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Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya

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1. Executive summary

Migrants and refugees suffer unimaginable horrors during their transit through and stay in Libya. From the moment they step onto Libyan soil, they become vulnerable to unlawful killings, torture and other ill-treatment, arbitrary detention and unlawful deprivation of liberty, rape and other forms of sexual and gender-based violence, slavery and forced labour, extortion and exploitation by both State and non-State actors.

Published jointly by the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR), this report describes patterns of serious human rights violations and abuses suffered by migrants and refugees in Libya at the hands of State officials and members of armed groups, as well as atrocities committed by smugglers and traffickers, amid the failure of the Libyan authorities to address these violations and abuses and provide redress to victims.

The findings in this report are primarily based on around 1,300 first-hand accounts¹ and other information gathered by human rights officers in UNSMIL between January 2017 and August 2018, including during regular monitoring visits to 11 immigration detention centres in Libya. UNSMIL also visited Nigeria in December 2017 and Italy in June 2018 to interview migrants who had been repatriated or had left Libya.

This report traces the entire journey of migrants and refugees through Libya, which is marred by considerable risks of serious human rights violations and abuses at every step of the way. The report documents such violations from the moment migrants and refugees cross Libya's southern border throughout their journey to the northern coast. The journey continues with the perilous Mediterranean Sea crossings, increasingly ending in interception or rescue by the Libyan Coast Guard (LCG) and then transfer back to Libya where migrants face indefinite detention and frequent torture and other ill-treatment in centres unfit for human habitation.

Despite the overwhelming evidence of human rights violations and abuses, Libyan authorities have thus far appeared largely unable or unwilling to put an end to violations and abuses committed against migrants and refugees. UNSMIL and OHCHR regret that the Libyan authorities have failed to implement the recommendations included in their joint report "*Detained and Dehumanized*": *Report on Human Rights Abuses Against Migrants in Libya*, issued on 13 December 2016. Given the lack of progress in addressing the rampant human rights violations and abuses against migrants and refugees in Libya, their situation has not improved in the past two years, despite overwhelming evidence of horrific abuses and increased attention given to the issue at global and regional levels.

Years of armed conflict and political divisions have weakened Libyan institutions, including the judiciary, which have been unable, if not unwilling, to address the plethora of abuses and violations committed against migrants and refugees by smugglers, traffickers, members of armed groups and State officials, with near total impunity. The vacuum left by the State following the 2011 uprising

¹ This figure includes migrants and refugees interviewed individually and in groups.

and armed conflict has been filled by a multitude of armed groups in control of large swaths of Libya's territory, borders, and key installations. These armed groups were increasingly integrated into State institutions without any vetting processes to remove those with problematic human rights records, although the Government of National Accord, following the outbreak of violence in Tripoli in September 2018, has promised to take steps to diminish the influence of armed groups on state institutions. This climate of lawlessness provides fertile ground for thriving illicit activities, such as trafficking in human beings and criminal smuggling, and leaves migrant and refugee men, women and children at the mercy of countless predators who view them as commodities to be exploited and extorted for maximum financial gain. Abuses against Sub-Saharan migrants and refugees, in particular, are compounded by the failure of the Libyan authorities to address racism, racial discrimination and xenophobia.

Libyan law criminalizes irregular entry into, stay in or exit from the country with a penalty of imprisonment pending deportation, without any consideration of individual circumstances or protection needs. Foreign nationals in vulnerable situations, including survivors of trafficking and refugees, are among those subjected to mandatory and indefinite arbitrary detention. Libya has no asylum system, has not ratified the 1951 Convention relating to the Status of Refugees, and does not formally recognize the United Nations High Commissioner for Refugees (UNHCR), while *de facto* allowing the agency to register some asylum seekers and refugees from a limited number of countries.

In practice, the overwhelming majority of migrants and refugees are arbitrarily detained as they have never been charged or tried under Libya's migration legislation. They languish indefinitely in detention until they are returned through the International Organization for Migration's (IOM) Voluntary Humanitarian Returns programme, evacuated by UNHCR or forcibly deported by the Libyan authorities.

While conditions vary across detention centres, they are generally inhuman, fall far short of international standards and, in some cases, may amount to torture. During visits to DCIM detention centres in 2017-2018, UNSMIL staff have consistently observed severe overcrowding, lack of proper ventilation and lighting, inadequate access to washing facilities and latrines, constant confinement, denial of contact with the outside world, and malnutrition. Conditions lead to the spread of skin infections, acute diarrhoea, respiratory tract-infections and other ailments, and medical treatment is inadequate. Children, including those separated or unaccompanied, are held together with adults in similarly squalid conditions. UNSMIL has also documented torture and other ill-treatment, forced labour, rape and other forms of sexual violence perpetrated by DCIM guards with impunity. The fact that women are held in facilities without female guards further facilitates sexual abuse and exploitation. UNSMIL staff found that female detainees are routinely subjected to strip searches by or under the gaze of male guards.

Many of those detained at DCIM centres are survivors of horrific abuses by smugglers or traffickers and are in need of tailored medical and psychological support and rehabilitation. They are systematically held captive in abusive conditions, including starvation, severe beatings, burning with hot metals, electrocution, and sexual abuses of women and girls, with the aim of

extorting money from their families through a complex system of money transfers, extending to a number of countries. They are frequently sold from one criminal gang to another and required to pay ransoms multiple times before being set free or taken to coastal areas to await the Mediterranean Sea crossing. The overwhelming majority of women and older teenage girls interviewed by UNSMIL reported being gang raped by smugglers or traffickers or witnessing others being taken out of collective accommodations to be abused. Younger women travelling without male relatives are also particularly vulnerable to being forced into prostitution. Countless migrants and refugees lost their lives during captivity by smugglers or traffickers after being shot, tortured to death, or simply left to die from starvation or medical neglect. Across Libya, unidentified bodies of migrants and refugees bearing gunshot wounds, torture marks and burns are frequently uncovered in rubbish bins, dry river beds, farms and the desert.

UNSMIL continues to receive credible information on the complicity of some State actors, including local officials, members of armed groups formally integrated into State institutions, and representatives of the Ministry of Interior and Ministry of Defence, in the smuggling or trafficking of migrants and refugees. These State actors enrich themselves through exploitation of and extortion from vulnerable migrants and refugees.

In addition to detention on the grounds of breaking immigration legislation, migrants and refugees are vulnerable to being arbitrarily arrested and detained, including by armed groups nominally under the control of the Ministry of Interior, in relation to accusations of theft, drug-related offences, sex work, alcohol consumption, and terrorism. Hundreds are thus held, most without charge or trial for prolonged periods or following grossly unfair trials. UNSMIL documented that migrants and refugees held at facilities under the Ministry of Interior, in particular at the Mitiga detention facility controlled by the Special Deterrence Force armed group in Tripoli, are subjected to torture and other ill-treatment, forced labour, prolonged solitary confinement, and inhuman detention conditions.

Security forces in Libya, including armed groups integrated into the Ministry of Interior, have used excessive or unwarranted lethal force against migrants and refugees in the course of law enforcement operations, leading to loss of life and injury.

Even at liberty, migrants and refugees in Libya are not safe and live under a constant risk of deprivation of liberty and arbitrary arrest, assault, theft, and exploitation by State and non-State actors, who are well aware of their vulnerability and inability to access justice or redress. Migrants and refugees are at risk of arbitrary arrest or capture at checkpoints or on the streets by security forces, members of armed groups and private citizens, even if they have proper documentation. Migrants and refugees are frequently exploited by unscrupulous employers who refuse to pay their wages, knowing that in practice they have no recourse to justice. The lack of liquidity in Libyan banks has left migrants and refugees employed in the public sector such as teaching, nursing and engineering struggling to withdraw their salaries for the past two years. UNSMIL gathered information that sick and injured migrants and refugees, as well as pregnant women in labour, have been turned away from public hospitals. Migrants and refugees whose rights have been abused,

including survivors of trafficking and rape, refrain from lodging complaints with the police or prosecution, fearing arrest and re-victimization.

While recognizing the significant security and political challenges faced by the Libyan authorities, OHCHR and UNSMIL call on them to respect, protect and fulfil the human rights of migrants and refugees and to place respect for human rights at the centre of their approach to managing migration. This includes releasing all migrants and refugees detained arbitrarily, closing all detention centres that fail to uphold minimum standards, guaranteeing unannounced and unimpeded access for human rights monitors, introducing alternatives to detention, and improving detention conditions. The authorities should also clearly signal that atrocities against migrants and refugees will no longer be tolerated, regardless of whether perpetrators are smugglers, traffickers, members of armed groups or State officials. Judicial investigations into violations and abuses committed against migrants and refugees should be undertaken and completed, with a view to holding perpetrators accountable in proceedings meeting international standards for fair trial. Tackling impunity would not only end the suffering of tens of thousands of migrant and refugee women, men and children seeking a better life, but also undercut the parallel illicit economy built on the abuse and exploitation of migrants and refugees. Eradicating this predation on migrants and refugees would reduce a key source of income for criminal gangs and armed groups and help establish the rule of law and national institutions.

OHCHR and UNSMIL recommend that the European Union and its Member States step up their search and rescue operations in the Mediterranean Sea and facilitate the life-saving work of rescue vessels operated by humanitarian organizations. They are also urged to put in place measures to ensure that any cooperation with Libyan institutions in the management of migration includes safeguards to ensure respect for international humanitarian, human rights and refugee law, and does not contribute to or facilitate, directly or indirectly, the commission of human rights violations. Any future support should be contingent upon the Libyan authorities showing progress in upholding human rights law and standards. This should include working towards an end to the mandatory, automatic and arbitrary detention of migrants and refugees in irregular situations, stamping out of torture and ill-treatment, sexual violence and forced labour in detention, and ending all return practices that would violate the strict prohibitions on collective expulsion and *refoulement*.

2. Introduction and methodology

This report is published jointly by the United Nations Support Mission in Libya (UNSMIL)² and the Office of the United Nations High Commissioner for Human Rights (OHCHR)³. It summarizes the human rights situation of migrants and refugees⁴ in Libya since the publication of the report entitled “*Detained and Dehumanized*”: Report on Human Rights Abuses Against Migrants in Libya⁵ by UNSMIL, in cooperation with the OHCHR, on 13 December 2016. It presents information obtained by UNSMIL from January 2017 through 30 September 2018.

This report is primarily based on information gathered by the Human Rights, Transitional Justice and Rule of Law Division of UNSMIL. In 2017-2018, UNSMIL conducted repeated visits to 11 immigration detention centres overseen by the Department of Combatting Illegal Migration (DCIM) in the cities of al-Khoms, Gharyan, Misrata, Tripoli and Surman in western Libya. Since the introduction of complicated procedures by the Protocol Office of the Ministry of Foreign Affairs and the Public Relations Office of the Ministry of Interior in April 2018, UNSMIL’s access to DCIM detention centres became more unpredictable and irregular.⁶ Security and logistical constraints impeded UNSMIL’s ability to visit detention centres in southern Libya. Further, UNSMIL was unable to visit immigration detention centres in eastern Libya despite numerous requests to the self-styled Libyan National Army in *de facto* control of eastern Libya. Notwithstanding these challenges, UNSMIL was able to interview around 1,220 migrants and refugees individually or in groups in Libya, either in detention or at liberty. Interviews in detention were conducted in private or semi-private areas, out of earshot of guards.

In addition, UNSMIL undertook monitoring missions to Nigeria, between 15 and 22 December 2017, and to Italy, between 11 and 15 June 2018. In Nigeria, UNSMIL visited shelters run by the National Agency for the Prohibition of Trafficking in Persons and local non-governmental organizations (NGOs) hosting returnees from Libya, including survivors of trafficking. UNSMIL was present at the Lagos International Airport on 18 December 2017 during the reception of 166 men and women returning from Tripoli through the Voluntary Humanitarian Returns (VHR) programme of the International Organization for Migration (IOM). During the visit to Nigeria,

² UNSMIL’s mandate, most recently extended by the United Nations Security Council on 13 September 2018 (Resolution 2434), includes “human rights monitoring and reporting” (Resolution 2434 at para. 2). The resolution also expressed grave concern at “the situation faced by migrants, refugees and internally displaced people” and reiterated the Council’s “concern at the smuggling of migrants and refugees and human trafficking through Libya”. UN Security Council Resolutions 2323 (2016) and 2376 (2017) similarly mandated UNSMIL to undertake “human rights monitoring and reporting.”

³ As stated in the “2011 Policy on Human Rights in Peace Operations and Political Missions,” the Chief of the Human Rights, Transitional Justice and Rule of Law Division of UNSMIL is the representative of the United Nations High Commissioner for Human Rights in Libya.

⁴ For the purposes of this report, the combination of “migrants and refugees” is used to cover the categories of migrant, refugee or asylum seeker, as well as any person who is outside a State of which s/he is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence, trafficked persons, smuggled migrants, and other categories, unless specified otherwise.

⁵ UNSMIL/OHCHR, “*Detained and Dehumanized*”: Report on Human Rights Abuses Against Migrants in Libya, 13 December 2016, available at: https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf.

⁶ On 30 April 2018, UNSMIL was denied access to the Tarik al-Sikka detention centre despite having received authorizations from the Director of DCIM and the head of the Public Relations Department at the Ministry of Interior. On 16 May 2018, the Mayor of Zuwara denied UNSMIL access to the Zuwara detention centre.

UNSMIL gathered the accounts of 58 migrants, who had lived or transited through Libya, and spoke to medical professionals, service providers, staff at United Nations agencies, national and local Government representatives, and members of national civil society organizations engaged in providing rehabilitation and reintegration services to migrants returning from Libya. During the monitoring mission to Italy, UNSMIL visited sites hosting migrants and refugees in Sicily and conducted private interviews with 19 individuals who had resided on Libyan territory in 2017 and 2018 and had recently arrived in Italy after crossing the Mediterranean Sea. UNSMIL spoke to medical professionals, staff at United Nations agencies, representatives of local authorities and members of international civil society organizations engaged in providing medical and psycho-social services to migrants and refugees from Libya.

UNSMIL also collected information from a range of other sources in Libya, including Libyan human rights defenders, humanitarian and medical workers, religious and community leaders, and local authorities. In particular, UNSMIL would like to express its appreciation for the information and expert advice provided by members of the Rights Group for Migration, a coalition of independent Libyan NGOs working on the human rights of migrants and refugees in western Libya. Names and other identifying details of sources have been withheld for their protection.

The collection of primary information was complemented by a review of relevant publications by United Nations bodies, as well as reports by NGOs.⁷ Findings in reviewed materials were largely consistent with patterns of violations and abuses described in this report.

UNSMIL discussed the findings and recommendations presented in this report in 2017 and 2018 with the Director of DCIM, the spokesperson of the Libyan Coast Guard (LCG), and the assistant to the Commander of the LCG. The report was sent to the Libyan authorities on 11 December 2018.

⁷ See, e.g., Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya, A/HRC/37/46, 21 March 2018, available at <https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session37/Pages/ListReports.aspx>; UN General Assembly, Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya, A/HRC/31/47, 15 February 2016; UN Security Council, *Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*, S/2017/466, 1 June 2017; UNICEF, *A deadly journey for children*, February 2018, available at https://www.unicef.org/publications/files/EN_UNICEF_Central_Mediterranean_Migration.pdf; UNHCR, “Refugees take safety flight out of Libya”, 10 May 2018, available at <http://www.unhcr.org/news/latest/2018/5/5af303d24.html>; IOM, “IOM learns of slave market conditions endangering migrants in North Africa”, available at <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>, 4 November 2017; Amnesty International, *Libya’s dark web of collusion: abuses against Europe-bound migrants*, 17 December 2017, available at <https://www.amnesty.org/en/latest/news/2017/12/libya-european-governments-implicit-in-horrific-abuse-of-refugees-and-migrants/>; Refugees International, “*Death Would Have Been Better*”: *Europe continues to fail refugees and migrants in Libya*, 15 April 2018, available at <https://reliefweb.int/report/libya/death-would-have-been-better-europe-continues-fail-refugees-and-migrants-libya>; Human Rights Watch, “Italy: Navy Support for Libya May Endanger Migrants”, 2 August 2017 available at <https://www.hrw.org/news/2017/08/02/italy-navy-support-libya-may-endanger-migrants>; Human Rights Watch, “EU: Shifting Rescue to Libya Risks Lives”, 19 June 2017 available at <https://www.hrw.org/news/2017/06/19/eu-shifting-rescue-libya-risks-lives>; Medecins Sans Frontieres, “Arbitrary detention of refugees, asylum-seekers and migrants must stop”, 1 September 2017, available at <https://www.msf.org/libya-arbitrary-detention-refugees-asylum-seekers-and-migrants-must-stop>. See also IRIN’s series on migration through Libya including instalments on Homecoming, Evacuation, Frustration, Desperation, Deportation, Demoralised, and Libya’s southern borders, available at <https://www.irinnews.org/special-report/2018/06/18/Europe-migration-homecoming>.

