010 which criminalises the irregular entry, stay and exit of migrants.<sup>25</sup> As a result, thousands of foreign nationals suddenly became “illegal migrants”, leaving them vulnerable to detention and expulsion while Libya continued to deny them the right to seek asylum (see Section VII).<sup>26</sup> Detention without due process became the prevailing migration management policy in Libya, applied to migrants and refugees intercepted at sea, as a form of punishment and to deter others from attempting the crossing.<sup>27</sup>

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18 Sara Hamood, *African Transit Migration Through Libya To Europe: The Human Cost*, The American University of Cairo, Forced Migration and Refugee Studies, January 2006, available at: <http://migreurop.org/IMG/pdf/hamood-libya.pdf>.

19 Nadia Al-Dayel, Aaron Anfinson & Graeme Anfinson, “Captivity, Migration, and Power in Libya”, *Journal of Human Trafficking*, 31 March 2021, <https://doi.org/10.1080/23322705.2021.1908032>.

20 FIDH, *Libya: The Hounding of Migrants Must Stop*, 2012, p. 12, available at: <https://www.fidh.org/IMG/pdf/libyemignantsuk-ld.pdf>.

21 Sylvie Bredeloup & Olivier Pliez, *The Libyan Migration Corridor*, European University Institute, 2011, p. 9, available at: <https://cadmus.eui.eu/bitstream/handle/1814/16213/EU-US%20Immigration%20Systems%202011%20-%202003.pdf>.

22 Treaty of Friendship, Partnership, and Cooperation between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Italy, 30 August 2008, available at: [https://security-legislation.ly/sites/default/files/lois/7-Law%20No.%20%282%29%20of%202009\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/7-Law%20No.%20%282%29%20of%202009_EN.pdf).

23 Human Rights Council, *Report on means to address the human rights impact of pushbacks of migrants on land and at sea*, 2021, *ibid*.

24 European Court of Human Rights (ECtHR), *Hirsi Jamaa and Others v. Italy*, Application no. 27765/09, Judgment, Grand Chamber, 23 February 2012, available at: <https://hudoc.echr.coe.int/spa#%7B%22itemid%22:%5B%22001-109231%22%5D%7D>.

25 Law No. 19 of 2010 on Combatting Illegal Immigration, 28 January 2010, available at: <https://security-legislation.ly/en/law/32174>.

26 *Ibid.* art. 11.

27 Sylvie Bredeloup & Olivier Pliez, *ibid.*

In 2011, the uprising and its consequences impacted migration into the country: where Libya's oil wealth had in the past attracted migrants to Libya as a destination point, the conflict and instability became the main reason for the country's shift to a transit state, as people on the move and forced to flee their countries of origin sought to escape the escalating violence in Libya.

## B. THE IMPACT OF THE CONFLICT ON MIGRANTS AND REFUGEES

In the aftermath of the 2011 uprising against Gaddafi, pockets of conflict proliferated throughout the country and Libya began to plunge into chaos.<sup>28</sup> The collapse of state institutions, the crash of the economy, the protracted conflict and the extreme violence forced onward movement to Europe. The pathway, primarily from Libya to Italy, became known as the Central Mediterranean Route (CMR) and has since been recognised as the world's most dangerous migration route.<sup>29</sup>

Although migration flows shifted around emerging local conflicts, the lives and safety of migrants and refugees often remained directly endangered by these conflicts, which spread indiscriminately throughout the country, including in places where migrants and refugees gathered or were held captive.<sup>30</sup> In 2014, against the backdrop of political turmoil that eventually led to a geographical and political split between the west and east of the country, two rival militias fought over territory, burning Tripoli's international airport in their wake. As a result of the conflict, almost all foreign entities, including embassies and UN bodies evacuated to neighbouring Tunisia. As the country plummeted into war, smuggling and trafficking networks flourished, given the lack of security and absence of monitoring bodies. The route from southern Libya to its northern coast was wide open and the absence of accountability gave rise to the systematic extortion and abuse of migrants and refugees at all points along the journey.

After years of political divisions between the west and east of Libya, on 4 April 2019, the Libyan Arab Armed Forces (LAAF) – an armed group commanded by Khalifa Haftar, who had recently come to prominence – launched operation “Flood of Dignity”.<sup>31</sup> The operation aimed to overthrow the Government of National Accord (GNA) and take control over western territories, and, most importantly, Tripoli. Haftar's offensive united several constituencies and armed groups in western Libya against him. As the conflict peaked in late June 2019, renewed violence ensued, putting migrants and refugees at further risk. As a blatant example of such situations of risk, in early July 2019, a foreign fighter jet conducted a strike on a compound in Tajoura where migrants and refugees were detained, which led to at least 53 deaths and at least 87 people injured.<sup>32</sup>

This was not the first time that migrants and refugees were caught in the conflict. Over the past decade, clashes have erupted in and around detention facilities and other places where migrants and refugees are held captive. In 2018, as a result of clashes that erupted in Tripoli, the Abu Salim detention centre was abandoned by guards. An estimated 8,000 migrants and refugees were left locked up without food or water for more than 48 hours while the war raged on outside.<sup>33</sup> In a further example, the UNHCR-run Gathering and Departure Facility (GDF) was forced to shut down in January 2020 due to shifting front lines that placed the centre in the line of fire.<sup>34</sup>

Several sources also mentioned an explosion on 20 June 2021 at the Aburshada (Abu Rashada or Bou-Rashada) Detention Centre in Gharyan. The centre, a former military compound, has been under the control of the DCIM since 2014.<sup>35</sup> Reportedly, the explosion was caused by ammunition being stored in a weapons and ammunition depot “a few steps from where refugees were

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28 For a detailed timeline of the Libya conflict, see: <https://www.reportinglibya.org/>.

29 International Rescue Committee, “The human stories of the world's most dangerous migration route”, 5 August 2020, available at: <https://www.rescue.org/article/human-stories-worlds-most-dangerous-migration-route>.

30 For example, Kufra and Ajdabiya, both popular smuggling hubs during the Gaddafi era, were closed off due to fighting. As a result, smugglers and traffickers sought alternative routes. Further, as the central authority in Tripoli lost territorial control throughout the country, the security situation deteriorated, and the ongoing conflicts revived the historical smuggling and trafficking routes from the south into the north-western coastal town of Zuwara. Local protest shut down the operation in the city, eventually moving the primary embarkation hub to Sabratha in 2015.

31 LFLJL, *Reporting Libya*, available at: <https://www.reportinglibya.org/>.

32 UNMSIL, “The airstrikes on the Daman building complex, including the Tajoura Detention Centre”, 2 July 2019, available at: <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25502&LangID=E>.

33 Bel Trew, “Libya: 30 dead in Tripoli militia clashes as rights groups warn refugees and migrants caught up in crossfire”, *The Independent*, 31 August 2018, <https://www.independent.co.uk/news/world/middle-east/tripoli-militia-clash-30-dead-latest-news-death-toll-rights-groups-a8517096.html>.

34 UNHCR, “UNHCR to suspend operations at GDF in Tripoli amid safety concerns”, 30 January 2020, <https://www.unhcr.org/uk/news/press/2020/1/5e32c2c04/unhcr-suspend-operations-gdf-tripoli-amid-safety-concerns.html>.

35 Global Detention Project, Aburshada (Bou-Rashada) Detention Centre, available at: <https://www.globaldetentionproject.org/countries/africa/libya/detention-centres/1660/aburshada-bou-rashada-detention-centre>.



being held”<sup>36</sup> As many as 100 people may have died, while numerous others were injured.<sup>37</sup> Detaining migrants and refugees near weapons and ammunition stores is a dangerous but widespread practice in Libya.

### C. THE CONFLICT ECONOMY OF THE SMUGGLING AND TRAFFICKING INDUSTRY

Although a smuggling industry existed in Libya prior to 2011, it significantly transformed in the aftermath of the uprising. The absence of a central state authority and the security vacuum that resulted from the outbreak of conflict facilitated the existence of numerous armed groups and militias – by the end of 2014 an estimated 1,600 armed groups were operating in Libya, an increase of 1,300 since 2011.<sup>38</sup> Powerful militias actively entered the business of human smuggling and/or trafficking and seized control of the main migration routes in Libya. Illicit trade, of commodities as well as people, became a means by which militias could secure funds for weapons and increase their power and influence,<sup>39</sup> further fuelling the conflict. Smuggling and trafficking became increasingly lucrative, particularly in the south of the country, and migrants and refugees were increasingly targeted as commodities to be detained, exploited and extorted for maximum financial gain. The trafficking industry grew to such a point that a 2017 Chatham House report estimated that revenues were around “\$978 million in 2016, amounting to 3.4% of Libya’s 2015 GDP of \$29.1 billion.”<sup>40</sup>

The exponential growth of the trafficking industry between 2012 and 2016 was facilitated by the increasing use of the *hawala* system (see text box).<sup>41</sup> The use of *hawala*, which was previously tightly controlled by the Gaddafi regime, grew after the weakening of the formal banking system.<sup>42</sup> The system offers no paper trail and makes it extremely difficult to trace money and its recipients.

36 Sara Creta, “Libya detention centre blast exposes dangerous conditions for refugees,” *Middle East Eye*, 9 July 2021, available at: <https://www.middleeasteye.net/news/libya-detention-centre-blast-exposes-dangerous-conditions-refugees>.

37 Interview with expert witness, August 2021.

38 Office of the Commissioner General for Refugees and Stateless Persons (CGRS) et al., *Libya: Militias, Tribes and Islamists*, 19 December 2014, p. 7, available at: <https://www.justice.gov/eoir/page/file/989511/download>.

39 The Global Initiative against Transnational Organized Crime (GI-TOC), *Global Initiative Report, Responding to the human trafficking - migrant smuggling nexus*, 2018, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Reitano-McCormack-Trafficking-Smuggling-Nexus-in-Libya-July-2018.pdf>.

40 Tim Eaton, *ibid.*, p. 10.

41 Mark Micallef, “People smuggling in post-revolution Libya”, *People smugglers globally*, 2017, Australian Strategic Policy Institute, p. 6, available at: <https://www.jstor.org/stable/pdf/resrep04260.11.pdf>.

42 Mark Micallef, *ibid.*

In parallel, between 2011 and 2014, many armed groups and militias were integrated into the state security apparatus, including migration management structures. As a result, state functions and resources became dangerously intertwined with criminal networks.<sup>43</sup> Most notably the DCIM, established in 2012 under the Ministry of Interior to oversee “illegal” migration in the country,<sup>44</sup> and the LCG, which operates under the Ministry of Defence, have been implicated in criminal activity and gross human rights abuses against migrants and refugees.<sup>45</sup>

Detention in DCIM facilities has become the primary form of migration management in Libya. In many cases detention centres are only nominally under the control of the DCIM and are in fact run by affiliated militias and armed groups. They represent an important component of trafficking operations.<sup>46</sup> Some detention centres are managed by individuals who are officially on the payroll of the DCIM, but work on behalf of, or are members of, militias.<sup>47</sup> A key example is the DCIM centre in Zawiyah, which is under the control of al-Nasr Brigade, a local militia whose commander, Mohammed Kashlaf, also works in collusion with the head of the Zawiyah branch of the LCG, Abd al-Rahman al-Milad (also known as “Bija”).<sup>48</sup> On 7 June 2018, Mohammed Kashlaf was listed for sanctions by the UNSC for his involvement in migrant smuggling operations and the exploitation of migrants and refugees.<sup>49</sup> Kashlaf’s collaboration with other armed groups and his involvement in repeated violent clashes in 2016 and 2017 were also noted by the UNSC.<sup>50</sup> Abd al-Rahman al-Milad was also sanctioned for his consistent link to violence committed against migrants and refugees and other human smugglers and traffickers.<sup>51</sup> Milad was subsequently removed from his post as head of the Zawiyah LCG. The Libyan authorities arrested him in October 2020, but later freed him after the charges against him were dropped due to “lack of evidence.”<sup>52</sup> On 25 October 2021, the UNSC also added Osama Al Kuni Ibrahim to the Sanctions List.<sup>53</sup> Osama Al Kuni Ibrahim, identified as de facto manager of the Al Nasr detention centre, is accused of human rights abuses against migrants and refugees in Libya and of acting on behalf, or at the direction of Kashlaf and Milad.<sup>54</sup> However, despite UN sanctions against known perpetrators, individuals and groups involved in smuggling, trafficking and other crimes in Libya have continued to operate with total impunity.

### The hawala system and the trafficking industry

Hawala, Arabic for “transfer”, is a money transfer system based on honour which is used widely in African countries. Typically, money is paid to an agent who then instructs a counterpart to pay the final recipient in another geographic location. In practice, relatives of migrants and refugees subject to ransoms are given the name of a local person to whom money is to be transferred through international money transfer companies such as Western Union and Orange Money. The money is either deposited directly or through an agent. There are often several intermediaries located across several countries.

Smuggling and trafficking networks in Libya operate along the migration routes from south to north. Over the years, hubs along these routes, where migrants and refugees gather, have emerged across the country. During their journey, migrants and refugees are often passed between multiple intermediaries, including DCIM centres, in a northward direction towards the Mediterranean Sea, even if this is not their intended destination. In fact, our research revealed that, given the profitability of sending migrants and refugees to Europe, some individuals were forced to make the sea crossing even though they had no intention of travelling to Europe. “Bolu”, who was arrested by an armed group and detained in Tripoli, explained in an interview conducted for the ICC Communication and this report:

43 OHCHR and UNSMIL, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, 20 December 2018, p. 6: “UNSMIL continues to receive credible information on the complicity of some State actors, including local officials, members of armed groups formally integrated into State institutions, and representatives of the Ministry of Interior and Ministry of Defence, in the smuggling or trafficking of migrants and refugees. These State actors enrich themselves through exploitation of and extortion from vulnerable migrants and refugees.” Full report available at: <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>.

44 Cabinet Decree (386) of 2014, available at: [https://security-legislation.ly/sites/default/files/lois/1321-Decree%20No.%20%28386%29%20of%202014\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/1321-Decree%20No.%20%28386%29%20of%202014_EN.pdf).

45 AI, *Libya’s Dark Web of Collusion*, p. 35.

46 Global Detention Project, *Immigration detention in Libya: A human rights crisis*, August 2018, p. 22, available at <https://www.globaldetentionproject.org/wp-content/uploads/2018/08/GDP-Immigration-Detention-Libya.pdf>

47 Ibid.

48 UNSC, Panel of Experts on Libya, *Final Report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*, S/2017/466, June 2017, p. 103, <https://www.undocs.org/S/2017/466>.

49 UNSC, Mohammed Kashlaf, 7 June 2018, available at: <https://www.un.org/securitycouncil/sanctions/1970/materials/summaries/individual/mohammed-kachlaf>.

50 UNSC, Ibid.

51 UNSC, Abd Al Rahman al-Milad, 7 June 2018, available at: <https://www.un.org/securitycouncil/sanctions/1970/materials/summaries/individual/abd-al-rahman-al-milad>.

52 Lorenzo Tondo, “Libya releases man described as one of world’s most wanted human traffickers”, *The Guardian*, 13 April 2021, available at: <https://www.theguardian.com/world/2021/apr/13/libya-releases-most-wanted-human-trafficker-bija>.

53 UN, “Security Council 1970 Committee Adds One Entry to Its Sanctions List”, 25 October 2021, available at: <https://www.un.org/press/en/2021/sc14674.doc.htm>.

54 Ibid.

“The goal was not to go to Europe, I wanted to go back to Mali... They put me in jail and said, we’re not going to leave you, we’re going to make you travel. And if you don’t pay, we’re going to make you work. I did not want to but after a while, I had to accept.”<sup>55</sup>

**“THE GOAL WAS NOT TO GO TO EUROPE, I WANTED TO GO BACK TO MALI... THEY PUT ME IN JAIL AND SAID, WE’RE NOT GOING TO LEAVE YOU, WE’RE GOING TO MAKE YOU TRAVEL. AND IF YOU DON’T PAY, WE’RE GOING TO MAKE YOU WORK. I DID NOT WANT TO BUT AFTER A WHILE, I HAD TO ACCEPT.”**

- Interview with “Bolu”, February 2021

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revenue. “Hassan”, a refugee from Sudan who was taken by traffickers to a camp in Brak Shati, explained in an interview:

“I told them my initial agreement was not like this, it was to take me to Tripoli. They replied to me, ‘We don’t have anyone coming here with an agreement. Whoever [comes] here to us [we] consider as a slave and we decide his or her fate.’”<sup>58</sup>

Within the context of the conflict in Libya, migrants and refugees continued to arrive in Europe. As the conflict escalated, the numbers of arrivals also increased, reaching its peak in 2016 at around 180,000<sup>56</sup> (as compared to the annual average of 19,500 prior to the uprising in 2011<sup>57</sup>). In response, Europe strengthened its cooperation with Libyan authorities to implement pushback measures as part of a broader policy of border externalisation, which transferred border control to Libya (see Section VIII). Such actions effectively closed all pathways to Europe leading to a major drop in the number of arrivals from Libya by 2017. These measures had the effect of trapping vulnerable migrants and refugees in an insecure and dangerous environment where they became increasingly monetised by smugglers, traffickers and criminal gangs involved in sea crossings. As a result, migrants and refugees were abducted, indefinitely detained and systematically exploited by these actors as a means of generating

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55 Interview with “Bolu”, February 2021.

