

“Death Would Have Been Better”: EUROPE CONTINUES TO FAIL REFUGEES AND MIGRANTS IN LIBYA

By Izza Leghtas



April 2018

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SUMMARY

Four years after the arrival in Europe of more than one million refugees and migrants by sea, European governments continue to grapple with the challenge of irregular migration. In March 2016, the European Union reached a deal with Turkey that led to a sharp drop in new arrivals on islands of Greece. The focus then shifted to the Central Mediterranean route between Libya and Italy. Over the past year, European governments have implemented a strategy designed to lower the number of refugees and migrant crossings along this route. However, this strategy has come at an unacceptable cost for the asylum seekers, refugees, and migrants themselves, who face horrendous conditions in Libya and an even deadlier sea journey across the Mediterranean.

At the heart of the EU's effort is a program to train and equip the Libyan Coast Guard to carry out the task of intercepting asylum seekers, refugees, and migrants in Libyan waters as they attempt the crossing to Europe. Those intercepted by the Coast Guard are transferred to detention centers in Libya where they are held indefinitely and without due process—something European ships cannot do under European and international human rights law. Proponents of the program point to the fact that arrivals to Italy have declined markedly since the summer of 2017.

However, as Refugees International (RI) and others have documented, the asylum seekers, refugees, and migrants detained in Libya continue to be subjected to grave human rights abuses in deplorable conditions. Men, women, and children are held in overcrowded and unsanitary facilities, where they face abuses such as forced labor, physical abuse, sexual violence, and a lack of food, clean water, and ventilation—all with no end in sight. For many, their ordeal did not start in detention; they are survivors of torture, kidnapping, and other horrific abuses during months or even years at the hands of human smugglers.

In response, the EU has pumped resources into programs to lessen the suffering of the migrants and refugees detained in Libya. It has also ramped up support for the Voluntary Humanitarian Returns (VHR) program, which is run by the UN's International Organization for Migration (IOM). The VHR program has facilitated the repatriation of thousands of migrants back to their countries of origin. Finally, the EU also supports the Emergency Transit Mechanism (ETM), a pilot program sponsored by the UN Refugee Agency (UNHCR), to evacuate a limited number of refugees and asylum seekers from detention centers to Niger. Once in Niger, these refugee cases can be processed for resettlement in a third country—primarily in Europe.

In late February 2018, RI conducted a mission to Niger to interview dozens of refugees and asylum seekers evacuated from Libya. The team also interviewed workers for nongovernmental organizations (NGOs), UN officials, and diplomats regarding the situation of refugees and migrants in Libya in both Niger and Tunisia (where many UN offices, NGOs, and embassies for Libya are operating remotely in the capital Tunis). RI found that, despite the importance of the humanitarian evacuation and return programs, European engagement has failed to significantly improve the situation of these populations in Libya. Nor has the EU provided adequate and long-term solutions to the challenges these populations face.

RI recognizes that EU governments are facing very strong domestic pressure to stem the flow of refugees and migrants into Europe. This pressure has been especially challenging for countries on the front lines of the crisis, such as Italy and Greece. RI also recognizes that any government has the right to control its borders. However, this control cannot come at the expense of the rights of those who have left their homes in search of safety, a better life, or greater economic opportunity. European governments and the Libyan authorities must now take swift and concerted action, in conjunction with the United Nations and others, to find solutions, improve conditions, and provide protection for those still trapped in Libya.

Cover Photo: A refugee evacuated from a detention center in Libya by UNHCR in the shelter in Niamey, Niger, where he and others await resettlement in another country.

RECOMMENDATIONS

For the Libyan authorities:

- **End the practice of detention of asylum seekers, refugees, and migrants**—In light of abusive conditions and absence of due process, the Libyan authorities should end the detention of asylum seekers, refugees, and migrants and transfer those intercepted by the Libyan Coast Guard to shelters open to international assistance, not into detention. Particularly given the abysmal conditions in Libya, the Libyan authorities should go further, and formally decriminalize irregular entry and stay.
- **Allow full access to detained refugees and migrants**—As long as migrants, refugees, and asylum seekers continue to be detained, the Libyan authorities should provide the UN and NGOs with full access to these populations and allow these organizations to provide direct care and services to all such individuals; and ensure that any assistance channeled through the Libyan Directorate for Combating Illegal Migration (DCIM) reaches these beneficiaries.
- **Employ female guards**—Deploy female guards to sections of detention centers where women and girls are held and ensure that no males enter these sections; and allow families to stay together in separate sections.
- **Crack down on abuse in detention centers**—Hold DCIM staff responsible for human rights abuses—including sexual violence—against asylum seekers, refugees, and migrants; and hold those committing such abuses accountable through criminal prosecutions and suspending those suspected of such abuses while investigations are ongoing.
- **Formalize full access for the UN Refugee Agency (UNHCR)**—Conclude a memorandum of understanding with UNHCR to allow the organization to operate in Libya with full access to all persons under its mandate, regardless of country of origin.

For the European Union and its Member States:

- **Condition support for the Libyan Coast Guard**—The EU and EU member states should make support for the Libyan Coast Guard conditional on ensuring that asylum seekers, refugees, and migrants are registered and transferred to open shelters that meet international human rights standards and where full access to NGOs and the UN is available.
- **Pressure the Libyan authorities to end detention of asylum seekers, refugees, and migrants**—In light of abusive conditions and absence of due process, the EU and EU member states should press for an end to the detention of asylum seekers, refugees, and migrants and provide funding and technical assistance to facilitate this process.
- **Fund legal assistance and additional health programs**—The EU and its member states should fund legal assistance programs for asylum seekers, refugees, and migrants to help them challenge their detention. In addition, they should increase funding for medical services for people held in DCIM's detention centers to ensure that they have access to physical and mental health care, including services for survivors of sexual violence.
- **Deploy a search-and-rescue operation**—Establish a European search-and-rescue operation in the Central Mediterranean, as part of EUNAVFOR Med or as a new operation, that has a clear mandate to conduct search and rescue, and that operates along the route taken by boats carrying asylum seekers, refugees, and migrants, including near Libyan territorial waters. Those rescued should be taken to a safe port and not returned to Libya.
- **Resettle refugees**—The EU and European governments should resettle with urgency all refugees and asylum seek-

ers who have been evacuated from Libya to Niger via UNHCR's ETM program and support other countries that would be willing to replicate the ETM model; also, where possible, resettle refugees and asylum seekers directly from Libya.