UNSMIL took into consideration the Global Compact for Safe, Orderly and Regular Migration agreement reached by United Nations Member States on 13 July 2018 and scheduled for formal adoption in Marrakesh on 10-11 December 2018. The Global Compact is firmly grounded in respect for human rights law and the principle of non-discrimination for all migrants and refugees regardless of their status. Its key objectives include saving lives and preventing the death of migrants and refugees; combatting trafficking in persons; working towards alternatives to migrant detention; and establishing safe and legal pathways to migration.⁸

3. Context

3.1 Snapshot – Migrants and Refugees in Libya

Given its geographic location, extensive land and sea borders, oil wealth, reliance on foreign labour and Qaddafi-era policies,⁹ Libya has long been a transit and destination country for individuals fleeing conflict and persecution, or seeking an escape from extreme poverty, lack of access to economic, social and cultural rights, and other human rights violations.

The 2011 uprising and armed conflict, which ended Mu'ammār Qaddafi's 40-year rule in Libya, created a fertile environment for thriving illicit and criminal activities, including smuggling and trafficking of human beings,¹⁰ facilitated by the proliferation and control exercised by armed groups over large swaths of Libyan territory, borders and key installations.

Since the renewal of armed hostilities in mid-2014, Libya has been witnessing a security, governance and humanitarian crisis characterized by ongoing violence, the fragmentation of national institutions, and the collapse of the rule of law. Even after the internationally recognized Government of National Accord (GNA) began operating from Tripoli in April 2016, it has been struggling to assert its control over the remainder of the country and to rein in and hold accountable powerful armed groups and criminal networks, including those systematically abusing migrants and refugees.

Libya's descent into chaos has severely hampered the functioning of the justice system, which is unable adequately to address rampant human rights violations and abuses committed by State and non-State actors. This situation, coupled with the breakdown of the economy and devaluation of

⁸ See Global Compact for Migration, *Global Compact for Safe, Orderly and Regular Migration*, 13 July 2018, available at https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf.

⁹ From the 1970s to the 1990s, the Libyan regime encouraged migration from other Arab as well as Sub-Saharan African countries. Foreign nationals were employed in formal professional sectors, including medicine, teaching and engineering, as well as in manual labour. For more details, see Migration Policy Center, *Libya The Demographic-Economic Framework of Migration, The Legal Framework of Migration, The Socio-Political Framework of Migration*, June 2013, www.migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf.

¹⁰ See, e.g., Global Initiative against Transnational Organized Crime, *The human conveyor belt: Trends in human trafficking and smuggling in post-revolution Libya*, March 2017, available at <http://globalinitiative.net/wp-content/uploads/2017/03/GI-Human-Conveyor-Belt-Human-Smuggling-Libya-2017-.pdf>; and Chatham House Publications, *Libya's War Economy: Predation, Profiteering and State Weakness*, 12 April 2018, available at <https://www.chathamhouse.org/publication/libyas-war-economy-predation-profiteering-and-state-weakness>.

the currency, has contributed to increasing numbers of migrants and refugees, including those who had lived in Libya for decades, leaving to seek a better life in Europe.

While no reliable statistics exist, estimates of the numbers of foreign nationals in Libya range between 700,000 and one million.¹¹ The overwhelming majority originate from Sub-Saharan and North African countries. Nationals from Niger, Chad, Egypt, Sudan, Ghana and Nigeria comprise the bulk of foreign nationals, while nationals from Middle Eastern and Asian countries represent under 10 per cent of migrants and refugees in Libya. Women represent 9 per cent of adult migrants and refugees, and children represent about 10 per cent of the migrant and refugee population, with more than half of them being unaccompanied, including girls trafficked for sexual exploitation.¹² As of 30 September 2018, the United Nations High Commissioner for Refugees (UNHCR) had registered 53,285 refugees and asylum seekers.¹³ The actual number of asylum seekers is believed to be much higher given constraints placed on the ability of UNHCR to fulfil its mandate in Libya.¹⁴

RACISM AND XENOPHOBIA IN LIBYA

Sub-Saharan African migrants and refugees often face racism, racial discrimination and xenophobia in Libya, amid successive governments' failure to tackle the issue. As in other parts of the world, Sub-Saharan Africans are sometimes blamed for the spread of diseases and rise in criminal activities. Migrant and refugee women, particularly from non-Muslim countries such as Nigeria, are often perceived as having "loose" sexual mores. Libyan media rarely portrays the positive contributions made by migrants to Libyan society or acknowledge Libya's reliance on foreign labour. To date, a commonly used word to refer to black people in Libya is "*abidat*", which translates to "slaves", although some Libyans deny the racist undertones of the word.

Widespread reports dating back to the 2011 armed conflict regarding the use of "African mercenaries" by parties to the conflict have further fueled negative attitudes and led to an increase in violent attacks against Sub-Saharan Africans.¹⁵ In its statement from its 94th session, dated 20 November-8 December 2017, the Committee on the Elimination of Racial Discrimination expressed alarm in relation to "anti-black discrimination" against "black men from Sub-Saharan

¹¹ IOM, "UN migration agency moves to relieve plight of migrants trapped in Libya. Backing AU, EU plan", 1 December 2017: available at <https://www.iom.int/news/un-migration-agency-moves-relieve-plight-migrants-trapped-libya-backing-au-eu-plan>.

¹² See IOM, DTM, *Round 19 Migrant Report*, April 2018, available at <http://www.globaldtm.info/dtm-libya-migrant-report-information-package-19-april-2018/>.

¹³ A refugee is defined as a person outside of his or her own country who has a "well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion" and requires international protection as a substitute to the protection of his or her country of origin. An asylum seeker is someone who is seeking protection as a refugee, but for whom a determination of status has not yet been made. An asylum seeker may in fact already be a refugee even before a state has granted recognition, since being a refugee is based on the facts of his or her situation, rather than on the granting of status. See United Nations Convention Relating to the Status of Refugee, available at <https://www.ohchr.org/EN/ProfessionalInterest/Pages/StatusOfRefugees.aspx>.

¹⁴ See "legal framework" for more information.

¹⁵ See, e.g., Human Rights Council, *Report of the International Commission of Inquiry to investigate all alleged violations of international human rights law in the Libyan Arab Jamahiriya*, 12 January 2012 (A/HRC/17/44), paragraphs 190-201; HRW, "Stranded foreign workers need urgent evacuation", 2 March 2011, available at <https://www.hrw.org/news/2011/03/02/libya-stranded-foreign-workers-need-urgent-evacuation>.

countries (...) being sold in slave markets in Libya” and “black women being subjected to torture and the worst forms of sexual violence”.¹⁶

During their regular prison and detention centre monitoring visits from 2012 to April 2018, UNSMIL regularly observed discriminatory practices against Sub-Saharan African detainees in terms of conditions of detention and, occasionally, concerning their treatment, compared to Arab and Libyan detainees. For example, in some facilities, Arab detainees had beds and/or mattresses, while Sub-Saharan African detainees slept on the floor on blankets. Further, in some facilities, Arab and Libyan detainees had more frequent and regular access to prison yards.

During meetings in 2017 and 2018, two senior level Libyan officials from institutions engaged in the field of migration expressed to UNSMIL staff their concerns about “Libya becoming black” and highlighted the importance of preserving the country’s demographic balance. Lower level officials, including DCIM officials and guards, also expressed similar opinions to UNSMIL.

3.2 Central Mediterranean Sea route – Increasing role of the Libyan Coast Guard

In 2017, some 119,310 migrants and refugees reached Italy from Libya using the central Mediterranean Sea route.¹⁷ At least 2,832 migrants and refugees lost their lives during that journey.¹⁸ A sharp drop in migrant and refugee arrivals to Italy was recorded since July 2017, compared to the same period in 2016, despite the typical rise in numbers during the summer months.¹⁹ The downward trend continued in 2018, when some 20,859 migrants and refugees arrived to Italy and 234 migrants and refugees arrived to Malta by 21 September 2018.²⁰ Despite the decrease in arrivals in 2018, the journey has become more dangerous, with over 1,200 migrants and refugees making the voyage perishing at sea by 31 August 2018, with June being the deadliest

¹⁶ Committee on the Elimination of Racial Discrimination, “Racial Discrimination and Enslavement of Migrants in Libya”, 94th session, 20 November – 8 December 2017, available at

https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/LBY/INT_CERD_SWA_LBY_8609_E.pdf.

¹⁷ This refers to the sea route taken by migrants and refugees towards Europe, mostly Italy, after having embarked on their journeys from the Libyan coast, and to a lesser extent from the Tunisian or Algerian coasts.

¹⁸ IOM, “Mediterranean Migrant Arrivals Reached 171,635 in 2017; Deaths Reach 3,116”, 5 January 2018, available at <https://www.iom.int/news/mediterranean-migrant-arrivals-reached-171635-2017-deaths-reach-3116>.

¹⁹ See, e.g., UNHCR, *Operational Portal : Situation in the Mediterranean*, available at

<https://data2.unhcr.org/en/situations/mediterranean/location/5205>. 11, 461 arrivals were recorded in July 2017, while over 20,000 arrivals were registered in each of the two previous months. In July 2016, over 23,500 arrivals were recorded. Also see, Amnesty International, *Libya’s Dark Web of Collusion*, p. 43.

²⁰ International Organization for Migration, “Mediterranean Migrant Arrivals Reach 78,372, deaths Reach 1,728”, 21 September 2018, available at: <https://www.iom.int/news/mediterranean-migrant-arrivals-reach-78372-deaths-reach-1728>.

month in 2018. Thus, in 2017 one in 43 people died crossing the Mediterranean Sea; in 2018 one in 18 people died crossing the Mediterranean Sea, more than doubling the risk of perishing at sea.²¹

Throughout 2017, another 15,810 migrants and refugees were brought back to Libyan shores following interception or rescue by the LCG.²² Between 1 January and 28 September 2018, the LCG rescued or intercepted over 13,575 migrants and refugees.²³

The consecutive annual drops in arrivals in Italy²⁴ reflect, in part, efforts by the European Union and its Member States to stem migration by gradually shifting search and rescue operations in international waters to the LCG and restricting the work of humanitarian rescue vessels. The annual drops in arrivals may also be due to reductions in departure attempts from the Libyan shores.²⁵

3.2.1 Shifting search and rescue operations in international waters

In response to increased tragedies at sea, the Government of Italy established the Operation Mare Nostrum in October 2013 with the mandate to save human lives and combat human trafficking and migrant smuggling in the Central Mediterranean Sea.²⁶ The Italian Navy rescued some 150,000 people in Libyan and international waters through Operation Mare Nostrum, until it ended in October 2014.²⁷

²¹ UNHCR, *Desperate Journeys: Refugees and migrants arriving in Europe and Europe's border, January-August 2018*, available at https://data2.unhcr.org/en/documents/download/65373#_ga=2.194834475.747989990.1535966855-870740757.1535966855; IOM, "Mediterranean Migrant Arrivals Reach 59,271 in 2018; Deaths Reach 1,504", 3 August 2018, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/iom.int-1.pdf>; IOM, "Over 200 Migrants Drown in 3 Days as Mediterranean Death Toll in 2018 Passes 1000", 1 July 2018, available at <https://reliefweb.int/report/libya/over-200-migrants-drown-three-days-mediterranean-death-toll-2018-passes-1000>; and IOM, "Mediterranean Migrant Arrivals Reach 44,957 in 2018; Deaths Reach 972", 29 June 2018, available at <https://reliefweb.int/report/italy/mediterranean-migrant-arrivals-reach-44957-2018-deaths-reach-972>. See Section 3.2 on the proportional increase in deaths at sea during the same time period.

²² The Libyan Coast Guard is part of the Libyan Navy and operates under the Minister of Defence. The Libya Observer, "The Libyan Navy releases official rescue statistics for 2017", 10 January 2018, available at <https://www.libyaobserver.ly/inbrief/libyan-navy-releases-official-rescue-statistics-2017>.

²³ UNHCR, Flash Update 21-28 September, 14 September 2018, available at <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Flash%20Update%2028%20September%202018.pdf>.

²⁴ In 2016, 181,436 arrivals were recorded through the central Mediterranean Route. See IOM, "Mediterranean Migrant Arrivals Reached 171,635 in 2017; Deaths Reach 3,116", 5 January 2018, available at <https://www.iom.int/news/mediterranean-migrant-arrivals-reached-171635-2017-deaths-reach-3116>.

²⁵ This is possibly as a result of the agreements between the Government of Italy and Libyan local authorities, including heads of municipalities, to improve border security and counter smuggling. See, e.g., the Global Initiative against Transnational Organized Crime, *The Anti-Smuggling Business and Libya's Political End Game*, December 2017, available at http://globalinitiative.net/wp-content/uploads/2018/01/Libya_ISS_Smuggling.pdf.

²⁶ See Italy Ministry of Defense, Operation Mare Nostrum, available at <http://www.marina.difesa.it/EN/operations/Pagine/MareNostrum.aspx>.

²⁷ See IOM, "Life Saving Mare Nostrum Operation Not a Migrant Pull Factor", available at <http://missingmigrants.iom.int/iom-applauds-italy-s-life-saving-mare-nostrum-operation-not-migrant-pull-factor>.

In November 2014, the European Union's external border agency Frontex launched Operation Triton with the primary mandate of border control and surveillance. It also supported Italy with search-and-rescue in the Central Mediterranean.²⁸

In 2015, the European Union established its naval operation EUNAVFOR MED, known as Operation Sophia, with the declared aim of “disrupting the business model of human smuggling and trafficking networks” and “preventing further loss of life”.²⁹ In 2016, the Council of the European Union extended the mandate of Operation Sophia to building the capacity of the LCG.³⁰ On 24 July 2017, it extended that mandate to 31 December 2018, with an additional task of monitoring the effectiveness of training provided to the LCG.³¹

Between 2015 and mid-2016 ships operating under the mandate of Operations Sophia and Triton were involved in search and rescue operations in international waters of the Mediterranean Sea.³² Since 2015, Operation Sophia has rescued 44,916 people, neutralized 551 boats, and apprehended 151 people from international waters of the Mediterranean Sea.³³ In 2018, Operation Sophia rescued 2,292 people,³⁴ while the LCG intercepted over 14,000 people.³⁵

On 2 February 2017, the Government of Italy³⁶ signed a memorandum of understanding with the GNA, committing to providing technical and financial support to Libyan institutions engaged in combatting irregular migration, namely the DCIM and LCG.³⁷ The European Council welcomed the agreement, with its priorities of “providing training, equipment and support” to key Libyan

²⁸ European Commission, EU Operations in the Mediterranean Sea, available at https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/securing-eu-borders/factsheets/docs/20161006/eu_operations_in_the_mediterranean_sea_en.pdf.

²⁹ See Official Journal of the European Union, *COUNCIL DECISION (CFSP) 2015/778*, 18 May 2015, available at <https://www.operationsophia.eu/wp-content/uploads/2018/03/Council-Decision-CFSP-2015778-of-18-May-2015.pdf>.

³⁰ See EUNAVFOR, *Mission*, available at <https://www.operationsophia.eu/about-us/#mission>.

³¹ See Official Journal of the European Union, *COUNCIL DECISION (CFSP) 2017/1385*, 25 July 2017 available at <https://www.operationsophia.eu/wp-content/uploads/2018/03/EU-Council-Decision-13852017.pdf>.

³² See UNSMIL/OHCHR, “*Detained and Dehumanized*”: Report on Human Rights Abuses Against Migrants in Libya, 13 December 2016, available at: https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf.

³³ See http://www.ansamed.info/ansamed/en/news/sections/generalnews/2018/08/28/migrants-2292-saved-by-operation-sophia-in-2018_a53f9211-70fb-4f27-853b-1f1fa70d4ee5.html. According to the European Union, since 2015, the European Union operations active in the Mediterranean have helped rescue over 690,000 people at sea of which 300,000 were rescued with direct support of the European Border and Coast Guard agency of European Member States and almost 45,000 by Operation Sophia.

