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LIBYA: EU'S PATCHWORK POLICY HAS FAILED TO PROTECT THE HUMAN RIGHTS OF REFUGEES AND MIGRANTS

A year after the emergence of shocking footage of migrants apparently being sold as merchandise in Libya prompted frantic deliberations over the EU's migration policy,¹ a series of quick fixes and promises has not improved the situation for refugees and migrants, Amnesty International said today. In fact, conditions for refugees and migrants have largely deteriorated over the past year and armed clashes in Tripoli that took place between August and September this year have only exacerbated the situation further.

Since late 2016, EU Member States – particularly Italy – have implemented a series of measures to close off the migratory routes through Libya and across the Mediterranean, including boosting the capacity of Libyan maritime authorities, in particular the Libyan Coast Guard, to intercept migrants and refugees and bring them back to Libya. These measures – together with deals negotiated by Italy with local authorities and militias in key smuggling cities, the criminalization of NGOs carrying out search and rescue operations at sea and the imposition of a new policy by Italy to refuse disembarkation to people rescued in the high seas – have reduced the numbers of people arriving in Italy, with only 22,232 arriving so far in 2018 compared to the 114,415 who arrived over the same period in 2017, according to data published by the Italian Ministry of Interior.²

With these measures, European governments have largely achieved their objective of blocking refugees and migrants from crossing into Europe via the central Mediterranean route. However, these policies have in turn left thousands of refugees and migrants to languish in Libya without regular status, either in detention or living undocumented in the shadows, at risk of violence and exploitation by armed groups. They have also damaged the integrity of the overall search and rescue system, increasing the death rate among people engaging in the sea crossing.³

In December 2017, Amnesty International published *The Dark Web of Collusion*, a report that details the complex net of complicities that have ultimately led to horrific human rights violations against refugees and migrants trapped in Libya.⁴

DETENTION OF REFUGEES AND MIGRANTS IN LIBYA

According to the International Organization for Migration, Libya's maritime authorities have intercepted and taken back to Libya about 14,377 people so far in 2018.⁵ Considering the drop in the number of people attempting the crossing, this marks a significant increase in the rate of those being intercepted. Indeed, in recent months, over half of those who attempted the crossing were returned to Libya, where they were immediately placed in detention centres run by the Directorate for Combatting Illegal Migration (DCIM) within the Libyan Ministry of Interior. Officials at DCIM confirmed to Amnesty International as of November, that nearly 6,000 foreign nationals – mostly of African origin – are being held in centres across the country.

The detention centres where refugees and migrants are kept have no judicial oversight, meaning detainees are held without any judicial order, cannot challenge their detention and are not offered legal counsel, making their detention

¹ CNN Report "People for Sale Where Lives are Auctioned for \$400", CNN, 14 November 2017, <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>

² Italian Ministry of Interior, http://www.interno.gov.it/sites/default/files/cruscotto_statistico_giornaliero_08-11-2018.pdf

³ Amnesty International, *Between the devil and the deep blue sea: Europe fails refugees and migrants in the Central Mediterranean*, (Index: EUR 30/8906/2018), August 2018, <https://www.amnesty.org/en/documents/eur30/8906/2018/en/>

⁴ Amnesty International, *Libya's dark web of collusion: Abuses against Europe-bound refugees and migrants*, (Index: MDE 19/7561/2017), December 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/

⁵ IOM, *IOM Libya Maritime Factsheet 16* – 31 October 2018

unlawful under international law. Torture and other ill-treatment is rife, being used by guards to exploit the detainees and extract money from their families.⁶

In Libya, official detention centres - recognized by the Libyan authorities and operated under the Ministry of Interior – are controlled by militias who do not necessarily adhere to the chain of command of the central authorities. In these centres DCIM often hold women, men and children together, irrespective of whether they are in need of international protection. In the absence of any legislation on asylum, in the past Libyan authorities had at least agreed to release from detention people of seven nationalities (Eritreans, Ethiopians, Iraqis, Palestinians, Somalis, Sudanese of Darfuri origin and Syrians), considered to be in need of international protection. However, throughout 2018 the Libyan authorities have systematically refused to release anyone from detention, with the exception of those being evacuated by IOM and UNHCR to third countries, or those who pay a bribe as a means to secure their release.

