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Libya and Malta: failing refugees, asylum-seekers and migrants

“It is better to die in the sea than return to Libya.”

Farah Anam, a Somali woman who arrived in Malta in July 2010 via Libya.

Migrants, refugees and asylum-seekers escaping persecution and armed conflict, face torture and indefinite detention as they attempt to make the journey to Europe via Libya, Amnesty International said today in a new report.

Seeking safety, finding fear: Refugees, asylum-seekers and migrants in Libya and Malta highlights the plight of those attempting to reach the EU, many in search of refuge and protection, and the human rights abuses they face in Libya and Malta.

“In Libya, foreign nationals, including refugees, asylum-seekers and migrants are particularly vulnerable and live in constant fear of being arrested and held for long periods, tortured or otherwise abused,” said Malcolm Smart, Director of Amnesty International’s Middle East and North Africa Programme.

“Moreover, many are in fear of being returned to their countries of origin, with no regard to the real risk of persecution they face there.”

According to the Libyan authorities, there are over three million “irregular migrants” in Libya, many from other parts of Africa, yet the Libyan authorities insist that none of them is a refugee.

Tens of thousands of Somalis leave Somalia every year making long and dangerous journeys through countries such as Libya to flee the conflict that has ravaged their country since 1991. Many spend all their savings to embark on risky journeys across the Mediterranean.

Refugees and asylum-seekers live in a legal limbo in Libya, regardless of their need for protection. Libya is not a signatory to the 1951 UN Refugee Convention and has no asylum system. In November 2010, the government publicly rejected recommendations that Libya ratify the 1951 Convention and agree a memorandum of understanding with the UN Refugee Agency, the UNHCR, according to which the latter would be able to assist refugees and asylum seekers in Libya.

“Asylum-seekers and refugees in Libya have nowhere to turn for help, and have become even more vulnerable since the Libyan authorities ordered UNHCR to suspend its activities last June. The very least that the Libyan authorities must do is protect those fleeing persecution and conflict from arrest, violence and abuse, and ensure they are not returned to places where they face a real risk of persecution or serious harm,” said Malcolm Smart.

Ahmed Mahmoud and Mariam Hussein, a Somali couple who fled their war-torn country and got to Libya, lived there in constant fear of being detained by the authorities, were unable to find work and had been robbed repeatedly, before they decided to leave by boat for Europe. Mariam was by then seven months’ pregnant.

The couple were part of a group of 55 Somalis who were intercepted at sea and rescued from a dinghy in distress by Maltese and Libyan vessels on 17 July 2010, as they were making the perilous sea crossing from Libya to Europe. Miriam Hussein and 26 others were immediately returned to Libya; twenty-eight others, including Ahmed Mahmoud, were taken to Malta.

In Libya, Miriam Hussein and those returned with her were all immediately detained and the men among them are reported to have been beaten and tortured with electric shocks. Two months later, Miriam suffered a still birth.

Torture and other abuse of refugees, asylum-seekers and migrants is systematic in Libya. Guards frequently punch detainees or beat them with metal rods or batons, and those who complain about detention conditions or ask for medical help face assault and other punishment. Despite this, in October, the European Commission signed a “cooperation agenda” with the Libyan authorities over the “management of migration flows” and “border control” until 2013, according to which the EU will pay Libya 50 million Euros.

Meanwhile, a broader “Framework Agreement” between the EU and Libya is being negotiated, including in order to allow the “readmission” to Libya of “third-country” nationals who enter the EU after transiting through Libya.

“EU-Libya cooperation needs to have human rights and responsibility-sharing at its core - the founding principles of international protection. The EU and its member states must not turn a blind eye to continuing human rights violations in Libya, when seeking Libya’s cooperation in order to stem the flow of people arriving in the EU from Africa,” said Malcolm Smart.

An estimated 13,000 people arrived in Malta by boat from Libya between 2002 and May 2009. Malta, however, is not the safe haven they were hoping to reach. Under Maltese law, any new arrivals, including asylum-seekers, are liable to be considered “prohibited immigrants” and face mandatory detention of indeterminate length - in practice up to 18 months.

Existing legal remedies to challenge detentions have been judged “ineffective” by the European Court of Human Rights.

“Malta’s geographical position means that it has to cope with large and mixed flows of irregular migrants and asylum-seekers, and this clearly presents a significant challenge. However, this does not relieve Malta of its obligations under international and regional refugee and human rights law, including the European Convention on Human Rights,” said Malcolm Smart.

The Maltese authorities must ensure that search and rescue operations do not result in the forcible return or removal of already vulnerable individuals to Libya or other states where this would expose them to a real risk of serious human rights violations.”

Note for editors

In September 2010, Amnesty International delegates visited Malta and interviewed 25 Somalis, who arrived from Libya to Malta on 17 July, as well as other asylum-seekers, refugees and migrants about their hazardous journeys from Libya to Malta.

Link to document

<http://www.amnesty.org/en/news-and-updates/report/libya-and-malta-failing-refugees-asylum-seekers-and-migrants-2010-12-14>