³⁴ See http://www.ansamed.info/ansamed/en/news/sections/generalnews/2018/08/28/migrants-2292-saved-by-operation-sophia-in-2018_a53f9211-70fb-4f27-853b-1f1fa70d4ee5.html.

³⁵ See <https://migrantsatsea.org/2018/12/12/90-day-extension-for-eunavfor-med-operation-sophia-under-consideration/>.

³⁶ This was not Italy's first attempt to seek the assistance of Libyan authorities to stem migration from Libya. Between 2007 and 2009, a number of bilateral agreements were signed between the two Governments, including the Friendship Treaty, to allow for migrants and refugees intercepted in international waters to be returned to Libya. The European Court of Human Rights considered this policy, known as “pushbacks”, to breach the European Convention on Human Rights, specifically the right to *non-refoulement*. See Case of Hirsi Jamaa and Others v. Italy (Application No. 27765/09), Judgement, European Court of Human Rights, Strasbourg, 23 February 2012.

³⁷ See unofficial translation of Memorandum of Understanding on cooperation in the fields of development, the fight against illegal immigration, human trafficking and fuel smuggling and on reinforcing the security of borders between the State of Libya and the Italian Republic at https://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf.

institutions adopted in the Malta Declaration.³⁸ The United Nations Committee Against Torture expressed concerns that the agreement did not contain any particular provision that may render cooperation and support conditional on respect of human rights, recommending the establishment of monitoring mechanisms to ensure a human rights centred approach.³⁹ The Memorandum of Understanding was successfully challenged by a group of Libyan human rights defenders in the Libyan Supreme Court, which suspended its application on technical grounds in March 2017. However, it remains unclear how this judicial suspension hampers implementation.

Despite the decision of the Libyan Supreme Court, Italy has assisted in the maintenance of LCG vessels and provided technical support and training.⁴⁰ In July 2018, the Italian authorities committed to providing the LCG with two additional patrol vessels and 12 inflatable boats and to assist in the installation of radar systems for the Libyan Rescue and Coordination Centre (LRCC).⁴¹ These activities fall under the framework of a European Union-funded project that aims to provide support for the LRCC to be operational by 2020.⁴²

In a meeting with UNSMIL in October 2018, LCG officials confirmed and praised their close cooperation with their Italian counterparts. They noted receiving technical trainings on the use of radar and communication systems and computers, as well as on response procedures to distress-at-sea calls. LCG officials were critical of what they considered to be insufficient material support provided by the European Union, while acknowledging the operational and material support, including the upgrading of equipment and commitment of transferring patrol vessels, received from the Government of Italy. Nonetheless, they lamented the shortage of patrol vessels⁴³ and lack of rubber boats.

3.2.2 Impeding search and rescue operations of humanitarian NGOs in international waters

The European Union and its Member States have prioritized enhancing the operational capacity of the LCG, while at the same time restricting the lifesaving search and rescue activities of

³⁸ See European Council, “Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route”, 3 February 2017, available at <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>.

³⁹ In its Concluding observations on the combined fifth and sixth periodic reports of Italy, the Committee against Torture further expressed deep concern at the lack of assurances that cooperation for the purpose of enhancing the operational capabilities of the Libyan Coast Guard or other Libyan security actors would be reviewed in the light of possible serious human rights violations. See CAT, *Concluding observations on the combined fifth and sixth periodic reports of Italy*: CAT/C/ITA/CO/5-6, December 2017, para. 22.

⁴⁰ See, e.g., Associated Press, “Italy Approves Naval Support to Libya to fight trafficking”, 28 July 2018, <https://www.news24.com/Africa/News/italy-approves-naval-support-to-libya-to-fight-trafficking-20170728>; Human Rights Watch, “Italy Navy Support May Endanger Migrants”, August 2017 available at <https://www.hrw.org/news/2017/08/02/italy-navy-support-libya-may-endanger-migrants>.

⁴¹ See Libyan Navy’s Official Facebook page, on the meeting of the Joint Italian Libyan Committee to Combat Irregular Migration of 3 July 2018: <https://ar-ar.facebook.com/libyan.navy/posts/2105118703064737:0>.

⁴² This information was also confirmed by the LCG spokesperson in a meeting with UNSMIL in October 2018. Reuters, “Exclusive: Italy plans big handover of sea rescues to Libya coastguard”, 17 December 2017, available at <https://www.reuters.com/article/us-europe-migrants-libya-exclusive/exclusive-italy-plans-big-handover-of-sea-rescues-to-libya-coastguard-idUSKBN1E91SG>.

⁴³ LCG officials claimed to have four operational patrol vessels.

humanitarian NGOs through a series of measures, including a code of conduct imposed by the Italian Government in 2017;⁴⁴ accusations of collusion with smugglers;⁴⁵ the impounding of rescue ships;⁴⁶ and ordering rescue ships to not obstruct the activities of the LCG.⁴⁷

The ability of humanitarian-operated rescue ships to rescue individuals in distress in international waters and disembark them in ports of safety in Italy was further eroded by a decision, on 1 June 2018, by the then new Minister of Interior of Italy to prohibit NGO rescue ships from docking in Italian ports.⁴⁸ On 22 September 2018, the Panama Maritime Authority revoked the registration and flag of the Aquarius ship, jointly chartered by *SOS Méditerranée* and *Médecins Sans Frontières* (MSF). Other ships, including Italian Coast Guard vessels and merchant ships, have also been delayed or denied entry to Italian and Maltese ports following search and rescue

⁴⁴ In August 2017, UN experts warned that the proposed Code of Conduct would impede the life-saving capacity of NGO-run rescue vessels. See OHCHR, “Italy-EU Search and Rescue Code Could Increase Mediterranean Deaths, UN experts warn”, 15 August 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21971&LangID=E>. Further, humanitarians operating rescue ships argued that the Code of Conduct included provisions that would reduce their efficiency and capacity to respond in real time to humanitarian emergencies. See, for instance, MSF, “MSF Committed to Saving Lives on the Mediterranean, But Will Not Sign Italian Code of Conduct”, 31 July 2017, available at <https://www.msf.org/msf-committed-saving-lives-mediterranean-will-not-sign-italian-code-conduct>.

⁴⁵ Since early 2017, there were two Italian parliamentary enquiries against NGOs’ alleged collusion with smugglers, which did not uncover any wrongdoing. In June 2018, prosecutors in Sicily announced investigations into some 20 crew members and other NGO staff working for MSF, Save the Children and Iuventa on charges of aiding illegal migration to Italy. See for instance, BBC, “Italy Migrant Crisis: Charities Colluding with Smugglers”, 23 April 2017, available at <https://www.bbc.com/news/world-europe-39686239> and Amnesty International, *Between the Devil and the Blue Sea: Europe Fails Refugees and Migrants*, 3 August 2018, available at <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>.

⁴⁶ For instance, in March 2018, an Italian prosecutor in Sicily ordered the rescue ship, Open Arms, run by the Proactiva NGO, to be impounded for an alleged violation of laws prohibiting the facilitation of illegal migration, after its crew had refused to hand over individuals rescued in international waters to the LCG. The ship was released two weeks later. See HRW, “Italy: Migrant Rescue Ship Impounded”, 19 March 2018, available at <https://www.hrw.org/news/2018/03/19/italy-migrant-rescue-ship-impounded>. In August 2017, another rescue ship, Iuventa, operated by a German NGO Jugend Rettet, was also impounded following investigations opened by a prosecutor in Sicily, also on charges of allegedly facilitating illegal migration to Italy. In this case the impound was confirmed and judicial procedures are currently ongoing. See, Guardian, “Italy Impounds Rescue Ship and Sends Navy Patrol Boat to Libya”, 2 August 2017, available at <https://www.theguardian.com/world/2017/aug/02/italy-impounds-ngo-rescue-ship-sends-navy-patrol-boat-to-libya-migrant-refugee-route-europe>. For general information on restrictions imposed on the work of humanitarian rescue boats also see, e.g., Washington Post, “The retreat of Rescue ships from the Mediterranean is a Sign of Changing Odds for Migrants”, 16 June 2018, available at https://www.washingtonpost.com/world/europe/the-retreat-of-rescue-ships-from-the-mediterranean-is-a-sign-of-changing-odds-for-migrants/2018/06/15/099b74f0-6e61-11e8-b4d8-eaf78d4c544c_story.html?noredirect=on&utm_term=.a12bb77ca5ae. See also Amnesty International, “Italy/Malta: Stop playing with refugee and migrants’ lives by closing ports”, 14 August 2018, available at: <https://www.amnesty.org/en/latest/news/2018/08/italy-malta-stop-playing-with-refugee-and-migrants-lives-by-closing-ports/>.

⁴⁷ See <https://www.consilium.europa.eu/media/35936/28-euco-final-conclusions-en.pdf>.

⁴⁸ See BBC, “Migrant Crisis: Italy Minister Salvini Closes Ports to NGO Boats”, 30 June 2018, available at <https://www.bbc.com/news/world-europe-44668062> and Amnesty International, *Between the Devil and the Blue Sea: Europe Fails Refugees and Migrants*, 3 August 2018, available at <https://www.amnesty.org/download/Documents/EUR3089062018ENGLISH.pdf>. Malta also refused migrants and refugees to be disembarked at its shores. For additional information see, e.g., MSF, “European Government Must Put People’s Lives Before Politics”, 17 June 2018, available at <https://www.msf.org/central-mediterranean-european-governments-must-put-peoples-lives-politics> and HRW, “Stranding people at sea is an abomination”, 14 June 2018, available at <https://www.hrw.org/news/2018/06/14/stranding-people-sea-abomination>.

operations.⁴⁹ Such measures have contributed to the increased death rate of migrants and refugees at sea and impacted the life-saving work of defenders of the human rights of migrants and refugees.

3.2.3 Increasing coordination of rescues in international waters by LCG

With European Union rescue vessels in retreat and NGOs being attacked⁵⁰ and compelled to discontinue their search and rescue operations, the LCG has increasingly taken on rescues and coordination in international waters, which were previously largely carried out by foreign vessels coordinated by the Maritime Coordination Centre Rome (MCCR).⁵¹ In August 2017, the Libyan authorities declared the establishment of its search and rescue zone and ordered foreign vessels to stay out.⁵² In a meeting with UNSMIL in October 2018, the spokesperson of the LCG confirmed extending Libya's search and rescue zone to 94 nautical miles off its coast, as of August 2017, and assuming coordination of operations in that zone with the support of the MCCR. LCG officials noted that the majority of distress calls they received "were coming through Italy."

Libyan authorities have uploaded information on their Search and Rescue Region on the International Maritime Organization's online information sharing system, the Global Integrated Shipping Information System. In June 2018, the Ambassador of Italy to Libya publicly congratulated the Libyan authorities on completing procedures related to the implementation of their search and rescue area.⁵³ As of 14 September 2018, the Secretary General of the International Maritime Organization had not been formally notified of any agreements between Libya and neighbouring countries, with the exception of Malta, or on Libya's completion of procedures in establishing search and rescue services.

Unlike migrants and refugees rescued by European Union and foreign vessels in international waters, who are taken to Italy or other European ports, those rescued by the LCG in Libyan and, increasingly, in international waters, are brought to Libya.

As outlined in the remainder of this report, at this time Libya cannot be considered a place of safety for the purpose of disembarkation following rescue or interception at sea, given the considerable risk of those returned being subjected to serious human rights violations and abuses, including prolonged arbitrary detention in inhuman conditions, torture and other ill-treatment, unlawful killings, rape and other forms of sexual violence, forced labour, extortion and exploitation. The Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has

⁴⁹ The Maritime Executive, "Italy Bars Own Coast Guard Ship from Port After Migrant Rescue", 20 August 2018, available at <https://www.maritime-executive.com/article/italy-bars-own-coast-guard-ship-from-port-after-migrant-rescue>.

⁵⁰ See <https://www.independent.co.uk/news/world/africa/libyan-coastguard-attack-shooting-refugee-rescue-boat-msf-medecins-sans-frontieres-armed-bullet-a7512066.html>.

⁵¹ Libya's territorial waters extend to 12 nautical miles off its shores. Media reports suggest that Libya declared its search and rescue zone to reach 74 nautical miles off its coast. See, e.g., Digit.site36.net, "A seahorse for the Mediterranean Border Surveillance for Libya's Search and Rescue Zone", December 2017, available at <https://digit.site36.net/2018/01/03/border-surveillance-technology-for-new-libyan-search-and-rescue-zone/>.

⁵² The Maritime Executive, "Libya Excludes NGO vessels from rescue zone", 11 August 2017, available at <https://www.maritime-executive.com/article/libya-excludes-ngo-vessels-from-rescue-zone#gs.8y4hZoE>.

⁵³ See Italian Ambassador to Libya's official twitter account: https://twitter.com/Assafir_Perrone/status/1012235279141359616.

characterized such practices of ‘pullbacks’, whereby countries of destination cooperate with another to prevent migrants and refugees from arriving, as violations of the principle of *non-refoulement*.⁵⁴

The former United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein, stated in November 2017: “*The increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants... Our monitoring, in fact, shows a fast deterioration in their situation in Libya.*”⁵⁵ On 13 December 2017, High Representative/Vice-President Federica Mogherini stated to the European Parliament: “*There is new awareness, and a new determination to act.*”⁵⁶ Despite significant efforts made since then by the European Union, some of its Member States, other countries and the United Nations, the situation remains desperate and dangerous for the thousands of migrants and refugees in Libya.

3.3 Human Rights Due Diligence Policy

The global United Nations human rights due diligence policy, issued by the United Nations Secretary-General in 2011,⁵⁷ applies to the United Nations system in Libya, including concerning migration related programmes largely funded by the European Union. The policy aims at ensuring that the United Nations system does not provide any support to non-UN security forces where there are substantial grounds for believing there is a real risk of the receiving entities committing grave violations of international humanitarian, human rights or refugee law, and that its support contributes to strengthening the rule of law and respect for human rights.

In September 2017, the United Nations system in Libya adopted a risk assessment and mitigation measures with respect to their support for the LCG to implement this policy and mitigate grave violations of international humanitarian, human rights or refugee law. The assessment found that there were substantial grounds to believe there was a real risk of human rights violations being committed by the LCG and that continued support should be contingent upon the implementation of mitigating measures to ensure compliance with applicable international law. The proposed measures included the establishment of joint United Nations monitoring frameworks, the creation of an internal accountability unit within the LCG, reporting and advocacy to the European Union, engagement with the Libyan authorities, and systematic screening of recipients of support at individual and unit levels.

A similar risk assessment with respect to support to the DCIM, adopted in August 2018, found that responsible, principled and transparent engagement with DCIM and life-saving assistance to

⁵⁴ Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/37/50, paras 56-59. “[W]hen “pullbacks” forcibly retain migrants in situations where they are exposed to a real risk of torture and ill-treatment, any participation, encouragement, or assistance provided by destination States for such operations would be irreconcilable with a good faith interpretation and performance of the prohibition of torture and ill-treatment, including the principle of *non-refoulement*.”

⁵⁵ OHCHR, “UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity”, 14 November 2017, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393>.

⁵⁶ https://eeas.europa.eu/headquarters/headquarters-homepage/37290/speech-federica-mogherini-european-parliament-plenary-session-situation-migrants-libya_en.

⁵⁷ See A/67/775-S/2013/110.

migrants and refugees in detention centres should be offered in conjunction with the implementation of a range of mitigating measures. These safeguards include high-level advocacy, monitoring and reporting of human rights in detention centres, and exclusion from training and material support of DCIM members and commanders when there are substantial reasons to suspect their involvement in human rights violations.

A number of the aforementioned mitigation measures are currently being implemented, including increased monitoring of compliance with international human rights law by recipients of support and screening to exclude from support anyone with a problematic human rights record.

3.4 European Union migration approach in Libya

The European Union's migration strategy⁵⁸ in Libya includes close cooperation and support to countries of origin and transit; capacity building of Libyan institutions; and support to United Nations agencies and NGOs operating in Libya and in migrants' countries of origin.

According to the European Union, the EU Emergency Trust Fund for Africa is funding projects based on providing protection of those in need (EUR 127.7 million); community stabilization (EUR 92 million); and improved border management (EUR 46.3 million). Through this fund the European Union provides assistance and protection services, directly and through its partners, to migrants and refugees at disembarkation points, in detention centres, and in host communities. In particular, a European Union action focused on "protection activities," includes assistance at disembarkation, improvement of detention conditions, and returns to countries of origin.

