



Jesuit Refugee Service Malta
January 2014

BEYOND IMAGINATION

ASYLUM SEEKERS TESTIFY TO LIFE IN LIBYA



“The first time we tried to leave Libya, the boat was taking in water. So we returned to Libya, where we were put in the hands of militias. We went through the first gate, the second, the third, I thought I would never leave that place, I was praying so hard. The Libyans asked us, ‘why did you try to cross the sea?’ They were so angry: ‘You are Africans, you come to our sea, you spoil it, go back to Africa.’ They accused us of working for Gaddafi. We were forced to lie flat on the floor for four to five hours, without moving, while the guards walked over us, beating us with metal rods and threatening us with guns. They asked us, ‘are you Muslim?’ To those who replied yes, the guards ordered them to pray and, when they obeyed, they kicked them.”

Abuubakar



Ganfuda detention centre, Benghazi, March 2011; migrants imprisoned under the Gaddafi regime escaped when the war in Libya started, leaving meagre but precious belongings behind. This centre is now used by militias to detain migrants.

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Don't return migrants to Libya

Malta mulls push-back to Libya

On 9 July 2013, the media learned that the government was planning to send a group of Somali asylum seekers back to Libya on an unscheduled Air Malta flight.

The asylum seekers had just arrived to Malta by boat, a handful among the thousands who undertake highly risky journeys across the Mediterranean Sea to seek protection in Europe – and who have provoked the so-called “irregular migration crisis” by doing so.

They were saved at the eleventh hour when the European Court of Human Rights (ECHR) issued an interim ruling against their return, in response to an urgent application filed earlier in the day by a coalition of local NGOs, among them the Jesuit Refugee Service (JRS).

The government later insisted that no final decision on returning the asylum seekers to Libya had actually been taken, saying the option was one of several different ones that were – and still are – on the table.

The government's regrettable decision even just to consider a push-back proved controversial, drawing condemnation at home and abroad. The push-back would have been clearly illegal, a complete negation of the spirit and letter of Malta's international obligations. If returned to Libya, the Somalis would have faced a real risk of inhuman, cruel and degrading treatment

and would have been unable to exercise their right to apply for asylum.

Can Libya be part of the solution?

The Maltese government has since insisted, on more than one occasion, that Libya should be seen not as part of the problem of irregular migration but as an essential part of the solution.

In theory, this approach might make sense for Malta, as it does for Italy. Both countries are struggling to cope with waves of African immigrants who set out from Libya and wash up on their shores in overcrowded vessels to apply for asylum. The UN refugee agency, UNHCR, says more than 23,000 people, mostly Africans, tried leaving Libya by boat in 2013, triple the number in 2012.

The Libyan coastguard says it stopped 2,200 migrants on the sea in just two months of 2013. Concerned about the sheer numbers of migrants and frequent horrific accidents at sea, the European Union (EU) is helping to train Libyan border patrol guards and to set up systems to control Libya's 2,000-km-long shore.

But if the tactic to seal off Libya's borders makes sense from an EU perspective, in reality it is nothing less than a travesty of the migrants' fundamental rights. Even if enthusiasm to control Libya's borders were matched by equal eagerness to help the country build and apply decent



Resting on the deck of an Armed Forces of Malta (AFM) patrol boat in July 2013, after being rescued from a vessel in distress while trying to reach European soil from Libya.

migration and asylum systems, hitherto non-existent, the truth is that Libya today is nowhere near ready to guarantee anybody's human rights, let alone those of foreigners.

Libya remains highly unstable

More than two years after the overthrow of the dictator Muammar Gaddafi, Libya remains prey to violence and political instability. One key reason is that the government has failed to disarm an array of well-armed militias, largely set up during or after the uprising against Gaddafi. The country is awash with weapons, and targeted assassinations, kidnappings and tribal clashes are commonplace.

The militias have been quick to step into the security void left by weak state institutions, military and police. They control swathes of territory and some brigades have taken it on themselves to guarantee the country's security, resorting to grossly illegal practices of

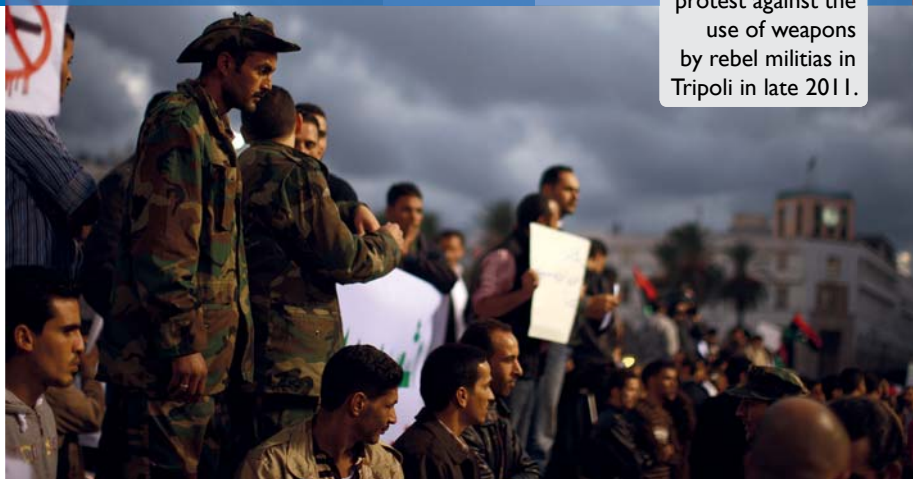
arbitrary arrest, unlimited detention and torture to do so. While some militia groups are sanctioned by the state, others operate entirely above the law, assuming "the roles of police, prosecutors, judges and jailers", in the words of the International Crisis Group.