For the United States:

- **Support humanitarian assistance for migrants and refugees in detention**—The United States government should fund programs that provide humanitarian assistance—particularly access to medical care—to refugees, asylum seekers, and migrants in detention in Libya.
- **Resettle refugees**—The United States should resettle at least several thousand of the more than 51,000 asylum seekers and refugees who have been registered by UNHCR and are stranded in Libya, along with some asylum seekers and refugees who have been evacuated to Niger.

For the United Nations system:

- **The Office of the High Commissioner for Human Rights (OHCHR)** should deploy international human rights monitors at disembarkation points and in detention centers to report on the treatment of refugees, asylum seekers, and migrants and make the findings of this reporting public.
- **The International Organization for Migration (IOM)** should strengthen safeguards for assisted voluntary returns by introducing strong safeguards within the VHR program to ensure that persons in need of international protection or who face risks of torture or ill treatment in their home country are not returned. In addition, IOM should refer to UNHCR all persons who fall under its mandate.
- **UNHCR** should expand or replicate the ETM and pursue opportunities for the evacuation of refugees and asylum seekers from Libya to other countries, following the example of the ETM in Niger, but with the caveat that the pace of resettlement to third countries must be accelerated to make this possible.
- **The UN Special Representative of the Secretary General for Sexual Violence in Conflict** should investigate reports of sexual abuses of refugees, asylum seekers, and migrants held in Libyan detention centers and make the findings public.
- **UNHCR and IOM** should request the transfer of people from detention centers and from disembarkation points to open shelters, and they should conduct interviews for evacuations and resettlement in such shelters, not in detention centers.

BACKGROUND

Nearly four years after more than one million refugees and migrants arrived in Europe by sea – mostly via the Greek islands – the Central Mediterranean has become the principal theater of concern for European governments desperate to stop these flows. Following the EU-Turkey deal in March 2016 and the closure of the so-called Balkans route, arrivals in Greece decreased dramatically. The route from North Africa—mainly between Libya and Italy—is now the main pathway for refugees and migrants arriving irregularly in Europe. Libya, in turn, has become a central focus of EU policymakers.

An oil-rich country in need of foreign labor, Libya has long been a destination for migrants from Sub-Saharan Africa. In 2011, Libya was swept up in the unrest of the uprisings in the Middle East and North Africa and descended into violence during and after the overthrow of Muammar Gaddafi. In the ensuing chaos, militias emerged as the central actors in much of the country. The situation deteriorated further in 2014, and Libya has seen ongoing conflict between the Government of National Accord (GNA), led by Fayeaz al-Sarraj and based in Tripoli, and the Tobruk-based government led by Khalifa Haftar in the east.

Many migrants caught up in the chaos of post-Gaddafi Libya sought to flee the country by crossing the Mediterranean. They were joined by refugees, asylum seekers, and others seeking protection or economic opportunity in Europe, who turned to Libya as a transit country. Many were guided by smugglers taking advantage of the country's governance vacuum. To date, hundreds of thousands have attempted the journey to Europe. However, the number of migrants and refugees trapped inside Libya remains far higher. IOM estimates that there are between 700,000 and one million migrants and refugees currently in Libya, including nearly 4,500 in detention centers run by DCIM under the GNA's Ministry of the Interior.

In February 2017, EU heads of state issued a joint declaration setting out the strategy to curtail the flow of migrants, asylum seekers, and refugees traveling to Europe along the Central Mediterranean route.¹ A key pillar of this strategy is an EU effort, led by Italy, to equip and train the

Libyan Coast Guard to intercept refugees and migrants in Libyan waters and then return them to Libyan soil—something European ships cannot do under European and international human rights law. In its 2012 ruling in *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights found that Italy's interception and return of asylum seekers and migrants to Libya violated the principle of non-refoulement due to the risk of torture and other ill treatment that they faced in Libya.²

In July 2017, instead of a surge in crossings that is typical for the summer months, arrivals to Italy sharply dropped. Though the Italian government has denied it, it has been widely suspected that the drop is, in fact, the result of the GNA paying an armed group to prevent boats from departing, as a way to implement its agreement with Italy.³ Despite the drop, the Central Mediterranean continues to serve as the main route for refugees, asylum seekers, and migrants traveling irregularly to Europe. As discussed below, the crossing itself has become deadlier for those who attempt it. The refugees, asylum seekers, and migrants who do so now are primarily from Eritrea, Tunisia, Pakistan, and Nigeria, though many other nationalities from East and West Africa are also represented.

In November 2017, CNN released a video of what appeared to be a slave auction of Sub-Saharan migrants in Libya.⁴ The migrants were being sold for as little as \$400. Though such reports were not new, the video provoked a global outcry.⁵ That same month, the issue became the focus of a summit between the EU and the African Union. At the summit, European and African leaders committed to three priorities: (1) improving conditions for migrants and refugees trapped in Libya; (2) facilitating the voluntary return of migrants to countries of origin; and (3) creating durable solutions for refugees who could not go home.⁶

In response, European governments invested additional resources in existing programs designed to lessen the suffering of migrants and refugees detained in Libya. They also ramped up support for IOM's VHR program, through which thousands of migrants have gone back to their country of origin.⁷ Finally, UNHCR launched a relatively unique program with EU funding, which is designed to evacuate a limited number of refugees and asylum seekers from detention centers to Niger. Once in

Niger, the cases of these refugees can be processed for resettlement in a third country—primarily in Europe.