On 14 November 2017, CNN aired a news report on slave markets selling Sub-Saharan African migrants and refugees in Libya. It purported to show footage of Sub-Saharan Africans being auctioned for up to 400 US dollars per person.⁵⁹ This news report triggered widespread outrage and condemnation by the international community, including the United Nations Secretary-General, United Nations independent experts and individual Member States.⁶⁰ Participants at the 29-30 November 2017 AU-EU Summit in Abidjan issued a joint condemnation and resolved to end these criminal practices.⁶¹ A joint Task Force comprising the European Union, African Union and United Nations was established on 29 November 2017, with the declared aims of saving and

⁵⁸ See European Council, "Malta Declaration by the members of the European Council on the external aspects of migration: addressing the Central Mediterranean route", 3 February 2017 <http://www.consilium.europa.eu/en/press/press-releases/2017/02/03/malta-declaration/>.

⁵⁹ CNN, "People for Sale", 14 November 2017, available at <https://edition.cnn.com/2017/11/14/africa/libya-migrant-auctions/index.html>.

⁶⁰ See, for example, UN, "Secretary General's Statement on Reported News of Slavery in Libya", 20 November 2017, available at <https://www.un.org/sg/en/content/sg/statement/2017-11-20/secretary-general%E2%80%99s-statement-reported-news-slavery-libya> and OHCHR, "Libyan Must End Outrageous Auctions of Enslaved People", 30 November 2017, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22475&LangID=Ehttps://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22475&LangID=E>.

⁶¹ European Commission, "Joint Statement on the Migrant Situation in Libya", 1 December 2017, available at <https://www.consilium.europa.eu/en/press/press-releases/2017/12/01/au-eu-summit-joint-statement-on-the-migrant-situation-in-libya/>.

protecting the lives of migrants and refugees *en route* to and in Libya, accelerating returns to countries of origins, and resettling people in need of refugee protection.⁶² Since the beginning of 2017, it has contributed to the return of more than 39,000 people from Libya to their countries of origin, whilst 2,476 people have been evacuated by UNCHR out of Libya for resettlement.⁶³

Moreover, the European Union has continued to strengthen its actions against migrant smuggling and trafficking in human beings. To date Operation Sophia has apprehended 151 suspected traffickers and smugglers and removed 551 vessels from criminal organisations. On 14 June 2018, the Council of the European Union transposed into European Union law the sanctions earlier adopted by the United Nations, imposing a travel ban and asset freeze on six human traffickers and smugglers operating in Libya.⁶⁴

In March 2018, the European Union announced an additional package of 150 million euros in support of the Task Force, including programmes aimed at providing protection to migrants and refugees in Libya and reintegration of returned migrants in their home countries.⁶⁵

The European Union's joint strategy on migration in Libya was further articulated on 28 June 2018 at the European Council's meeting on migration, which emphasized Member States' support for countries of origin and transit, including support to the LCG. The conclusions also explicitly instructed vessels operating in the Mediterranean Sea "not to obstruct" the LCG operations.⁶⁶

There is significant European Union funding, including from the European Union Emergency Trust Fund for Africa, dedicated to the management of mixed migration in Libya, including for protection activities. Nevertheless, the human rights situation of migrants and refugees in Libya remains dire, and the vast majority of migrant and refugee men, women and children in vulnerable situations have no possibility to access mechanisms for, let alone obtain, protection and redress.⁶⁷

⁶² European Commission, "Joint press release of the United Nations, African Union and European Union", 29 November 2017, available at http://europa.eu/rapid/press-release_STATEMENT-17-5029_en.htm.

⁶³ See <https://www.unhcr.org/news/press/2018/11/5bf7e0634/unhcr-appeals-resettlement-end-detention-libya-evacuations-near-2500.html>.

⁶⁴ See <http://www.statewatch.org/news/2018/aug/eu-sophia-libya-overview-11471-18.pdf>; see also <https://news.un.org/en/story/2018/06/1011751>.

⁶⁵ EEAS, "Migration: Joint EU Taskforce with African Union Helps More than 16,000 People Stranded in Libya", 2 March 2018, available at https://eeas.europa.eu/headquarters/headquarters-homepage/40729/migration-joint-eu-taskforce-african-union-and-un-helps-more-16000-people-stranded-libya_en.

⁶⁶ European Council, "European Council Conclusions", 28 June 2018, available at <http://www.consilium.europa.eu/en/press/press-releases/2018/06/29/20180628-euco-conclusions-final>. The European Union also indicated its intent to explore the possibility of establishing regional disembarkation platforms, in close cooperation with relevant third countries as well as UNHCR and IOM. Libyan officials have publicly rejected the establishment of such centres on their territory. On 5 July 2018, the Council of Europe's Commissioner for Human Rights called on European Union Member States to address concerns emanating from the adoption of these conclusions in line with their obligations under international law. In particular, the Commissioner raised concerns about hindering rescue operations run by humanitarian organizations in the Mediterranean Sea; called for effective human rights monitoring of agreements ensuring compliance with human rights law; and emphasized that any place of disembarkation for rescued migrants should provide effective protection against *refoulement* and have adequate reception conditions. See Commissioner for Human Rights, "European States must Put Human Rights at the Centre of their Migration Policies", 5 July 2018, available at <https://www.coe.int/en/web/commissioner/-/european-states-must-put-human-rights-at-the-centre-of-their-migration-policies>.

⁶⁷ See EU Emergency Trust Fund for Africa: "Improved migration management", available at: <https://ec.europa.eu/trustfundforafrica/thematic/improved-migration-management>.

At the time of writing, there was a lack of independent monitoring of the impact, including on human rights, of activities funded by the European Union in the field of migration, including those aimed at supporting the LCG and addressing the situation of migrants and refugees in DCIM detention centres. According to the European Union, a limited monitoring mechanism has been established for members of the LCG undergoing training through Operation Sophia.

UNHCR IN LIBYA

UNHCR has been operating in Libya since 1991,⁶⁸ albeit without an official agreement with the Libyan authorities. The Libyan authorities have allowed UNHCR to register individuals from certain nationalities, namely: Eritreans, Oromo Ethiopians, Iraqis, Palestinians, Sudanese from Darfur, Somalis, Syrians, Yemenis and South Sudanese. Individuals from other nationalities may have access to UNHCR on a case-by-case basis but essentially have no possibility to seek asylum in Libya.

As for other United Nations agencies and humanitarian and human rights actors, security concerns, bureaucratic hurdles and ad hoc lengthy access procedures impede the ability of UNHCR to promptly access and provide assistance to individuals in need. Even when access to detention facilities is granted, conditions are not in place for UNHCR to conduct interviews in private and to identify individuals in situations of vulnerability. For instance, UNSMIL received reports of DCIM guards removing individuals from collective cells ahead of visits by United Nations agencies or selecting detainees for the receipt of services.

UNHCR continues to advocate for the release of asylum seekers and refugees and the evacuation of persons of concern in vulnerable situations, including through the Emergency Transfer Mechanism, funded mainly through the EU Emergency Trust Fund for Africa, to third countries pending resettlement and durable solutions.⁶⁹ Efforts to find alternatives for detention include rehabilitation of a Gathering and Departure Facility, which is expected to begin operation in late 2018, to provide for more humane conditions of detention for migrants and refugees. There is a need for additional legal pathways, including resettlement, for vulnerable persons of concern to UNHCR in Libya and for faster resettlement procedures from Libya and from the UNHCR Emergency Transit Centre in Niger.⁷⁰

⁶⁸ UNHCR was briefly expelled in 2010 and returned following the 2011 uprising and armed conflict.

⁶⁹ Since November 2017, UNHCR evacuated 1,730 refugees out of Libya (1,408 to Niger, 312 to Italy and 10 to Romania).

⁷⁰ By 13 May 2018, only 108 refugees who had been evacuated from Libya to Nigeria were resettled in third countries, namely in France, Sweden and Switzerland. A total of 11 countries had pledged to resettle 2,681 refugees who had been evacuated from Libya to Niger. See UNHCR, Libya Niger Situation, 13 May 2018, available at <http://reporting.unhcr.org/sites/default/files/UNHCR%20Libya-Niger%20Situation%20Resettlement%20Update%20-%2013MAY18.pdf>. Between March and May 2018, evacuations were on hold due to a lack of resettlement places. See “U.N. resumes refugee evacuations from Libya to Niger”, available at: <https://af.reuters.com/article/topNews/idAFKBN11A17S-OZATP?feedType=RSS&feedName=topNews>.

4. Legal framework

4.1 International law

Libya is party to several core international human rights treaties.⁷¹ Libya is not a party to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol. It has ratified the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa, which adopts the same definition of a refugee as the 1951 Refugee Convention. However, Libya has no asylum legislation or established asylum procedures.

International human rights law provides protection for all persons, regardless of their migration or asylum status. Amongst others, it strictly prohibits torture and ill-treatment, arbitrary deprivation of life, arbitrary detention, and slavery.⁷² It also guarantees the right to liberty and security of person, and the right to leave any country.⁷³

In accordance with article 9 of the International Covenant on Civil and Political Rights⁷⁴ detention in the course of proceedings for the control of immigration is not per se arbitrary, but the detention must be justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time.⁷⁵ Asylum seekers who unlawfully enter a State party's territory may be detained for a brief initial period in order to document their entry, record their claims and determine their identity if it is in doubt.⁷⁶ To detain them further while their claims are being resolved would be arbitrary in the absence of particular reasons specific to the individual, such as an individualized likelihood of absconding, a danger of crimes against others or a risk of acts against national security.⁷⁷ The decision must consider relevant factors case by case and not be based on a mandatory rule for a broad category; must take into account less invasive means of achieving the same ends, such as reporting obligations, sureties or other conditions to prevent absconding; and must be subject to periodic re-evaluation and judicial review.⁷⁸ Decisions

⁷¹ Libya is a party to: the International Covenant on Civil and Political Rights and its first Optional Protocol; the International Covenant on Economic, Social and Cultural Rights; the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of All Forms of Discrimination against Women and its Optional Protocol; and the Convention on the Rights of the Child and its Optional Protocols on the Involvement of Children in Armed Conflict, and on the Sale of Children, Child Prostitution and Child Pornography and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

⁷² International Covenant on Civil and Political Rights, articles 6, 7, 8 and 9; and the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, articles 1 and 16.

⁷³ International Covenant on Civil and Political Rights, articles 9 and 12(2).

⁷⁴ Human Rights Committee, General Comment No. 35 on article 9, para. 18. See also A/HRC/20/24.

⁷⁵ Human Rights Committee, Communications No. 560/1993, *A. v. Australia*, paras. 9.3–9.4; 794/1998, *Jalloh v. Netherlands*, para. 8.2; 1557/2007, *Nystrom v. Australia*, paras. 7.2–7.3.

⁷⁶ Human Rights Committee, Communication No. 1069/2002, *Bakhtiyari v. Australia*, paras. 9.2–9.3.

⁷⁷ Human Rights Committee, Communications No. 1551/2007, *Tarlue v. Canada*, paras. 3.3 and 7.6; 1051/2002, *Ahani v. Canada*, para. 10.2.

⁷⁸ Human Rights Committee, Communications No. 1014/2001, *Baban v. Australia*, para. 7.2; 1069/2002, *Bakhtiyari v. Australia*, paras. 9.2–9.3; see UNHCR, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention (2012), guideline 4.3 and annex A (describing alternatives to detention). For additional information

regarding the detention of migrants must also take into account the effect of the detention on their physical or mental health.⁷⁹ Any necessary detention should take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons.

Irregular entry or stay within a country should not constitute a criminal offence, as the individual has not committed a crime *per se* against persons, property or national security. Automatic, mandatory or indefinite detention in the context of migration is in itself arbitrary. Migrant children should never be detained on the basis of their or their parents' migration status,⁸⁰ as detention is never in the best interests of the child⁸¹ and in such cases always constitutes a violation of the rights of the child.⁸² The detention of persons in situations of vulnerability, who have specific needs or who are particularly at risk of exploitation, abuse, sexual or gender-based violence, or other forms of violence should be avoided.⁸³ Women in detention should be held separately from men and be guarded by female guards.⁸⁴ A failure to adhere to these legal safeguards leads to the arbitrary detention of migrants and may amount to torture.⁸⁵

on the international and national legal framework governing detention in Libya, see OHCHR, *Abused behind Bar: Arbitrary and Unlawful Detention in Libya*, 12 April 2017, available at

https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf, Chapters 4.1 and 4.2.

⁷⁹ Human Rights Committee, Communications No. 1324/2004, *Shafiq v. Australia*, para. 7.3; 900/1999, *C. v. Australia*, paras. 8.2 and 8.4.

⁸⁰ Joint general comment No. 3 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 22 (2017) of the Committee on the Rights of the Child on the general principles regarding the human rights of children in the context of international migration, para. 11.

⁸¹ See Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, A/HRC/28/68, para. 80, which notes that "Within the context of administrative immigration enforcement, it is now clear that the deprivation of liberty of children based on their or their parents' migration status is never in the best interests of the child, exceeds the requirement of necessity, becomes grossly disproportionate and may constitute cruel, inhuman or degrading treatment of migrant children." This principle was also highlighted in para. 56 of the New York Declaration for Refugees and Migrants, in which Member States affirmed that children should not be criminalized or subject to punitive measures because of their migration status or that of their parents. Similar provisions are included in the Global Compact for Safe, Orderly and Regular Migration agreed by United Nations Members States on 13 June 2018, and set to be adopted in Marrakech on 10-11 December 2018. See Global Compact for Migration, *Global Compact for Safe, Orderly and Regular Migration*, 13 July 2018, available at https://refugeesmigrants.un.org/sites/default/files/180713_agreed_outcome_global_compact_for_migration.pdf.

⁸² See Convention on the Rights of the Child, article. 3. See also Report of the Special Rapporteur on the Human Rights of Migrants, A/HRC/20/24, para. 41; UN Human Rights Council, *Report of the Special Rapporteur on the human rights of migrants on a 2035 agenda for facilitating human mobility*, 28 April 2017, para 61. See also Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return.

⁸³ Human Rights Council, *Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations - Report of the United Nations High Commissioner for Human Rights - Addendum*, p. 6. Individuals with vulnerabilities include "pregnant and nursing women, older persons, persons with disabilities, survivors of torture or trauma, migrants with particular physical or mental health needs."

⁸⁴ See United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules). Rules 11(a) and 81, General Assembly resolution 70/175, annex, adopted on 17 December 2015. See also United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), General Assembly resolution 2010/16, Annex, adopted on 22 July 2010, which states that for the principle of non-discrimination to be put into practice, account shall be taken of the distinctive needs of women prisoners in the application of the Rules.

⁸⁵ The Special Rapporteur on Torture and other Cruel, Inhuman and Degrading Treatment or Punishment noted that: "detention based solely on migration-status, as such, can also amount to torture, most notably where it is being intentionally imposed or perpetuated for purposes such as deterring, intimidating, or punishing irregular migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to voluntary repatriation, providing information or fingerprints, or with a view to extorting money or sexual acts, or for reasons based on discrimination of any kind,

The principle of *non-refoulement* is similarly a fundamental norm of international law, including international human rights and refugee law. Under international human rights law, this principle prohibits the return of anyone to a place where the individual is at risk of death, torture and other cruel, inhuman or degrading treatment or punishment, or other irreparable harm.⁸⁶ Refugees and asylum seekers are specifically protected from being returned to any country where they would face persecution or other serious human rights abuses, and all migrants at all times are protected from *refoulement*, whether directly or indirectly.

Libya is a State party to the 1979 International Convention on Maritime Search and Rescue, which requires States parties to ensure that assistance is provided to any person in distress at sea, regardless of the nationality or status of the person or the circumstances in which the person is found, and to provide for his or her initial medical or other needs and to deliver him or her to a place of safety.

Libya is also a State party to the United Nations Convention on Transnational Organized Crimes and its supplementary Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children and Protocol Against the Smuggling of Migrants by Land, Sea and Air.

While not falling within the purview of international human rights law as such, the widespread criminal conduct by smuggling and trafficking networks in Libya is taken into account in this report. All States in which such criminal networks operate are obliged to actively prevent them from committing abuses, investigate and prosecute the perpetrators, and provide a remedy to victims.