Migrants and asylum seekers at high risk

In such a lawless scenario, migrants are especially vulnerable, particularly sub-Saharan black Africans. Those who left their own countries because of war and persecution have no realistic chances of applying for asylum in Libya. They suffer widespread racist abuse; they are criminalized because they enter the country without the right documents; they are systematically hunted down and detained in appalling conditions; and exploited as forced labour.

Some militias have made it their "mission" to tackle migration, drawing inspiration from xenophobia, misguided fears of disease, and security

concerns. They detain migrants in camps that were used for the same purpose in Gaddafi's time and have opened new makeshift ones too.



A lawless country: demonstrators protest against the use of weapons by rebel militias in Tripoli in late 2011.

The reality on the ground leaves no room for doubt: for the foreseeable future, Malta cannot return migrants to Libya – to do so would be tantamount to dispatching them to hell.

Certainly Libya's allies, Malta included, should help the fledgling government and civil society to strengthen law-abiding state security forces and to work towards the creation and implementation of a justice system and fair policies that truly protect human rights.

But while all work together to attain this ideal situation, an ideal is all it will remain for a long time to come. Getting Libya to sign up to international agreements, a laudable step in itself, will not be nearly enough to guarantee urgently needed changes on the ground. Until radical and measurable improvements take place in the security and governance of Libya, it will be a very dangerous place for migrants, asylum seekers and refugees, in particular those of sub-Saharan African origin.

In this publication, we use the words “migrants” or “asylum seekers” to describe those smuggled clandestinely by boat from Libya to Malta. We wish to emphasise that however people are labelled, migrants, asylum seekers, refugees... they should *never* be returned to a country where they face a real risk of inhuman and degrading treatment and punishment, and where their fundamental rights would be ignored. Most migrants are in fact asylum seekers; at the first opportunity, they file a claim for international protection. In 2012, 1890 migrants arrived by boat to Malta. Only 52 did not apply for asylum. In that year, 78% of all asylum seekers were granted some form of protection and another 9% provisional status. Somalis accounted for 86% of those granted international protection, followed by Eritreans.

© UN Photo/lason Foouten

The post-Gaddafi era

In 2009, JRS Malta published a booklet about life for asylum seekers in Libya, entitled *Do they know?* At the time, Gaddafi was still in power and asylum seekers and migrants were subjected to arbitrary detention, torture and xenophobic violence.

By all accounts, the post-Gaddafi era is even worse. Since Malta has very actively considered push-backs, JRS decided

to issue another publication about life for asylum seekers in Libya today, so that the consequences of returning anyone there will be clear to all.

UNHCR estimates that Libya hosts around 30,000 registered refugees and asylum seekers, as well as a huge population of migrants searching for work, who come from sub-Saharan Africa as well as Middle Eastern and other North

African countries. Many, if not most, asylum seekers consider Libya as a stepping-stone on their arduous journey to find safety in Europe.

In these pages, we focus specifically on asylum seekers from Eastern Africa, bringing you the voices of Eritrean and Somali asylum seekers who passed through Libya in 2012 and 2013 and who were interviewed after their arrival in Malta.



Arriving in Malta in July 2013 after being rescued from a vessel in distress.



Rescued at sea in July 2013.

Fear, whims and commodity

The experience of most sub-Saharan African migrants in Libya can be summed up in three words: fear, whims and commodity. They live in *fear*, they are at the mercy of the *whims* of those – Libyan armed forces, militias or civilians – who hold them in their power, and they are viewed as a useful *commodity* to be bought and sold, and exploited as forced labour.

“When I heard the Maltese government was planning to return some people to Libya, I got a shock, I panicked, I thought it was me they wanted to take back. Dying would be better. Life for us in Libya is beyond imagination... I can never forget. It changes my mood when I remember. It really pains me, it is not good for a man to cry but I cannot express it otherwise, it really pains me deeply.”

Abuubakar

Easy prey

The accounts given by the asylum seekers interviewed by JRS were strikingly consistent in the details of their ordeal in Libya. The picture that emerged is one of foreigners who felt conspicuous and unsafe everywhere, even at home. They constantly feared that Libyan civilians might report them and that the armed forces or militias would arrest and imprison them for not having the right papers to be in the country. Bitter experience taught them not to trust anyone, be it their landlord, shopkeeper, taxi driver... They saw themselves – with solid justification – as totally deprived of their rights in Libya, and so constantly open to exploitation and abuse, without anyone to turn to for help or redress.

Their fears are borne out by evidence from human rights delegations visiting Libya. One mission found Eritrean and Somali communities living a “semi-clandestine existence in deplorable conditions” in poor neighbourhoods of Tripoli.

The severe marginalisation of migrants stems from long-standing racism against sub-Saharan Africans in Libyan society, fanned by rumours during and immediately after the 2011 conflict that Gaddafi’s forces had used African mercenaries. Amnesty International said: “The generalised contempt for and suspicion of black people within the Libyan population make fertile ground for acts of violence.”