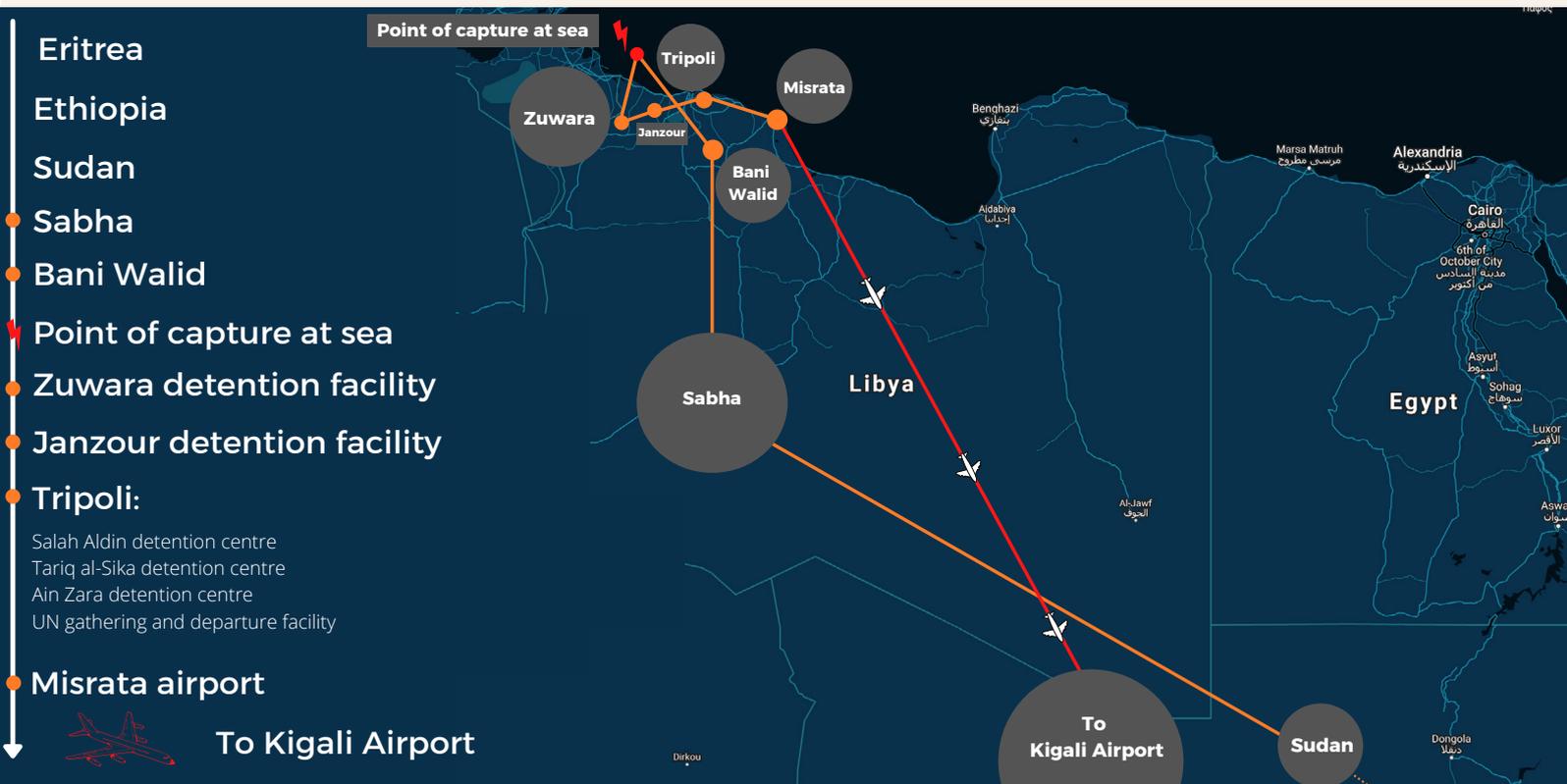
56 UNHCR, Operational Data Portal, Mediterranean Situation: Italy, available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5205>.

57 Mark Micallef, *ibid*, p. 38.

58 Interview with “Hassan”, February 2021.

# V. A JOURNEY THROUGH LIBYA

Migrants and refugees travel through Libya for various reasons. Their journeys take different routes, often depending on their country of origin and the period in which they arrived. Yet, many face similar experiences of abuse along the journey, particularly deprivation of liberty and inhumane conditions and treatment potentially amounting to torture. “Tesfay”,<sup>59</sup> who fled persecution in Eritrea, survived his journey through Libya and now resides as a refugee in Europe. His story depicts the cruel reality of many migrants and refugees in Libya, treated as commodities by different groups along the route – sold, enslaved, exploited and abused – with a vague promise of getting out.



For an interactive representation of Tesfay’s journey, click [here](#).

## The journey begins: from Ethiopia to Libya

After a complicated escape from Eritrea to Ethiopia, Tesfay paid his way to Sudan, where, in July 2017, a “smuggler” agreed to arrange his journey to Libya and onwards to Europe. From that moment, Tesfay was swept into a system of exploitative trafficking and enslavement from which he would be unable to break free until October 2019. He spent four days in Omdurman under lock and key, while a member of the trafficking network collected others for the desert crossing to Libya. Tesfay and 67 others were then packed into open-back trucks, exposed to the elements with little food, water or rest for days, across the gruelling terrain of the Sahara. At some point, they were handed over by their Sudanese drivers to Libyans, who Tesfay described as “cruel and callous”. He recalls them saying: “You are 68, even if 60 fall down, we don’t care. Eight is enough.” After several more days of treacherous desert driving, and unsure when they crossed the border, Tesfay and his group were deposited in a grove of date trees somewhere in south-west Libya.

<sup>59</sup> Interview with “Tesfay”, January 2021.

### ***In Libya: from the desert to Bani Walid***

Three days later, Libyan men in open-back Toyota Land Cruisers transported Tesfay's group to a large compound about an hour away. Tesfay described the compound as a "fortress" hidden among the date trees, where many other groups of Somalis, Ethiopians and Eritreans were held. After ten days, Tesfay's group was transported with others to Bani Walid, a town in the north-west of Libya, approximately 100 miles inland from Tripoli. The journey took several days. Wary of kidnappers along the route, the Libyan captors began the trip at night, in a convoy flanked by armed men with military-grade weapons. In what would become a trend, at around 5 am they were transferred to different drivers, also armed with military-grade weapons. When Tesfay's vehicle got stuck in the sand, the famished Eritreans were beaten and forced to push it. After two days, they were transferred again, to a large, covered lorry to conceal them as they entered Sabha city centre. In a mechanic's garage, they were given some food, juice, and allowed to rest for one hour, before they were loaded into two new covered lorries and taken to a transit compound 20 minutes away, on the outskirts of the city, where Tesfay's group spent three days exposed to the elements, only once given a tiny portion of plain pasta. Tesfay's group was finally taken from the compound and after half a day of driving they were transferred to another group of Libyan men who sorted them by religion, ridiculing, beating, and depriving the Christians of water. Tesfay and others desperately resorted to drinking their urine to keep from fainting. Around 8 pm, they arrived in Bani Walid, at a compound run by Nigeriens, and were finally able to drink water. At 1 am, a new group of Libyan men arrived and drove Tesfay's group for two hours at high speed to a much larger compound.

This place was heavily guarded by armed men and run by a group of four notorious Eritrean traffickers, though it was owned and ultimately controlled by the Libyan Mousa Adiyab,<sup>60</sup> to whom the four traffickers answered. The compound extended over several hectares, and Tesfay estimated that 2,000 migrants and refugees were held there in cramped, chaotic conditions. Upon arrival, an Eritrean trafficker went through their bags and confiscated their belongings. They were forced to pay \$4,000 for the promise of being sent onward to Europe via sea crossing. Guards beat them to elicit screams of agony while they called relatives or other contacts to arrange the money transfer. Tesfay's brother-in-law paid for him from a third country. While in the compound, Tesfay found his sister, who had left Eritrea before him and had already been in Bani Walid for six months when they met. They were held by different Eritrean traffickers, and, in early September 2017, she was transferred from the compound, supposedly to be taken to the sea. Tesfay later learned from her that she had made it only as far as another compound in Bani Walid, where she and those with her were told they had been sold by Mousa Adiyab to a Sudanese trafficker named Aziz. Tesfay would not see her again for nearly a year.

Shortly thereafter, fighting among traffickers active in the vicinity of Adiyab's compound in Bani Walid led to the reorganisation of migrants and refugees under their control. The Eritrean trafficker who effectively owned Tesfay was residing outside of Libya at the time and there were rumours that he had been arrested. In any case, he could no longer be reached and had effectively disappeared. One of the other Eritrean traffickers on-site appropriated Tesfay's group and demanded that they pay again. Tesfay and the others were subjected to worse living conditions than before and lined up outside every day for over a month to be beaten while they made phone calls to plead with relatives for money. In November, Tesfay's contact in a third country paid another \$3,600 for his onward travel. Tesfay recalls that many women, regardless of whether they had paid already or not, were ordered to have sex with the Eritrean trafficker or his associates before they would be allowed to be sent onwards. Those who refused were punished with violence and subjected to harsher living conditions until they eventually submitted.

### ***Zuwara: captivity, extortion and attempt at sea crossing***

Finally, in mid-January 2018, after five months in captivity in the compound in Bani Walid, Tesfay was taken to Zuwara, a small town on the north-west coast, to embark on a sea crossing. The journey was tortuous. Though the drive to Zuwara from Bani Walid should only take a total of three to four hours, Tesfay's group was moved around in covered lorries between different transit houses for several weeks, where they were held captive by Libyans awaiting payment from the Bani Walid network, which was delayed due to fighting between militias in the area. The conditions were so bad that Tesfay and many others developed lice and scabies all over their bodies. Finally, at the end of February 2018, Tesfay's group was taken to the sea. In the middle of the night, they were boarded onto a wooden boat along with Algerians and Tunisians, amounting to 110 passengers in total. In the morning, a Libyan captain in a small boat tugged them out to sea. Around noon, they were left in the open sea and told rescue would be called and that a big boat would come, they just had to wait. Soon after, a helicopter

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<sup>60</sup> Mousa Adiyab (sometimes spelt Moussa Diab) was listed for EU sanctions on 21 September 2020 for the following reasons: "Moussa Diab is responsible for and has directly engaged in serious human rights abuses including human trafficking and the kidnapping, raping and killing of migrants and refugees; He held migrants and refugees in captivity in an illegal detention camp near Bani Walid, where they were treated in an inhuman and degrading manner. Several migrants and refugees were killed when they tried to escape from the detention camp." *Official Journal of the European Union*, L 305 I, Volume 63, 21 September 2020, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L:2020:305I:FULL&from=EN>.

arrived and took photos. After more than thirteen hours at sea, they finally saw a boat approaching in the distance. As it got closer, however, their relief turned to fear, as it bore a Libyan flag and was manned by Libyan men in uniform.

### ***Back to Libyan shores and detention***

The Libyan boat pulled them back to Zuwara, where many journalists, armed men and a military commander, as well as IOM and UNHCR workers awaited them. Tesfay went through an IOM triage and was taken to a large detention facility in Zuwara. Tesfay stayed there for five days, in a closed room with no windows, scant water for drinking or hygiene purposes, and barely any food. From there, he was transferred to Janzour, a DCIM detention centre on the outskirts of Tripoli. He remembers that while IOM was registering other migrants for repatriation and relocation, no one registered the Eritreans. Tesfay stayed there for nearly three months. Over two months into his stay, he and his fellow Eritreans asked the prison boss to register them with UNHCR or transfer them to Tajoura detention centre, where they had heard UNHCR was active. The boss said he could arrange another sea crossing attempt for them but would not connect them with UNHCR. When Tesfay's group realised the boss was involved with trafficking and would potentially sell them again, they began a hunger strike in mid-May that was met with beatings and worsening conditions of detention. On 31 May 2018, Tesfay's group was packed onto a covered minibus at night and taken not to Tajoura, but to the Salah Aldin detention centre.

On 19 July 2018, after more than a month without progress at Salah Aldin, Tesfay and the other Eritreans refused to accept medical treatment from *Médecins Sans Frontières* (MSF) doctors until they agreed to contact UNHCR. Two days later, representatives of UNHCR arrived at Salah Aldin and finally registered the Eritreans for relocation. From that moment, Tesfay thought he would be safe. Yet, after more than a month with no further news from UNHCR, armed conflict broke out around Salah Aldin on 27 August 2018. The centre's guards fled, leaving the migrants and refugees locked inside. Eventually, a Somali cook returned and opened the doors, allowing them to escape. Tesfay and nine others headed towards a nearby mosque to seek shelter. On their way, however, a kind Libyan stranger called out to them on the street. He let them use his phone and tried to help them find a safe place to stay. After calling a relative in Europe, Tesfay discovered that his sister had not managed to cross the Mediterranean and was still in Libya, detained at the DCIM Tariq al-Sika centre. Because they had nowhere else to go and feared ending up in the hands of traffickers again after having finally been registered with UNHCR, Tesfay called his sister, who arranged their transport to Tariq al-Sika.

### ***Detention in Tariq al-Sika and relocation***

Tesfay stayed at Tariq al-Sika for over one year, from the end of August 2018 until October 2019. With over 1,000 detainees crowded into a large hall in extreme heat with limited water and only five toilets, Tesfay described the conditions as the harshest he endured in Libya. Detainees were often subjected to beatings and denied access to medical or humanitarian aid. Disease was rampant and, during his stay, Tesfay developed severe tuberculosis. Thanks to his sister's cries for help and aid from a local charitable organisation, he received one month of treatment in hospital before being returned to the detention centre. During his time at Tariq al-Sika, Tesfay was often forced to work, usually for Libyans who came to "rent" detainees for manual labour, predominantly in construction. However, there was also a secret storage depot for weapons hidden at the detention centre and during bouts of armed conflict, detainees were often forced to load weapons onto vehicles for transport. On several occasions, Tesfay was taken from the centre to the area of Ain Zara, where active armed conflict raged. While he was forced to unload and transport weapons, he saw other refugees and migrants pressured to join the fighting.

In early October 2019, UNHCR finally took Tesfay, his sister and other registered Eritreans to the "Gathering and Departure Facility" in Tripoli, which was only about 50 m away from Tariq al-Sika. After staying there for three days, Tesfay and his sister were taken to a Libyan airport and relocated to Rwanda, from where he was later relocated to Europe.

# VI. VIOLATIONS AGAINST MIGRANTS AND REFUGEES IN LIBYA: CRIMES AGAINST HUMANITY

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Migrants and refugees face gross human rights violations throughout their time in Libya. Based on the Organisations' analysis, it is argued that the widely documented violations of international human rights law also amount to crimes against humanity under the Rome Statute of the ICC. These crimes include imprisonment or severe deprivation of liberty, enslavement, murder, torture and other inhumane acts, rape, sexual slavery, enforced prostitution, other forms of sexual violence, and persecution.

## What is a crime against humanity?

Under Article 7 of the Rome Statute of the ICC, crimes against humanity refer to specific acts committed “as part of a widespread or systematic attack directed against any civilian population”, and “pursuant to or in furtherance of a State or organizational policy.”

Crimes against humanity are often committed as part of state policies, but they can also be perpetrated by non-state armed groups or paramilitary forces. Unlike war crimes, crimes against humanity can also be committed in peacetime.

Article 7(1) of the Rome Statute enumerates 11 crimes against humanity, including murder, enslavement, imprisonment, torture, sexual violence, persecution and enforced disappearance.