Together with the EU’s continued support for the Libyan Coast Guard, the VHR, ETM, and programs to improve conditions for asylum seekers, refugees, and migrants in Libya constitute the four central pillars of the EU’s response to the Central Mediterranean component of Europe’s migrant and refugee crisis. However, as explained below, each of these pillars remains deeply flawed or has yet to make a systemic and concrete positive impact.

INTERCEPTION AT SEA BY THE LIBYAN COAST GUARD

A Deadlier Crossing

As mentioned above, Europe is succeeding in its goal of reducing the overall number of migrants and refugees from crossing the Central Mediterranean. However, this success has come at a great human cost to those attempting the journey. EU leaders often cite saving the lives of migrants and refugees as a key objective for their policy in the Mediterranean. Indeed, the overall number of those who died while attempting to cross the sea to Italy between January and March 2018 declined compared with the same period in 2017. However, according to IOM, the number of deaths among those who attempted the crossing actually increased proportionally by 75 percent during that period.⁸ In other words, the net effect has been to make the route itself even deadlier for those who attempt it.

This trend is in part due to the EU’s failure to strengthen its capacity to conduct search-and-rescue operations in the Central Mediterranean. Instead, the EU and European governments have moved in the opposite direction. The EU’s naval operation, EUNAVFOR Med, does not conduct search and rescue as part of its core mandate, which is to destroy smugglers’ vessels, enforce the arms embargo on Libya, and train the Libyan Coast Guard and Navy. EUNAVFOR Med only conducts searches and rescues as part of its obligations under international law.

Meanwhile, in Italy, NGOs operating their own rescue ships in international waters off the Libyan coast have been targeted by a smear campaign accusing them of colluding with human smugglers.⁹ In August 2017 and March 2018, the Italian authorities seized two NGO ships and opened criminal investigations against them. At the height of the response, nine humanitarian NGOs were conducting search-and-rescue operations with more than a dozen vessels. By March 2018, only one ship, operated by Médecins Sans Frontières and SOS Méditerranée, was left.¹⁰

Interception by the Libyan Coast Guard and Transfer to Detention

The Libyan Coast Guard has played a leading role in reducing the number of successful crossings by migrants and refugees into Europe. The EU supports the Libyan Coast Guard by providing training and equipment through the EU’s Trust Fund for Africa and other programs. The Libyan Coast Guard is a key tool of Europe’s strategy, because it can return those it intercepts to Libya—something European navies cannot do without violating the principle of non-refoulement under European and international law, as the European Court of Human Rights has made clear in its 2012 ruling in *Hirsi Jamaa and Others v. Italy*.

Refugees interviewed by RI in Niger were detained at different stages of their travel through and beyond Libya. Those intercepted by the Libyan Coast Guard told harrowing stories of their experiences at sea. They also described how they were summarily transferred to detention—a process that provides little or no access to protection or humanitarian assistance.

“Libya isn’t a safe disembarkation place. There is no emergency care, no proper registration. How many get lost between the boat and the detention center?”

— NGO representative.

After interception, asylum seekers, refugees, and migrants are brought back to shore, where they are met by representatives of UNHCR, IOM, or one of their implementing partners. The UN agencies are empowered to do little more than write down their names and nationalities. In some cases, they are able to hand out rations, blankets, or other nonfood items. Refugees and migrants are then taken to detention centers operated by DCIM with no judicial process or systematic registration by the Libyan Coast Guard.

Dawit,¹¹ a 23-year-old refugee from Eritrea, told RI that in December 2017, he spent 21 hours at sea in a boat carrying 100 people, before being intercepted by the Libyan Coast Guard. “The Libyan Coast Guard saved us in a really bad way. They were just throwing us, like if one missed, he would end up in the water,” he said. Dawit told RI that once they reached the shore, UNHCR staff members gave him and the others in the group blankets and took their names, after which people he described as police took them to a detention center.

The lack of systematic and predictable access and official registration prevents the UN or international NGOs from tracing the whereabouts of refugees and migrants in order to verify their safety. It also limits the possibility of accountability for human rights abuses that may occur between interception by the Libyan Coast Guard, transportation back to shore, disembarkation, and transportation to a detention center. “Libya isn’t a safe disembarkation place,” an NGO representative told RI. “There is no emergency care, no proper registration. How many get lost between the boat and the detention center?”

Samuel, a 26-year-old man from Eritrea, said that he and 86 others spent three and a half hours at sea before the Libyan Coast Guard intercepted them and transferred them to their boat. “We spent 19 hours on their boat because they were looking for others [other boats attempting the journey to Europe].” He added that, after they disembarked, “UNHCR registered our names and our nationalities and gave us a blanket and biscuits. The Libyan police took us to a detention center. They didn’t register us or anything.” The failure of the Libyan authorities to register people like Samuel means that the UN or other protection or relief agencies cannot ensure that

they are not sold to human traffickers or smugglers. The Libyan authorities should, as a matter of priority, ensure that any asylum seekers, refugees, or migrants entering the detention system are registered.

Sameera, a 17-year-old girl from Somalia, told RI that in October 2017, she spent four hours at sea on a boat that started sinking. She said that half the people died, and the other half were taken to a detention center.

The systematic transfer of people intercepted by the Libyan Coast Guard to detention centers is all the more inhumane, in that it includes people who have experienced the trauma of their boat sinking or witnessing other asylum seekers, refugees, and migrants drowning before being brought back to shore by the Coast Guard. Sameera, a 17-year-old girl from Somalia, told RI that in October 2017, she spent four hours at sea on a boat that started sinking. She said that half the people died, and the other half were taken to a detention center.

IN DETENTION: CONDITIONS OF REFUGEES AND MIGRANTS IN LIBYA

Once on land, those intercepted at sea, like Dawit and Samuel, join the thousands of refugees and migrants who are trapped in Libya’s network of formal and informal detention facilities. In its June 2017 report, ‘Hell on Earth’: Abuses Against Refugees and Migrants Trying to Reach Europe from Libya, RI documented the severe human rights abuses in these centers, including arbitrary detention for indefinite periods of time, unlawful killings, sexual violence, forced labor, beatings, and a lack of adequate or sufficient food.¹² RI’s interviews with refugees recently evacuated from Libya to Niger in February 2018 found that conditions in the detention centers remain deplorable.