A UN human rights workshop at Tripoli University in 2011. Although Libya is taking steps to improve its human rights record, migrants and asylum seekers, especially of sub-Saharan African origin, still face widespread xenophobia.



“When we arrived in Libya, the smugglers threw us out of the vehicle in the middle of the night, two kilometres from the town of Kufra. Some people attacked us: they beat and robbed us, taking everything we had. No African can walk or travel by bus safely in Libya, they will ask for your documents and even if you show your passport, they will ask for a visa. They will slap you, tear up your papers and arrest you. We used to sleep in our shoes, so that if the soldiers came to kick in the door, we could all jump up and run.”

Abuubakar

Somalis at a detention centre in Benghazi tell UNHCR about their concerns and grievances, February 2012.



© UNHCR/L. Dobbs

“You live in fear. There are checkpoints everywhere. Even if you go out of your place to the grocery shop to buy something, or to call your mum from the phone booth, you are always scared, am I going to make it back safely? Are they coming at night? Is the landlord coming? You are afraid of the militias and of the people, because they may report you, even the shopkeeper.”

Farah

“I was in prison...”

From the moment they cross the border into Libyan territory, sub-Saharan Africans are in constant danger of being grabbed and placed in custody – by whom, is not always clear. Arrests are systematic at checkpoints controlled by militias at the entry to towns and villages and on the main thoroughfares.

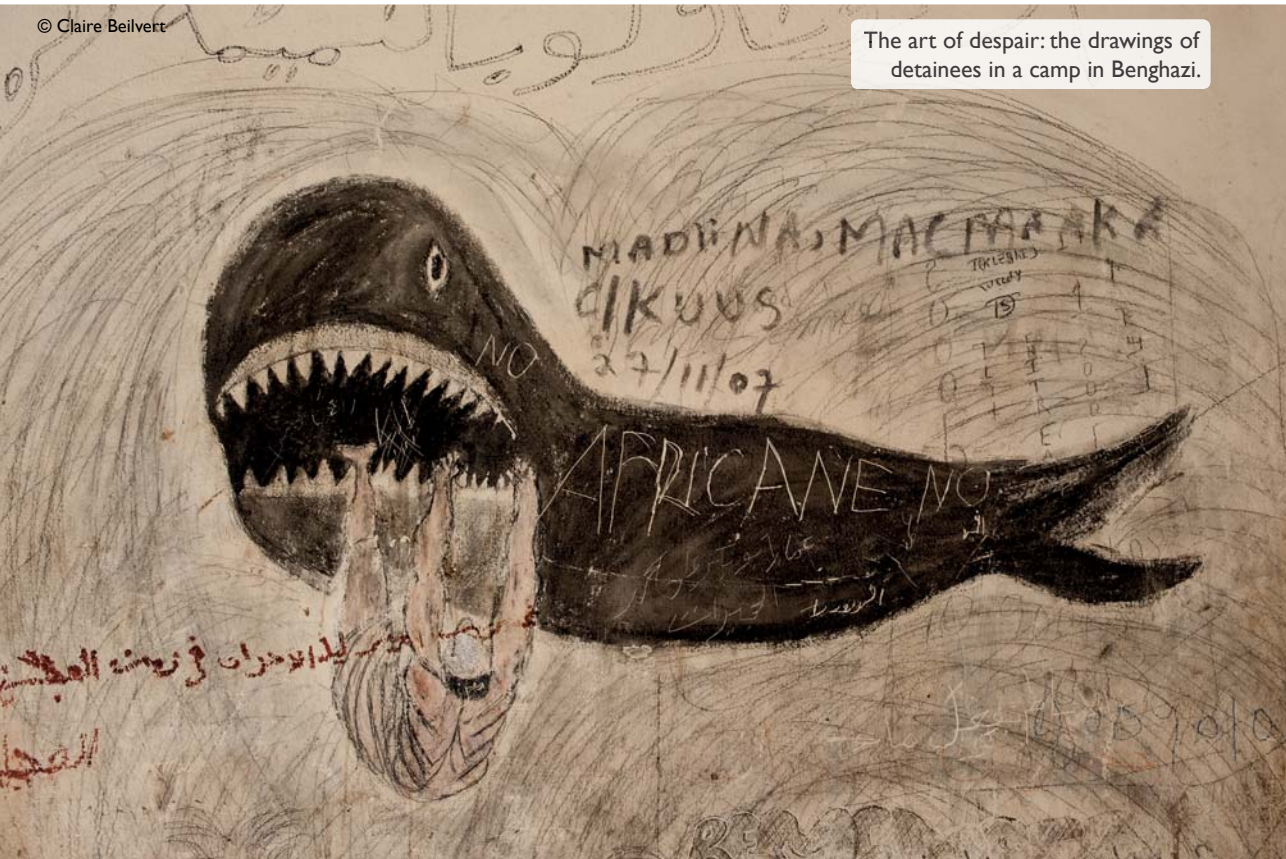
The time in Libya of all the asylum seekers interviewed may be described as a string of spells in detention, from one hellhole to another. The confusion reigning in Libya made it difficult for them to identify their captors: they may have been the official forces of

“We were caught in Sabha, around 130 of us, and imprisoned in a private building. They called the man holding us ‘Colonel’, he had guards under his command, and he demanded that we pay \$1500 each. He had three of us put in a big refrigerator for several minutes and lined the others up to watch, to scare us into paying. He gave us a mobile to call anywhere we liked and arrange for the transfer of money. I called Eritrea and made arrangements, and once I paid, the man organised transport to Tripoli. As soon as we arrived in the city, while we were waiting for someone to pick us up, we were arrested again.”