## CONTEXTUAL ELEMENT OF CRIMES AGAINST HUMANITY

A crime against humanity is a criminal act committed in the context of an attack against a civilian population pursuant to a state or organisational policy, which either affects a large number of people, is spread over a significant area, or is committed repeatedly, meaning that the crimes were not a random occurrence.<sup>61</sup>

The witness testimonies collected for the ICC Communication and this report, in conjunction with open-source information, clearly depict a pattern of multiple crimes committed against migrants and refugees by state authorities, militias, armed groups and private individuals. These crimes are committed in the context of an overall attack against civilians, in this case migrants and refugees in Libya. This identifiable group of civilians is targeted because of their migration status and their vulnerability as a result of the absence of legal protection in the country.

Crimes against migrants and refugees in Libya are committed both against a large number of individuals and across a wide geographical scope, spanning the entire country. This demonstrates the large-scale nature of the attack against them. Since 2011, tens of thousands of migrants and refugees have been held in detention sites across the country – both in official detention centres as well as in unofficial places of captivity controlled by militias, armed groups or individuals – where they face inhumane treatment<sup>62</sup> and conditions.<sup>63</sup>

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61 Rome Statute, art. 7(2): “For the purpose of paragraph 1: (a) “Attack directed against any civilian population” means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack.”

62 For example, in the case of over 3,000 migrants and refugees assisted by the medical organisation Medici per i Diritti Umani (Doctors for Human Rights – Italy, MEDU) between 2014 and 2020, at least 85% of them reported suffering torture and inhumane degrading treatment and 65% experienced serious and repeated beatings. MEDU, La Fabbrica della Tortura, 2020, p. 11, available at: [https://mediciperidiritiumani.org/medu/wp-content/uploads/2020/03/marzo\\_medu\\_2020\\_it\\_web.pdf](https://mediciperidiritiumani.org/medu/wp-content/uploads/2020/03/marzo_medu_2020_it_web.pdf).

63 The inhumane conditions inside all places of detention and captivity in Libya have been widely reported, including in a series of reports by Amnesty International, the most recent of which is available here: <https://www.amnesty.org/en/documents/mde19/4439/2021/en/>.

Over the years, reports published by a wide range of organisations have been consistent in demonstrating the forms of violence and exploitation to which migrants and refugees are subjected, either during their journey through the country, or while in detention. In its October 2021 report, the UN Fact-Finding Mission on Libya (the FFM) drew attention to the systematic character of the crimes against migrants and refugees, which have been “longstanding and on a massive scale.”<sup>64</sup> The FFM also highlighted that these incidents are neither isolated nor can they “be attributed to rogue elements,”<sup>65</sup> particularly in the case of the violent interceptions at sea and the subsequent detention of migrants and refugees.

Militias, armed groups, state authorities and individuals affiliated to them, involved in the commission of these crimes, control and profit from an organised network of human smuggling and trafficking, employing a consistent pattern of conduct throughout the detention and abuse cycle. Moreover, this takes place in the context of a legal framework hostile to migrants and refugees, which prescribes automatic and indefinite detention for every person entering the country irregularly (see Section VII), and against a historical backdrop of racial discrimination and general xenophobia in Libya. As such, the violations against migrants and refugees in Libya are not random but are organised. As the FFM noted, evidence points to “a state policy encouraging the deterrence of sea crossings, the extortion of migrants in detention, and the subjection to violence and discrimination.”<sup>66</sup> Therefore, the state policy in Libya – implemented by state and non-state actors alike – furthers the attack against migrants and refugees.<sup>67</sup>

### Crimes which may amount to crimes against humanity

Having demonstrated that the contextual element of crimes against humanity exists, this report draws on the ICC Communication to describe the crimes that have been, and continue to be, committed against migrants and refugees in Libya and which may amount to crimes against humanity.

## A. IMPRISONMENT OR SEVERE DEPRIVATION OF PHYSICAL LIBERTY

Under the Rome Statute, imprisonment or severe deprivation of physical liberty as a crime against humanity requires that “[t]he perpetrator imprisoned one or more persons or otherwise severely deprived one or more persons of physical liberty,” and that “[t]he gravity of the conduct was such that it was in violation of fundamental rules of international law.”<sup>68</sup>

The gravity of the conduct is determined by the violation of fundamental rules of international law. Such rules consist of the right to be free from arbitrary detention and the right to a fair trial, which include rights to have access to legal representation, to challenge the lawfulness of one’s detention, to be presented before judicial authorities, and to be released in cases of unlawful detention. These rights have been recognised as peremptory norms of international law, enshrined in treaties including the International Covenant on Civil and Political Rights (ICCPR).<sup>69</sup>

As documented over the years in countless public reports, arbitrary detention occurs at very high rates in Libya and amounts to a grave systemic issue.<sup>70</sup> The interviews conducted as part of the Organisations’ research also corroborated this: all but one of the individuals interviewed reported being arbitrarily detained at some point in their journey through Libya either in official detention facilities or in places of captivity by non-state armed individuals or groups. Several witnesses described being deprived of their liberty multiple times during their stay in Libya and on each occasion had to pay a ransom to be released, as highlighted by Tesfay’s journey (see Section V).

64 Human Rights Council, *Report of the Independent Fact-Finding Mission on Libya*, 2021, para. 68.

65 Ibid.

66 Ibid., para. 69.

67 Ibid.

68 ICC Elements of Crimes, art. 7(1)(e), Crime against humanity of imprisonment or other severe deprivation of physical liberty, available at <https://www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf>.

69 C. K. Hall and C. Stahn, in Triffterer/Ambos, *The Rome Statute of the ICC*, 2016, p. 203.

70 See for example, UNSMIL and OHCHR, *Abuse Behind Bars: Arbitrary and unlawful detention in Libya*, 2018, available at: [https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful\\_EN.pdf](https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf); AI, *Libya’s Dark Web of Collusion*.

## DCIM centres

According to the then Head of the DCIM, as many as 99% of migrants and refugees in DCIM centres arrive following interception at sea and return to Libya by the LCG.<sup>71</sup> Between January and September 2021 alone, the LCG returned over 23,000 migrants and refugees, including 1,500 women (at least 68 of whom were pregnant), to Libya.<sup>72</sup> This number represents a significant rise: not only is it twice that of 2020 but the highest number on record since LCG interceptions began in 2017.<sup>73</sup>

As of October 2021, estimates suggest that 7,000 migrants and refugees are detained at DCIM detention centres, although the actual number is likely to be much higher.<sup>74</sup> The discrepancy between the number of migrants and refugees returned to Libyan shores by the LCG and the number of those who are transferred to detention reflects the fact that many of them remain unaccounted for. The reality is that many disappear after disembarkation and are either handed over to smugglers or traffickers or are sold into bonded labour. Organisations such as IOM and MSF have repeatedly voiced alarm about this.<sup>75</sup> Moreover, DCIM centres are regularly opened and closed depending on demand and other factors, making it hard to monitor where migrants and refugees are being detained.

As a result of overcrowding in detention centres, DCIM centres have been forced to function significantly beyond their capacity limits. According to one expert, the DCIM became so overloaded that it urged the LCG to stop bringing people back to Libya.<sup>76</sup> The LCG did not honour this request. Particularly since February 2021, conditions inside detention centres have further deteriorated and tensions have been heightened, resulting in several violent incidents, including fatal shootings of migrants and refugees.<sup>77</sup>

## Unofficial places of captivity

Smugglers, traffickers, armed groups and militias deprive migrants and refugees of their liberty by sequestering and holding them in makeshift detention premises pending transfer to other locations. As in the case of Tesfay (see Section V), the length of their captivity in these locations is often contingent upon the transfer of money from an external source (e.g. the captives' family, friends, or other contacts) or on a decision by those controlling their liberty that they have paid off their "debts" in situations of forced labour or sexual slavery (both detailed below in subsequent sections). Often, imprisonment is used as a tool for the exploitation and extortion of migrants and refugees.

Migrants and refugees are sometimes "released"<sup>78</sup> to places of captivity that are not controlled by the Libyan authorities in any official capacity, but that are primarily controlled by non-state actors including traffickers, armed groups and militias who may have ties to state actors.<sup>79</sup> Migrants and refugees are often taken to such places by smugglers along the journey or after having been kidnapped from their homes, on the streets or at checkpoints.<sup>80</sup> These makeshift detention facilities, frequently referred to as "campos"<sup>81</sup> or "prisons," are often warehouses, houses, hangars, farms, or other structures unfit for human habitation. Such places are believed to be particularly prevalent in, but not limited to, the south of the country.<sup>82</sup>

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71 UNSC, *Final report of the Panel of Experts on Libya established pursuant to Security Council resolution 1973 (2011)*, 8 March 2021, p. 12, available at: <https://digitallibrary.un.org/record/3905159?ln=en>.

72 International Rescue Committee (IRC), "Libya: Record numbers intercepted at sea and detained; IRC calls for their immediate release", 2 September 2021, available at: <https://www.rescue.org/press-release/libya-record-numbers-intercepted-sea-and-detained-irc-calls-their-immediate-release>.

73 Ibid.

74 Human Rights Council, *Report of the Independent Fact-Finding Mission on Libya*, 2021.

75 See for example IOM, "Migrants missing in Libya a matter of gravest concern", 17 April 2020, available at: <https://www.iom.int/news/migrants-missing-libya-matter-gravest-concern>.

76 Interview with expert, July 2021.

77 MSF, "Libya: One dead and two injured in shooting in Tripoli detention centre", 9 April 2021, available at:

<https://www.msf.org/people-dead-and-injured-following-libya-detention-centre-shooting>.

78 Global Detention Project, *Immigration detention in Libya: 'A human rights crisis'*, August 2018, p. 52, available at: <https://www.globaldetentionproject.org/wp-content/uploads/2018/08/GDP-Immigration-Detention-Libya.pdf>.

79 Human Rights Watch (HRW), *No Escape from Hell: EU Policies Contribute to Abuse of Migrants in Libya*, 21 January 2019, available at: <https://www.hrw.org/report/2019/01/21/no-escape-hell/eu-policies-contribute-abuse-migrants-libya>.

80 AI, *Libya's Dark Web of Collusion*, p. 53.

81 Term often used in interviews with migrants and refugees to designate places of detention and captivity such as warehouses, houses, hangars or farms. See for example, AI, *Between Life and Death: Refugees and migrants trapped in Libya's cycle of abuse*, September 2020, p. 21, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/05/MDE1930842020ENGLISH.pdf>.

82 Arezo Malakooti, *The Political Economy of Migrant Detention in Libya: Understanding the players and the business models*, April 2019, p. 31, available at: <https://globalinitiative.net/wp-content/uploads/2019/11/Final-Report-Detention-Libya.pdf>.

Due to the nature and circumstances of the captivity of migrants and refugees in such places, the location and other details remain largely unknown and unreported, thus identifying these locations is particularly challenging. Many of the migrants and refugees interviewed in the course of the research conducted by the Organisations indicated that they often did not know whether they were being held in a DCIM detention centre or an unofficial place of captivity. One example of an unofficial place of captivity recently identified through witness testimony is a compound in the desert village of Tazirbu, north of Kufra. Witnesses held in this location have described the compound as including approximately 10 buildings and guarded by plain-clothed guards and police dogs. It reportedly holds between 700 and 1,200 migrants and refugees.<sup>83</sup>

While Libyan law criminalises “illegal entry, stay or exit,” providing a basis for the imprisonment and deportation of “illegal” migrants,<sup>84</sup> legal provisions are rarely invoked in the arrest and detention of migrants and refugees. They are carried out arbitrarily, whether by state actors or non-state actors, in the absence of any judicial oversight.<sup>85</sup> Even when held in official facilities, migrants and refugees are unable to challenge their detention through legal proceedings, in breach of their fundamental right enshrined in international law. Instead, their most likely way out is through paying a ransom, being sold to a smuggler or trafficker and, sometimes, finding themselves in a situation of bonded labour, or, in rare cases, by managing to escape.<sup>86</sup> When in unofficial sites, detention and captivity is arbitrary and unlawful by default, as it is carried out by armed groups and militias acting beyond the scope of the law and due process. Overall, given that the deprivation of liberty of migrants and refugees in Libya breaches peremptory norms of international law, it may amount to a crime against humanity.

## B. ENSLAVEMENT

Under the ICC Elements of Crimes, the crime against humanity of enslavement occurs when “[t]he perpetrator exercised any or all of the powers attaching to the right of ownership over one or more persons, such as by purchasing, selling, lending or bartering such a person or persons, or by imposing on them a similar deprivation of liberty.”<sup>87</sup>

The exercise of the powers attaching to the right of ownership as set out in the ICC Elements of Crimes can only be established on a case-by-case basis.<sup>88</sup> International jurisprudence has provided some indicators of the exercise of the powers attaching to the right of ownership. These include: (i) control or restrictions of someone’s movement and, more generally, measures taken to prevent or deter escape; (ii) control of physical environment; (iii) psychological control or pressure; (iv) use or threat of force or coercion; (v) duration of the exercise of powers attaching to the right of ownership; (vi) assertion of exclusivity; (vii) subjection to cruel treatment and abuse; (viii) control of sexuality; (ix) forced labour or subjecting the person to servile status; and (x) the person’s vulnerability and the socio-economic conditions in which the power is exerted.<sup>89</sup>

The interviews conducted for the ICC Communication and reflected in this report, as well as the extensive catalogue of open-source information documenting abuses against migrants and refugees in Libya, reveal that migrants and refugees are subjected to multiple forms of exercise of powers attaching to the rights of ownership, including the selling of people, forced labour, and sexual slavery.

The **selling of migrants and refugees** by one smuggler, trafficker, armed group or even private citizen to another, occurs in different contexts: *en route*, while they transit through Libya, but also in market auctions and from inside detention centres. Evidence of migrants and refugees, predominately black men, being sold to the highest bidder in slave auctions has emerged,

83 Interview with expert, May 2021.

84 Law No. 19 of 2010 on Combatting Illegal Migration, 28 January 2010, available at: <https://security-legislation.ly/law/32174>.

85 AI, *Libya’s Dark Web of Collusion*, p. 7

86 HRW, *No Escape from Hell*; GI-TOC, *The Human Conveyor Belt : trends in human trafficking and smuggling in post-revolution Libya*, March 2017, p. 35, available at: <https://globalinitiative.net/wp-content/uploads/2017/03/GI-Human-Conveyor-Belt-Human-Smuggling-Libya-2017-.pdf>.

87 ICC, Elements of Crimes, art. 7 (1) (c). Further, the ICC has defined the powers attaching to the right of ownership as “the use, enjoyment and disposal of a person who is regarded as property, by placing him or her in a situation of dependence which entails his or her deprivation of any form of autonomy.” See, ICC, Situation in the Democratic Republic of The Congo in the case of The Prosecutor v. Germain Katanga, judgement pursuant to article 74 of the Statute, 2014, para. 975, available at: [https://www.icc-cpi.int/CourtRecords/CR2015\\_04025.PDF](https://www.icc-cpi.int/CourtRecords/CR2015_04025.PDF).

88 ICC, Situation in Uganda in the case of *The Prosecutor v. Dominic Ongwen*, Trial Judgment, 2021, para. 2711, available at: [https://www.icc-cpi.int/CourtRecords/CR2021\\_01026.PDF](https://www.icc-cpi.int/CourtRecords/CR2021_01026.PDF); ICC, Situation in the Democratic Republic of the Congo in the case of *The Prosecutor v. Bosco Ntaganda*, Trial Judgment, 8 July 2019, para. 952, available at: [https://www.icc-cpi.int/CourtRecords/CR2019\\_03568.PDF](https://www.icc-cpi.int/CourtRecords/CR2019_03568.PDF).

89 Ongwen Trial Judgment, *ibid*, para. 2712.



including in video footage released by CNN in November 2017.<sup>90</sup> One of the witnesses interviewed by the Organisations, “Nada”, a Sudanese woman who was held captive in Zawiya, described witnessing such an auction on one occasion.<sup>91</sup> Nada was held by traffickers at a makeshift detention facility on a farm in Zawiya for nine months with her daughters and granddaughter. One day during her captivity, she was given permission to leave the farm to buy food supplies and was taken by taxi to a nearby supermarket. She witnessed the auction taking place on the street outside the supermarket. Nada explained:

“We are standing there and first time in my life I saw in front of me, between two cars, a black man who... had a chain on his head, on his hands, on his feet, because he was strong... they were making an auction of how much they want to pay. And I saw first time the trade. The price started 3,000 dinars until they reached 7,000 dinars.”

**“SOMETIMES THEY THROW AWAY  
WHAT PEOPLE ARE EATING AND WHEN  
PEOPLE ASK FOR WATER THEY SAY  
“IBEIDAT...ALL YOU BLACK ARE SLAVES.”**

- Interview with “Nada”, April 2021

Describing the environment in which she was held and the treatment of the guards towards migrants and refugees, she added: “Sometimes they [the guards] throw away what people are eating and when people ask for water, they [the guards] say ‘ibeidat... all you black are slaves.’”<sup>92</sup>

As Tesfay’s journey exemplifies, another common form of exercise of the right of ownership over migrants and refugees detained or held captive in Libya is **forced or bonded labour**.