4.2 National law

Libyan law criminalizes irregular entry into, stay in and exit from Libya and does not distinguish between migrants, refugees, asylum seekers, victims of trafficking,⁸⁷ migrants in vulnerable situations, migrant children, or other migrants in need of international human rights protection. Law No. 6 of 1987 Regulating Entry, Residence and Exit of Foreign Nationals provided for the imprisonment and deportation of those who entered the country irregularly or sought to exit

including discrimination based on immigration status.” Human Rights Council, Report on the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment, A/HRC/37/50, 28 February 2018.

⁸⁶ The prohibition of *refoulement* is explicitly included in the 1951 Convention Relating to the Status of Refugees (1951 Convention) as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The principle has been interpreted by international human rights bodies, regional human rights courts, as well as national courts to be a non-derogable norm of customary international law, or *jus cogens*, and an implicit guarantee flowing from the obligations to respect, protect and fulfil human rights. See, Human Rights Committee, General Comment No. 31 The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, para. 12; and Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment No. 4 on the implementation of article 3 of the Convention in the context of article 22.

⁸⁷ In 2013, the Ministry of Justice prepared a draft law on human trafficking that foresaw protection of victims of human trafficking. However, the draft has not been adopted by the legislative body.

without a proper visa. The law was amended by Law No. 2 of 2004 to tighten visa requirements and penalize “smuggling by any means”.

In 2010, Law No. 19 on Combatting Irregular Migration was adopted,⁸⁸ allowing for the detention, pending deportation, of migrants and refugees in an irregular situation. Migrants and refugees in an irregular situation face criminal penalties, which include “imprisonment with labour or by a fine not exceeding 1,000 Libyan Dinars” (Article 11). The Law further states that “in all cases, a foreigner convicted of any of the crimes set forth in this law shall be expelled from the territory of the Great Jamahiriya⁸⁹ immediately upon execution of the sentence.” (Article 6). The convicted person may be exempt from punishment if he/she takes the initiative of informing the authorities about the crime of smuggling of migrants and refugees (Article 8). The Law stipulates that migrants should be treated “in a humane manner, keeping their dignity and rights, without assault on their money or assets.” (Article 10).

While article 10 of the 2011 interim Constitutional Declaration prohibits the extradition of “political refugees”, Libya has not established an asylum system in law or practice. As a result, asylum seekers or refugees in Libya without appropriate documentation, including those rescued and disembarked, face detention under Law No. 19 of 2010.

In practice, the overwhelming majority of migrants and refugees are placed in indefinite detention pending deportation without being charged, tried or sentenced under applicable Libyan laws.

5. Findings of violations and abuses against migrants and refugees in Libya

“The suffering of migrants detained in Libya is an outrage to the conscience of humanity,” former United Nations High Commissioner for Human Rights, Zeid Ra’ad Al Hussein.⁹⁰

“In Libya, we suffer a lot. We see death, in the desert, in prison, in the streets,” – a man in his twenties from Guinea.⁹¹

“In Libya, they hate black people. They treat us like slaves and animals. We are arrested for no reason; once we are locked, we never get out unless [we] pay a lot of money or die slowly,” –Nigerian migrant returned home in December 2017.⁹²

⁸⁸ Provisions of Law 19 abrogate previous laws on migration, in case of contradiction.

⁸⁹ Official name of Libya during Qhadafi’s rule.

⁹⁰ OHCHR, “UN human rights chief: Suffering of migrants in Libya outrage to conscience of humanity”, 14 November 2017, available at <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393>.

⁹¹ UNSMIL Interview, Tripoli, January 2018.

⁹² UNSMIL Interview, Lagos, December 2017.

5.1 Land journeys from hell – abuses by smugglers and traffickers

“[As a migrant or refugee], you are always scared in Libya. You have to sleep with one eye open. You get sold from one simsar (smuggler) to another,” –Somali asylum seeker.⁹³

Migrants and refugees generally enter Libya after enduring long and treacherous journeys through the desert.⁹⁴ Many have witnessed other travellers’ deaths from harsh conditions, dehydration and violence by smugglers or traffickers.⁹⁵ Reaching Libya does not provide them with a respite but rather compounds their suffering. A Senegalese migrant in his twenties, who arrived in Libya in January 2017 in search of a better life, summed up his experience: *“As soon as I stepped onto Libyan soil, my nightmare got worse. I have only seen violence, exploitation and detention.”*⁹⁶

Migrants and refugees interviewed by UNSMIL repeatedly emphasize their vulnerability to killings, extreme violence, torture, rape, and forced labour by smugglers or traffickers. They were systematically held captive in abusive conditions with the aim of extorting money from their families through a complex system of money transfers, extending to a number of countries. They were frequently “sold” from one criminal gang to another and asked to pay ransoms multiple times before being set free or taken to coastal areas to await the Mediterranean Sea crossing.

UNSMIL received consistent testimonies from migrants and refugees about horrific treatment, degrading conditions, and frequent rapes in captivity in Bani Walid, including by the brothers “Moussa and Mahmoud Diab” and “Mohamed Whiskey”; in Sabha, in a facility run by a man referred to as “Ali” or “Mohamed” “Gateau”; in Kufra, mostly by Tabu gangs, including a man known as “Mohamed Karongo”; in Buraq al-Shati; in Shwerif, including in a place under the control of a man referred to as “Sahban Darbuh”; and in Sabratah, in makeshift detention facilities referred to as “campos”, including those run by men known as “Genabu”, “Rambu”, and Ahmed al-Dabbashi (al-Amu).⁹⁷

Despite the well documented patterns of abuse against migrants and refugees by smugglers and traffickers and the frequent recovery, across Libya, of bodies of unidentified Sub-Saharan migrants and refugees bearing gunshot wounds, torture and burn marks, the Libyan authorities have

⁹³ UNSMIL Interview, Libya, March 2018.

⁹⁴ Most commonly, migrants and refugees from West African countries enter Libya’s borders after setting off from Agadez in Niger, while some travel through Algeria. Gatroun and Sabha are the most common first ports of arrival in south-western Libya. Migrants and refugees travelling from eastern Africa generally enter the south-eastern city of Kufra after being smuggled through the Libyan-Sudanese border. Most migrants and refugees interviewed by UNSMIL reported spending between four days and two weeks in the desert *en route* to Libya. Many described how smugglers dumped the bodies of dead migrants and refugees in the desert.

⁹⁵ While smuggling involves the consent of migrants and refugees and financial transactions to facilitate their journey, human trafficking is a serious human rights abuse involving the use of force, or threats, deceit or coercion or fraud in the aim of exploitation. UNSMIL documented numerous cases of smuggled migrants and refugees becoming victims of trafficking in transit in Libya and being held against their will and exploited.

⁹⁶ UNSMIL Interview, Tripoli, November 2017.

⁹⁷ The United Nations Security Council included Ahmed al-Dabbashi in the Sanctions List in June 2018). See, United Nations Security Council, “Security Council Committee concerning Libya Adds Six Individuals to Its Sanctions List”, 7 June 2018, SC/13371, available at <https://www.un.org/press/en/2018/sc13371.doc.htm>.

appeared largely unable and unwilling to address or even recognize crimes committed against migrants and refugees.

As Libyan law criminalizes irregular migration and lacks any measures to protect victims of trafficking, migrants and refugees are reluctant to report abuse to Libyan authorities. UNSMIL also continues to receive credible information on the collusion and complicity of some representatives of State institutions, local officials, and members of armed groups nominally integrated into State institutions in smuggling and trafficking networks, while migrants and refugees interviewed by UNSMIL have described their transfers between individuals who appeared to be State officials and smugglers or traffickers.⁹⁸

Following the CNN report on slavery on 14 November 2017,⁹⁹ the Office of the Prosecutor General announced investigations into smuggling and trafficking networks in Libya and abuses committed against migrants and refugees. On 14 March 2018, the head of investigations in the Office of the Prosecutor General revealed that 205 arrest warrants had been issued in relation to smuggling in human beings and fuel and abuses against migrants.¹⁰⁰ No further details were made available, including on the number of individuals held in custody and referred to trial, their nationalities, or their affiliations.¹⁰¹

On 7 June 2018, the United Nations Security Council imposed travel bans and asset freezes on four Libyan and two Eritrean men involved in the trafficking and smuggling of migrants in Libya. One of the men was the head of the Al-Zawiya sector of the LCG, until his suspension on 22 June 2018.¹⁰²

5.1.1 Inhuman conditions, starvation, abuse and exploitation

Smugglers and traffickers hold migrants and refugees in makeshift detention pending transfer onto next locations, generally contingent upon their families transferring money or captives paying off

⁹⁸ For instance, migrants and refugees involved in a deadly traffic accident in Beni Walid, in February 2018, told UNSMIL that men in police uniform returned those deemed not to require medical treatment to the camp run by the Diab brothers. Some had been held captive there for up to two years. Injured migrants and refugees were eventually provided with medical treatment in local medical facilities. An Eritrean woman interviewed by UNSMIL in Italy in June 2018 said that members of the Ministry of Interior, most likely the Passport Investigation Department, based on the description of their uniforms, handed her and other migrants and refugees over to smugglers in Wershefana, in January 2018, after they had paid their way out of detention in Sabratah. The same individuals allegedly had taken part in a raid on a camp in Sabratah on 30 December 2017, arresting her and other migrants and refugees and bringing them to an official detention facility in Sabratah. In February 2018, UNSMIL also received a copy of the leaked report of the Panel of Experts on Libya in Arabic, which suggested links between armed groups integrated into State institutions and smuggling networks. See Huffington Post, “Human Smugglers in Libya have links to Security Services: UN report”, 8 February 2018, available at: https://www.huffingtonpost.co.za/2018/02/08/human-smugglers-in-libya-have-links-to-security-services-u-n-report_a_23356182/. In their latest public report, issued on 5 September 2018, the Panel of Experts on Libya found that armed groups in Libya continued profiting from trafficking in persons and smuggling of migrants and refugees. See United Nations Security Council, *Letter dated 5 September 2018 from the Panel of Experts on Libya established pursuant to resolution 1971 (2011) addressed to President of Security Council*, 5 September 2018, S/2018/812, paras 48 and 58, available at http://www.un.org/ga/search/view_doc.asp?symbol=S/2018/812.

⁹⁹ See “Context”.

¹⁰⁰ Akhbar Libya, “Details on General Prosecutor Investigations into Migration, Slavery and Fuel Smuggling”, 15 March 2018, available at <https://www.libyaakhbar.com/libya-news/600267.html>.

¹⁰¹ In a meeting with UNSMIL at the Tripoli Court Complex, in February 2018, the prosecutor responsible for the migration file refrained from providing any detailed information.

¹⁰² See Section 5.2.

“their debts” in forced labour situations. Such holding places include hangars, warehouses, unfinished buildings or apartment blocks, houses and farms.

Migrants and refugees interviewed by UNSMIL consistently described conditions in such as unfit for human habitation, overcrowded and unhygienic. Some appear to lack any running water, washing facilities and latrines, with migrants and refugees being forced to relieve themselves in buckets or outside. In general, those held must either procure their own food through money transfers from their families or starve to death. No basic cleaning items are ever provided, and medical treatment is non-existent. The special needs of migrants and refugees in vulnerable situations, including children, pregnant and breastfeeding women, are not addressed.

These conditions lead to a proliferation of scabies and other skin infections, respiratory problems and gastro-digestive ailments. According to first-hand accounts gathered by UNSMIL, women giving birth in such conditions have died or suffered complications. The lack of medical treatment, including for injuries sustained as a result of torture and malnutrition, lead to frequent preventable deaths. Some migrants and refugees have described being held by abusive smugglers or traffickers for up to two years in such conditions and paying ransoms on multiple occasions. Eritrean and Somali nationals appear to be most vulnerable to prolonged captivity.¹⁰³

Migrants and refugees are subjected to extreme violence, at times on camera, as their relatives watch in agony. Most frequently described methods include beatings with various objects, suspension from bars, pouring petrol, boiling water or chemicals on victims’ bodies, electric shocks, stabbing, pulling nails, application of heated metals to flesh, and shootings, particularly the legs.

SURVIVOR VOICES AND ACCOUNTS – CAPTIVITY BY SMUGGLERS AND TRAFFICKERS

A 26-year old asylum seeker from Darfur, who lived in Libya for nearly three years, described her two months in captivity in Shwerif: *“We were 700-800 people in a large hangar... They would keep shooting [migrants and refugees] in the legs if they couldn’t pay, and then let them bleed to death... My son, five years old at the time, was hit on the head with a big metal bar to pressure us to pay quickly... I saw many people die in this place, from beatings and hunger. There was a Somali boy, he was skin and bones. He couldn’t even stand on his two feet and they [smugglers] would still beat him. He died... until now, when I close my eyes, I am haunted by his face.”*¹⁰⁴

A young mother from Liberia, who spent three months in a “campo” in Sabratah before armed clashes started in September 2017,¹⁰⁵ told UNSMIL: *“My sister died from medical neglect... If*

¹⁰³ The information is based on interviews by UNSMIL carried out with migrants and refugees of various nationalities deprived of their liberty by smugglers. Smugglers and traffickers appeared to perceive that Somali and Eritrean refugees were able to pay more given their diaspora communities and likelihood of obtaining refugee status upon reaching Europe.

¹⁰⁴ UNSMIL Interview, Tripoli, April 2018.

¹⁰⁵ Clashes between local armed groups, which lasted for more than three weeks, ultimately led to the withdrawal of armed groups allied to Ahmed al-Dabbashi, a notorious head of smuggling networks, and the transfer of thousands of migrants and refugees from “campos” run by smugglers/traffickers to DCIM detention.

*you are sick, you just die. They [men in control of the campo] beat us, shot at us, and stepped on us when we were sleeping. I was pregnant with my belly showing, but it did not matter to them. We were hundreds in this place [an unfinished building], stuffed like sardines. I had to urinate in a bottle and defecate outside.*¹⁰⁶

A mother of three from Côte d'Ivoire using crutches told UNSMIL: *"I was sold to a criminal gang in Bani Walid. They wanted my family to transfer 600,000CFA (1,000 USD) to an account in Egypt... They poured petrol on my leg and lit it on fire. I still cannot walk. They beat everyone, raped women. My two-year-old was burned with a cigarette... I saw so many people die there"*.¹⁰⁷ UNSMIL examined the child's neck bearing a scar consistent with her account.

In June 2017, UNSMIL sent information to the Office of the Prosecutor General regarding videos circulating on social media showing sub-Saharan African migrants and refugees being beaten and otherwise abused, purportedly to extort money from their families. UNSMIL also provided the telephone number of one of the traffickers.¹⁰⁸ On 20 January 2018, further videos were circulated on social media depicting horrific scenes of torture of asylum seekers from the Sudan. In one video, a man in civilian dress is seen pouring a liquid on a naked man lying on the floor, screaming in pain. Several voices are heard on the video demanding that the victims' relatives transfer money.¹⁰⁹ On 24 January 2018, the Special Deterrence Force, a Tripoli-based armed group, and the DCIM announced the arrest of the alleged perpetrators. The survivors received medical treatment before being transferred to the custody of the Central Security Force¹¹⁰ in Sirte. At the time of writing, they remained detained without having had access to any judicial authority.¹¹¹

According to information obtained through UNSMIL interviews, male migrants and refugees are also routinely taken out of captivity for forced manual labour, including in farms, construction work, offloading heavy merchandise or weapons, and cleaning. Less frequently, women also reported being transferred out of detention by smugglers and traffickers to carry out domestic work without any remuneration.

5.1.2 Killings and other deaths in captivity

Migrant and refugee accounts consistently demonstrate how smugglers and traffickers, who control the movement of people through Libya, exhibit blatant disregard for their lives, either deliberately shooting them, torturing them to death in an attempt to extort money from their families, or leaving them to die from starvation or medical neglect.

¹⁰⁶ UNSMIL Interview, Tripoli, November 2017.

¹⁰⁷ UNSMIL Interview, Tripoli, November 2017.

¹⁰⁸ No response was received by the time of writing. Videos examined by UNSMIL have since been removed.

¹⁰⁹ Part of the videos continued to be available online at the time of writing at:

<https://www.youtube.com/watch?v=5kIDPe6I17o&t=9s> and <https://www.facebook.com/aajajain/videos/10211484819305206/>.

¹¹⁰ A law enforcement agency in Sirte nominally under the oversight of the Ministry of Interior.

¹¹¹ See Section 5.4 on the arbitrary detention of migrants and refugees.