Mehari

© Claire Beilvert

The art of despair: the drawings of detainees in a camp in Benghazi.



order or one of the militias – some are affiliated with the state, others not. Other times, the captors were powerful civilians who commanded their own bands of thugs and who quite simply kidnapped the asylum seekers for exorbitant ransoms. The frightening thing is that this is totally possible in the lawlessness pervading Libya.

Sometimes the asylum seekers were sold by their smugglers to unscrupulous Libyans, even before they reached Libya, and grabbed when they crossed the border. Others were arrested as soon as they entered Libyan territory and imprisoned. As soon as they managed to leave one prison, the asylum seekers were often promptly re-arrested or kidnapped and imprisoned once again. The only way out for them was to pay up or to escape. But many did not have the means to keep paying for their freedom, once, twice, three times, and failed escape attempts met with terrible punishment.

“In Libya, you are not safe. Someone will catch you and you have to pay money, but then they hand you over to someone else and you have to pay again, it’s a business. If you don’t pay, you remain locked up. As soon as we left the desert and approached the city of Sabha, the man who had smuggled us handed us over straight away to someone else, who locked us in a house under armed guard until we could pay. One of us tried to escape and was shot and killed. I saw this with my own eyes. I have neither money nor family but after two months the people I was with managed to collect money between them and paid for my freedom.”

60-year-old Dahabo

“I was in three different prisons between January and June 2013, all run by soldiers or police.”

Tesfay

“When you enter Libya, they sell you between them. If you don’t have money to pay for your freedom, they abuse you.”

17-year-old Sahra

© Sara Prestianni



According to Amnesty International, since 2012, Libya's Department of Combating Irregular Migration (DCIM) has been taking control of places of detention formerly run by militias and by mid-2013 was running 17 so-called "holding centres" across the country, in which between 4,000 to 6,000 asylum seekers, refugees and migrants were held at any time. Detention conditions have ostensibly improved somewhat: better food, more access to healthcare and renovations. However this is not nearly enough. Meanwhile, an unknown number of detainees continue to be held by local militias in camps run in an improvised manner and without any official oversight.



Bou Rashada camp in Gharyan, near Tripoli, June 2012.

“300 people drinking from the same tap”

“In Tripoli, they hardly ever gave us food, only a small piece of bread once a day and no water. When we asked them for water, they used to tell us to drink from the toilet. When we were very thirsty, we used to drink tap water. The place was very dirty and there were no mattresses, only mats. We were 76 women in one room, as well as a three-year-old girl. We had to share one toilet and shower. It was very crowded. In Ajdabiya, there were 26 women in one small room. We were never allowed to go outside except for one hour a week.”

Jamilah

Conditions in the places where the asylum seekers interviewed were imprisoned – regardless of who was running them – were uniformly poor. Some places were slightly better than others: the food was more plentiful, of better quality, and sometimes there were beds, when space allowed. However overcrowding, poor ventilation and sanitation, overheating, arbitrary access to fresh air, and a lack of food and of safe and palatable drinking water characterised the asylum seekers’ stay in detention in Libya. Their claims are amply backed by the findings of human rights delegations that visited places of detention.



Bou Rashada camp
in Gharyan, near
Tripoli, June 2012.

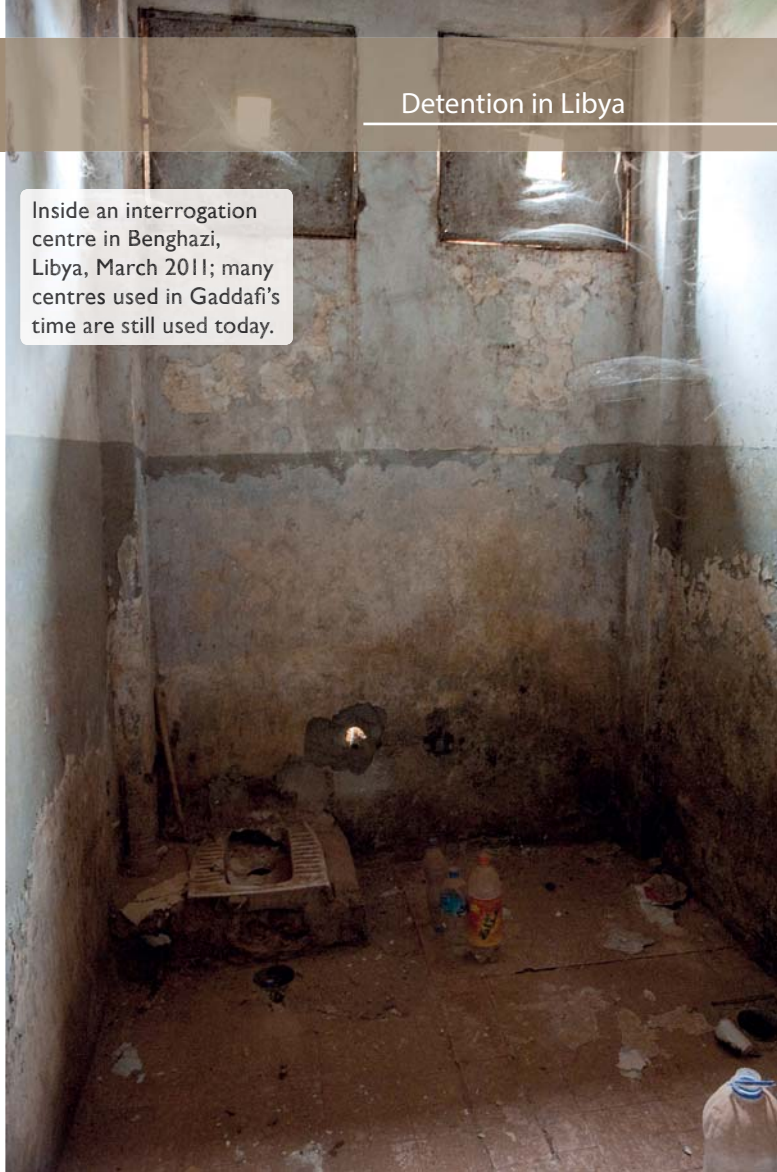
“In Sabha, we were 250 in a big hall, three rooms and a corridor. Even the corridor was packed. We didn’t even have place to sleep, someone had to stand up while someone else slept.”