Inhumane Detention Conditions

Refugees interviewed by RI in February 2018 had been evacuated from DCIM-operated detention centers, to which UN agencies and NGOs have far more access than other detention centers in Libya. The fact that these agencies have access means that conditions in these detention facilities are likely to be much better than in the majority of detention facilities, to which international agencies have less or no access. But even in these “best-case scenario” facilities, conditions remain appalling. Yonas, 39, from Ethiopia, told RI that in his Tripoli detention center, “We had to use the toilet back to back, two people at a time.” But Yonas underscored that “others used to tell me that I was in a five-star detention center.”

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— Yonas, 39, from Ethiopia.

Refugees and asylum seekers described squalid centers that were so overcrowded detainees had to lie on one side to sleep and were not allowed to go outside. A small number of toilets were shared by hundreds of people. Detainees were forced to share small amounts of food between several people. They had no change of clothes and often had no clean drinking water. The overcrowding and lack of hygiene resulted in medical conditions such as widespread scabies and lice. In recent visits to DCIM detention centers, the UN Support Mission in Libya (UNSMIL) also found “severe overcrowding and appalling hygiene conditions. Detainees were malnourished and had limited or no access to medical care.”¹³

Dawit, the 23-year-old Eritrean man, described the detention center where he was held following his interception by the Libyan Coast Guard. “When you slept, you slept on one side. At first, they gave us bottled water, then they stopped. . . . When they stopped giving us bottled water, we drank tap water and even toilet water.” Dawit said he had both scabies and lice. “We had no change of clothes. If we washed our clothes and put them outside, the Libyans working there threw them out. . . . There were lots of beatings.”



Refugees evacuated from detention in Libya in the shelter where they live in Niamey, Niger

“We had no change of clothes. If we washed our clothes and put them outside, the Libyans working there threw them out. . . . There were lots of beatings.”

— Dawit, 23, from Eritrea.

Kareema, a 27-year-old refugee from Somalia, said she was stopped by the police when she tried to get on a boat in Sabratha. “The police took me to the [detention center] for three months. Death would have been better than that,” she said. She said the detention center, notorious for its inhumane conditions, was not safe and that she received food only once per day.

Abuse and Racism in Detention Centers

Physical abuse inside the detention centers appears to remain pervasive. One NGO representative reported that, in the centers to which his organization has access, violence by guards had declined in the fourth quarter of 2017, along with the overall number of detainees. But those interviewed by RI described widespread beatings and abuse in DCIM centers, which remained overcrowded. Asylum seekers and refugees said that guards beat them randomly or when they protested their treatment or conditions. A UN official informed RI that “we still get information that, in DCIM detention centers, there is sexual violence, forced labor; there is still torture and there are still beatings.”

“There were lots of beatings,” said Yohannes, 22, from Eritrea, about the detention center where he was held. “Beatings were by the Libyan guards and others (Eritreans and Chadians) working for them. Whenever they heard shouting or there were fights, they would just beat everyone they could find, with a hose.” In his description of a Tripoli detention center, Salamou, 24, also from Eritrea, told RI that “one day, I was just chatting with my friend, when a Libyan passed and hit me with his foot and broke my finger.” He said he saw people who worked in

the detention center beating others. Salamou said, “One day, all the Eritreans were brought outside, and one by one, we were hit with an iron stick on our hands. It was just because we made noise.”

“We still get information that, in DCIM detention centers, there is sexual violence, forced labor; there is still torture and there are still beatings.”

— UN official.

All the asylum seekers and refugees interviewed by RI in Niger were from Sub-Saharan Africa. Several said they faced racial and religious discrimination in detention and received worse treatment than migrants or refugees from North Africa. David, a 26-year-old refugee from South Sudan, told RI that in the detention center in Tripoli where he was held, refugees and migrants from Sub-Saharan Africa were treated worse than others. Once he was unwell and waited in line for a guard to take him to the clinic in the detention center. Even though David had arrived first, the guard took three men from Morocco first. “[When] I said, ‘I came here before them,’ [the guard] said, ‘You’re black. You’re a slave.’”

“We hid our crosses, because the Libyan police working in that place didn’t appreciate Christians.”

— Sarah, 23, from Ethiopia.

Most interviewees were Christians from Eritrea and Ethiopia. Many told RI that they faced threats and insults along the journey through Libya for being Christians, including from guards in detention centers. Sara, 23, from Ethiopia, told RI that while she was detained, “we hid our crosses, because the Libyan police working in that place didn’t appreciate Christians.”

ASTATKE'S STORY

RI met with Astatke, a 37-year-old man from Ethiopia who had arrived in Tripoli via plane from Sudan in July 2017. He had paid a smuggler in Sudan to help him get to Europe. Upon arrival at the airport, however, he was detained by Libyan immigration officials and eventually arrested by Libyan police and taken to detention.

He was taken to a “kind of prison” in Tripoli, where he spent a month with more than 20 men in a small room (no larger than 6 x 12 feet) with one small window and no lights or toilet. They were allowed out of the room twice a day for about two minutes to use the toilet and to wash. They were fed small amounts of bread or pasta two times a day and also had to get their water from the toilet. He said he was never given a change of clothes.

Astatke told RI that he was eventually taken to detention in Tripoli, where the conditions were better but still very poor. The facility hosted 600 people of all nationalities and was overcrowded, and they were locked in and never allowed to go outside. He had to knock on the door to be allowed out to use the toilet, and, he told RI, there were times when he did not make it to the toilet. Beatings were common. “The guards would beat us for any reason,” he said.

Eventually, the situation started taking a mental toll on Astatke. “I hated my life. It was a time when you were deprived of your dignity. That is a time that I hated being alive. They would get satisfaction by beating you. You were sitting and doing nothing, and he [the guard] would just come over and hit you on your intimate parts for no reason. I was just waiting to die.”