The IOM operates “Voluntary Humanitarian Return” (VHR), mostly from Libya’s migration detention centres, for anyone deciding to return to their home countries. Over 20,000 were transferred back to their home countries in 2017, while 14,622 individuals have been returned so far this year, through programmes heavily funded by European governments.⁷

While VHR can offer a lifeline for many who are stuck in Libya, genuinely wish to return to their home countries and have no other means to do so, it does not solve the problems related to arbitrary detention, torture and ill-treatment and remains an inadequate response to the scale and seriousness of the situation for migrants and refugees in Libya. Because many people cannot be returned back to their country of origin – due to the real risk of persecution, armed conflicts or other harm – European and other governments should offer them evacuation and assistance, in particular through a UNHCR resettlement programme. However, the dismal number of resettlement slots offered – only 3,886 slots have been pledged by twelve countries, and only 1,140 individuals have departed on resettlement from Libya and Niger – is a testament to the callous disregard on the part of European and other states for the suffering of those languishing in detention centres.⁸

BARRIERS TO UN REFUGEE AGENCY IN LIBYA

For refugees, who cannot be returned to their home countries because they are at real risk of persecution or other serious human rights violations, the UN Refugee Agency (UNHCR) continues to face obstacles, including unreasonable restrictions on the part of the Libyan authorities, to providing meaningful protection in Libya.

Refugees awaiting resettlement through the UN global scheme face lengthy waits: with only a limited number of resettlement slots on offer, they languish in detention while waiting for an evacuation, or eventually give up and opt to return to their country of origin despite the risks that caused them to flee. One such example is a group of 124 Somalis who on 7 November returned to Somalia from Libya.⁹

Furthermore, a UNHCR processing centre, that after lengthy negotiations was due to open in July 2018, has yet to materialize, as once again the Libyan authorities are delaying it. The centre, with a capacity to house up to 1,000 people, is meant to offer a safe space for the most vulnerable refugees in Libya awaiting resettlement, while guaranteeing their liberty and freedom of movement. Earlier this year, final agreement was reached, and the building was completed for a summer opening. The Italian Minister of Interior, Matteo Salvini, visited the centre in June, claiming that its opening within one month would “dismantle all the lies and the rhetoric according to which in Libya there are torture and violation of civil

⁶ Amnesty International, *Libya’s dark web of collusion: Abuses against Europe-bound refugees and migrants*, December 2017, www.amnesty.org/en/documents/eur30/7241/2017/en/

⁷ IOM, *Suspended for Two Years, IOM Resumes Voluntary Humanitarian Return Flights from Southern Libya*, 9 November 2019, <https://www.iom.int/news/suspended-two-years-iom-resumes-voluntary-humanitarian-return-flights-southern-libya>

⁸ UNHCR, Central Mediterranean situation: UNHCR calls for an additional 40,000 resettlement places, 11 September 2017, www.unhcr.org/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html; UNHCR, *UNHCR Libya-Niger Situation Resettlement Update #33*, 29 October 2018; UNHCR, *Libya Flash Update 2-9 November 2018*, <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Flash%20Update%209%20November%202018.pdf>

⁹ IOM Press Room, *IOM Facilitates Voluntary Return of 124 Somalis Following Brief Clashes at Airport in Tripoli*, 7 November 2018, <https://italy.iom.int/en/archivio-news-iom>

rights.”¹⁰ However, the centre has not opened. Even if it was to open, it would only be able to host a small number of people compared to the nearly 6,000 currently in detention centres.

Libya has not signed the 1951 Refugee Convention, nor have the authorities been willing to sign a memorandum of understanding with UNHCR. This leaves UNHCR unrecognised, limiting its operations and ultimately hurting refugees and asylum seekers.

BOTTLENECKS IN THE NIGER EMERGENCY TRANSIT CENTRE

Movement of people to the Emergency Transit Mechanism (ETM) centre in Niger has been sporadic, causing further difficulties for refugees seeking to leave Libya for places of safety. The ETM was set up by the UN in 2017 to temporarily host refugees evacuated from Libya while third countries process their resettlement applications. However, from June until October 2018, there was a freeze on entry into the ETM when the centre reached its full capacity of 1,536 individuals. This was caused by a large number of people evacuated from Libya to Niger earlier in 2018 who were still waiting for their permanent resettlement to a third country.