Yohannes

“Tweisha was horrible, we had no sunlight. To take our meals, they made us run, grab our food and then rush back to our cell, to eat the food inside. It was very overcrowded with poor ventilation.”

Mehari

Inside an interrogation centre in Benghazi, Libya, March 2011; many centres used in Gaddafi’s time are still used today.



© Claire Beilvert

“In Sabratha, the cells were very crowded. It depended on the guard if we were allowed out or not, some allowed us to move around the corridor. At meal times, we were taken out of the cell to eat. The food wasn’t bad but we had only about 40 plates for 300 people so we had to wait for someone to finish using his plate to take it even without washing it. A big problem was no drinking water. The officials told us to drink water from the toilets but it was salty. There was a tap outside the toilets that everyone used. It was better, but there were a lot of fights, you can imagine, 300 people drinking from the same tap. We had mattresses and beds, but when there were too many people, they took the beds out. There were blankets too but they were full of insects and filthy. So we removed the sheets from the mattresses, washed them and used them to cover ourselves instead.”

Tesfay

“This is my country; I do what I like”

The asylum seekers interviewed were not always certain who was imprisoning them, even if the guards wore military fatigues, as members of militia groups sometimes wear them too. However the common denominator of the treatment they received in all places of detention was the impunity with which their captors behaved. In a word, the guards could do exactly as they pleased – taunt, torture, rape, even kill – without being apparently accountable to anybody.

Not all the guards were bad. The asylum seekers were clear about this and told of one guard who made a telephone call to an embassy on their behalf, and another who bought a bar of soap for some of them. However, the fact remains that the asylum seekers were completely at the mercy of the inclinations of their captors, often with appalling consequences.

“There was a good Samaritan among the militia, he said ‘they are Muslim, just leave them.’”

Abuubakar

“The militia men are out of this world, they can do anything they want to you, verbal, sexual, physical abuse, anything.”

Farah

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“The guards had different behaviours, some beat you and treated you badly and others were ok. For sure, they could do whatever they wanted with you, they were not controlled by anyone. They used to treat us badly just for fun; it depended on their mood, not because we did something bad. For example, if they took us to the toilet and they thought we took too long, they got angry and lashed out, as simple as that. Or if they called us for breakfast and some dawdled, they would get it.”

Tesfay



The “Free Libya” camp run by a revolutionary militia brigade near Benghazi, June 2012.

“There was too much beating in Tweisha. A lot of people were injured. They had no reason to beat us apart from enjoying the fact that they were violating our dignity; they seemed to enjoy it.”

Mehari

“In Ajdabiya, the guards used to beat people for nothing, and when some asked why they were doing this, they got shot in their legs. They used to beat us with anything they had in their hands.”

Yohannes

“When we crossed the border, they caught us and told us we had to pay to be released. We were about 60 in this prison. Some of us didn’t have money and they made us run up and down for hours as a punishment. But we were given hardly any food or water, so how could we run? I saw some people drop dead. The man in charge shot others as they ran. When he shot them, he threatened the rest of us: ‘If you don’t do everything I say, you will die like that, I will shoot you all.’ This man – he wore a military uniform – used to choose a woman every night. One time, it was going to be me, but the others begged him not to take me because I was sick... not because I am young – that didn’t matter. The guards would come and beat us for no reason other than ‘you are not at home here. This is my country and I can do what I like.’ They hit me on the head and I had headaches all the time. We left this prison when another man bought us and took us to Sabha, where we were put in an old house and again told we had to pay, to call our family within two hours to send us the money or face punishment. I didn’t have money so I escaped.”

I 7-year-old Sahra

“I was shot in prison in Sabratha on 24 June 2013. Some people – I was not among them – tried to escape at dinnertime, practically the only time we were allowed out of our cells. They had been protesting about the harsh conditions in the prison. The guards shot to prevent them escaping and I was hit. They did not shoot in the air but directly at us. The bullet went into one side of my leg, just above my ankle, and out of the other. After a few hours, the guards took me to hospital.”