Eventually, Astatke tried to take his life. What disturbed him the most, he told RI, was that he had not spoken to his wife for over a year, and she had no idea if he was alive or dead. She also had health issues, and he worried incessantly that not knowing what had happened to him was also taking a toll on her. Fortunately, a friend was able to intervene and prevent him from committing suicide.

“All this time I had not spoken to my family. They did not know where I was. I kept thinking about this. I have three children. My wife has kidney problems. I tried to commit suicide inside there.”

One of the main obstacles to reducing abuses by DCIM staff in the detention facilities remains the lack of oversight or accountability. There are no internal reporting mechanisms in detention centers that detainees can use to report physical or other forms of abuse by guards and other DCIM staff. Asylum seekers, refugees, and migrants also lack access to legal assistance in the detention facilities. And conditions are not conducive to open and frank conversations with UN and NGO workers during visits, due to the lack of privacy in detention centers.

Sexual Violence

Many of the women RI interviewed said they had been raped by human smugglers on the journey through Libya. Some interviewees also reported witnessing sexual abuse against women in detention centers. Yonas, a 39-year-old refugee from Ethiopia, told RI that while he was held in a detention center in Tripoli, “One night, when I was going to the toilet, I saw two policemen trying to rape a 13- or 15-year-old girl. I shouted, so I stopped them, and

then they started to beat me.” Sara, the 23-year-old woman from Ethiopia, said that people who worked in that center “did whatever they wanted to women. They raped them. I saw it with my own eyes. When you’re hungry, they tell you to walk, and you get raped, and then you get a piece of bread.” RI has also been informed by NGO, UN, and European officials that there are cases of sexual violence against men, including in detention centers.

The Lack of Medical Care

Due to overcrowding and poor ventilation and hygiene, most of those interviewed by RI said they had scabies while in detention. Some had more serious medical conditions but were not able to get medical treatment. Others arrived in very poor health due to the months or years spent in captivity at the hands of human smugglers and traffickers. Yohannes, 22, from Eritrea, said he was detained in a detention center in Libya after being intercepted by the Libyan Coast Guard. “It was very hot, the air barely got in. There were a lot of Eritreans who had tuberculosis. They put sick and healthy people together in the same room, so you got sick.”

Medical care is mainly limited to what is provided by international NGOs. Some NGOs maintain clinics in a limited number of centers, but otherwise provide health care through site visits by their staff. One NGO representative told RI that the main health issues his staff members observe are “scabies and other skin diseases, pregnancies, and the lack of variety and the lack of frequency of meals.” NGO representatives also told RI that they were often forced to take patients requiring more intensive treatment to private clinics and had to cover the costs because public hospitals refuse to treat people from Sub-Saharan Africa. “We don’t go to government hospitals because they don’t accept [refugees and migrants],” the NGO representative observed.

Refugees and migrants who receive medical care outside detention centers must return to detention after receiving treatment. This includes pregnant women and women who have just given birth. Amal, a 25-year-old woman from Somalia, gave birth while she was detained in Tripoli. She was released to receive medical care only for



brief periods before returning to detention. “I gave birth on Thursday. On Saturday, I went back to the detention center.” Amal told RI that she and her newborn were held in a room with 53 other people, including other babies and children. She said she and the other detainees were not allowed to go to the toilet during the night and had to use a bucket in the room instead.

“I gave birth on Thursday. On Saturday, I went back to the detention center.”

— Amal, 25-year-old woman, Somalia.

The Lack of Psychosocial Care

Nearly all refugees interviewed by RI said they had endured or witnessed severe abuses at the hands of human smugglers or traffickers and over long periods of time. The abuses include torture and rape—including rape leading to pregnancy—along with beatings, access to very little or no food or clean water, and being held for long periods of time in inhumane conditions. Several said they were held by ISIS along their journey through Libya. These events, combined with the subsequent detention in extremely poor conditions, strongly indicate the need for psychosocial care. But such care is not available while people are held in detention.

The Lack of Access and Oversight by the UN and NGOs

As mentioned above, UN agencies and NGOs do not have systematic access to detainees, and the conditions of detention are not conducive to private and confidential meetings where asylum seekers, refugees, and migrants can report abuses freely and without fear of reprisal. Salamou, 24, from Eritrea, told RI that while he was detained in a detention center in Tripoli, “[A UNHCR worker] used to come. I could see her through the window, but I wasn’t allowed to speak to her.” Yonas, 30, from Ethiopia, said that though UNHCR, the International Medical Corps, IOM, and journalists from Italy visited the detention center where he was held, “we couldn’t talk freely with them because the Libyans working there were next to us.”

Several refugees also told RI that immediately before a visit by UNHCR, IOM, or NGO staff members, conditions in the detention center would improve. For example, the food would be better, or the guards would allow them to go outside their rooms. But these improvements only lasted for the duration of the visit. According to Salam, 21, from Eritrea, “When UNHCR was about to come, even the bathroom would get cleaned. But after they left, that’s when the beating started.” Samuel, 26, from Eritrea, told RI that “when someone from the UN came and we decided to bring a sick person to them, the Libyans didn’t let us out.” He said that there was not enough food, and that five people had to

share one plate. “When [a UNCHR worker] was present, the food was good.”

“When UNHCR was about to come, even the bathroom would get cleaned. But after they left, that’s when the beating started.”

— Salam, 21, from Eritrea.

“When UNHCR was present, the food was better, but when they weren’t there, there were times when we didn’t eat at all,” said Deborah, a 15-year-old Eritrean girl who said she spent three months in a DCIM detention center after escaping from ISIS. She said that in the detention center, food consisted of bread, pasta, and sauce. “Only when UNHCR came did we see meat. Even fruit, it was only when UNHCR came.” She said that she and other detainees were never allowed outside, and that when UNHCR visited, the Libyan detention staff made it look much better than it was. “[They made it look like] when UNHCR was there, everything was good. But when they left, they beat men on their feet while they were on the floor and also with a pipe.”