Migrants and refugees who are unable to raise the funds for their release are often forced to work without receiving payment and against their will. This is a widespread phenomenon in both official and unofficial detention centres – most of the 14 migrants and refugees interviewed described experiences of being forced to work. One out of two migrants and refugees interviewed by IOM in 2017 reported having worked or provided services for someone during their journey without receiving the expected remuneration in return.<sup>93</sup>

90 Nima Elbagir, Raja Razek, Alex Platt and Bryony Jones, “People for sale: Where lives are auctioned for \$400”, CNN, November 2017, available at: <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>.

91 Interview with “Nada”, April 2021.

92 Ibid. Note: ‘ibeid’ singular, ‘ibeidat’ plural, means slave(s) in Arabic.

93 IOM, *Mixed Migration Flows in the Mediterranean and Beyond: Flow monitoring data analysis*, April 2017, p. 2, available at: [https://migration.iom.int/docs/Analysis\\_Flow\\_Monitoring\\_and\\_Human\\_Trafficking\\_Surveys\\_in\\_the\\_Mediterranean\\_and\\_Beyond\\_26\\_April\\_2017](https://migration.iom.int/docs/Analysis_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_26_April_2017).

In some cases, forced labour happens when the operator of the detention facility needs labour for his own projects, including staffing and building the facility itself. In other cases, Libyans from the local area, known as sponsors,<sup>94</sup> come to the facility to offer money in return for labour. Following payment to the operator of the detention facility, detainees are released to sponsors to work with the promise that they will be returned to the centre at the end of a specified period. For a larger sum, migrants and refugees are released to the sponsor indefinitely and are made to work off their debt by working for the sponsor.<sup>95</sup> Evidence gathered from open sources and corroborated by the interviews conducted for the ICC Communication and this report reveals that construction, manufacturing, cleaning, maintenance and farming are the sectors that make use of forced labour most frequently.<sup>96</sup>

Migrants and refugees have recounted that 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. “Idris,” an asylum-seeker from Eritrea who entered Libya after being smuggled across the Sudanese border in 2014, explained that on numerous occasions he was taken out of the prison where he was being detained for over a year in Benghazi, and subjected to forced labour.<sup>97</sup> On his experiences of being forced to work in Libya, Idris said:

“Anyone needing workers would come and take us and pay the prison – I know they paid the prison because once the man said (when we were slow leaving) that we had to be quick because he had paid money for us.”

He added:

“The men who came were wearing jalabeya<sup>98</sup> and something to cover their head but never any of the blue camouflage uniform like some of the guards. A person from the detention centre would always come with us, and he would also wear a jalabeya. Both were armed with big guns... The labour was heavy, including carrying metal and stones. I think we were building houses, although I never saw them finished. The people who took us out to work guarded us closely. When they thought that we were speaking to each other, they would beat us. This happened every day.”

Other forms of forced labour include migrants and refugees being **forced to engage in the conflict**. In January 2020, UNHCR Special Representative for the Central Mediterranean, Vincent Cochetel, told a German press agency, “We have accounts from people who were in detention centres that they were given the choice to remain there for an indefinite period of time or to fight on the front line.”<sup>99</sup> This was described as well by one of the witnesses interviewed by the Organisations: Hassan, who left his country of origin in 2015, and was detained at multiple unofficial locations by non-state actors during his two-year journey through Libya. Hassan stated, “If you know how to hold a gun, you were taken to fight.”<sup>100</sup>

Another form of enslavement identified during the Organisations’ research and interviews is **sexual slavery**. It should be noted that in the Rome Statute, sexual slavery constitutes a standalone crime, distinct from enslavement, and is included together with other sexual crimes under Article 7(1)(g). However, the elements required to characterise both the crimes of enslavement and sexual slavery are similar, the main difference being that for the crime of sexual slavery, the perpetrator must have caused the victim “to engage in one or more acts of a sexual nature.”<sup>101</sup> This means that the crime of enslavement must involve an act of a sexual nature in order to amount to sexual slavery. In Libya, many testimonies and open-source information show that in relation to women and girls particularly, the exercise of the right of ownership by the captors often involves various forms of sexual violence, including women being taken for periods of a week at a time or longer, being sold for prostitution, or being kept at the captors’ convenience for sexual activities. For instance, Tesfay said of a well-known trafficker in Bani Walid:

“At this time, there were so many girls who he asked (...), ‘You want to cross the sea? Let’s go to my home.’ [...] Who is an attractive girl, he choose[s] and tell[s] her, ‘You want to go to Italy? Ok, come to my home.’ If you don’t go, he says you will stay here forever.”

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94 Arezo Malakooti, *The Political Economy of Migrant Detention in Libya: Understanding the players and the business models*, April 2019, p. 36, available at: <https://globalinitiative.net/wp-content/uploads/2019/11/Final-Report-Detention-Libya.pdf>.

95 *Ibid.*, pp. 35-42.

96 See for example IOM, *Mixed Migration Flows in the Mediterranean and Beyond*, p. 2.

97 Interview with “Idris”, May 2020.

98 A *jalabeya* is a traditional Arab garment.

99 Dpa international, “UNHCR: Warring Libyan parties using migrants as fighters”, 17 January 2020, available at: <https://www.dpa-international.com/topic/unhcr-warring-libyan-parties-using-migrants-fighters-urn%3Anewsml%3Adpa.com%3A20090101%3A200117-99-508611>.

100 Interview with “Hassan”, February 2021.

101 ICC Elements of Crimes, art. 7 (1) (g)-2 Crime against humanity of sexual slavery.

During the months Tesfay stayed in this location, he observed that the trafficker “changed so many girls as his wife”. Women held captive in private homes have also described being forced to carry out domestic tasks as well as perform sexual acts. Hassan, who was held captive in Tripoli, said: “For the girls that were kept here, whenever he [the trafficker] came in, he would take one of them to his room to sleep with them.”

The conduct described above, such as the selling of migrants and refugees, forced and bonded labour, forced engagement in the conflict, and sexual slavery all demonstrate the exercise of the powers attaching to the right of ownership over migrants and refugees in Libya. They reflect the control or restrictions of their movement and of their physical environment, the use of psychological control or pressure and the use or threat of force or coercion. As such, the evidence collected for the ICC Communication and reflected in this report<sup>102</sup> suggest that such conduct may amount to the crime against humanity of enslavement.

## C. MURDER

Under the Rome Statute, murder as a crime against humanity, takes place when “[t]he perpetrator killed one or more persons.”<sup>103</sup>

Based on the evidence collected, including through testimonies, the murder of migrants and refugees has been taking place in a wide range of instances, including during the use of excessive and unlawful lethal force in response to protests, or as punishment – such as when individuals were unable to pay a ransom, attempted to escape detention or resisted physical violence.<sup>104</sup> Murders have been reported in DCIM detention centres, unofficial places of captivity, and outside of detention settings in urban areas.<sup>105</sup>

In an interview, Nada reported witnessing multiple murders during the nine months that she was held captive on a farm in Zawiya.<sup>106</sup> She described how, in one incident, a woman was shot for resisting physical abuse:

“Once a Nigerian girl was asked to go to them (the trafficker), to be their wife for them, and she refused and said “I did not come to be your wife or your commodity” and then the Libyan man wanted to slap her and she stopped him by grabbing his arm, the other one charged his gun and pop, pop, pop, killed her, in the head and in the belly, in front of us.”

Nada described another incident on the farm, in which minors were forced to bury the mutilated dead bodies of other migrants and refugees:

“They were taken in a close place where [there] were many bodies, dead bodies, and they (the guards) said “you will bury these bodies”. One of the guys was 16 years old, a teenager, who for five days after this, for a week, he just ke[pt] throwing up and keep crying... After this they brought other mutilated dead bodies carried in sacks, one sack composed of heads, and the other composed of other body parts.”

Migrants and refugees have also been killed outside of detention settings, such as when they are in transit. For example, in 2017, the UN Panel of Experts reported that one member of the Zawiya Refinery Coastguard shot at boats carrying migrants and refugees, causing the death of an unknown number of people on board.<sup>107</sup> In another case in July 2020, after being intercepted at sea and returned to Libya by the LCG, three Sudanese nationals aged between 15 and 18 tried to avoid being detained and were shot dead, reportedly by members of a militia linked to the LCG.<sup>108</sup>

102 See for example GI-TOC, *The Human Conveyor Belt*, pp. 34-35; GI-TOC, *The intersection of irregular migration and trafficking in West Africa and the Sahel: Understanding the Patterns of Vulnerability*, February 2020, p. 48, available at: <https://globalinitiative.net/wp-content/uploads/2020/11/The-intersection-of-irregular-migration-and-trafficking-in-West-Africa-and-the-Sahel-GITOC.pdf>; IOM, “IOM Learns of ‘Slave Market’ Conditions Endangering Migrants in North Africa”, 11 April 2017, available at: <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>; UNSMIL and OHCHR, *Desperate and Dangerous*.

103 ICC Elements of Crimes, art. 7 (1)(a) Crime against humanity of murder.

104 HRW, *No Escape from Hell*.

105 See for example, UNSMIL and OHCHR, *Desperate and dangerous*.

106 Interview with “Nada”, April 2021.

107 UNSC, *Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*, 1 June 2017, p. 133, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/N1711623.pdf>.

108 Mat Nashed, “What happens to migrants forcibly returned to Libya?”, *The New Humanitarian*, 5 August 2020, available at: <https://www.thenewhumanitarian.org/news-feature/2020/08/05/missing-migrants-Libya-forced-returns-Mediterranean>.

**“PEOPLE GET SICK EVERY DAY, THERE IS SHORTAGE OF FOOD, IT’S VERY HOT AND THERE ARE NO WINDOWS. EVERY DAY YOU SEE PEOPLE DYING IN THERE BECAUSE OF ILLNESS.”**

- Interview with “Johnathon”, January 2021.

facilities and places of captivity, and the common active refusal by guards and smugglers to allow medical care in the facilities. For example, between September 2018 and May 2019 alone, at least 22 people were reported to have died in detention mostly from tuberculosis in Zintan and Gharyan detention centres.<sup>110</sup>

“Kaleb,” a refugee from Ethiopia, was held captive and tortured multiple times during his 15-month journey through Libya. He reported seeing hundreds of Eritrean men die of diarrhoea, and some from hunger during his month-long detention at a compound in Al Shwarif.<sup>111</sup>

“Johnathon,” a migrant from Eritrea, was imprisoned at multiple locations during his time in Libya. In Bani Walid, one of the many places where he was held captive, people also regularly died from illness:

“People get sick every day, there is shortage of food, it’s very hot and there are no windows. Every day you see people dying in there because of illness. There the water is not clean, you are sleeping in a small place and you’re sleeping together, so there are skin transmitted diseases.”<sup>112</sup>

According to the ICC Elements of Crimes, the crime of murder can be equally committed through actions and/or omissions that knowingly cause the death of civilians.<sup>113</sup> It may be argued that the deliberate act of subjecting individuals to life threatening conditions, of which the likelihood of causing death can be reasonably foreseen, can amount to murder. The terrible conditions of detention that migrants and refugees have faced, and continue to face, characterised by poor sanitation, deprivation of food and water,<sup>114</sup> failure to provide medical care or promptly treat medical conditions, cumulatively have resulted in the death of thousands of migrants and refugees.<sup>115</sup>

## D. TORTURE

Under the Rome Statute, torture as a crime against humanity is “the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.”<sup>116</sup>

Inside and outside of detention sites in Libya, migrants and refugees fall victim to extreme levels of physical violence committed by DCIM guards, LCG officials, smugglers and traffickers, members of militias, and other non-state actors. The UN Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment has argued that “detention based solely

109 MEDU, *La Fabbrica della Tortura*, p. 12.

110 MSF, *Out of Sight, Out of Mind: Refugees in Libya’s Detention Centres*, July 2019, available at: <https://www.msf.org/out-sight-out-mind-refugees-libyas-detention-centres-libya>.

111 Interview with “Kaleb”, February 2021.

112 Interview with “Johnathon”, January 2021.

113 ICC Elements of Crimes, art. 7(1)(a), footnote 7.

114 AI, *Libya’s Dark Web of Collusion*, p. 8.

115 Numerous deaths in custody have been reported by human rights and humanitarian organisations including Amnesty International and MSF. Although an accurate figure for the number of refugees and migrants that have died as the result of medical neglect is not available, our research leads us to estimate that the number is likely in the hundreds.

116 Rome Statute, art. 7(1)(f) and 7(2)(e); For the elements of the crime against humanity of torture see ICC Elements of Crimes, art. 7(1)(f).

on migration-status, as such, can also amount to torture<sup>117</sup> particularly when it is done with the purpose of intimidation, or punishing migrants and their families.

### *Violence in detention*

Based on the testimonies gathered for the ICC Communication and this report, as well as other publicly available documentation, the infliction of violence, pain and suffering on migrants and refugees in Libya is widespread and systematic in nature. Amnesty International has consistently reported on the prevalent use of torture throughout detention centres in Libya including in 2021.<sup>118</sup> The pervasiveness of torture is also highlighted in a report by MEDU, in which at least 85% of the over 3,000 persons interviewed reported suffering treatment which amounts to torture or inhumane and degrading treatment.<sup>119</sup>

These reports are further corroborated by testimonies from migrants and refugees interviewed as part of the Organisations' research; all individuals interviewed described the use of violence against them on at least one occasion during their journey through Libya.

“Albert” crossed the border into Libya from Algeria in 2017 and was detained and severely mistreated by both state and non-state actors at multiple sites over several months. Albert described on one occasion being stabbed after trying to escape from a militia-run camp in Sabratha where he was being held captive:

“We had fled and went into some bushes. When I jumped in the yard, there was an agent who told me to stop. I didn't comply and that's when he stabbed my back with a knife.”<sup>120</sup>

**“BEFORE I WAS TAKEN INSIDE THE PRISON, I WAS BEATEN TO THE POINT I WAS NOT CONSCIOUS OF WHAT HAPPENED. I WAS BEATEN BADLY AND THEN THROWN INSIDE THE CELL.”**

- Interview with “Hassan”, February 2021

Although the forms of violence committed against migrants and refugees are wide ranging, the forms most frequently reported by both open sources and witness testimonies are beating with various objects, whipping, burning with various tools, electrocution, gun violence, stabbing, being forced to hold stressful or uncomfortable positions for long periods of time, and pouring boiling water, melted plastic or chemicals on the body.<sup>121</sup> Many migrants and refugees interviewed described themselves or others sustaining severe injuries due to the violence they were forced to endure, including gunshot wounds and broken bones.

Sudanese migrant, Hassan, was transferred between numerous detention facilities during the two years he was in Libya. Because of the horrors that he experienced in the country, Hassan decided to flee Libya in 2017 by making the sea crossing to Italy. During his cycle of detention, upon arrival at a prison in Sabratha, Hassan was beaten unconscious by guards:

“Before I was taken inside the prison, I was beaten to the point I was not conscious of what happened. I was beaten badly and then thrown inside the cell.”<sup>122</sup>

Hassan also reported witnessing other migrants being beaten with a plastic hose:

“They stripped them naked inside and the long water tubes were used to beat people. When they are being beaten, they get black scars on their body. When you protect yourself with your hand they beat you harder.”

“Amat,” a migrant from the Gambia, spent six months in transit in Libya throughout late 2013 and early 2014. Amat described being stopped by a Tebu gang who demanded money from the group of migrants and refugees with whom he was travelling:

117 Human Rights Council, *Report on the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment*, A/HRC/37/50, 28 February 2018, available at: [https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.53\\_english.pdf](https://www.ohchr.org/documents/hrbodies/hrcouncil/regularsession/session22/a.hrc.22.53_english.pdf).

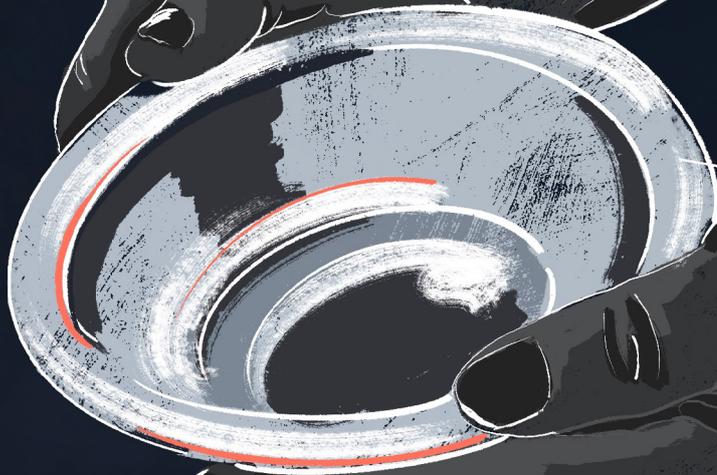
118 AI, *Libya's dark web of collusion*; AI, *Between Life and Death*; confirmed in AI, *No One Will Look for You: Forcibly Returned from Sea to Abusive Detention in Libya*, June 2021, available at: <https://www.amnesty.org/en/wp-content/uploads/2021/07/MDE1944392021ENGLISH.pdf>.