Bereket

No right to health

The poor conditions in places of detention in Libya often lead to illness among the detainees, especially respiratory tract and skin infections. However the asylum seekers interviewed said healthcare was a luxury few, if any, were allowed. Sometimes lotion was given for scabies. However, in most cases, those who were ill, even seriously ill, were not treated. They said merely asking for medical care often met with taunts or

punishment and some migrants were simply abandoned to die of their illness. Once again, their words are consistent with the findings of human rights organisations.

“Once I asked soldiers for medical help and they said ‘hmar [donkey], sit down’ and mocked me. I never received any medical help.”

60-year-old Dahabo is seriously ill

© Darrin Zammit Lupi

A Somali woman feeds her child in an ambulance in Malta shortly after being rescued at sea in July 2013. In Libya, where migrants intercepted at sea are detained and often punished, and where healthcare is a luxury denied to detainees, the situation would probably have been very different.



“We were kept in a windowless room – there were 40 people crammed in there. I was sick for nearly three months with a bad respiratory tract infection. I was very unwell, I had fever, I was vomiting and could not stand up without feeling dizzy. People from UNHCR used to come and find me on the floor, in the same place; they told me they would love to help but nothing happened. Then the other prisoners protested for me, they refused to eat for two days, and so I was taken to hospital and diagnosed but never given treatment. They took me back and that was that.”

Farah

“When I was in Ajdabiya, there were three sick men, two Somalis and one Eritrean. We knocked on the doors of the cell to let the guards know. After a long time, they came and asked us what we want. When we said there were sick people who needed help, they started beating us all. A Somali died first and the other two died shortly afterwards. They left the bodies there a whole day before removing them.”

Yohannes

“I was sick for seven days and when I said I need a doctor, they said, ‘it’s up to you, it doesn’t concern us.’”

Amina

Bou Rashada camp in Gharyan, near Tripoli, June 2012. The most vulnerable are not spared: pregnant women and mothers with babies and very young children are also detained in Libya. Although the authorities have sometimes released children and others who face heightened risks, often following intervention by embassies or humanitarian agencies, there is no guarantee that they will not be rearrested.



“The beating of a lifetime”

Cruel, inhuman and degrading treatment is all too common in places of detention in Libya, an unacceptable fact highlighted by the human rights organisations that have researched them. The asylum seekers interviewed spoke of taunting, often of a racist nature, of beatings and other physical abuse. Beatings were very frequent, including on the head, with metal rods, pipes, electric cables, police batons, rifles and chains. They also told how some detainees had their heads banged against the floor and how others were subjected to *falanga*, a type of torture that consists of beating the soles of the victim’s feet. Cattle

prods were used to give electric shocks. Sometimes victims were soaked with cold water before being beaten.

Women were not spared. Anyone caught trying to escape, or intercepted at sea while trying to leave Libya, suffered especially severe punishment. However the guards usually beat their charges for no reason at all, other than that they were drunk or in a bad mood.

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Bou Rashada camp
in Gharyan, near
Tripoli, June 2012.

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“If you have already escaped from prison, the best thing you can pray for is to be taken to a different one. If you go to the same prison, that’s when you get the beating of a lifetime. They tie you to a chair with your legs up and they beat the soles of your feet because they are what you used to escape, and you will never think of escaping again.”

Farah

“I was detained for nine months in Libya. We were a group of Somalis; they came to the place where we were staying and took us all to prison. When someone escaped, they would come and beat the rest of us who were still there. I could not try to escape, I am old and alone.”

Dahabo

“The guards had the usual batons that police have – if we were lucky, we were beaten with those. But they also used more painful things to beat people like electric wires or the chains on the doors. There was a man called Ahmed who ran the prison in Sabratha and he used chains and wire.”

Tesfay





Bou Rashada camp
in Gharyan, near
Tripoli, June 2012.

“I tried to escape from prison in Ajdabiya. They caught me and two soldiers hit my head and face, one driving the barrel of his gun into my skull and the other hitting me with the butt of his gun on the side of my head. I fell down when they hit my temple. I was so badly injured that they took me to hospital where my wounds were stitched. Since the beating, I have difficulties understanding what people tell me. My mind goes blank, I can’t see so well... when I’m talking, I lose track of what I’m saying, my concentration is very poor.”

Nuuriya, a widow and mother of seven

“At the deportation centre in Khums, the guards took drugs and got drunk and, in the evenings, they used to come and take anyone they chose out of the cell to beat him. Or they would ask if we were Christian or Muslim and, if we said we were Christian, they beat us. At the prison in Gharyan, the soldiers used to get drunk too, and throw stones or take pot shots at us from the window. But they didn’t take us out of the cell to beat us; they would beat their victims up in front of the others, with sticks and wires. In Misrata, in the very first prison I was put in, they used a weapon, like a prod, to give electric shocks. One man was caught trying to escape from a window. They grabbed him, poured acid on his chest and left him like that.”

Bereket

“While taking us to the prison, they beat us with pipes in the vehicle. When we arrived at the prison, they beat us again with long planks of wood. They wanted us to give them money but we didn’t have any. Some people were beaten for a long time, sometimes throughout the night after being soaked with cold water. Then the guards would order them to clean the toilets.”