Systematic Detention Remains Unchallenged

The results of RI’s field research suggest that, despite interventions by European governments and others, conditions for migrants and refugees in Libya have not improved significantly. RI is not alone in these findings. As described in a recent report on the UN Support Mission in Libya, “Migrants were subjected to arbitrary detention and torture, including rape and other forms of sexual violence, abduction for ransom, extortion, forced labour and unlawful killings. Perpetrators included State officials, armed groups, smugglers, traffickers, and criminal gangs.”¹⁴

These wretched conditions are symptomatic of a deeper, underlying challenge: that refugees and migrants are being

JOHAN'S STORY

RI met with Johan, a 22-year-old man who fled Eritrea in the hope of being able to get an operation to repair detached lenses in his eyes that left him blind in one eye and with limited vision in the other.

Johan said that upon arrival in Libya, he was held hostage by smugglers, who tied him up and beat him terribly, breaking his jaw and further damaging his eyesight. “Even now, I have trouble closing my jaw,” he said. Eventually, he was able to pay the smuggler, and in December 2017, he boarded a rubber boat with almost 100 other people. Johan said that after nearly 22 hours at sea, the Libyan Coast Guard came and took them to shore. Although someone from UNHCR was able to take their names upon disembarkation, Johan was never given any proper medical examination, despite his serious medical injuries, and he was immediately taken to detention by people he described as Libyan police.

When RI asked him about conditions in Libyan detention, where he spent more than two months before being evacuated to Niger under the ETM, he replied, “I can’t say a lot about that place. I was very sick and couldn’t talk because I had been hit in the face by the smuggler. There was an emergency doctor that treated me so at least I could speak, but I did not recover 100 percent. I was very weak. I lay in a corner the whole time and didn’t move much. I still feel a lot of pain.”

detained with no recourse through a judicial procedure. This constitutes arbitrary detention, and it is contrary to the International Covenant on Civil and Political Rights, to which Libya is a party.¹⁵ Under Libyan law, irregular entry or stay in Libya is punishable by imprisonment with labor or a fine, along with expulsion from the country upon completion of the sentence.¹⁶ Libyan law does not distinguish between people in need of international protection, victims of trafficking, and others.¹⁷ Until the Libyan authorities end the practice of detaining asylum

seekers, refugees, and migrants without any legal process or opportunity to challenge their detention, systemic improvements in the conditions of these populations are unlikely.

HUMANITARIAN EVACUATION AND ASSISTED RETURN FROM LIBYA

A key part of the EU’s approach to the appalling conditions that migrants and refugees face in Libya is to support and fund UNHCR’s and IOM’s evacuation programs. Given the horrendous and life-threatening conditions that refugees and migrants face in Libya, both programs serve as important emergency humanitarian mechanisms. However, these evacuation pathways only help a limited proportion of the total refugee and migrant population in Libya. They are not substitutes for providing solutions for the large numbers of refugees and migrants already in Libya, along with those who continue to arrive in the country.

UNHCR in Libya

Libya is not a party to the 1951 Refugee Convention, or to its 1967 Protocol, and though UNHCR is present in Libya, it is only allowed to have an informal presence and only permitted to register people who are members of one of the seven nationalities that the Libyan authorities consider to be from refugee-producing countries: Eritrean, Oromo Ethiopian, Iraqi, Syrian, Sudanese from Darfur, Palestinian, and Somali. Although Libya is a party to the Organization of African Unity’s Convention Governing the Specific Aspects of Refugee Problems in Africa, it has not enacted domestic legislation to implement the convention, and it has no national asylum system. The closure of U.S. and most European government embassies due to the armed conflict has severely restricted opportunities to conduct resettlement procedures within Libya.

Of the estimated 700,000 to one million migrants and refugees in Libya, UNHCR has registered 51,519 refugees and asylum seekers, including nearly 2,300 asylum seekers and refugees held in detention centers to which



Refugees in Niamey, Niger, where they await resettlement following their evacuation from Libya by UNHCR

UNHCR or its partners have access. Refugees and asylum seekers fleeing other conflict-ridden countries are beyond UNHCR's reach. So too are people who face persecution on other grounds—such as their sexual orientation—but who are not members of one of the seven nationalities that UNHCR is permitted to assist.

Even for refugees and asylum seekers belonging to these seven nationalities, UNHCR's limited presence in the country and lack of formal recognition restrict its ability to provide meaningful assistance. UNHCR does not have a Memorandum of Understanding with the Libyan government, which only tolerates its presence. Moreover, the volatile security situation and travel restrictions on the number of UN foreign nationals permitted visas have limited the agency's footprint and curtailed its staff's presence on the ground.

Meanwhile, the volatile security situation within Libya limits traditional pathways for resettling refugees directly from Libya to third countries. Most Western countries

have closed their embassies and are therefore unable to screen and process applicants in person. As a result, at the time of writing, UNHCR has only been able to evacuate 312 refugees directly from Libya to Italy and ten to an emergency transit center in Romania. In short, the asylum space is extremely limited within Libya, and the only way to process the vast majority of cases is via evacuation to another country.

UNHCR's Emergency Transfer Mechanism for Asylum Seekers and Refugees

Faced with these challenges, in November 2017, UNHCR initiated the ETM, which allows for the evacuation to Niger of some refugees and asylum seekers held in Libyan detention centers. Once in Niger, their cases can be processed for resettlement to a third country. "We came to the conclusion that Libya is not a safe country for refugees, especially from Sub-Saharan Africa, so we said the best solution is to evacuate," a senior UN official told RI.