In May 2018, in an incident revealing the brutality endured by migrants and refugees in Libya, human traffickers in Bani Walid chased and shot migrants and refugees seeking to escape their captivity, resulting in some 15 deaths and 25 injuries.¹¹² Migrants and refugees who had been held captive in Bani Walid have consistently reported witnessing deaths often on a weekly basis. According to activists, humanitarian workers and medical professionals, bodies of migrants and refugees are regularly found on the outskirts of Bani Walid, in dry riverbeds, ditches and the desert. Many bear gunshot wounds, bruises and burns. Most bodies appear emaciated, suggesting the victims were suffering from starvation.

While Bani Walid has gained particular notoriety for migrant and refugee deaths, the bodies of Sub-Saharan Africans bearing gunshot wounds and signs of torture are frequently uncovered in other locations, including Sabha, al-Zawiya and Tripoli.¹¹³

SURVIVOR VOICES AND ACCOUNTS – DEATHS IN CAPTIVITY

A man from Côte d'Ivoire who stayed in Libya for two years before attempting the Mediterranean crossing in November 2017, reported being tasked to dispose of the body of a Senegalese migrant who died in captivity at a site in Sabha controlled by a man referred to by migrants and refugees as "Gateau". He observed the death of another male migrant in the same facility, apparently as a result of untreated gunshot wounds.¹¹⁴

A 27-year-old man from Nigeria, who was held in captivity in Sabratah between May and October 2017, described witnessing a migrant being shot by a "drunk guard for no apparent reason", and another being shot point blank over a disagreement about a sim card.¹¹⁵

A Cameroonian man, whose wife died in November 2017 during childbirth because smugglers refused to provide her with any medical treatment, recounted: "*My wife was getting more and more sick. I begged the pushers (smugglers) to let me take her to the hospital or to bring a doctor; I even got on my knees, but I was just hit and told to shut up... My wife went into labour and was helped by another Cameroonian lady. There was no hot water, nothing. We had to cut the (umbilical) cord with a dirty knife. My wife continued bleeding profusely... She died in my arms*".

¹¹⁶

¹¹² MSF, "Over 100 migrants escape clandestine prison under gunfire", May 2018, available at <http://www.doctorswithoutborders.ca/article/libya-over-100-migrants-escape-clandestine-prison-under-gunfire-survivors-say-least-15-dead>.

¹¹³ For instance, on 8 May 2018, the body of a Sudanese national was brought to the Sabha Medical centre bearing torture marks. On 25 February 2018, the body of an Egyptian migrant worker bearing gunshot wounds was found in the area of Qasr Ben Ghashir. In February 2018, a Sub-Saharan African rubbish collector died at the Sabha Medical Centre from gunshot wounds sustained on 28 January 2018. He was reportedly ambushed by a group of armed men who stole his belongings and shot him in the legs.

¹¹⁴ UNSMIL Interview, Italy, June 2018.

¹¹⁵ UNSMIL Interview, Benin City, December 2017.

¹¹⁶ UNSMIL Interview, Tripoli, April 2018.

In an incident documented by UNSMIL, seven sub-Saharan Africans suffocated inside a truck on 4 July 2017, after being locked up and abandoned by smugglers in the area of Garabulli. According to several survivors interviewed by UNSMIL separately, officials from the Ministry of Interior uncovered the truck with deflated tires, but they apparently did not open the doors until hours later once it was towed to Tripoli. An 18-year-old female survivor from Côte d'Ivoire said: *“The police arrived at 9 pm, but they only opened the door once we got to the Tarik al-Sikka detention. They were afraid we would escape. We banged and banged on the door. People were vomiting inside the truck and suffocating.”*¹¹⁷

UNSMIL also documented how smugglers and traffickers abandon injured or sick migrants and refugees. For instance, in May 2018, a male Eritrean national with severe gunshot injuries was reportedly left behind by armed smugglers in the desert west of Kufra. A Libyan national brought him to a local hospital, where his leg was amputated.¹¹⁸

5.1.3 Rape, forced prostitution and other sexual violence

“They get drunk, and then do what they want to us. They touch us, take off all our clothes, and we have to pay to get out,” – Eritrean asylum seeker.¹¹⁹

“To be sold and forced to have sex with Arab or African men either to pay [for] the journey or to extract your money is a common thing to happen to you as a woman or a girl, all over the journey from day one in the desert until you depart Libya,” – Nigerian woman returned home in December 2017.¹²⁰

The overwhelming majority of migrant and refugee women and older teenage girls interviewed by UNSMIL in 2017-2018 reported either being raped by smugglers or traffickers in Libya or witnessing others being taken out of collective accommodations and returning distraught, physically hurt and/or with torn clothes. The prevalence of rape among women who have transited through Libya has been corroborated by a plethora of sources, such as medics and other service providers, including in countries of origin and destination.

Accounts of survivors who were held captive by smugglers or traffickers point to a pattern of frequent gang rapes, physical violence and death threats, including at gunpoint, and the refusal of perpetrators to use protection. While unaccompanied women and girls considered to be “younger and prettier” appear to be most frequently targeted, women in their 40s and 50s travelling with their families, as well as pregnant and nursing women, are not spared. In most cases, victims are removed from collective accommodation and abused. Survivors also reported being raped in front of their children and male relatives. Perpetrators include Libyan and North and Sub-Saharan African men. Rape and sexual violence do not happen in isolation, as women and girls concurrently suffer a multitude of other serious human rights abuses.

¹¹⁷ UNSMIL Interview, Tripoli, June 2017.

¹¹⁸ UNSMIL Interview, Tripoli, May 2018.

¹¹⁹ UNSMIL Interview, Tripoli, January 2018.

¹²⁰ UNSMIL Interview, Lagos, December 2017.

SURVIVOR VOICES AND ACCOUNTS – RAPE BY SMUGGLERS AND TRAFFICKERS

An asylum seeker from Eritrea, who entered Libya in January 2017 with the aim of seeking protection in Europe, was kidnapped and held captive three times by criminal networks in Barak al-Shatti, Bani Walid and al-Khoms, enduring gang rape, beatings and starvation. Her family paid thousands of dollars each time to secure her freedom. She described her ordeal in al-Khoms after being abducted from Tripoli in November 2017: “*We were 200 people in a room. We could not breathe or move or stretch our legs. Every night, I was raped by about six men: some Libyans, some Africans. I spent five months like this. My mother had to sell her house and everything else and borrow money to pay the \$5,000 USD they demanded... I am pregnant now [as a result of rape]*”.¹²¹ She was unable to terminate her unwanted pregnancy as abortion is criminalized in Libya,¹²² including in cases of rape.

A woman from Somalia, who was immediately “sold” to traffickers in Kufra upon entering Libya from the Sudan in late 2017, recounted her experience: “*I was raped and beaten in Kufra until my mother paid money. I was not freed but taken to Bani Walid and paid again, only to be taken to Barak al-Shatti and asked to pay again. Everyday someone would die. I stayed in Barak al-Shatti for several months and witnessed some 20 people die.... The men would pick the young, pretty girls... Many came hoping for a better life, but instead they saw pain, and many lost their virginities [to rape]*.”¹²³

A 30-year-old woman from Côte d’Ivoire, who arrived in Libya in April 2017, was held captive for seven months, beaten and raped by smugglers or traffickers in Sabha and Sabratah. She described the pattern of abuses to UNSMIL: “*They [men holding them captive in Sabha] would come in with their guns and pick women they wanted to rape and take them outside. It didn’t matter if women were pregnant or breastfeeding... I saw with my own eyes three women dying. Our men [migrants] would have to then pick up the bodies and dump them in the desert... The same thing [rape] would happen in Sabratah campo. They [perpetrators] would force women to take off all their clothes, look at them and select some to rape. I left my country to search for a better life for me and my children; instead, I was tortured and raped. If a woman refuses to sleep with the smugglers, she does not eat, she gets beaten, and she doesn’t travel (cross the sea), even if she already paid.... I cannot express what we went through. A man who was refusing to listen to the smugglers was shot right in front of us.*”¹²⁴

A woman from Nigeria who arrived in Italy in April 2018 recounted being raped consecutively by four men, about three times a week, while held at a site in Sabha run by a man referred to as “Gateau.” She described how five men would enter detainees’ cells together and concurrently rape five women. When she arrived in Libya, she was in the early stages of pregnancy and suffered a miscarriage, she believes as a result of rape. She claimed that when women died at the facility,

¹²¹ UNSMIL Interview, Tripoli, April 2018.

¹²² Articles 391 and 392 of the Libyan Penal Code. Women willingly undergoing abortions can be sentenced to prison terms ranging from six months to three years.

¹²³ UNSMIL Interview, Tripoli, April 2018.

¹²⁴ UNSMIL Interview, Tripoli, November 2017.

guards would just shrug and remove the bodies.¹²⁵ Other women held at the same facility also reported frequent rapes.

A Sudanese asylum seeker and mother of two recounted her kidnapping by armed men near Tobruk in late December 2017, soon after she had crossed the border between Egypt and Libya. During her months in captivity, she was taken out from the container where she was held on at least seven occasions, and raped by several men, until her family paid a ransom of \$1,000 USD.¹²⁶

While migrant and refugee women and girls are disproportionately affected by rape and sexual violence, international NGOs and other service providers have also told UNSMIL that men and boys are increasingly vulnerable to rape and other sexual abuses while in transit in Libya, noting a rise in 2018 in cases of men and boys receiving treatment and support for the physical and psychological consequences of sexual abuse.

Despite the prevalence of rape and other sexual violence against female and girl migrants and refugees in Libya, UNSMIL is unaware of a single case of a perpetrator being held to account and survivors receiving redress and adequate rehabilitation. Instead, survivors of rape and other atrocities end up in abusive indefinite detention under the DCIM, with little recourse to protection and assistance and a high risk of re-victimization.¹²⁷

Migrant and refugee women and girls, particularly those travelling without male relatives, are further vulnerable to forced prostitution and sexual exploitation in conditions amounting to sexual slavery. Women and girls are compelled to engage in sexual acts against their will and are under the absolute power and control of their captors. In particular, Nigerian women and girls appear to be vulnerable to trafficking by multinational criminal networks in their countries of origin. They embark on their journeys believing office work awaits them in Europe but find themselves in so-called “connection houses” (“brothels”) in Libya.

SURVIVOR VOICES AND ACCOUNTS – FORCED PROSTITUTION

A 22-year-old Nigerian woman, who was forcibly taken to a “connection house” in Tripoli’s Gergaresh neighbourhood shortly after arriving to Libya, was given a “choice” of either paying a “debt” of 24,000 Libyan dinars (then about \$28,000 USD¹²⁸) to her traffickers or engaging in sexual activities. She was forced into the second option for nearly one year until the “connection house” was raided by a Tripoli-based armed group in early 2017.¹²⁹ She described the “connection house” as several three-bedroom flats, where an estimated 100 Nigerian women and girls aged between 15 and 22 shared rooms, using a curtain as a partition when engaged with “clients”. The women were never allowed to leave the “connection house” or to make contact with the outside world. They had to endure being raped by up to 20 men a day. They were not given any contraception, and several consequently got pregnant and forced to pay for dangerous abortions

¹²⁵ UNSMIL Interview, Italy, June 2018.

¹²⁶ UNSMIL Interview, Italy, June 2018.

¹²⁷ See Section 5.3.

¹²⁸ According to the then official exchange rate, with Libyan dinar grossly overvalued.

¹²⁹ See Section 5.5 on “Excessive Use of Force”.

carried out at the “connection house”. As they were not allowed to keep any money in their possession and therefore unable to make payments directly, their “debts” were increased instead. The woman described seeing another victim bleed to death following an abortion. She said that the day to day management of the “connection house” was left to a Nigerian woman, while the “mudir” (director in Arabic) and guards were Libyan.¹³⁰

This survivor’s account is consistent with other accounts gathered by UNSMIL from women who had been forced into “connection houses” in Tripoli’s Gergaresh and Mitiga neighbourhoods throughout 2017. A 19-year-old girl from Nigeria promised domestic work by her traffickers found herself in a “connection house”. She recounted her shock: *“At first, I refused to work. But if girls refused to work, they [connection house management and guards] would kill you or rape you and do anything they wanted to you. I had to stay there for nearly a year, until I paid my debt of 1.3 million Naira (\$3,500 USD)”*.¹³¹

UNSMIL also gathered accounts from survivors forced into prostitution at “connection houses” in Sabha. Apparently due to her inability to pay a ransom, a 20-year-old Nigerian woman was forcibly transferred by smugglers/traffickers from a facility where she had spent one month to a “connection house” for one year and a half until March 2018. She reported being beaten at the “connection house” for initially refusing to engage in sex work. As in “connection houses” in Tripoli, women and girls as young as 15 reportedly worked and slept at the facility, where they were locked up for the duration of their stay. They were forced to receive several clients – up to 10 – per day under threat of beatings and other abuse. She reported suffering a miscarriage and not receiving any medical treatment.¹³²

As Libya lacks anti-trafficking legislation or systems to identify and protect survivors, and criminalizes any sexual relations outside of wedlock and prostitution, women and girls forced into “connection houses” do not report their experiences to Libyan authorities, fearing prosecution.

5.2 Dangerous sea crossings and rescues

After enduring unimaginable atrocities by abusive smugglers or traffickers and paying multiple times for their onward journey, migrants and refugees are crammed into unseaworthy wooden boats or rubber dinghies without lifejackets, and at times without a compass, escorts or satellite communication.

Since August 2017, when Libya declared the extension of its search and rescue zone to 94 nautical miles off its coast, the LCG has increasingly taken charge of rescue operations in international waters, even when other vessels, including humanitarian-run rescue ships, had arrived at the scene earlier.¹³³

¹³⁰ UNSMIL Interview, Benin City, December 2017.

¹³¹ UNSMIL Interview, Lagos, December 2017.

¹³² UNSMIL Interview, Catania, June 2018.

¹³³ UNSMIL meeting with LCG officials, October 2018.

While the overall number of deaths at sea dropped in 2018 compared to the same periods in previous years, the journey for those attempting it has become far more dangerous.¹³⁴ The reduction in fatalities reflects a decrease in the total numbers of those undertaking the journey and obscures the fact that a higher proportion of those attempting to cross lost their lives. The European Union strategy of shifting search and rescue responsibilities to the LCG, combined with attacks on humanitarian rescue ships, have contributed to making the world's most dangerous migration sea route even more deadly.¹³⁵

From January 2017 to 30 September 2018, the LCG intercepted or rescued over 29,000 migrants and refugees. Despite increased support from the European Union and Italy,¹³⁶ serious concerns remain around the conduct of the LCG during search and rescue operations, which, in some instances, further endangers the lives of people in distress at sea and casts serious doubts over the LCG claim made to UNSMIL during meetings in May 2017 and October 2018 of being mainly driven by the objective of saving lives, rather than pulling migrants back to Libya.

UNSMIL documented the use of firearms, physical violence and threatening or racist language by coastguard officials during search and rescue operations in Libyan and international waters, which induces panic among people in unseaworthy vessels seeking assistance. Other recorded reckless behaviour by the LCG includes jumping on board migrant vessels without warning, colliding with vessels in distress, and moving at a speed that generates destabilizing waves. Such acts risk tipping over already unseaworthy boats and cause additional panic among people in distress, some of whom jump into the water without lifejackets. Migrants and refugees intercepted or rescued by the LCG are rarely provided with lifejackets. The LCG have also engaged in aggressive behaviour towards humanitarian rescue boats and have threatened them with the use of force and firearms.¹³⁷

For instance, on 10 May 2017, a LCG patrol boat intervened in international waters (some 20 nautical miles from Libyan shores) during a rescue operation of some 500 migrants and refugees in a wooden vessel carried out by the German NGO Sea-Watch. Accounts from the rescue crew and survivors¹³⁸ indicate that LCG officials pointed their weapons at the migrants and refugees,

¹³⁴ See, for instance, UNHCR, "As Mediterranean Sea arrivals decline and death rates rise, UNHCR calls for strengthening of search and rescue", 6 July 2018, available at : <http://www.unhcr.org/news/briefing/2018/7/5b3f270a4/mediterranean-sea-arrivals-decline-death-rates-rise-unhcr-calls-strengthening.html>. Figures collected by IOM suggest that while numbers dropped in absolute terms, there has been a proportional increase in 70 per cent. IOM, "Saving lives must be number one priority", 28 March 2018, available at <http://www.italy.iom.int/en/news/iom-saving-lives-must-always-be-number-one-priority>.