119 MEDU, *La Fabbrica della Tortura*, p. 11.

120 Ibid.

121 See for example, OHCHR and UNSMIL, *Desperate and Dangerous*, p. 28.

122 Interview with “Hassan”, February 2021.



“When they come, they threaten you, they slap you and whip you. The whip they use is usually used for animals, cattle, but they use it for humans... a young boy holding an AK47 shot into the sand to threaten us, he said if you don't give us [money], this is what we will do to you. People were crying.”<sup>123</sup>

For the first part of his time in Libya, Amat described travelling between different migrant “ghettos”<sup>124</sup> where he was enslaved and forced to work by traffickers. In these “ghettos”, Amat experienced and witnessed many different means of violence. After three months, Amat was arrested by the police and taken to a former police station on the outskirts of Tripoli, where he was detained for three months and tortured:

“They [the guards] have hooks and they put your legs up and head down and torture your legs. People screamed, screamed, screamed.”

“Samuel,” who was facing persecution in Cameroon, entered Libya in late 2015. Soon after crossing the border from Niger, Samuel was transferred from the smugglers he had paid to facilitate the border crossing, to traffickers who took him to a prison in Sabha. The prison was not under the control of the authorities, and migrants and refugees reportedly were held there until a ransom payment had been made. Samuel reported that he was tortured with a blow torch after asking to be released from the prison:

“They tied me with some metal chains and were beating me, with fire, “chalumeau” (torch), and they were using that to burn me.”<sup>125</sup>

Kaleb described being put into a freezer as punishment whilst being held captive in Kufra.<sup>126</sup> Other migrants and refugees have also reported being transported in refrigerated trucks.

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123 Interview with “Amat”, February 2021.

124 Migrants who work in Libya often reside in specific areas of a city. These areas, often known for being more impoverished than other parts of the city, are commonly referred to as “ghettos”.

125 Interview with “Samuel”, January 2021.

126 Interview with “Kaleb”, February 2021.

In some cases, ill-treatment and physical violence is committed by other detainees under orders from their captors. Kaleb, who was also held captive by traffickers in Al Shwarif for nine months, described the treatment of other detainees after a failed attempt to escape from the compound. He reported:

“They [the guards] caught them and they shot them in front of everybody in the leg and foot. They took everyone out to witness. They used electrical [shocks] as examples so nobody else tries to run away... They rope their hands behind them and wet them with spring water. They lie them down, they beat them on any part of their bodies... After they beat [them] up, they put them up[side] down... They put ropes on their legs and... they slaughter them like butchers... they asked other migrants to beat them... [Using] sticks, wood that you can make a table with.”

### *Conditions in detention*

Physical and mental pain is also inflicted on migrants and refugees in Libya through the conditions in which they are held, as described above, whether in official DCIM-run centres or other types of facilities. There is a serious lack of provision of basic requirements needed to sustain human life, causing severe physical and mental suffering that in some cases amounts to torture. Detainees are often forbidden to go outside and are locked in small rooms or cells with little or no space to lie down or stretch their legs. In most cases, the physical structures where migrants and refugees are held are not designed for this purpose. Migrants and refugees have reported that the places where they are held are often so overcrowded that it is impossible to even open the door or move around. Fleeing war and oppression in Sudan, “Yasir”, who travelled to Libya in September 2016, was detained in four different places by non-state actors. On one occasion, shortly after arriving in Libya, he was held captive in a metal container in the desert town of Umm Al Aranib with 120 other migrants and refugees. The migrants and refugees in the container were given one meal and one cup of water per day. Yasir described the place where he was detained:

“It was very small, the space fit for one person. No space to turn around. If you want to change position you have to stand, change and lie again.”<sup>127</sup>

Migrants and refugees routinely described extremely scarce provisions of food, for example, one spoon of rice or macaroni per day, and very little water. Nada, who was detained for nine months in Zawiya, stated:

“The situation is very, very, very, unhealthy, still we have to draw water from the [well], and that well is a dirty [well], where there are pieces of shoes, dirty clothes, you have to take the water out and drink it.”<sup>128</sup>

Lighting, including daylight, is usually inadequate and rooms, sometimes without windows, can be so dark that it is impossible to distinguish people’s faces. Migrants and refugees being detained or held captive are usually forbidden from leaving their cells, are not allowed to wash and have limited or no access to a toilet. Sometimes they are forced to urinate and defecate in buckets or bottles. Due to poor sanitation and overcrowding, scabies and other disease outbreaks are common in these facilities.<sup>129</sup> Tesfay recalled that he was not permitted to wash for weeks while being held in a house by traffickers in the coastal town of Zuwara.<sup>130</sup> He explained that:

“We have never washed our body. There is no soap. So, this lice, everyone has lice and itching our hands, our bodies. It became so bad, everything is itching.”

Detainees lack access to adequate medical assistance causing many to suffer from health problems caused or aggravated by the conditions in which they are detained, including respiratory tract infections, acute diarrhoea, skin diseases and infections such as scabies, urinary tract infections, and illnesses related to malnutrition.<sup>131</sup> In fact, the situation in DCIM detention centres has become so desperate and dangerous that humanitarian actors have been forced to suspend their activities because the conditions prevent them from conducting their work effectively. In June 2021, MSF announced the suspension of their activities in detention centres located in Tripoli due to the endless cycle of violence and inhumane conditions, stating that “the persistent pattern of

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127 Interview with “Yasir”, February 2021.

128 Interview with “Nada”, April 2021.

129 MSF, *Difficult choices: providing healthcare in detention centres in Libya*, 2017, available at: <https://www.msf.org/international-activity-report-2017/difficult-choices-providing-healthcare-detention-centres-libya>; UNSMIL and OHCHR, *Detained and dehumanised: Report on human rights abuses against migrants in Libya*, 13 December 2016, available at: [https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised\\_en.pdf](https://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf).

130 Interview with “Tefay”, January 2021.

131 MSF, *International activity report 2017*, August 2018, pp. 14-15, available at: [https://www.msf.org/sites/msf.org/files/2018-08/msf-international-activity-report-2017\\_1.pdf](https://www.msf.org/sites/msf.org/files/2018-08/msf-international-activity-report-2017_1.pdf).

violent incidents and serious harm to refugees and migrants, as well as the risk to the safety of our staff, has reached a level that we are no longer able to accept.”<sup>132</sup>

### *Violence in transit*

Migrants and refugees have also frequently described a blatant disregard for their safety as well as violent and abusive treatment in transit from one place to another, particularly during dangerous desert crossings. Their treatment during transit, in continuation of the abuse they undergo in detention, often amounts to torture. Kaleb described the abusive treatment he experienced during the journey to Al Shwarif:

“Most of us, we were crying because they put ash in our eyes and sand. It was very dirty...and it was like punishment more than the sticks. I would choose the sticks, they are temporary but the sand stays.”

Vehicles are usually severely overcrowded, with reportedly as many as 120 people being transported in a single vehicle. Bolu, a migrant from Mali, moved between multiple cities during his time in Libya and suffered mistreatment at every stage. After walking across the border from Algeria, Bolu paid an armed group to take him from Ghadames to Tripoli to find work in the capital. Bolu described the actions of this militia:

“They hit people, they treat people like animals...The violence is that people are piled on top of each other. When there are people who want to move, the other screams. When people scream, they stop the pickup and they come with belts, and they hit everybody, everybody. They injured some, they say they’re going to leave us in the bush, in the desert.”<sup>133</sup>

Around 80% of the migrants and refugees assisted by MEDU between 2014 and 2020 reported physical consequences and 79% suffered from Post-Traumatic Stress Disorder (PTSD) following the traumatic events – including torture – they experienced during their journey in Libya,<sup>134</sup> highlighting the severity of the violence they experienced. Due to the severity of this pain and suffering – both physical and psychological – inflicted in a widespread and systematic manner on migrants and refugees in Libya it may be argued that such conduct amounts to the crime against humanity of torture.

## E. RAPE

Under the Rome Statute, the crime against humanity of rape requires that “[t]he perpetrator invaded the body of a person by conduct resulting in penetration, however slight, of any part of the body of the victim or of the perpetrator with a sexual organ, or of the anal or genital opening of the victim with any object or any other part of the body.”<sup>135</sup>

The act constituting rape must have been committed or caused by force, or by threat of force or coercion. Such coercion can be caused by fear of violence, duress, detention, psychological oppression or abuse of power. This act can be carried out by or against the victim, the perpetrator or a third party, or by taking advantage of a coercive environment or of the victim’s incapacity to give genuine consent.<sup>136</sup> International criminal tribunals have recognised that the situation of detention and captivity can amount to a coercive environment and that in such cases, there can be no genuine consent to sexual acts.<sup>137</sup> The evidence gathered for this report and the ICC Communication shows that many forms of coercion are used before and/or during sexual violence against migrants and refugees in Libya. These include the use or threat of force against them or a third person such as a family member,

132 MSF, “Ongoing violence against detained migrants forces MSF to suspend Tripoli detention centre activities”, 22 June 2021, available at: <https://www.msf.org/violence-against-migrants-forces-msf-suspend-centre-activities-libya>.

133 Interview with “Bolu”, February 2021.

134 MEDU, *La Fabbrica della Tortura*, p. 12.

135 ICC Elements of Crimes, art. 7 (1)(g)-2 Crime against humanity of sexual slavery.

136 For rape, see Rome Statute, art. 7(1)(g)-1. For other forms of sexual violence see Rome Statute, art. 7(1)(g)-6.

137 See Special Court for Sierra Leone, *Brima et al Trial Judgment*, para 694; ICTY, *Kunarac et al Trial Judgment*, paras 464, 542; ICTY, *Furundžija Trial Judgment*, para 271. In the ICC *Ntaganda Trial Judgment*, the judges recognised that the deprivation of personal liberty of one victim who was “kept captive in a state of extreme vulnerability” in a UPC/FPLC training camp gave the member of the group at the camp “powers over her attaching to the right of ownership”, and that “the conduct of the UPC/FPLC soldiers who subjected P-0883 to sexual violence was committed by threat of force or coercion”. See paras 976 and 978.



but also the use of detention (official or unofficial), abuse of (official) power, psychological oppression, blackmail and reprisals.<sup>138</sup>

In 2018, extensive research conducted by the UN revealed that the “overwhelming majority” of migrant and refugee women and older teenage girls in Libya experience or witness incidents of sexual violence, often multiple times and in multiple locations.<sup>139</sup> Sexual violence, particularly rape, is inflicted by a plethora of actors in Libya, including by the intermediaries involved in the detention, movement and exploitation of migrants and refugees. This includes DCIM officials, guards, members of armed groups and militias, smugglers, traffickers, criminal gangs and private individuals, in both official and unofficial places of captivity.<sup>140</sup> Some women, who were detained in Shara’ al-Zawiya between January and May 2021, reported to Amnesty International that guards raped or coerced women into sex in exchange for their release or essentials such as clean water.<sup>141</sup> Rape is often perpetrated in conjunction with other acts of violence and used for the purpose of extortion, subjugation, punishment, and entertainment, and frequently involves elements of profound cruelty and psychological torture.<sup>142</sup> The Organisations’ analysis of open sources and interviews with witnesses has found that rape, gang rape and forced rape of others are amongst the most frequently reported forms of sexual violence.<sup>143</sup> In fact, the widespread and well-known risk of being raped in Libya has often led women migrants to take contraceptive pills or carry condoms during their journeys.<sup>144</sup> Nada was held captive on what she described as a farm in Zawiya with her three daughters and one granddaughter. She described that:

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138 OHCHR and UNSMIL, *Desperate and Dangerous*.

139 OHCHR and UNSMIL, *Desperate and Dangerous*.

140 United States Department of State, *2018 Trafficking in Persons Report - Libya*, 28 June 2018, available at: <https://www.refworld.org/docid/5b3e0af04.html>.

141 AI, *No one will look for you*, p. 40.

142 Women’s Refugee Commission, *‘More Than One Million Pains’: Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy*, March 2019, p. 2, available at: [https://www.researchgate.net/publication/332082680\\_More\\_Than\\_One\\_Million\\_Pains\\_Sexual\\_Violence\\_Against\\_Men\\_and\\_Boys\\_on\\_the\\_Central\\_Mediterranean\\_Route\\_to\\_Italy](https://www.researchgate.net/publication/332082680_More_Than_One_Million_Pains_Sexual_Violence_Against_Men_and_Boys_on_the_Central_Mediterranean_Route_to_Italy).

143 Ibid. See also AI, *‘Libya is full of cruelty’: Stories of abduction, sexual violence and abuse from migrants and refugees*, May 2015, available at: [https://www.amnesty.org.uk/files/libya\\_is\\_full\\_of\\_cruelty.pdf](https://www.amnesty.org.uk/files/libya_is_full_of_cruelty.pdf); UNSMIL and OHCHR, *Detained and dehumanised*; HRW, *No Escape from Hell*; Refugees International, *‘Hell on Earth’: Abuses Against Refugees and Migrants Trying to Reach Europe from Libya*, 31 May 2017, available at: <https://www.refugeesinternational.org/reports/2017/libya>.

144 Mirjam Van Reisen and Meron Estefanos, “Human Trafficking Connecting to Terrorism and Organ Trafficking: Libya and Egypt”, *Human Trafficking and Trauma in the Digital Era: The Ongoing Tragedy of the Trade in Refugees from Eritrea*, March 2017, p. 180, available at: [https://www.researchgate.net/publication/316991680\\_Human\\_Trafficking\\_Connecting\\_to\\_Terrorism\\_and\\_Organ\\_Trafficking\\_Libya\\_and\\_Egypt](https://www.researchgate.net/publication/316991680_Human_Trafficking_Connecting_to_Terrorism_and_Organ_Trafficking_Libya_and_Egypt); AI, “Refugees and migrants fleeing sexual violence, abuse and exploitation in Libya”, 1 July 2016, available at: <https://www.amnesty.org/en/latest/news/2016/07/refugees-and-migrants-fleeing-sexual-violence-abuse-and-exploitation-in-libya/>.

**“THERE WERE MANY OF THEM. THEY WANTED TO HAVE SEX WITH ME. THEY HAD BIG GUNS, AND THEY TOLD ME THAT IF I MOVE, IF I TRY TO LEAVE, THEY WILL SHOOT ME IN THE FOOT.”**

- Interview with “Esther”, March 2021

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“The Libyan[s] there, they sniff white powder, and they smoke, and they come searching for girls, with consent or no consent, by force; with this water tube, if you try to resist, you get beaten up.”<sup>145</sup>

Many of the victims interviewed described that rape occurred at any and every point throughout the journey. “Esther” left Cameroon in May 2016 in search of better opportunities. When she first arrived in Libya, Esther was two months pregnant. On her journey towards the coast, Esther experienced a multitude of acts of violence and ill-treatment at the hands of traffickers, militias and armed groups. She described that she only narrowly avoided being raped by armed groups after she first crossed the western border into Libya:

“They got me out of the car, they wanted to rape me. A “soldier” pulled out his penis to rape me. I said I was pregnant. He put me on the floor. Then one of his friends came back to pick him up. There were many of them. They wanted to have sex with me. They had big guns, and they told me that if I move, if I try to leave, they will shoot me in the foot.”<sup>146</sup>

Kaleb, a refugee from Ethiopia, also described hearing of women being raped by their drivers and other men wearing uniforms during the journey from Sudan to Libya.<sup>147</sup> He said:

“They raped women, two women. One woman had a baby, five or six months old, I am not sure. The other one was not mature enough, 15 or 16 years old... One was crying all day the next day. Eritrean men went to ask her the next day who raped her. She could not talk, she was only crying.”

Kaleb also described women being taken to separate rooms where they were raped by guards at an unofficial place of captivity in Al Shwarif:

“Dozens of women [became] pregnant... they cannot ask for abortion or for treatment to end the pregnancy. Some of them they give birth in Libya... From the rape, from the guards, from the agents.”