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Under the ETM, the asylum seekers and refugees are transferred by plane from detention in Tripoli to Niamey, the capital of Niger, where they are placed in safe houses across the city while their cases are processed. Most come from Eritrea, Ethiopia, and Somalia. Niger is the only country that has generously agreed to host the evacuated refugees on a temporary basis. The ETM is part of a larger appeal by UNHCR for the resettlement of 40,000 refugees located in 15 priority countries along the Central Mediterranean route, including those evacuated by the ETM from Libya to Niger.¹⁸

By March 2018, European governments had pledged to resettle 24,440 of the 40,000 refugees, including commitments by several European governments and Canada for 2,483 refugees from Niger and 1,100 directly from Libya.¹⁹ At the time of writing, 1,020 refugees and asylum seekers have been evacuated from Libya to Niger via the ETM, but only 37 have been resettled to France. Faced with a growing number of ETM evacuees in Niger and only a handful of resettlements, UNHCR announced in early March 2018 that the Nigerien government has requested a suspension of the program until more evacuated refugees have been resettled.

For refugees and asylum seekers in Libya who have been left behind in detention, a lifeline to safety has been suspended. In the near term, European and other governments must promptly resettle refugees from Niger and work with UNHCR to address the delays that have led to the suspension of evacuations. This will offer durable solutions to evacuated refugees in Niger and make room for other refugees and asylum seekers awaiting evacuation from Libya. It can also encourage other countries

to follow Niger’s example and agree to temporarily host evacuees from Libya.

IOM’s Assisted Returns of Migrants to Countries of Origin

A more established pathway exists for migrants to leave Libya via IOM’s VHR program, which facilitates returns directly to countries of origin for migrants held inside the Libyan detention system, as well as migrants living in urban areas. In 2017, IOM returned 19,730 persons to their countries of origin as part of the VHR program. Almost 15,000 of those returned were evacuated from detention centers, and more than 4,730 were returned from urban settings.

In interviews with RI, some NGO and UN workers raised questions about whether all the returns occurring under the program could indeed be truly voluntary. As indicated above, at present, most VHR returns take place from detention centers. Once migrants are in detention, their options are severely limited. Their choice is either to face indefinite detention and abuse or to go home (and possibly migrate again). As one NGO representative explained, “Once people are inside detention, asking them if they want to go home is to ignore the reason they left in the first place.”

For those who may have a right to international protection but are not from one of the seven nationalities that UNHCR is allowed to register in Libya, the VHR program presents a heightened risk of refoulement, in addition to the risk that returning may be involuntary. Specifically, the program could unwittingly present such a person with the choice of either remaining in detention or returning home and facing the risk of torture or other ill treatment. Such returns would violate the prohibition of refoulement under refugee law, and also the refoulement provisions under the UN Convention against Torture, to which Libya is a party.²⁰ It should be noted that people who are not in need of international protection but would face torture or other ill treatment if returned to their country are also protected under this convention.

For people who do want to return to their home countries and can do so safely, the VHR program is beneficial and

should continue. But this program's fast pace and large scale have increased the risk that not all those in need of international protection are being properly identified. IOM does have a referral system to UNHCR in cases where IOM workers suspect a return would not be safe. However, the pace of the program and the conditions in which it is carried out in most cases—namely, in detention—along with the restrictions UNHCR faces in assisting people who are not from one of the seven nationalities raise serious questions about this system's effectiveness.



A refugee and her son in the shelter where they live in Niamey, Niger, following their evacuation from Libya by UNHCR

The EU's hope that the VHR program will "empty out" detention centers in Libya appears to be driving the pace and scale of the program. In December 2017, EU High Representative for Foreign Affairs and Security Policy Federica Mogherini observed that transferring thousands of people out of detention centers and to their home countries under the VHR program "would allow us to empty the current population in detention centers in the next few months."²¹ In mid-March, Mogherini stated her belief that these efforts would lead to emptying detention centers completely within a couple of months.²²

Mogherini's position is not without basis. In October 2017, the number of refugees and migrants in DCIM detention centers spiked, from several thousand to 20,000.²³ By February 2018, the number had declined to 4,453—in large measure due to the VHR program. But with an estimated 700,000 to one million refugees and migrants in Libya, there is no end in sight for the continued detention of asylum seekers, refugees and migrants. As long as the authorities can detain asylum seekers, refugees, and migrants without due process of law, and as long as people intercepted by the Libyan Coast Guard continue to be transferred to detention, it is highly unlikely that the VHR program can "empty out" detention centers over the long run.

The EU's Flawed Approach in Libya

A key part of the EU's approach to the appalling conditions that migrants and refugees face in Libya is to provide support and funding to UNHCR to evacuate refugees and asylum seekers and to IOM to return migrants to their country of origin. Given the horrendous and life-threatening conditions that refugees and migrants face, both these programs are emergency humanitarian measures that must be available for those who wish to benefit from them, and if they include safeguards to ensure that returns are safe and voluntary, they must be supported.

Finally, however, evacuation pathways only help a limited proportion of the total refugee and migrant population in Libya. They cannot provide solutions for the hundreds of thousands of asylum seekers, refugees, and migrants already present in Libya, even as more continue to arrive. And they do not address the root of the problem—namely, the criminalization of irregular entry and stay and arbitrary detention.

Ultimately, the EU's focus on interception and evacuation fails to address the system that leads to the abuses that asylum seekers, refugees, and migrants face in Libya. It may even undermine the ability of the international humanitarian community to adopt a more unified, principled approach. There is a need for the EU to use its leverage with the GNA to address these systemic problems and to work toward solutions that respond to the needs on the ground.

CONCLUSION

As European leaders point to their programs in the Central Mediterranean as a success, the reality for refugees, asylum seekers, and migrants in Libya remains dire. Faced with mounting domestic pressure to close down irregular migration routes, the EU's main focus is to prevent further arrivals from Libya by sea and to increase returns from Libya to countries of origin, even in the absence of safeguards to ensure that these returns are genuinely voluntary and safe. Although the EU's support to UNHCR's evacuations of refugees to Niger under the ETM is welcome, EU governments have been slow to resettle refugees once they are in Niger. The result has been to bring evacuations to a halt and to prevent more refugees from being rescued.