Relocating individuals to third countries from the ETM takes months, mostly due to the low number of resettlement opportunities on offer and the slow processing of applications. This leaves thousands in Libyan detention centres to suffer in the meantime. In October, access to the ETM resumed with an evacuation of 135 individuals from Libya.¹¹ However, unless resettlement pledges and processing speed increase significantly, the bottleneck is likely to return. UNHCR has received 3,886 resettlement pledges in relation to refugees in either Libya or Niger, for the whole of 2018 and 2019,¹² while it has registered 56,442 refugees in Libya alone.

As a result of European and other countries' inadequate offer of resettlement opportunities for refugees and their slow processing of the few places on offer, refugees cannot be quickly evacuated to Niger and thousands will remain stuck in detention centres in Libya, enduring horrific conditions, until new slots are available in the ETM Centre in Niger.

CAUGHT IN THE CROSSFIRE OF THE CONFLICT

Fighting that broke out in Tripoli at the end of August 2018 has worsened the situation for civilians, including detained migrants and refugees. A number of the detention centres were caught in the cross fire and could not be evacuated in time.¹³

In the Tariq Al Matar detention centre, six detainees were reported to have been wounded by stray bullets. At the Ain Zara detention centre, located in southern Tripoli, where the majority of the clashes took place, the guards abandoned their post to escape, leaving 2,000 detainees locked in the centre as rockets fell nearby. The refugees and migrants managed to eventually break free and seek shelter. As movement became restricted due to the clashes, several other centres within the conflict zone were left without food supplies and water. Aid agencies managed to have a number of the centres evacuated, but as the conflict intensified, their own capacity to access the centres became restricted.

"Martin", a refugee who was in Ain Zara detention centre, told Amnesty International:

*"It was terrifying, the guards left us, they left us locked up and they ran away for safety. We broke the doors but were too scared to run, we had no idea where to go. What if other gangs caught us? We spent days without food."*¹⁴

VIOLENCE, ABUSE AND EXTORTION AT THE HANDS OF ARMED GANGS

Outside the detention centres, thousands of refugees and migrants remain in precarious circumstances in Libya. Without documentation and forced into the shadows by Libya's laws criminalising irregular entry and stay, they are at risk of falling

¹⁰ YouTube Migranti, Salvini: 'In Libia centri d'accoglienza all'avanguardia' 25 June 2018, <https://www.youtube.com/watch?v=IZY5H8RZTol>

¹¹ UNHCR, *UNHCR evacuates vulnerable refugees out of Libya as fighting resumes*, 18 October 2018, <http://www.unhcr.org/news/press/2018/10/5bc8494b4/unhcr-evacuates-vulnerable-refugees-libya-fighting-resumes.html>

¹² UNHCR, *UNHCR Libya-Niger Situation Resettlement Update #33*, 29 October 2018

¹³ Médecins Sans Frontières, *Evacuation of refugees and migrants out of Libya is urgently needed*, 7 September 2018, <https://www.msf.org/evacuation-refugees-and-migrants-out-libya-urgently-needed>

¹⁴ "Martin" (not real name) Interviewed by Amnesty International by phone, 12 October 2018

into the hands of armed gangs. Perceived as a commodity, in a country whose economy is severely debilitated due to the conflict, migrants and refugees have become a source of income for many armed groups seeking access to cash.

Migrants and refugees who have left Libya have shared horror stories with Amnesty International of being held hostage by these armed groups who inflicted pain on them, including through electrocution and beatings, as a means to extort funds, forcing them to call their families and beg for money in return for their freedom.

"Martin", the same refugee who was stuck in the detention centre in Ain Zarah during the clashes in Tripoli, told Amnesty International that he had previously spent two months in early 2018 in captivity in Libya. He recalled the abuse and violence he experienced at the hands of an armed gang:

"We were a group of 100 in three Toyota pickups, when they captured us and took us all back to a big hangar. I stayed there for two months and people were suffering there. They would punch and beat us, deprive us of food and water, we were all weak and itching all over our skin. They would beat us demanding we call our families for money. Once you pay they let you go."¹⁵

In a country troubled by a protracted conflict, where there is a proliferation of unaccountable armed groups that are not under the authority of any centralized power, refugees and migrants far too often are victims of the lawlessness that prevails.