Rape against men and boys has also been well documented by other organisations.<sup>148</sup> Incidents often go unreported by survivors of such violence because of extreme stigma and feared discrimination after reporting the abuse. In 2019, a protection officer interviewed by the Women’s Refugee Commission stated, “[E]veryone knows when a man says, ‘I’ve gone through Libya’, it is a euphemism for rape.”<sup>149</sup> There are also frequent reports of men and boys being “forced to rape women and girls, including family members”<sup>150</sup> and sometimes women are also forced to perpetrate sexual violence against men and boys. Much of this violence is carried out in public or filmed for humiliation and/or extortion purposes.<sup>151</sup>

Such acts of a sexual nature resulting in the forced penetration of the body through different forms of coercion including the use, or threat of, force against them or a third person such as a family member, but also the use of detention, abuse of power, psychological oppression, blackmail, and reprisals, demonstrate that the conduct described above may amount to the crime against humanity of rape.

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145 Interview with “Nada”, April 2021.

146 Interview with “Esther”, March 2021.

147 Interview with “Kaleb”, February 2021.

148 See for example, AI, *No one will look for you*, p. 40.

149 Women’s Refugee Commission, *More Than One Million Pains*.

150 Ibid.

151 Ibid., p. 24.

## F. OTHER CRIMES AGAINST HUMANITY COMMITTED AGAINST MIGRANTS AND REFUGEES IN LIBYA

Many other crimes against humanity are committed in Libya against migrants and refugees. Based on the Organisations' documentation and analysis, the following crimes against humanity also appear to be committed against migrants and refugees in Libya: enforced prostitution, other forms of sexual violence, persecution, and other inhumane acts. While the ICC Communication presents a detailed assessment of the evidence in relation to the legal requirements for each of these crimes, they are not analysed in full in this report, only outlined.

### *Enforced prostitution*

Enforced prostitution has been and continues to be committed against migrants and refugees in Libya. The crime against humanity of enforced prostitution requires that a perpetrator causes one or more persons to engage in acts of a sexual nature by force, or by threat of force or coercion, or by taking advantage of a coercive environment or a person's incapacity to give genuine consent.<sup>152</sup> Additionally, the perpetrator or another person must have obtained or be expected to obtain some form of advantage in exchange for, or in connection with, the acts of a sexual nature,<sup>153</sup> whether financial, material, practical, psychological or of any other sort.

In Libya, many women and girls have been and continue to be forced into prostitution by their captors, including and most commonly in order to pay off a (real or imposed) debt or ransom, or as their only chance to eat, to survive and to continue their journey through Libya. Available evidence shows that a financial advantage is almost always received by the perpetrators and their networks. However, the crime can also be characterised when the victims themselves are "benefiting" from the prostitution – through payment, expectation of survival, regaining freedom or accessing more humane living conditions in exchange for the services provided – as long as it occurs "under coercion". In Libya, migrants and refugees find themselves almost constantly in situations of coercion where their vulnerability is exploited by their captors. This may amount to the crime against humanity of enforced prostitution.

### *Other forms of sexual violence*

Other acts committed against migrants and refugees in Libya may amount to the crime against humanity of other forms of sexual violence,<sup>154</sup> a broad category encompassing a wide range of acts that do not necessarily correspond to the other sexual crimes enumerated in the Rome Statute,<sup>155</sup> but that are so serious and of comparable gravity, that they may equally constitute a crime against humanity. These acts must have been committed "by force, or by threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power [...] or by taking advantage of a coercive environment or such person's or persons' incapacity to give genuine consent."<sup>156</sup> Several acts can fall under this category, such as forced nudity, molestation and forced masturbation, as well as intentionally creating an environment of constant fear of sexual violence.

For example, forced nudity has been recognised by various regional and international courts, as well as UN bodies, as a violation of the victim's integrity,<sup>157</sup> an outrage upon personal dignity,<sup>158</sup> an inhuman and/or degrading act or treatment,<sup>159</sup> and even a form of "sexual torture".<sup>160</sup> In Libya, forced nudity is particularly widespread and affects all genders. It occurs mostly, although not exclusively, in the context of body searches, also referred to as strip searches, in violation of international standards. These

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152 ICC Elements of Crimes, art. 7 (1)(g)-2 Crime against humanity of enforced prostitution.

153 Ibid.

154 ICC Elements of Crimes, art. 7 (1)(g)-6 Crime against humanity of sexual violence.

155 Rome Statute, art. 7(1)(g).

156 ICC Elements of Crimes, art. 7 (1)(g)-6 Crime against humanity of sexual violence.

157 Inter-American Court for Human Rights, *Miguel Castro Castro Prison v. Peru*, Judgment (Merits, Reparations and Costs), 25 November 2006, paras 304-308. Judges also noted that it constitutes sexual violence (para. 306) and also considered that in some cases, forcing a person to undress or to remain naked is a violation of the right to humane treatment (para. 308).

158 International Criminal Tribunal for the former Yugoslavia (ICTY), *Prosecutor v. Dragoljub Kunarac, Radomir Kovac and Zoran Vukovic*, Trial Judgment, IT-96-23-T&IT-96-23/1-T, 22 February 2001, paras 766-774, 782, 88 [being forced to strip and dance naked on a table while being watched by the accused]; International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Trial Judgment, ICTR-96-4-T, 2 September 1998, paras 688, 697 [being undressed and forced to do gymnastics naked in the public courtyard of the bureau communal, in front of a crowd].

159 International Criminal Tribunal for Rwanda (ICTR), *The Prosecutor v. Jean-Paul Akayesu*, Trial Judgment, *ibid.* ICTR-96-4-T, 2 September 1998, paras 688, 697; African Commission on Human and Peoples' Rights (ACHPR), *Commission nationale des droits de l'Homme et des libertés v. Chad*, Communication n°74/92, 11 October 1995. Special Court for Sierra Leone (SCSL), *Prosecutor v. Brima, Kamara and Kanu*, Appeals Judgment, SCSL-2004-16-A, 22 February 2008, para. 184.

160 Human Rights Council, 'Report of the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment on his mission to Mexico (21 April to 2 May 2014)', A/HRC/28/68/Add.3, 29 December 2014, para. 28.



searches often include internal cavity searches – sometimes susceptible to amount to the crime of rape – and are carried out on arrival at a new detention centre or place of captivity or transit to find and steal money and phones from migrants and refugees. The testimonies collected by the Organisations also revealed that forced nudity, particularly of women and girls, often leads to further acts that may amount to sexual violence.

#### *Persecution*

The Rome Statute defines persecution as a crime against humanity as “the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.” To qualify as persecution, this deprivation of rights must be based on the political, racial, national, ethnic, cultural, religious, or gender characteristics of the person targeted or other grounds that are universally recognised as impermissible under international law. Based on the documentation and evidence collected, the Organisations argue in the ICC Communication that the myriad abuses migrants and refugees face in Libya frequently amount to deprivations of their fundamental rights based on multiple – often intersectional – grounds of discrimination, including religion, race, gender, nationality and their status as migrants and refugees.

#### *Other inhumane acts*

Lastly, the crime against humanity of other inhumane acts serves as a residual category to include conduct that is not explicitly listed as crimes against humanity in the Rome Statute. In Libya, the Organisations found that the inhumane conditions of detention, transfer and transport, both on land and at sea, may be inhumane acts in cases which may not amount to torture. Further, separation of families of migrants, particularly in unofficial places of captivity, constitutes a serious violation of human rights and thus can be characterised as inhumane acts. Lastly, in situations related to enslavement, where the exercise of powers attaching to the right of ownership cannot be established, the conduct may be characterised as inhumane acts of slave trade, which is a precursory yet distinct crime to enslavement.

#### *War crimes*

Additionally, it should be noted that while the focus of this report is on crimes against humanity, the crimes analysed have taken place over the past ten years against the backdrop of a non-international armed conflict. When they have taken place in the context of active hostilities, many of the crimes detailed above may also amount to war crimes.

# VII. LIBYA'S LEGAL FRAMEWORK AND INTERNATIONAL OBLIGATIONS

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Libya lacks an appropriate legal framework on migration. Moreover, its complete lack of an asylum framework is in breach of its international obligations and increases the vulnerability of migrants and refugees in the country.

## *The early laws*

Libya's labour and migration laws have fluctuated over the years since the country's independence. Under the Gaddafi regime, the laws often reflected the need for, and reliance on, foreign workers but were also used as leverage to achieve foreign policy objectives at any given time. Law No. 6 of 1987 on Organising the Entry, Residence and Exit of Foreigners in Libya<sup>161</sup> was a direct reflection of Gaddafi's pan-Arab aspirations: all entry, stay and exit of foreign nationals was regulated by the General Directorate of Passports and Nationality and related visa programmes,<sup>162</sup> with the exception of nationals from Arab states, Ethiopia and Eritrea.<sup>163</sup> Law No. 6 was later amended by Law No. 2 of 2004 to provide harsher punishments including for the crime of smuggling – a reflection of the policy changes towards migration.<sup>164</sup>

## *Law No. 19 of 2010*

In another policy shift influenced by its relations with the EU, Libya began tightening its borders and by 2010 the introduction of Law No. 19 of 2010 on Combatting Illegal Migration<sup>165</sup> sought to put an end to open migration in the country. Not only did the law criminalise what was now perceived as “illegal” entry, stay and exit from the country, it also suddenly placed thousands of nationals who had previously resided in the country freely, in an irregular situation.<sup>166</sup> The implementation of the law gave foreign nationals present on the Libyan territory a two-month grace period to register before their status was rendered “illegal”.<sup>167</sup>

Law No. 19 of 2010 is particularly problematic as it provides a legal basis for automatic detention of migrants and refugees, as well as forced labour. Indeed, according to Article 6, “Foreign illegal immigrants shall be penalised by detention with hard labour or by a fine not exceeding 1,000 LYD. In all cases, a foreigner convicted of any of the crimes outlined in this law shall be expelled from the territory of the Great Jamahiriya immediately upon execution of the sentence.”

The indiscriminate and arbitrary detention of all “irregular migrants” means that refugees and asylum seekers are also regularly detained solely for the purpose of migration control, a practice that violates international law and human rights standards. Further, while Article 10 provides that those arrested under Law No. 19 shall be referred to the competent judicial authorities and be treated “in a humanitarian manner that preserves their dignity and rights and that does not violate their money or moveable property,”<sup>168</sup> there is no additional provision guaranteeing procedural safeguards. In fact, Law No. 19 allows for the indefinite detention, followed by deportation, of those considered to be irregular migrants.<sup>169</sup> Article 6 provides that unauthorised migrants are to be detained and then deported after they serve their sentences. Additionally, those detained do not have avenues to challenge the grounds of their detention or deportation decisions.

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161 Law No. 6 of 1987 on Organising the Entry, Residence and Exit of Foreigners in Libya, available at: [https://security-legislation.ly/sites/default/files/lois/1214-Law%20No.%20\(6\)%20of%201987\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/1214-Law%20No.%20(6)%20of%201987_EN.pdf).

162 Ibid., art. 2.

163 Ibid., art. 3.

164 Art. 1 of Law No. 2 of 2004 increased the fine for those breaching the law from a maximum of 200 Libyan dinars to a minimum of 2,000 Libyan dinars. Additionally, art. 2 of Law No. 2 of 2004 introduced a new provision – art. 19(bis) – to Law No. 6 of 1987 to criminalise smuggling and any form of assistance to irregular migrants in the country. See Law No. 2 of 2004 amending certain provisions of Law No. 6 of 1987, art. 1, available at: [https://security-legislation.ly/sites/default/files/lois/841-Law%20No.%20%282%29%20of%202004\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/841-Law%20No.%20%282%29%20of%202004_EN.pdf).

165 Law No. 19 of 2010 on Combatting Illegal Migration, available at: <https://security-legislation.ly/en/law/32174>.

166 Ibid., art. 11.

167 Ibid.

168 Law No. 19 of 2010, art. 10.

169 AI, *Libya: Rule of Law or Rule of Militias?*, 5 July 2012, p. 37, available at: <https://www.amnesty.org/en/documents/mde19/012/2012/en/>.

To this date, Law No. 6 of 1987, as amended by Law No. 2 of 2004 and Law No. 19 of 2010 still constitute the applicable legal framework. Ultimately, Law No. 19 of 2010 set the tone for Libya's migration management and continues to be implemented today. Detention is widely and systematically used, largely for those caught attempting to cross to Europe by sea, serving not only as a deterrent for others but also as a means of profit-earning for militias, armed groups, and the smuggling and trafficking industry.

### ***Lack of asylum framework and Libya's international obligations***

In addition to its inappropriate legal framework on migration, Libya also lacks an operational asylum and refugee protection framework. While Article 10 of Libya's 2011 interim Constitutional Declaration recognises the right to "political asylum,"<sup>170</sup> the general principle of asylum and other provisions of protection are yet to be incorporated into domestic legislation.

Although Libya is not a party to the 1951 Convention relating to the Status of Refugees or its additional protocols, it has signed and ratified the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa, which recognises not only the principle of asylum and refugee protection but also the spirit of the 1951 Refugee Convention. Libya is also a party to the Universal Declaration of Human Rights (UDHR) which, although not legally binding, recognises the principle of asylum as an international legal principle<sup>171</sup> and the ICCPR, which protects freedom of movement.<sup>172</sup>

The fact that Libya remains without a legal framework for processing asylum claims or recognising refugee status, places thousands of potential refugees and asylum seekers in a situation of increased vulnerability and precariousness. In contravention of both Libyan law and international standards, migrants and refugees are held in detention indefinitely, with no formal registration, no legal process, and no access to lawyers or judicial authorities.

Moreover, the Libyan legal framework is also inadequate when it comes to the criminalisation of serious crimes under international law. Indeed, not only does it fail to penalise international crimes, as listed in the Rome Statute, the definitions of serious offenses, such as torture and other forms of ill-treatment, slavery and sexual and gender-based violence, also fail to comply with international law and standards. Overall, the ill-equipped legal framework impedes the possibility to ensure accountability for international crimes in Libya, thereby creating an environment that fosters the commission of such crimes. Combined with a weak and ineffective criminal legal system, Libyan authorities are unable to effectively carry out investigations and prosecutions of international crimes pursuant to international standards. This should trigger the ICC's complementarity to investigate international crimes of such gravity.

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170 Libya's Constitutional Declaration, 2011, available at: [https://security-legislation.ly/sites/default/files/lois/1214-Law%20No.%20\(6\)%20of%201987\\_EN.pdf](https://security-legislation.ly/sites/default/files/lois/1214-Law%20No.%20(6)%20of%201987_EN.pdf).

171 Universal Declaration of Human Rights, 1948, art. 14.

172 International Covenant on Civil and Political Rights, 1966, art. 12.

# VIII. TRAPPED IN LIBYA: WHAT IS EUROPE'S ROLE?

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Over the past decades, and more intensely since 2015, European policies have aimed to close migration routes to Europe as much as possible. Aimed at stemming arrivals to Europe, these policies have in turn contained migrants and refugees in Libya and therefore, European actors implementing them may be responsible for enabling crimes against humanity to be committed against them.

## *Flows to Europe following the outbreak of conflict in Libya*

The so-called European “migrant crisis” of 2015, in which more than one million people crossed into Europe (including approximately 154,000 via the Central Mediterranean Route - CMR),<sup>173</sup> was a turning point that cemented European efforts to keep migrants and refugees out.

Migration management measures developed by the EU have centred around containing migrants and refugees in Libya or returning them to their country of origin rather than providing them with safe passage to, and resettlement in, Europe. The European response seeks to avoid its obligations under international law, particularly the *non-refoulement* principle which prohibits returning people to a country where they would face torture, cruel, inhuman or degrading treatment or punishment or other irreparable harm.<sup>174</sup> The deplorable conditions in which migrants and refugees are detained in Libya have been recognised by several jurisdictions; in 2012, the ECtHR ruled that Italy's actions to capture migrants and refugees at sea and return them to Libya where they risked torture and other cruel, inhuman or degrading treatment, violated the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR).<sup>175</sup> Unable to continue returning those intercepted at sea to

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173 IOM, “Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015”, 22 December 2015, available at: <https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom>.

174 Convention on the Status of Refugees, 1951, art. 33, available at: <https://www.unhcr.org/3b66c2aa10>.

175 ECtHR, *Hirsi Jamaa and Others. v Italy*, para. 125; Corte d'Assise di Milano, N.10/17 (10 October 2017), 71.



Libya following this ruling,<sup>176</sup> Italy found innovative ways to circumvent its international law obligations and ensure that those attempting to flee war-torn Libya did not make it to European shores. So continued a series of policy initiatives by the EU, Italy and other European states that would ultimately leave migrants and refugees stranded and trapped in Libya at the mercy of traffickers, armed groups, militias and state authorities alike.