¹³⁵ See "Context" for further information, noting that while overall deaths have decreased, the likelihood of dying has increased. See also, MSF, "Drowning skyrockets as European governments block humanitarian assistance on Central Mediterranean", 12 July 2018, available at <https://www.msf.org/drowning-skyrockets-european-governments-block-humanitarian-assistance-central-mediterranean>.

¹³⁶ See "Context" for further information. Libyan authorities continue to emphasize the lack of sufficient material support, insisting that the training provided was not a priority. On 29 June 2018, the spokesperson for the Libyan Navy claimed that no logistical, technical or financial support has been received from Europe and that the ships used by LCG were donated by Italy in 2010. See Alwasat, "Colonel: Ayoub Qassem: The European Union did not provide any technical, or logistical, or financial support to face migrants", 28 June 2018, available at: <http://alwasat.ly/news/libya/210905>.

¹³⁷ In addition to incidents at sea described in this section, the spokesperson of the Libyan Navy has made several public statements condemning the work of NGO-run rescue boats and threatening them with "consequences". See, e.g., the Libya Navy's official Facebook post, dated 24 June 2014, threatening Proactiva Open Arms: <https://ar-ar.facebook.com/libyan.navy/>.

¹³⁸ Testimonies collected by UNSMIL in Tripoli in May 2017.

threatened and shouted at them, and rammed into their wooden boat twice. Officials then moved hundreds of migrants and refugees from the wooden vessel to the Libyan patrol boat without lifejackets. Others were left in the wooden vessel, also without life jackets, and steered back to shore. In another incident, on 23 May 2017, the LCG reportedly fired shots in the air and at migrants and refugees who jumped into the water during an ongoing rescue operation by the Aquarius and the Iuventa rescue ships run by humanitarian NGOs.¹³⁹ UNSMIL spoke to several migrants and refugees brought back to detention in Libya following this incident. They confirmed that LCG officials had fired shots in the air and slapped and pushed some men seeking to avoid interception.¹⁴⁰

On the morning of 6 November 2017, another incident pointing to the reckless and violent behaviour of LCG officials during life-saving operations occurred when the rescue ship Sea-Watch 3 and the LCG apparently almost simultaneously approached a sinking boat with migrants in international waters. According to a witness present on the rescue ship, a member of the LCG threatened the Sea-Watch crew, including by waving a firearm and mimicking throat-cutting signs. LCG officials also apparently threw potatoes in the direction of rescuers and migrants. One LCG official apparently beat a migrant with a rope for refusing to board the Libyan vessel. The LCG also reportedly sailed at an inappropriately high speed, even though one migrant was still hanging off the side of the vessel. According to Sea-Watch, 59 people were taken on board their rescue ship, while 42 others were returned to Libya by the LCG. Five corpses were recovered at sea, while around 40 people were unaccounted for and are believed to have perished at sea.¹⁴¹ On 8 May 2018, 17 survivors of this incident filed an application against Italy with the European Court of Human Rights invoking its responsibility for deaths at sea and for enabling the “pull back” of migrants to Libya, where they are at real risk of serious human rights violations.¹⁴²

Similarly concerning behaviour by the LCG was documented in the course of 2018. For instance, on 31 March 2018, the humanitarian rescue ship Aquarius had spotted a migrant dinghy in distress, prior to the arrival of the LCG, which then declared itself to be in charge of coordinating the operation. The LCG allowed Aquarius staff to distribute lifejackets and rescue the most vulnerable people, but they were prohibited from rescuing the remainder of the passengers.¹⁴³ UNSMIL interviewed eyewitnesses upon their return to Libya who recounted that their boat was leaking, with water reaching knee depth by the time the two Aquarius speedboats approached them.¹⁴⁴ Humanitarian rescuers distributed lifejackets to the women, children, and accompanying male relatives before moving them to the speedboats. After some 30 minutes, the LCG reportedly

¹³⁹ MSF, “MSF accuses Libyan coastguard of endangering peoples’ lives during Mediterranean rescue”, 24 May 2017, available at <https://www.msf.org/msf-accuses-libyan-coastguard-endangering-peoples-lives-during-mediterranean-rescue>.

¹⁴⁰ UNSMIL Interview, Tripoli, June 2017.

¹⁴¹ Sea Watch, “Clarification of incident of 6 November”, 7 November 2017, available at <https://sea-watch.org/en/clarification-on-the-incident-of-november-6th/>.

¹⁴² Global Legal Action Network, “Legal action against Italy over its coordination of the Libyan Coast Guard pull backs resulting in migrants deaths and abuse”, 8 May 2018, available at <http://www.glanlaw.org/single-post/2018/05/08/Legal-action-against-Italy-over-its-coordination-of-Libyan-Coast-Guard-pull-backs-resulting-in-migrant-deaths-and-abuse>.

¹⁴³ *SOS Méditerranée, Board Journal*, 1 April 2018, available at <http://www.sosmediterranee.fr/journal-de-bord/sauvetages-010418>.

¹⁴⁴ They recognized it by the letters “S.O.S” written on the side.

approached the migrant dinghy at high speed, creating destabilizing waves. The passengers panicked, and some jumped in the water in a desperate attempt to reach the Aquarius. The survivors described what happened next:

*“They [LCG] threw ropes, but some of the migrants refused... So they [LCG] started calling us slaves [abid] and threatening to beat us. One of them said ‘you don’t want the rope, fine, die then’. Eventually people started getting desperate and cold and held onto the ropes... Once on board, they [LCG] took the Moroccan passengers inside, but we Africans stayed on deck in the cold. We are always discriminated against... everyone, here and in Europe, is complicit in our suffering.”*¹⁴⁵

These well-documented incidents, involving aggressive behaviour against migrants, refugees and humanitarian rescuers, are not isolated. UNSMIL gathered multiple accounts from migrants rescued or intercepted by the LCG in 2017-2018, which indicate a pattern of reckless and violent behaviour.

In footage that emerged in February 2017, Abdel Rahman Milad (alias Bija), the head of the al-Zawiya branch of the LCG, is seen whipping migrants and/or refugees inside their rubber boat with a plastic hose.¹⁴⁶ Fourteen months later, on 22 June 2018, following United Nations Security Council sanctions, Bija was removed from his post as head of the al-Zawiya LCG.¹⁴⁷

SURVIVOR VOICES AND ACCOUNTS – ENCOUNTERS WITH LCG

Two Sudanese women who attempted the Mediterranean Sea crossing on 18 January 2018, recounted their interception by the LCG after they had been at sea for some eight hours. They described how the LCG vessel approached them at high speed, making waves which risked capsizing their boat. The women alleged that members of the LCG beat several passengers and taunted them saying: *“there is no Italy for you.”* The two women complained about discrimination and preferential treatment granted to Arab women. One of them recounted: *“He called us black savages and gave the Palestinian and Syrian women juice and biscuits, while my children were given nothing. They took those women into a cabin, while we initially stayed on deck.”*¹⁴⁸

A 23-year-old woman from Nigeria intercepted by the LCG off the coast of Zuwara in January 2017 recalled the panic caused when members of the LCG jumped onto their dinghy and shot in the air. Some migrants and/or refugees were reportedly beaten with hoses and the back of rifles for refusing to point out the “captain” – or individual steering the boat – to the LCG.¹⁴⁹

In a meeting with UNSMIL in May 2017, LCG officials justified resorting to force and firing warning shots in the air during rescue operations in order to “restore calm” among migrants who “aggressively resist returning to Libya”. They did not reply to questions by UNSMIL on legislation

¹⁴⁵ Multiple UNSMIL Interviews, Tripoli, April 2018.

¹⁴⁶ The Times, “Video shows Libyan Coastguard Whipping Rescued migrants”, 4 February 2017, available at <https://www.thetimes.co.uk/article/video-shows-libyan-coastguard-whipping-rescued-migrants-6d8g2jgz6>.

¹⁴⁷ His suspension was confirmed to UNSMIL in a meeting with LCG in October 2018.

¹⁴⁸ UNSMIL Interview, Tripoli, January 2018.

¹⁴⁹ UNSMIL Interview, Lagos, December 2017.

governing the LCG use of force and firearms and the existence of accountability systems. In another meeting with UNSMIL, in October 2018, LCG officials rejected allegations of ill-treating or otherwise abusing migrants and refugees, and again justified any use of force during their operations as necessary to meet their “life-saving objective”. They considered any criticism of the LCG as “propaganda” by smugglers and traffickers. The LCG did not appear to have any internal mechanism of addressing complaints and allegations of abuse, noting that the Office of the Prosecutor General had the mandate to investigate allegations of crimes.

Immediately following rescues or interceptions at sea, coastguard officials routinely fail to screen, identify and meet the needs of migrants and refugees, including those in particularly vulnerable situations, such as individuals with pre-existing medical conditions or living with disabilities, pregnant women, and unaccompanied minors. Some migrants and refugees interviewed by UNSMIL claimed to have only been provided with water, food and emergency medical care once they disembarked, even if the journeys back to Libyan shores lasted several hours.

According to humanitarian agencies operating in Libya, those rescued or intercepted at sea off the coast of western Libya are disembarked at 13 designated points between Ras Jdir and Misrata. One or more staff of IOM, UNHCR, or implementing partners strive to be present at disembarkation points to provide basic humanitarian assistance. However, their ability to carry out comprehensive screening for medical needs, registration, assessment of the situation of vulnerabilities, and provision of emergency assistance is limited, as migrants and refugees are usually rushed to DCIM detention centres. Conditions at disembarkation are also not conducive for conducting detailed interviews as survivors are kept in open areas in ports.

Some migrants and refugees rescued or intercepted by LCG complained about ill-treatment upon disembarkation and the failure of Libyan officials to recognize their exhausting and traumatic experiences at sea. For instance, migrants and refugees disembarked in Tripoli in late May 2017 following interception at sea, told UNSMIL that they were initially taken to an outdoor location, where they slept on gravel for one night. The male detainees were strip-searched and all their belongings, including money, documents, and rings, were confiscated by men in military fatigues and dark blue uniforms. The following day they were taken to the Tarik a-Shouq DCIM.¹⁵⁰ Two migrants who had been at sea for some 24 hours, with no food or water, said that upon disembarkation in Tajoura, in March 2018, they were forced to walk for about 15 minutes until reaching a base where they were given some water and biscuits.¹⁵¹

5.3 Violations in migration-related detention

The Department of Combatting Illegal Migration (DCIM) was established in 2012 under the Ministry of Interior and mandated with managing immigration detention centres, officially called “sheltering centres”.¹⁵² At the time of writing, there were 26 known functioning detention centres, some of which had been established and controlled directly by armed groups before their formal

¹⁵⁰ UNSMIL Interview, Tripoli, May 2017.

¹⁵¹ UNSMIL Interview, Tripoli, April 2018.

¹⁵² During Mu’ammarr al-Qhadafi’s rule immigration detention centres were managed by the Passport Investigation Department.

integration into the DCIM. To date, several detention centres continue to be effectively controlled by armed groups, with their own command-and-control structures, even though they nominally fall under the Ministry of interior.

Since assuming the position of DCIM Director in March 2017, Brigadier-General Mohamed Bishir has sought to decrease the number of functioning centres and to consolidate DCIM control over the remaining ones. He also issued instructions to the directors of DCIM centre to treat detainees humanely. He ordered the closure of centres particularly notorious for human rights violations, corruption and other abuses.¹⁵³ However, the implementation of these orders largely stalled because members of armed groups in effective control of DCIM centres were unwilling to comply and handover detainees. For instance, the Shuhada al-Nasr detention centre in al-Zawiya remained operational at the time of writing, even though the head of the DCIM had officially ordered its closure on 18 April 2018.

At any given time, between 4,000 to 7,000¹⁵⁴ detainees are held in DCIM centres in western Libya. The numbers multiplied in late 2017 to nearly 20,000 people following the arrests of thousands of migrants and refugees in the aftermath of fighting between armed groups in Sabratha in October 2017.¹⁵⁵ While this period of severe overcrowding further exacerbated an already dire situation, UNSMIL has consistently documented the same patterns of human rights violations committed at detention centres under the DCIM throughout 2017 and 2018, including arbitrary and indefinite detention, torture and other ill-treatment, inhuman detention conditions (in some cases amounting to torture), sexual abuse or forced labour.

As of 18 September 2018, an estimated 6,800 migrants and refugees were in detention in western Libya, including some 3,700 asylum-seekers or refugees.

5.3.1. Arbitrary and indefinite detention

“It is not a prison, it is hell ... even animals are treated better than the way we are treated”,
– 25-year-old Nigerian woman.¹⁵⁶

Thousands of men, women and children remain arbitrarily detained at DCIM centres in Libya without due process or access to lawyers or judicial authorities to challenge the legality of their detention. The overwhelming majority of detainees has never been brought to court as required by Libyan immigration legislation.¹⁵⁷

Many migrants and refugees end up in DCIM detentions centres following rescues or interceptions at sea by the LCG. Others are rounded up from their homes in Libya, without warrants, during

¹⁵³ In 2017-2018, the Surman, al-Khoms, Shuhada Al-Nasr, Abu Salim, and Tarik al-Shouk detention centres were subject to closure orders.

¹⁵⁴ These statistics are based on regular information obtained from UN agencies and other organizations visiting the centres and the DCIM. The numbers rise during summer months in parallel with increases of rescues/interceptions in the Mediterranean Sea.

¹⁵⁵ See <https://reliefweb.int/report/libya/libya-sabratha-response-update-flash-update-3-23-october-2017>.

¹⁵⁶ UNSMIL Interview, Tripoli, November 2017.

¹⁵⁷ In 2017-2018, UNSMIL has documented one case of North African migrants being convicted by a Tripoli court of charges of seeking to exit Libya unlawfully, following their interception at sea.

raids in neighbourhoods with heavy migrant concentrations or taken from checkpoints or the streets. Members of armed groups, police and DCIM officials conduct such arrests. Some migrants and refugees are captured on the street by private individuals and brought to detention centres, sometimes following disagreements over salary payments owed to migrant employees. Migrants and refugees are also transferred to DCIM centres from prisons under the Ministry of Justice or Ministry of Interior either upon completing their sentences for non-migration related offences or at the whim of prison administrators.¹⁵⁸

Arrests are frequently accompanied by violence and the confiscation of all belongings, including documents, telephones, money and other valuables. These items are almost never returned upon release or return home.

Migrants and refugees are held indefinitely for periods ranging from days to months, without any possibility of having the legal or substantive grounds of their detention reviewed by judicial authorities. Migrants and refugees have few possibilities to put an end to their indefinite detention. They are either repatriated from Libya through IOM's VHR¹⁵⁹ programme or UNHCR's successful lobbying for the release and evacuation of persons of concern to safe third countries.¹⁶⁰ In rarer cases, they are deported by the Libyan authorities, including after covering the costs of their own flights home. In some detention facilities under the DCIM, migrants and refugees bribe guards through an arrangement commonly referred to as "*birnamej*" (programme). A smaller number of migrants and refugees are released when their Libyan employers or consular representatives come to detention centres to "vouch" for them. The Libyan authorities have failed to develop and implement other alternatives to indefinite detention even for the most vulnerable groups, including unaccompanied and separated children.

Since early 2017, IOM returned over 30,000 individuals from Libya to their countries of origin.¹⁶¹ Given the abusive conditions in arbitrary and indefinite detention and absence of alternatives to detention, in some cases such decisions to return may not be characterized as fully voluntary and may have been made under duress. There is no comprehensive system in place to examine, including in accordance with the principle of *non-refoulement*, the individual circumstances of all migrants regardless of their nationality¹⁶² to assess whether they might be at risk if returned to their countries of origin.

Detention centres in Libya lack human rights compliant registration systems, rendering the tracing and family reunification of migrants and refugees¹⁶³ nearly impossible and facilitating the disappearance of persons from detention with impunity. On numerous occasions, UNSMIL gathered accounts from migrants and refugees, consular representatives and humanitarian workers

¹⁵⁸ See Section 5.4.

¹⁵⁹ Since early 2018, IOM has also been able to lobby for the release of some 40 migrants in vulnerable situations and to place them with members of their communities in Libya.

¹⁶⁰ See Section 4 "Legal Framework" on limitations of the right to seek asylum.