RECOMMENDATIONS

Amnesty International urges the **Libyan authorities** to respect, protect, fulfil and promote the rights of foreign nationals in Libya, be they refugees, asylum-seekers or migrants, as per their international legal obligations.

Amnesty International also urges the **EU and its member states** to immediately reset their co-operation with Libya on migration, focusing on protecting the human rights of refugees, asylum-seekers and migrants rather than on their containment in the country. In particular, until Libyan authorities can assert real effective control on the ground and guarantee the protection of the human rights of refugees and migrants in accordance to their legal obligations, **no assistance must be offered that may result in further human rights violations and further perpetuate the cycle of violence towards refugees and migrants.** Instead, the focus with every effort should be made to help those still languishing in the country to be offered safety in another country.

Amnesty International makes the following specific recommendations to the Libyan authorities

- Immediately end the practice of unlawful arbitrary detention in Libya; amend Law no. 19 of 2010 on Combating Irregular Migration and Law no. 6 of 1987 to decriminalize irregular entry, stay and exit.
- Promptly locate, register and release any foreign nationals arbitrarily held in DCIM detention centres or held captive by militias and armed groups and ensure the full respect and protection of their rights, including the ability to seek international protection in countries other than Libya.
- Initiate independent, impartial investigations into all allegations of torture and other ill-treatment – including rape and sexual violence – and any other crimes by DCIM officials and LCG officials, and ensure that those reasonably suspected of ordering, committing or allowing such acts are removed from positions where they can repeat these violations and prosecuted in a transparent and fair trial.
- Promptly take all necessary steps to identify, dismantle and prosecute criminal gangs responsible for the human rights violations, including the capture, torture, rape, killing and abuse of refugees and migrants in Libya.
- Ensure the creation of an asylum system and put in place a mechanism to issue documentation to all refugees and asylum-seekers inside Libya, particularly to ensure they are not vulnerable to arrest or deportation while their case is under assessment.
- Formally recognize and facilitate the mandate and work of UNHCR in Libya by allowing the organization unhindered access to people of concern wherever they are, to conduct refugee status determination, to accept asylum claims from anyone wishing to apply and to provide protection and assistance as necessary – including by sheltering people in open centres – regardless of the nationality of the beneficiary.

¹⁵ "Martin" (not real name) Interviewed by Amnesty International by phone, 12 October 2018

Amnesty International makes the following specific recommendations to EU Governments and Institutions:

- Reset all co-operation with Libya on migration – in the form of financial, institutional, material, policy and/or capacity support – focusing it on the priority of protecting the human rights of refugees, asylum-seekers and migrants in the country.
- Make continuing cooperation with the Libyan authorities on migration conditional on concrete and verifiable steps in the areas indicated in the previous section, and specifically towards the prompt release of all refugees, asylum-seekers and migrants being arbitrarily detained and the end of the system of automatic detention; the full and formal recognition of UNHCR; the establishment of adequate human rights monitoring and accountability mechanisms; and the adoption and enactment of new legislation, providing for the decriminalization of irregular entry, stay and exit and ensuring the creation of an asylum system.
- Open safe and regular routes into Europe, in particular by offering a meaningful number of places for resettlement and alternative pathways to protection to the thousands of people in need of protection and stranded in Libya, and by reviewing migration policies with a view to facilitate regular pathways for would-be migrants. In order to ensure that a bottleneck does not hinder the evacuation from detention for refugees, also take urgent steps to expedite the resettlement process.
- Ensure that an adequate number of vessels with search and rescue as their primary purpose are deployed along the routes taken by boats carrying refugees and migrants, including near Libyan territorial waters, and refrain from transferring to Libyan authorities the coordination of Search and Rescue operations.
- Ensure that NGOs can continue to contribute to rescuing refugees and migrants at sea, limit any cooperation with the Libyan Coast Guard to cases where their intervention is essential to prevent immediate loss of life and make it conditional on measures to mitigate against the risks of disembarkation in Libya.
- Refrain from setting policies that expand the use of detention for refugees and migrants and outsource border control responsibilities to countries outside Europe.