### The shift in EU migration policy in the Central Mediterranean since 2015

Following the increased number of deaths at sea from 2013, the EU member states primarily concerned swiftly set up search-and-rescue operations, in line with the UN Convention on the Law of the Sea (UNCLOS), which requires rescue of “persons in distress” in states’ territorial waters regardless of their legal status.<sup>177</sup> In an effort to reduce the number of deaths at sea, Italy launched **Operation Mare Nostrum**, a search-and-rescue programme. However, despite its effectiveness in saving lives at sea, Operation Mare Nostrum ended in October 2014. Surveillance and enforcement activities at Europe’s external borders were then taken over by the European Border and Coast Guard Agency, also known as Frontex. In November 2014, Frontex launched **Operation Triton**, whose primary focus on border surveillance and enforcement reflected the shift in the EU’s priorities. Operation Triton’s search and rescue activities were severely limited compared to those of Mare Nostrum. Following the shipwreck on 18 April 2015,<sup>178</sup> where 700 migrants and refugees lost their lives, Frontex launched a military mission, European Union Naval Force Mediterranean (EU NAVFOR Med), also known as **Operation Sophia**, to address trafficking and smuggling. Operation Sophia extended its patrol activities into Libya’s territorial waters and focused on targeting smugglers’ vessels while being mandated with training and equipping the LCG. Operation Sophia ended in March 2020 and was replaced with **Operation Iriini**. Operation Iriini’s mandate consists of solely enforcing an arms embargo on Libya, with an explicit ban on rescuing migrants and refugees at sea, while continuing its LCG training programme, reflecting yet another step in the radical shift in EU policy towards security and containment rather than protection.

## A. THE AGREEMENTS SIGNED WITH LIBYA

Italy and Libya have a longstanding relationship on cooperation in the area of migration management.<sup>179</sup> After the 2011 uprising and the increased sea arrivals to Italy in 2016, on 2 February 2017, the Italian government and Libya’s GNA entered a Memorandum of Understanding (MoU)<sup>180</sup> geared towards “the fight against illegal immigration”.<sup>181</sup> The following day, on 3 February 2017, members of the European Council adopted the Malta Declaration which welcomed and supported Italy’s cooperation with Libya.<sup>182</sup> These two events marked a new era of migration management in the Mediterranean which became characterised by the interception, return and detention of migrants and refugees in Libya.

The MoU was adopted amid widespread criticism over its legality and effects.<sup>183</sup> One major concern is that cooperation with the LCG and DCIM is not conditioned on guaranteeing human rights standards, ending the use of arbitrary detention, or vetting those institutions and their members to ensure that they were not responsible for crimes and human rights violations against

176 ECtHR, *Hirsi Jamaa and Others v. Italy*, 2012. The Court ruled that Italy’s return agreements with Libya constituted a violation of the principle of *non-refoulement*.

177 UNCLOS, 1982, art. 98.

178 Julian Miglierini, “Migrant tragedy: Anatomy of a shipwreck,” BBC, 24 May 2016, available at: <https://www.bbc.co.uk/news/world-europe-36278529>.

179 For instance, the 2008 Treaty on Friendship, Partnership and Cooperation. Available at: <https://splash-db.eu/policydocument/treaty-of-friendship-partnership-and-cooperation-between-the-italian-republic-and-the-great-social/#searchresult>.

180 Memorandum of Understanding on Co-operation in the fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic, 2 February 2017, available at: <https://www.governo.it/sites/governo.it/files/Libia.pdf>. An unofficial translation in English is available at: <https://www.statewatch.org/media/documents/news/2017/oct/it-memorandum-of-understanding-libya-migration-deal.pdf>.

181 The MoU commits Italy to providing “support and financing to development programs in the regions affected by the illegal immigration phenomenon” (art. 1(B)), as well as “technical and technologic support to the Libyan institutions in charge of the fight against illegal immigration” (art. 1(C)). Italy also commits to strengthening border control in Southern Libya (art. 2(1)) and financing “reception camps” to hold “illegal immigrants” (art. 2(2)). In return, Libya commits to stem the flow of “illegal migrants” to Europe by preventing people from departing its territory, intercepting migrant boats in the Mediterranean and returning them to Libya (art. 1(A)).

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

183 See for example Yasha Maccanico, *Analysis: Italy renews Memorandum with Libya, as evidence of a secret Malta-Libya deal surfaces*, March 2020, available at: <https://www.statewatch.org/media/documents/analyses/no-357-renewal-italy-libya-memorandum.pdf>.

migrants and refugees. Despite many calls for the MoU to be revoked,<sup>184</sup> on 2 February 2020, the MoU was automatically renewed without amendments for a further three years.<sup>185</sup>

Further, in May 2020, Libya also signed a Memorandum of Understanding with Malta “in the field of combatting illegal immigration,”<sup>186</sup> under which Malta committed to provide support to Libya in fighting irregular migration across the Mediterranean. The Memorandum established two migration management coordination and support centres based in Valletta and Tripoli, both financed by the Maltese government. Strongly focused on the objective of stemming migration to Europe and ignoring the reality of the situation in Libya, the Memorandum also provides that Malta will propose to the EU Commission and EU states an increase in financial support to help Libya in securing its southern borders, the provision of technologies for border control and protection, as well as support to dismantle trafficking networks and curtail organised crime.<sup>187</sup> The Memorandum is valid for three years.

## B. COOPERATION WITH THE LIBYAN COAST GUARD AND DECLARING THE SEARCH AND RESCUE ZONE

Since 2015, and as European SAR operations<sup>188</sup> in the Mediterranean decreased, the EU and its member states progressively outsourced responsibility for search and rescue to the LCG.

With the aid of Operation Sophia, funds from the EU Trust Fund for Africa<sup>189</sup> and through direct bilateral support from Italy,<sup>190</sup> the LCG’s capacity grew. The EU and individual member states provided the LCG with training as well as financial and material support. In 2017 Italy provided four vessels to the LCG with a further six promised.<sup>191</sup> By 2019, 399 LCG personnel had been trained.<sup>192</sup> Yet none of the support provided by the EU and European states to the LCG was conditioned upon upholding human rights obligations by the Libyan authorities, nor was any monitoring oversight put in place to ensure compliance with human rights standards.<sup>193</sup> Newly trained and with new and refurbished ships, by the summer of 2017 the LCG was in full operation and began returning migrants and refugees on a large scale to deplorable conditions in Libya.

On 2 August 2017, Italy’s Parliament approved the deployment of a mission of navy ships to help Libya “fight against illegal immigration and human smuggling”.<sup>194</sup> One of the main objectives of the mission was to help the Libyan authorities set up a maritime coordination centre, a prerequisite for the establishment of a SAR zone.<sup>195</sup>

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184 For example, the Council of Europe’s Commissioner for Human Rights made such a call. See Council of Europe, “Commissioner calls on the Italian government to suspend the co-operation activities in place with the Libyan Coast Guard that impact on the return of persons intercepted at sea to Libya”, 31 January 2020, available at: <https://www.coe.int/en/web/commissioner/-/ommissioner-calls-on-the-italian-government-to-suspend-the-co-operation-activities-in-place-with-the-libyan-coast-guard-that-impact-on-the-return-of-p>.

185 AI, “Libya: Renewal of migration deal confirms Italy’s complicity in torture of migrants and refugees”, 30 January 2020, available at: <https://www.amnesty.org/en/latest/news/2020/01/libya-renewal-of-migration-deal-confirms-italys-complicity-in-torture-of-migrants-and-refugees/>.

186 Memorandum of Understanding Between the Government of National Accord of the State of Libya and The Government of The Republic of Malta in the Field of Combatting Illegal Immigration, 28 May 2020, available at: <https://www.statewatch.org/media/documents/news/2020/jun/malta-libya-mou-immigration.pdf>.

187 Ibid., art. 5.

188 Search and rescue (SAR) operations involve looking for people who are lost or in danger at sea and bringing them back to shores safely. For more detail, see text box on *The shift in EU migration policy in the Mediterranean since 2015*, p. 46.

189 The EU Emergency Trust Fund for Africa, established in 2015 has allocated 455 million euros to Libya migration management as of June 2021. According to its June Factsheet update, 57.2 million has been allocated to border management including the training of the LCG, while 5.2 million has been allocated to dismantling criminal networks in North Africa involved in human smuggling and trafficking. [https://ec.europa.eu/trustfundforafrica/sites/default/files/eutf\\_libya\\_en.pdf](https://ec.europa.eu/trustfundforafrica/sites/default/files/eutf_libya_en.pdf).

190 IEMed, “Italy and Libya renew their bilateral migration deal”, *euromesco*, 2 February 2020, available at: <https://www.euromesco.net/news/italy-and-libya-renew-their-bilateral-migration-deal/>.

191 AI, *Libya’s Dark Web of Collusion*.

192 Ibid. and Benjamin Bathke, “When helping hurts: Libya’s controversial coast guard, Europe’s go-to partner to stem migration”, *Infomigrants*, 24 July 2019, available at: <https://www.infomigrants.net/en/post/18196/when-helping-hurts--libyas-controversial-coast-guard-europes-goto-partner-to-stem-migration>.

193 Very little of the training involved matters of human rights or international law. In fact, according to Access Info, an organisation that was able to obtain the training material from Frontex through an access to documents request, only one slide in the training manual addressed human rights. See Access Info, “Disclosure of documents used by EU trainings to Libyan Coast Guard show negligible focus on protection of human rights”, 30 November 2017, available at: <https://www.access-info.org/2017-11-30/disclosure-of-documents-used-by-eu-in-trainings-to-libyan-coast-guard-show-negligible-focus-on-protection-of-human-rights/>.

194 HRW, “Italy navy support to Libya may endanger migrants”, 2 August 2017, available at: <https://www.hrw.org/news/2017/08/02/italy-navy-support-libya-may-endanger-migrants>.

195 A Search and Rescue zone is a maritime zone where search and rescue operations to render assistance to persons in distress at sea, regardless of the nationality or status of such a person or the circumstances in which that person is found, are carried out and coordinated, in accordance with the applicable International Law of the Sea.



Supported by the EU Trust Fund for Africa,<sup>196</sup> in December 2017 Libya declared its new SAR zone.<sup>197</sup> By 2018, and while Libya remained inadequately equipped to coordinate SAR operations, the International Maritime Organization (IMO) had accepted the declared SAR zone,<sup>198</sup> with SAR operations officially handed over to the LCG. The Rome Maritime Coordination Centre (MCC), previously responsible for coordinating rescue operations, started diverting SOS calls to MCC Tripoli or directly calling on the LCG to deploy their rescue operation and return fleeing individuals to Libya. As a result, those intercepted by LCG boats, considered to be in Libyan territory, could be disembarked in Libya without breaching the principle of non-refoulement. This new setup obscured European involvement in these operations while still facilitating the return of those rescued at sea to Libya rather than European shores, with the aid of an Italian navy ship that docked in Tripoli's Abu Sitta port from 2017 until 2020, assisting the Libyans in coordinating interception operations.<sup>199</sup>

In May 2021, to no avail, the UN High Commissioner for Human Rights called on the Libyan Government of National Unity (GNU) and the EU and its member states to urgently reform their current SAR policies and practices in the central Mediterranean Sea in order to protect the “lives, dignity and fundamental human rights”<sup>200</sup> of refugees and migrants.

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196 In addition to the assistance provided under the Italy-Libya MoU, in July 2017 the EU Trust Fund for Africa adopted a project known as *Aurora*, worth €46 million, to further reinforce the border management capabilities of the Libyan authorities. The programme helped to set up operational rooms to support the LCG in better organising their control operations, defined a new Libyan search and rescue zone, and established the Joint Rescue Coordination Centre (JRCC) in Tripoli to be responsible for it.

197 An official challenge to Libya's declared SAR zone was submitted to the IMO in March 2020 by Open Arms, the *Comitato Nuovi Desaparecidos*, *Progetto Diritti* and a team of lawyers. The complaint called for the revocation of the Libyan-declared SAR zone, on the grounds that Libya does not meet the requirements needed to coordinate rescue missions, highlighting their lack of capacity and material, including the LCG's common failure to respond to distress calls. See Statewatch, “Mediterranean: As the fiction of a Libyan search and rescue zone begins to crumble, EU states use the coronavirus pandemic to declare themselves unsafe”, 4 May 2020, available at: <https://www.statewatch.org/analyses/2020/mediterranean-as-the-fiction-of-a-libyan-search-and-rescue-zone-begins-to-crumble-eu-states-use-the-coronavirus-pandemic-to-declare-themselves-unsafe/>.

198 European Parliament, Parliamentary Question: Search and Rescue Area off Libya, 2 July 2018, available at: [https://www.europarl.europa.eu/doceo/document/P-8-2018-003665\\_EN.html](https://www.europarl.europa.eu/doceo/document/P-8-2018-003665_EN.html).

199 Italian Senate, Comunicazioni dei Ministri degli Affari esteri e della cooperazione internazionale, on. Luigi Di Maio, e della Difesa, on. Lorenzo Guerini, sulla partecipazione dell'Italia alle missioni internazionali, 7 July 2021, available at: [https://webtv.senato.it/4621?video\\_evento=218401](https://webtv.senato.it/4621?video_evento=218401).

200 UN News, “UN rights chief urges Libya, EU, to protect migrants crossing the central Mediterranean”, 26 May 2021, available at: <https://news.un.org/en/story/2021/05/1092752>.

## C. HARASSMENT OF NGOS CONDUCTING SEARCH AND RESCUE OPERATIONS

As a result of the EU's cessation of proactive SAR operations in the Mediterranean Sea, NGOs have had to deploy their own rescue missions in a desperate attempt to fill this gap and reduce casualties at sea.<sup>201</sup> NGOs started carrying out SAR operations and disembarking those rescued on European shores. However, in tandem with the introduction of border externalisation policies in late 2016 and early 2017, these NGO rescue operations became increasingly scrutinised, delegitimised and criminalised by European states and Frontex. Smear campaigns against NGOs with baseless accusations (which have since been refuted) that NGOs were “colluding with people-smugglers”<sup>202</sup> for their own profit, were accompanied by the criminalisation of their efforts to provide humanitarian support and assistance to migrants and refugees.<sup>203</sup>

Additionally, in May 2017 the Italian authorities recommended stricter regulation of NGO activities at sea to curtail NGO sea rescue operations that would compel European states to allow disembarkation on their territory. In July 2017, Italian authorities drafted a code of conduct<sup>204</sup> that, amongst other restrictions, prohibited NGOs from conducting SAR activities in Libyan waters and requested that NGOs sign and abide by it. Failing to sign the code of conduct left some rescue ships impounded and unable to carry out rescue missions.<sup>205</sup> Further to this, in some instances European states have denied a safe harbour to NGO vessels and told NGOs to “hold” their position or to “stand down,” even when they were the nearest vessel able to undertake a rescue.<sup>206</sup> For example, in one incident in June 2020, 180 migrants and refugees who were rescued by French NGO *SOS Méditerranée* were left stranded on board the rescue boat in unsafe conditions for more than a week as the NGO vessel was repeatedly denied entry to ports by Italy and Malta.<sup>207</sup>

The resulting lack of SAR operations by NGOs in the Mediterranean has been accompanied by a rising death rate of migrants and refugees. Although fewer people travelled along the CMR in 2019 than any year since 2012, the rate of migrant deaths and disappearances relative to arrivals along this route steadily increased, more than doubling from 2016 to 2019, from 2.4% to 6.4%<sup>208</sup> with over 20,000 adults and children dying in the Mediterranean Sea between 2014 and 2020.<sup>209</sup>

## D. NO SAFE WAY OUT

Following the implementation of the migration management strategy detailed above, the number of arrivals to Italy quickly plummeted – falling by 67% between July and November 2017.<sup>210</sup> By 2018, the system of intercepting migrants and refugees at sea and returning them to Libya had become well-practised and highly effective in reducing the number of arrivals to Europe. Arrivals to Italy from Libya fell to 23,370 in 2018, and to 11,471 in 2019 – less than the yearly average prior to 2011.<sup>211</sup> On the other hand, the number of returns carried out by the LCG have been continuously increasing. In 2021 alone, at the time of publication the LCG had intercepted and returned a record number of 28,636 migrants and refugees, including at least 1,092 minors.<sup>212</sup>

Many migrants and refugees now trapped in Libya have no way out. The number of resettlement slots offered by European countries remains extremely limited. This, together with EU returns policy, contributes to the prolonged entrapment of migrants and refugees in Libya in deplorable circumstances, which, as detailed above, could amount to crimes against humanity.