Jamilah

“They took us by force”

Sexual abuse of sub-Saharan African immigrants is widespread in detention and elsewhere in Libya, and women are not the only victims. Once again, the testimony of the asylum seekers revealed that impunity is the name of the game, and the guards were allowed to abuse whoever they chose. Often the detainees desperately and bravely sought to protect one another, especially the most

vulnerable, even at the cost of being severely punished for doing so.

“It is not only women who suffer sexual abuse in Libya, it is terrible. A lot of men have been sexually abused but are afraid to speak out because they may be stereotyped.”

Farah



Arriving in Malta in July 2013 after being rescued from a vessel that left from Libya and ran into problems at sea.

“As soon as we crossed the border, soldiers caught us and brought us to prison in Kufra. At night, the soldiers used to try to enter our cell when we were asleep. One night, after about four months, four young soldiers took me and another woman and raped us. When we refused, they took us by force. They hit my face and burned my hands with a lighter when I tried to hug myself in self-defence. After this happened to me, I tried to escape. But they caught me after one and a half hours because I was on foot and could not move fast. They took me back to prison, beat me with plastic wires and tied my legs with rope for two nights so I wouldn’t escape. Two of the same soldiers raped me again. I tried to save my life; this is why I escaped because in prison you are not safe. My head hurts badly still because they beat me so badly and I cannot sleep well. I wake up in shock because I see and feel them holding my neck.”

Amina

“We used to hold each other for protection. Once the guard wanted to take a woman but I held her fast from behind. We were crying and shouting. He hit me hard with the torch on my forehead but he didn’t take her.”

Jamilah

“We were five women and four men trying to reach Tripoli... while we were waiting at night to travel to the next point of our journey, someone must have heard our voices and reported us. Some men approached... they fired on us, and demanded to know where we were going. One of us knew Arabic and explained that we were Somalis. They said, ‘ok, you are Somali, Muslim, ok, sorry, sorry,’ and they left, only for one to return 20 minutes later to ask for two of the women, whom he abused sexually. They came back crying.”

Farah

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Standing in a row like slaves

Some of the men interviewed said they were used as forced labour, a claim consistent with the findings of international human rights NGOs. Those running places of detention struck deals with local businessmen who came to pick the strongest men for a range of jobs, particularly in the agriculture and construction sectors. The men were either paid nothing or a pittance

and were sometimes abused by those for whom they were forced to work. The only silver lining was that some were released when they had finished their work or took the opportunity to escape.

“I was imprisoned for 25 days in a prison in az-Zawiyah where they also detained former Gaddafi aides. The powerful men of the city came every day to ask for workers: it was forced labour and we had no option. They chose those who looked strongest. When we heard the door opening, we used to try to hide under a blanket or in the toilet. We had to stand up in a row so they could choose who to take. It was just sad, like slavery coming back. I have done farming, cleaning and construction jobs and, at the end of the day, we were paid either five dinars (three euro) or less or nothing at all. Sometimes we got a carton of juice. If we asked for a drink, we were called ‘hmar’, donkey. They liked using that word.”

Farah



“I was arrested and put in a big prison called Tweisha. I was taken for forced labour with two others on a farm outside Tripoli. After working under armed guard for a month, we were freed. But after three days I was woken up at 6am by a knock on the door. It was the police doing a big round-up, arresting people and taking them to prison in big trucks. I was taken to prison in Sabha.”

Mehari



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Detained migrants being taken for forced labour from Bou Rashada camp in Gharyan, near Tripoli, June 2012.

Immune to outside influence

Official places of detention, run by the armed forces, offer a slight degree of protection in that UNHCR and members of humanitarian organisations are allowed access on an arbitrary basis. Visits by human rights delegations, for example Amnesty International, and embassy representatives are sometimes permitted too.

However, although many asylum seekers pin their hopes on UNHCR, those we interviewed were disappointed because they said UNHCR was powerless to act. Indeed, UNHCR is still operating without official status in Libya, which does not have a national asylum system and legislation. It is extremely doubtful how much clout UNHCR staff in Libya has to actually change the awful treatment meted out to the detainees, even when they are allowed to visit. Sometimes the guards even tear up the asylum-seeker certificates distributed by UNHCR.

All this said, we heard of two instances where UNHCR intervened effectively: one time to obtain the release of elderly people and minors from detention (however they had no guarantee that they would not be re-arrested) and the other to take two people with gunshot wounds sustained in prison to hospital.

“In Ajdabiya, we went on hunger strike and demanded that UNHCR come to visit us. Three days later they came to see us, told us they would give us papers and help us, and left. We had a mobile in hiding and when we called UNHCR to follow up, they said it was not safe for them to visit again, they were afraid. They said the asylum-seeker certificates they gave to the detainees in Sabha were torn by the guards so they did nothing.”

Yohannes

“Even if UNHCR is present in Libya, it cannot work freely. They are more afraid than we are; they need to ask permission just to see. Even if they witness people being beaten, they can do nothing, they are powerless. I saw UNHCR representatives present when people were being beaten and they could do nothing. They said ‘we can provide you only with food’. When UNHCR came to prison, they asked who were Eritreans and Somalis, took our photos and gave us asylum-seeker certificates to prevent our deportation.”