Today, Libya remains in chaos. In this context, there are no easy solutions for the horrendous conditions facing

asylum seekers, refugees, and migrants who are stranded there. But Europe is accountable for the programs it funds and for the migration agenda it sets in Libya. The EU and its member states must use all the leverage they have with the Libyan authorities to push for an end to Libya's system of arbitrary detention of asylum seekers, refugees, and migrants. They must also push for an end to the systematic transfer of people from disembarkation points to detention centers where they can neither challenge their detention nor the appalling conditions in which they are held. While the EU's leaders may claim that fewer deaths in the Mediterranean Sea are being recorded, their actions and funding are causing more people to be detained in Libya, where deaths go unrecorded.

ENDNOTES

- 1 "Malta Declaration by the Members of the European Council on the External Aspects of Migration: Addressing the Central Mediterranean Route," February 3, 2017, <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>.
- 2 Hirsi Jamaa and Others v. Italy, European Court of Human Rights, Application 27765/09, February 23, 2012.
- 3 Mark Micallef and Tuesday Reitano, "The Anti-Smuggling Business and Libya's Political End Game," Institute for Security Studies, December 2017, <https://issafrica.s3.amazonaws.com/site/uploads/nar2.pdf>; Associated Press, "Backed by Italy, Libya Enlists Militias to Stop Migrants," August 29, 2017, <http://abcnews.go.com/amp/International/wireStory/backed-italy-libya-enlists-militias-stop-migrants-49484692>; Reuters, "Exclusive: Armed Group Stopping Migrant Boats Leaving Libya," August 21, 2017, <https://www.reuters.com/article/us-europe-migrants-libya-italy-exclusive/exclusive-armed-group-stopping-migrant-boats-leaving-libya-idUSKCN1B11XC>.
- 4 CNN, "People for Sale: Where Lives Are Auctioned for \$400," November 14, 2017, <https://www.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>.
- 5 Izza Leghtas, "It Is Better to Die than Stay in Libya': Libya's Slave Markets Remind Us of Flaws in EU Migration Plans," Newsweek, April 19, 2017, <http://www.newsweek.com/libya-eu-migrants-malta-declaration-slaves-583616>.
- 6 "Joint Statement on the Migrant Situation in Libya, African Union–European Union Summit 2017," Abidjan, Côte d'Ivoire, November 29–30, 2017, <http://www.consilium.europa.eu/media/31871/33437-pr-libya20statement-20283020nov2010.pdf>.
- 7 UN News "Thousands of Migrants Return Home Safely from Libya as Part of UN-Supported Programme," March 13, 2018, <https://news.un.org/en/story/2018/03/1004782>.
- 8 International Organization for Migration, "Saving Lives Must Always Be the Number One Priority," March 28, 2018, <http://www.italy.iom.int/en/news/iom-saving-lives-must-always-be-number-one-priority>.
- 9 Daniel Howden, "Europe's new Anti-Migrant Strategy? Blame the Rescuers," Prospect Magazine, March 20, 2018,

- <https://www.prospectmagazine.co.uk/magazine/europes-new-anti-migrant-strategy-blame-the-rescuers>;
- 10 Médecins Sans Frontières: “Central Mediterranean: European Governments Are Obstructing Lifesaving Rescues and Returning People to Unsafe Libya,” March 21, 2018, <http://www.msf.org/en/article/central-mediterranean-european-governments-are-obstructing-lifesaving-rescues-and-returning>.
- 11 The names of the asylum seekers and refugees cited in this report have been changed to protect their identities.
- 12 Izza Leghtas, ‘Hell on Earth’: Abuses Against Refugees and Migrants Trying to Reach Europe from Libya, Refugees International, June 2017, <https://www.refugeesinternational.org/reports/2017/libya>.
- 13 “Report of the Secretary-General on the United Nations Support Mission in Libya,” February 12, 2018, S/2018/140, paragraph 48, <https://unsmil.unmissions.org/sites/default/files/n1803952.pdf>.
- 14 Ibid., paragraph 47.
- 15 International Covenant on Civil and Political Rights, Article 9.
- 16 Article 6, Law No. 19 of 2010 on Combatting Irregular Migration.
- 17 See “Detained and Dehumanised,” Report on human rights abuses against migrants in Libya, UN Support Mission in Libya, December 2016, http://www.ohchr.org/Documents/Countries/LY/DetainedAndDehumanised_en.pdf.
- 18 “UNHCR Resettlement Flash Appeal: Vulnerable Persons of Concern Evacuated from Libya,” December, 8, 2017, <http://www.unhcr.org/5a2e550a4>; the 15 priority countries are Algeria, Burkina Faso, Cameroon, Chad, Djibouti, Egypt, Ethiopia, Kenya, Libya, Mali, Mauritania, Morocco, Niger, Sudan, and Tunisia. On the Central Mediterranean situation: UNHR calls for an additional 40,000 resettlement places, September 11, 2017, <http://www.unhcr.org/en-us/news/press/2017/9/59b6a5134/central-mediterranean-situation-unhcr-calls-additional-40000-resettlement.html>.
- 19 The pledge of 2,483 resettled refugees from Niger includes refugees evacuated from Libya to Niger and refugees registered in Niger.
- 20 Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, Article 3.
- 21 Speech by Federica Mogherini at the European Parliament plenary session on the situation of migrants in Libya, December 13, 2017, https://eeas.europa.eu/headquarters/headquarters-homepage/37290/,DanaInfo=eeas.europa.eu,SSL+speech-federica-mogherini-european-parliament-plenary-session-situation-migrants-libya_en
- 22 Speech by High Representative/Vice-President Federica Mogherini at the European Parliament plenary session on the Progress on the UN Global Compact for safe, regular and orderly migration and UN Global Compact on Refugees, March 13, 2018, https://eeas.europa.eu/headquarters/headquarters-homepage/41272/speech-high-representativevice-president-federica-mogherini-european-parliament-plenary_mt
- 23 The sudden spike in October 2017 resulted from the Libyan authorities’ transfer to detention of thousands of asylum seekers, refugees, and migrants who were stranded in the port city of Sabratha due to intense fighting between militias.

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