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201 Forensic Oceanography, *Blaming the Rescuers*, 2017, available at: <https://blamingtherescuers.org/report/>.

202 *BBC News*, “Italy migrant crisis: Charities ‘colluding’ with smugglers”, 23 April 2017, available at: <https://www.bbc.co.uk/news/world-europe-39686239>.

203 Such criminalisation often relied on laws aimed at migrant smugglers to target those providing humanitarian support. In Spain for example, authorities have misused administrative laws to restrict the rescue activities of NGO ships, threatening them with fines up to €901,000. AI, *Punishing compassion: solidarity on trial in Fortress Europe*, March 2020, pp. 73-74, available at: <https://www.amnesty.org/en/documents/eur01/1828/2020/en/>.

204 Code of Conduct for NGOs involved in Migrants’ Rescue Operations at Sea, July 2017, available at: <https://www.statewatch.org/media/documents/news/2017/jul/italy-eu-sar-code-of-conduct.pdf>.

205 AI, *Libya’s dark web of collusion*, *ibid.*

206 OHCHR, *‘Lethal Disregard’: Search and rescue and the protection of migrants in the central Mediterranean Sea*, May 2021, pp. 4-11, available at: <https://www.ohchr.org/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>.

207 *Daily Sabah*, “180 migrants in limbo at sea after Italy, Malta refuse entry to ports”, 2 July 2020, available at: <https://www.dailysabah.com/world/europe/180-migrants-in-limbo-at-sea-after-italy-malta-refuse-entry-to-ports>.

208 Isabella Lloyd-Damjanovic, *Criminalization of Search-and-Rescue Operations in the Mediterranean Has Been Accompanied by Rising Migrant Death Rate*, Migration Policy Institute, 9 October 2020, p. 1, available at: <https://reliefweb.int/sites/reliefweb.int/files/resources/Criminalization%20of%20Search-and-Rescue%20Operations%20in%20the%20Mediterranean%20Has%20Been%20Accompanied%20by%20Rising%20Migrant%20Death%20Rate.pdf>.

209 IOM, *Calculating ‘death rates’ in the context of migration journeys: Focus on the Central Mediterranean*, April 2020, p. 3, available at: <https://publications.iom.int/system/files/pdf/mortality-rates.pdf>.

210 AI, *Libya’s dark web of collusion*, *ibid.*, p. 7.

211 UNHCR, Operational Data Portal: Mediterranean Situation, available at: <https://data2.unhcr.org/en/situations/mediterranean/location/5205>.

212 IOM, “IOM Libya maritime update”, 8 November 2021, available at: [https://twitter.com/IOM\\_Libya/status/1457726723496218644](https://twitter.com/IOM_Libya/status/1457726723496218644).

Complementing the returns policy, the IOM's evacuation action through so-called "Voluntary Humanitarian Return" (VHR) aimed at carrying out "voluntary" returns of "migrants" from Libya back to their countries of origin, has received considerable support – political as well as financial – from European states. However, the possibility to seek asylum in Libya is restricted to a few nationalities and does not in any way reflect the actual number of asylum seekers in need of protection. There is, therefore, a risk that those who are returned to their country of origin may in fact need international protection. Moreover, given the severe ill-treatment that migrants and refugees continue to face in Libya, which may amount to crimes against humanity, the voluntary nature of such returns cannot be conclusively determined and thus they cannot be considered voluntary.<sup>213</sup> In addition, such assistance is piecemeal and can only be, by its very nature, a short-term solution. VHR fails to address the crimes that migrants and refugees have experienced in Libya. It does not provide access to justice to victims and should not be seen as an alternative to redress mechanisms.

The already dire situation of migrants and refugees in Libya was further exacerbated by the COVID-19 pandemic. Individuals inside overcrowded and unsanitary DCIM detention centres and other places of captivity remain dangerously exposed to the virus with no access to health services.<sup>214</sup> Restrictions on movement meant that the already limited means of evacuation or escape, whether evacuation by UNHCR or "voluntary return" by IOM, came to a complete halt. At sea, NGO rescue operations were also shut down in 2020 because of the pandemic.<sup>215</sup>

## E. INTERNATIONAL OBLIGATIONS OF THE EU AND EUROPEAN STATES

The European policies and practices highlighted above are problematic as they undermine normative frameworks enshrined in several human rights conventions and international legal instruments to which European states are party. Such measures have allowed the EU and individual states to circumvent their obligations and ignore their duties under the law of the sea and international refugee and human rights law.

All states have obligations not to engage in or facilitate the commission of internationally wrongful acts.<sup>216</sup> Such acts include, for instance, genocide, slavery, racial discrimination, crimes against humanity and torture.<sup>217</sup> The prohibitions on such acts constitute peremptory norms of international law (*jus cogens*). In particular, regarding international crimes, states have the obligation to prevent, repress and punish such acts. Not only should states refrain from assisting in the commission of such crimes, but they should also prevent them, and stop co-operation and assistance which facilitate the commission of such crimes.<sup>218</sup>

By implementing the migration policies detailed above, including the support provided to the LCG to return migrants and refugees to Libya, the EU and individual European states have facilitated the high number of returns of migrants and refugees to Libya, a place recognised as unsafe, and thereby have evaded their international obligations under several international instruments. This includes the 1951 Refugee Convention and its 1967 additional Protocol which outline the rights of refugees as well as the legal obligations of states to protect refugees. The core principle enshrined in the Convention is the principle of non-refoulement.<sup>219</sup> This universal principle, also enshrined in the UN Convention Against Torture,<sup>220</sup> has been recognised as a key principle of international human rights law<sup>221</sup> and is explicitly found in the 2000 Charter of Fundamental Rights of the European Union.<sup>222</sup>

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213 This is in line with UNHCR's position according to which repatriation can be considered voluntary only when a person has the right to remain in the host country, is free from detention and their rights are fully respected. See UNHCR, *Handbook on Voluntary Repatriation: International Protection*, 1996, p. 10, available at: <https://www.unhcr.org/publications/legal/3bfe68d32/handbook-voluntary-repatriation-international-protection.html>.

214 Marwa Mohamed, "Locked up with no escape: refugees and migrants in Libya face bombs, virus and everything in between", *Open Democracy*, 18 May 2020, available at: <https://www.opendemocracy.net/en/north-africa-west-asia/locked-no-escape-refugees-and-migrants-libya-face-bombsvirus-and-everything-between/>.

215 SOS Méditerranée, *Synthèse 2020*, available at: <https://www.sosmediterranee.fr/medias/SOSMEDITERRANEEESYNTHESE2020EN.pdf>.

216 International Law Commission, Articles on State Responsibility for Internationally Wrongful Acts, arts 12 and 16, available at: [https://legal.un.org/ilc/texts/instruments/english/commentaries/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/commentaries/9_6_2001.pdf).

217 *Ibid.*, art. 26.

218 International Law Commission, Articles on State Responsibility for Internationally Wrongful Acts, art. 16, available at: [https://legal.un.org/ilc/texts/instruments/english/draft\\_articles/9\\_6\\_2001.pdf](https://legal.un.org/ilc/texts/instruments/english/draft_articles/9_6_2001.pdf).

219 Convention on the Status of Refugees, 1951, art. 33.

220 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3.

221 It has also been recognised as customary international law. See for instance UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol*, 26 January 2007, para. 15, available at: <https://www.refworld.org/docid/45f17a1a4.html>.

222 Charter of Fundamental Rights of the European Union, 2000, art. 19(2).

European migration policies at sea are also in breach of the international law of the sea, including the UN Convention on the Law of the Sea (UNCLOS) – which has been signed and ratified by all European states as well as the EU as an entity – and the International Convention for the Safety of Life at Sea (SOLAS). Signatories to the UNCLOS are obliged to render assistance to people in distress at sea<sup>223</sup> and protect human life at sea.<sup>224</sup> Similarly, the SOLAS Convention provides that any ship master at sea who is in a position to be able to provide assistance, upon receiving information that persons are in distress at sea must proceed with all speed to their assistance, and that “[t]his obligation to provide assistance applies regardless of the nationality or status of such persons or the circumstances in which they are found.”<sup>225</sup>

These violations reach such a high level of gravity that in fact, in October 2021, the FFM suggested that failure to render assistance to migrants and refugees in distress at sea may be categorised as other inhumane acts within the meaning of the Rome Statute, and therefore amount to a crime against humanity in itself.<sup>226</sup>

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223 UN Convention on the Law of the Sea, 1982, art. 98.

224 *Ibid.*, art. 146.

225 SOLAS Convention, chapter V, regulation 33(1).

226 Human Rights Council, *Report of the Independent Fact-Finding Mission on Libya*, 2021, Annex II, para. 11.

# IX. CONCLUSION AND RECOMMENDATIONS

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## A. CONCLUSION

Over the past decade, hundreds of thousands of migrants and refugees, many of whom had already fled conflict and persecution in their home countries, have suffered torture and other inhumane acts in Libya at the hands of an array of different actors who continue to act with absolute impunity. The extensively documented crimes that have been, and continue to be, committed against them are widespread – in terms of geographical scope and the numbers of people targeted – and systematic in nature. They also constitute an attack against an identifiable group of civilians, made vulnerable by their lack of legal status in the country and the prevailing climate of racism and xenophobia.

Such violations, abuse and mistreatment committed against migrants and refugees in Libya may amount to crimes against humanity, including imprisonment or severe deprivation of physical liberty, enslavement, murder, torture, rape, sexual slavery, enforced prostitution, other forms of sexual violence, persecution and other inhumane acts. The Organisations have thoroughly documented and analysed each of these crimes and, by means of an extensive joint Communication under Article 15 of the Rome Statute, have asked the Prosecutor of the ICC to urgently proceed in this regard and to investigate and prosecute the crimes committed against migrants and refugees in Libya as crimes against humanity, in the context of the ongoing situation in Libya, under investigation by the ICC since 2011.

Further to this, as Libya is not a safe place for migrants and refugees, Libyan and European policies and actions that return and trap them in the country are not only morally wrong and unlawful, but also entail their potential responsibility for the commission of crimes that may amount to crimes against humanity.

Therefore, Libyan authorities, the EU and European states must comply with their international obligations and take immediate action to put an end to the crimes committed against migrants and refugees, ensure migrants and refugees have access to protection, safety and justice, and hold the perpetrators of the crimes committed against them accountable.

## B. RECOMMENDATIONS

### **To the Libyan authorities:**

1. Immediately release all those held in arbitrary detention under DCIM authority, end the arbitrary arrest of migrants and refugees and stop the use of detention as a migration management tool by closing all DCIM-run centres and dissolving the DCIM;
2. Immediately take the necessary measures to locate and release migrants and refugees being held in captivity by non-state actors in unknown locations;
3. Comply with Libya's international obligations to guarantee and protect the human rights of all those on its territory including migrants and refugees, regardless of their nationality, race, religion, gender, or political opinion, and protect them from all forms of violence, including sexual violence;
4. Remove from position all those accused of committing crimes against migrants and refugees, launch thorough independent investigations into these crimes and hold those responsible to account in line with international fair trial standards;
5. Cooperate with, and provide unhindered access to the Libyan territory to, all investigative mechanisms including the ICC and the FFM, with no obstruction to access victims, and provide humanitarian organisations unhindered access to all

detention centres;

6. Reform the domestic criminal justice system and the Libyan legal framework by adopting legislation that complies with Libya's international obligations, decriminalise the irregular entry, stay and exit of migrants and refugees and revoke Law No. 19 of 2010; and
7. Recognise the right to asylum and refugee protection and take steps to implement them including by ratifying and implementing the 1951 Convention on the Status of Refugees, implementing obligations under the 1969 OAU Convention and by recognising UNHCR and facilitating its work to exercise its full mandate.

#### **To the EU and its member states:**

1. Immediately suspend any existing agreement in relation to migration management policies and refrain from entering new ones with the Libyan authorities until they provide sufficient guarantees to ensure that the human rights of refugees and migrants are protected and that an adequate asylum system is established to uphold the right to international protection in Libya;
2. Ensure that any support and assistance, including financial, institutional, material and capacity-building, to Libyan authorities in managing migration is conditional upon upholding the rights of migrants and refugees, including the right to seek asylum, and upon protecting them from violence and abuse;
3. Take immediate steps to investigate the impact of such agreements and arrangements, whether or not legally binding, including Memorandums of Understanding, on the rights of migrants and refugees in Libya and ensure that all such future agreements and arrangements with Libyan authorities comply with IHRL and IHL, specifically to respect, protect and guarantee the rights of migrants and refugees;
4. Ensure that SAR operations comply with the principle of non-refoulement and immediately cease all returns to Libya, recognising that Libya is not a safe port of disembarkation, and commit to disembarking at a port of safety where human rights are safeguarded;
5. Increase and improve access to safe and legal pathways for migrants and refugees to Europe including by increasing resettlement slots in countries of asylum and by offering other legal and effective pathways from countries of origin in order to prevent the need to resort to smuggling networks and dangerous journeys where migrants and refugees are at risk of trafficking and crimes against humanity; and
6. To the EU: Issue directives binding on member states to that effect, based on their international obligations to respect, protect and guarantee migrants and refugees' rights.

#### **To the ICC Prosecutor:**

1. Urgently open an investigation into the commission of international crimes against migrants and refugees within the Situation in Libya, pursuant to UNSC Resolution 1970, and in response to the joint ICC Communication submitted by the Organisations; and
2. Cooperate with the Fact-Finding Mission, the Panel of Experts and other relevant institutions and authorities in gathering information that may be evidence of crimes.

#### **To national prosecutors of third states:**

1. Open investigations, including structural ones, and on the basis of universal jurisdiction where needed, to gather information and prosecute those involved in the commission of crimes against migrants and refugees, in particular

focusing on the responsibility of those actors in a position of command; and

2. Cooperate with other judicial and investigative authorities, both at domestic and international levels, to share and make evidence available, including by working in joint investigation teams.

**To the UN Fact-Finding Mission on Libya:**

1. Dedicate investigations to establishing the facts and identities of those individuals who have lost their lives or disappeared along the CMR with the aim of establishing the truth for the families of the victims, and in line with the FFM's existing mandate, preserve the evidence for future accountability and redress.

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# ABOUT US

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## EUROPEAN CENTER FOR CONSTITUTIONAL AND HUMAN RIGHTS (ECCHR)

The European Center for Constitutional and Human Rights (ECCHR) is an independent, non-profit legal and educational organisation based in Berlin, Germany. Since 2007, ECCHR has been dedicated to enforcing civil and human rights worldwide. Together with persons affected and partners around the world, ECCHR uses legal means to end impunity for those responsible for torture, war crimes, sexual and gender-based violence, corporate exploitation and fortified borders. In cooperation with transnational networks, universities and artists, we initiate, develop and support high-impact strategic human rights litigation and other legal interventions to hold state and non-state actors accountable for violating the rights of the most vulnerable. Until recently, no push-back or violent attack on migrants and refugees had resulted in any legal or political consequence for those responsible. Together with those affected, ECCHR challenges this fortification of Europe and fights to uphold the fundamental right to have rights to which all people, including migrants and refugees, are entitled.



## INTERNATIONAL FEDERATION FOR HUMAN RIGHTS (FIDH)

FIDH is an international human rights non-governmental organisation federating 192 member organisations from 117 countries. Among other activities, and in close collaboration with its national member and partner organisations, FIDH documents human rights violations and international crimes; supports victims in seeking justice and reparations at national, regional and international levels, including through strategic litigation; undertakes advocacy towards decision makers and carries out awareness raising activities on situations of human rights abuses; and strengthens the capacity of member and partner organisations so they can meaningfully engage with accountability mechanisms. With a permanent representation in The Hague since 2004, FIDH also closely monitors proceedings, as well as strategies and policies at the International Criminal Court (ICC) and, together with member organisations based in “situation countries” working directly with victims and affected communities, documents allegations of international crimes, assesses national justice efforts in relation to these crimes, and provides substantiated information to the ICC Office of the Prosecutor.



## LAWYERS FOR JUSTICE IN LIBYA (LFJL)

Lawyers for Justice in Libya is a Libyan and international independent non-governmental organisation and UK-registered charity. LFJL works on and in Libya with a growing network of lawyers, activists and grassroots communities across and outside the country. LFJL seeks justice in Libya through advocacy and outreach, accountability, transitional justice initiatives and capacity building, underpinned by independent research, which includes a particular focus on enforced disappearances, the protection of civic space, the rights of women and the rights of migrants and refugees. LFJL's work is rooted in a rights-based approach: all engagement and policies must be founded on a human rights framework and ensure that individuals and communities can participate fully as a fundamental part of leading dignified lives.

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