Bereket



“In Sabha, there were around 150 people crammed in a hall without ventilation. It was suffocating. We knocked on the door and told them we needed air. There was no place to lie down and the guards told us ‘you are not here to sleep but to be in prison’. Two Somalis had breathing problems and died. UNHCR came the next day and we told them what happened. They did nothing, they got us soap and toothpaste, and that was it. After the deaths, we stopped eating in protest and demanded that the overcrowding be eased so that at least we could sleep. They forced us to eat and then they started shooting. Two people were shot in the legs and UNHCR came and took them to hospital.”

Mehari

“The question why didn’t you seek asylum in Libya is disgusting for me, it makes a mockery of what we have gone through. Where am I supposed to seek asylum in a place that doesn’t even have institutions?”

Farah

© Sara Prestianni




Bou Rashada camp in Gharyan,
near Tripoli, June 2012.

We can't say we didn't know

States are legally obliged to provide protection to all within their jurisdiction who need it. The 1951 Convention on the Status of Refugees prohibits states from returning asylum seekers “in any manner whatsoever” to countries where their life or freedom will be threatened. This prohibition is echoed in regional and international human rights instruments, which provide protection to *all* within a state’s jurisdiction from return to a country where there is a real risk of torture or cruel, inhuman and degrading treatment or punishment.

The courts have repeatedly held that sending asylum seekers to a country where they are unable to seek and obtain protection, and where their life, liberty and personal security are at risk, is a serious violation of these laws.

On 28 June 2013, just days before Malta’s attempted push-back in July, the Constitutional Court upheld the first-instance decision handed down in the case of Abdul Hakim Hassan Abdulle and Kasim Ibrahim Nur, which found that their forced return to Libya in October 2004 violated their fundamental human rights.



Somalis sit on a police bus in Malta after being rescued from a drifting rubber dinghy by the local armed forces in late July 2013.

Abdul and Kasim were two of six asylum seekers returned to Libya, before they could apply for asylum, within days of their arrival in Malta. The other four men died in the desert when they were dumped there after months of imprisonment.

In its strongly-worded judgment, the court emphasised a number of important principles, particularly that the government was obliged to assess the risks facing the asylum seekers upon return to Libya before sending them back. In the light of the available evidence, continued the court, the government should have known that asylum seekers risked torture or cruel, inhuman and degrading treatment if returned to Libya.

Much the same conclusion was reached by the European Court of Human Rights in the landmark case of *Hirsi Jamaa and others v Italy*, decided on 23 February 2012. The case harked back to an incident in 2009, when Italy intercepted migrants adrift in the Mediterranean and returned them to Libya. This was a more complex case, because the interception and return operations took place on the high seas, raising questions as to whether or not the alleged breaches of human rights occurred within the state's jurisdiction.

In its judgment, the court concluded that the Italian government had indeed violated international human rights law when it pushed the migrants back to Libya. While acknowledging the challenge that the influx of migrants poses for states at the external borders of the EU, the court stressed that this could not justify sending people back to face serious harm.

In assessing whether Italy's action constituted a breach of the applicants' rights under Article 3 of the European Convention of Human Rights, the court was unequivocal: *"It was for the national authorities, faced with a situation in which human rights were being systematically violated ... to find out the treatment to which the applicants would be exposed on their return... the Italian authorities knew or should have known that there were insufficient guarantees protecting the parties concerned from the risk of being arbitrarily returned to their countries of origin, having regard in particular to the lack of any asylum procedure and the impossibility of making the Libyan authorities recognise the refugee status granted by UNHCR. It follows that the transfer of the applicants to Libya also violated Article 3 of the Convention because it exposed the applicants to the risk of arbitrary repatriation."*

In the light of these findings, JRS calls upon the government of Malta to:

- Ensure that all asylum seekers within Malta's effective jurisdiction are allowed to apply for protection;
- Ensure that all rescued within Malta's search and rescue area are disembarked at a safe port, where their fundamental rights will be respected and where those who need protection can access their right to ask for asylum;
- Refrain from actions that will result, directly or indirectly, in the return of migrants to Libya until the situation there has drastically improved;
- Refrain from entering into any agreement on the return of migrants to Libya before the Libyan government puts in place effective measures to safeguard human rights and guarantee access to protection in practice;
- Publish the terms of any bilateral agreement with Libya providing for assistance and cooperation in irregular migration so that they may be subject to democratic oversight and accountability.

Arriving
in Malta in
July 2013.



JRS also calls upon European Union institutions to:

- Actively contribute to the development and establishment of democratic institutions in Libya, most notably by supporting civil society actors;
- Support any initiatives aimed at establishing effective protection mechanisms, especially for refugees and vulnerable migrants, and at putting an end to ongoing severe human rights violations against them;
- Ensure that EU member states refrain from returning migrants to Libya until the situation there has drastically improved;
- In the context of Libyan border control, ensure that people in need of protection can access their right to ask for asylum;
- Replace current EU legislation to allow for more effective ‘burden-sharing’ among member states in dealing with asylum applications.



Resting on the deck of an Armed Forces of Malta (AFM) patrol boat in July 2013, after being rescued from a vessel in distress.

Credits

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“When I heard the Maltese government was planning to return some people to Libya, I got a shock, I panicked, I thought it was me they wanted to take back. Dying would be better. Life for us in Libya is beyond imagination... I can never forget. It is not good for a man to cry but I cannot express it otherwise, it really pains me deeply.”

Abuubakar

The “Free Libya” camp run by a revolutionary militia brigade near Benghazi, June 2012.

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