¹⁶¹ IOM, UN Migration Agency helps more than 30,000 migrants return safely to over 30 countries of origin, 14 August 2018, available at <https://www.iom.int/news/iom-un-migration-agency-helps-more-30000-migrants-return-safely-over-30-countries-origin>.

¹⁶² See Box on UNHCR in section 3.4.

¹⁶³ Migrant and refugee families are sometimes separated in transfers between DCIM detention centres.

about detainees vanishing from DCIM facilities overnight. UNSMIL has gathered information indicating that registration of detainees is limited and inconsistent within and across DCIM detention centres, contains no safeguards against misuse or data-protection measures, and is not overseen by independent monitoring mechanisms. IOM has introduced a registration system for migrants and refugees disembarked on Libyan shores following interception, which has been used by the LCG since early 2018. Yet, it remains unlinked to any formal or informal registration undertaken by individual detention centres and is inaccessible to other United Nations entities or humanitarian actors, including UNSMIL. This registration system upon disembarkation does not include any measures for external oversight or data protection.¹⁶⁴

Given the above-mentioned restrictions on access, interference by DCIM officials in field visits of organizations, lack of recognition of the mandate of UNHCR, and the absence of asylum system, there is a risk that international organizations working in DCIM centres are not able to provide adequate protection of the human rights of all detained migrants and refugees despite their efforts to identify vulnerability, conduct in-depth individual assessment and establish a referral system. Such protection would include an effective individual assessment under international human rights and refugee law, including in accordance with the principle of *non-refoulement*, as well as of any particular individual vulnerabilities that would require a heightened duty of care from the State or actors engaging with the State. Such protection should be granted based on individual rights, needs and vulnerabilities and should not be restricted to a group of pre-selected nationalities.

TRIPOLI VIOLENCE IN AUGUST AND SEPTEMBER 2018 – IMPACT ON ARBITRARILY DETAINED MIGRANTS AND REFUGEES

The outbreak of hostilities between rival armed groups in Tripoli on 26 August 2018 further highlighted the precarious situation of migrants and refugees in Libya, demonstrating yet again that the country cannot be considered a “place of safety”.

Thousands of arbitrarily detained migrants and refugees were trapped in detention centres in areas of active conflict and caught in crossfire, with no or limited access to food, medical treatment and other basic necessities, since the ability of humanitarian actors to access those in need was further curtailed.

For instance, the Tarik al-Matar detention centre, where 1,900 migrants and refugees were held, was shelled on the evening of 3 September 2018, leading to the injury of a detained migrant and material damage. The director of the facility told UNSMIL that he negotiated a brief ceasefire with parties to the conflict, allowing him to evacuate hundreds of migrants and refugees to another detention facility. Hundreds of others fled in search of safety. Only days earlier, hundreds of migrants and refugees had been transferred from other DCIM detention centres to Tarik al-Matar, which was deemed at that time to be in a “safer area.”

¹⁶⁴ The HRDDP mitigating measures for support provided to DCIM, adopted on 14 August 2018, include provisions for DCIM to work with UNHCR and IOM on the establishment of a detention register and development of DCIM Standard Operating Procedures for admission to and transfer across detention centres, as well as for communication with detainees on their rights, services and conditions, and on the respect of data protection standards and protocols.

Thousands of migrants and refugees were relocated by the Libyan authorities, in some instances with the support of United Nations agencies, to detention facilities farther away from the armed clashes, including outside Tripoli, further compounding the overcrowded and squalid detention conditions in those places. Hundreds of migrants and refugees were also transferred to the Abu Salim DCIM, even though it is located in an area near active clashes, and while the area is controlled by Central Security Abu Salim Branch armed group, a party to the conflict. Others escaped or were released by guards, having little choice but to seek shelter and safety in a dangerous and volatile security environment, amid reports that some migrants and refugees were captured by armed groups and forced to work.

5.3.2 Detention conditions

“In detention, Libyans don’t value lives,” – Nigerian man held in Tarik al-Matar until being repatriated back home in December 2017.¹⁶⁵

While conditions across DCIM detention centres vary, they are generally inhuman, falling far short of international human rights standards. In several centres, migrants and refugees are crammed into hangars or other structures unfit for human habitation, characterized by overcrowding, poor hygiene, inadequate lighting and ventilation, and insufficient access to washing and sanitation facilities.

Throughout visits to detention centres in Libya, UNSMIL observed hundreds of emaciated migrants and refugees packed into spaces large enough to hold dozens of people. Most were sitting on filthy mattresses or blankets on the ground, surrounded by rubbish and scraps of food. In some centres, UNSMIL counted two or three overflowing latrines used by hundreds of detainees. This situation led to urination or defecation in bottles and buckets when available or directly in the hangars or cells. In some facilities, there were also severe shortages of cleaning products and other basic necessities, including sanitary pads and diapers.

Detention conditions exacerbate detainees’ pre-existing medical concerns and lead to the spread of skin infections, including scabies, as well as respiratory tract infections, gastro-intestinal problems and urinary tract infections.

The lack of adequate food, and potable water in some facilities, lead to widespread malnutrition. Migrants and refugees consistently raise concerns about the poor quality and quantity of food, with their daily diets largely consisting of a small piece of bread and undercooked carbohydrates – usually pasta. No special provisions are made for pregnant or nursing women. Access to baby formula for children is inconsistent across centres and irregular in those centres where it is distributed. In some facilities, detainees reported paying for bread.

Access to medical treatment is generally limited to what is provided by United Nations agencies and other humanitarian organizations, including MSF and some local organizations, and it is

¹⁶⁵ UNSMIL Interview, Lagos, December 2017.

inadequate given the overwhelming needs. Migrants and refugees needing hospitalization for injuries, sickness or child birth also rely on MSF and other international organizations given the general refusal of hospitals to admit migrants and refugees.¹⁶⁶

UNSMIL gathered numerous accounts of pregnant women delivering their babies in detention centres due to negligence, undue delays or outright refusal by detention centre staff to transport them to hospitals, particularly if they went into labour at night. For instance, a woman from Côte d'Ivoire, who gave birth to a baby boy in June 2017, told UNSMIL that her cellmates knocked at the cell door for a long time until DCIM guards took her to the hospital, hours after she had given birth.¹⁶⁷

Women transferred from the Zuwara detention centre to detention facilities in Tripoli, in March 2018, painted a horrid picture of conditions in Zuwara. Hundreds of women were locked inside their cells for the duration of their detention, with no space to lie down or stretch their legs. They had no access to washing facilities or cleaning products. They drank water from the toilet tap. When menstruating, they had to tear rags from their clothes, as at most two sanitary pads were distributed monthly. Detainees reported frequent vomiting of blood and acute diarrhoea, amid inadequate access to medical treatment. According to accounts by former detainees, a toddler and several men died at the facility in early 2018.¹⁶⁸ At the time of writing, over 600 detainees were still held at the Zuwara detention centre.

The Hamra DCIM centre in Gharyan is another facility notorious for horrid detention conditions, with migrants and refugees locked up in containers for months without any access to washing facilities, medical treatment, or other basic necessities. According to accounts from migrants and refugees gathered during a visit to the centre in June 2017, deaths in custody of young men not suffering from any pre-existing conditions, seemingly from malnutrition and medical neglect, were “not uncommon”.¹⁶⁹

Conditions of detention also have a negative impact on the mental health of migrants and refugees, many of whom have already suffered from traumatic experiences prior to their detention at DCIM centres.¹⁷⁰ UNSMIL learned of suicide attempts, particularly by detainees who had been held for prolonged periods. Others described having problems sleeping and other symptoms suggesting they were suffering from PTSD, depression and anxiety. A limited number of organizations provide psychological treatment and support in some centres, and this is insufficient given the overwhelming needs.

In most detention centres, detainees have no or inadequate access to the outdoors throughout the period of their detention. Hundreds told UNSMIL that they were only allowed to step outside their

¹⁶⁶ See Section 5.6.3.

¹⁶⁷ UNSMIL Interview, Tripoli, June 2017.

¹⁶⁸ Multiple UNSMIL interviews, Tripoli, May 2018.

¹⁶⁹ Multiple UNSMIL interviews, Tripoli, August 2017. Their accounts were corroborated by accounts of migrants interviewed by UNSMIL in Tripoli and Nigeria following their transfer from Gharyan detention centre.

¹⁷⁰ See Section 4.1.

cells during monitoring visits by international organizations. DCIM staff frequently justified this prohibition by the alleged lack of personnel and fears of rioting or the risk of detainees escaping.

During UNSMIL visits to detention centres, detained migrants and refugees consistently complained to UNSMIL about not being granted facilities to communicate with their families, with rare exceptions when United Nations agencies or other humanitarians provide migrants and refugees with phones during their visits.

5.3.3 Torture and other ill-treatment

Interviews conducted by UNSMIL and other sources of information indicate that migrants and refugees detained at DCIM facilities are systematically subjected to torture and other ill-treatment. UNSMIL collected accounts of such violations committed in 2017 and 2018 at the Abu Salim, Gharyan, Janzour, Shuhada al-Nasr in al- Zawiya, Kararim, Mitiga, Surman, Tarik al-Matar, Tajoura, Tarik al-Tikka, Tarik al-Shouq, Zintan and Zuwara detention centres, all under DCIM at the time of the recorded violations.¹⁷¹ Several migrants and refugees also showed UNSMIL scars and bruises they said were the result of beatings at DCIM centres.

Methods of torture most commonly described by survivors interviewed by UNSMIL include beatings with various objects (such as water pipes, metal bars, rifle butts and sticks); forcing detainees into uncomfortable positions, such as squatting, for prolonged periods; punching and kicking; and eclectic shocks. While men appear to be targeted more frequently, including for severe beatings, women and children are not spared. Several accounts also pointed to guards shooting in the air and, at times, at the roof of hangars, terrorizing and endangering detainees.

The United Nations Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment described the detention regime for migrants and refugees in Libya as grossly incompatible with international standards for the treatment of prisoners, to inflict undue pain and suffering on migrants, and to be inconsistent with the prohibition of torture and other ill-treatment.¹⁷²

SURVIVORS' VOICES AND ACCOUNTS – TORTURE IN DCIM DETENTION

A 22-year-old woman, who was brought to the Surman detention centre after being intercepted at sea in May 2017, was tortured after complaining about detention conditions to a visitor. A guard forced her to undress down to her underwear. He then tied her ankles with a rope and dangled her head down from a metal bar, proceeding, together with another guard, to beat her with water pipes all over her body. She showed UNSMIL marks on her ankles and a long scar on her stomach, visible months after the incident.¹⁷³

¹⁷¹ The only facility visited by UNSMIL where torture and other ill-treatment were not reported is the Souq al-Khamis DCIM in al-Khoms.

¹⁷² See, e.g., Human Rights Council, *Report on the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment*, A/HRC/37/50, 28 February 2018, para. 20.

¹⁷³ UNSMIL Interview, Benin City, December 2017. See 4.3.3 on sexual abuse at Surman detention centre.

A man in his forties from a West African country recalled being beaten at the Tarik al-Matar detention centre by hand and with water pipe and wooden sticks because he had rushed out of the hangar to get bread in the morning. He noted how guards walked on top of people lying down on the hangar floor. *“We are not alive here. Only our spirits are,”* he added.¹⁷⁴ A man from Cameroon also described the situation at the Tarik al-Matar centre to UNSMIL: *“They beat us every day. They use electric sticks, just because we ask for food or [medical] treatment or for information about what will happen to us... Those who try to escape or make trouble are taken outside for more brutal beatings; they come back with fractures.... We are not alive in here. Someone died here 10 days ago and more will certainly follow if we stay here.”*¹⁷⁵

These are not isolated acts. A witness described to UNSMIL the death of a 20-year-old man from Guinea at the Tajoura detention centre. He had been weakened by months of detention at the Gharyan detention centre¹⁷⁶ and could barely stand on his feet. When he failed to obey a guard’s command to stand up on his first day of detention at Tajoura, he was beaten with water pipes. He reportedly vomited blood and passed away later that night.¹⁷⁷

Migrants and refugees detained in Gharyan also described frequent beatings including for making “too much noise” or complaining about their detention conditions. In one incident documented by UNSMIL, some 80 men held in one container were ordered to run around the facility, while guards beat them with water pipes.¹⁷⁸

A group of Nigerian men, detained at the Zuwara detention centre for two months following interception at sea in January 2018, described being beaten with water pipes and given electric shocks daily. They also described detainees being locked up in the refrigerated back of a van used to transport perishable food as punishment.¹⁷⁹

5.3.4 Rape and other sexual and gender-based violence

With the exception of the Tarik al-Sikka detention centre, where female guards were introduced in January 2018, no DCIM facilities employ female guards. Even at Tarik a-Sikka, the female guards are not present 24 hours a day. This situation not only contravenes international law and standards¹⁸⁰ but also facilitates sexual abuse and exploitation.

Women held at detention centres under DCIM consistently reported being strip-searched by or in front male guards. Some also reported being subjected to intrusive cavity searches and having their breast and buttock fondled during searches. Male guards also routinely enter women’s cells and washing and sanitation facilities without warning.

¹⁷⁴ UNSMIL Interview, Tripoli, November 2017.

¹⁷⁵ UNSMIL Interview, Tripoli, November 2017.

¹⁷⁶ See 4.3.2 on conditions of detention in Libya.

¹⁷⁷ UNSMIL Interviews, Tripoli, January 2018.

¹⁷⁸ UNSMIL Interview, Tripoli, May 2018.

¹⁷⁹ UNSMIL Interview, Tripoli, May 2018.

¹⁸⁰ See Section 4.1.

SURVIVORS' VOICES AND ACCOUNT – SEXUAL HARASSMENT

A Nigerian woman in her twenties arrested at a checkpoint in Misrata in January 2018, and held at the Kararim detention centre, complained to UNSMIL about a male guard entering the toilet on multiple occasions while she was using it. When she protested, she was reportedly called a “prostitute.”¹⁸¹ Similar allegations were received from women detained at the Tajoura detention centre. An asylum seeker lamented to UNSMIL: “*When I was in the toilet, a man [DCIM guard] entered, I told him to leave immediately. He refused and kept staring at me. Even animals are left alone to do their business.*”¹⁸²

UNSMIL received consistent reports of rape and other forms of sexual violence committed at the Surman detention centre. Survivors identified among the perpetrators the person who was in the effective control of the centre,¹⁸³ and another guard frequently referred to as “Rasta” by the detainees, given his hairstyle. Accounts by former Surman detainees indicate that women, particularly younger women, were selected and taken out of their cells by the person in control of the centre on a nightly basis to be raped by the DCIM guards and their guests. When UNSMIL visited the centre on 16 May and 28 June 2017, detainees were visibly traumatized and fearful about sharing information about their treatment. Nonetheless, several women confirmed being forcibly taken out of the detention centre at night to a house some 20-30 metres away. Refusals were met by beatings and threats at gunpoint.¹⁸⁴

On multiple occasions, UNSMIL raised concerns regarding the situation in Surman with the Libyan authorities, including Prime Minister Fayyez al-Sarraj, urging that the women be evacuated to Tripoli, where they could receive protection and rehabilitation, and calling for independent judicial investigations into rape allegations with a view to bringing perpetrators to justice.¹⁸⁵ The centre was closed by order of the DCIM Director in October 2017. However, according to several eyewitness accounts, when DCIM officials came to transfer women from Surman to other facilities, the person who was in control of the centre hid 17 women, refusing to hand them over. To date, the fate and whereabouts of these women remain unknown and the perpetrators remain at large.¹⁸⁶

UNSMIL also collected credible information, including first-hand accounts, of sexual abuse taking place at a functioning detention centre in Tripoli, and raised these concerns directly with relevant officials at the Ministry of Interior. A number of detainees described how a particular guard would select women to be taken out of their collective accommodations during the night, alleging that

¹⁸¹ UNSMIL Interview, Libya, March 2018.

¹⁸² UNSMIL Interview, Libya, November 2017.

¹⁸³ Even though he was not the DCIM appointed Director of the centre, according to accounts from former detainees, this person was always present, including at night, and in effective control of the facility, while the official Director reportedly came on rare occasions during the day, usually during visits by foreign delegations. This person appeared to be the one making all decisions in relation to the functioning of the centre.

¹⁸⁴ UNSMIL also interviewed four survivors, who had been transferred out of Surman and repatriated to their home countries. A fifth survivor was interviewed by UNSMIL in detention in Libya.

¹⁸⁵ UNSMIL raised concerns in multiple meetings and in writing since April 2017.

¹⁸⁶ On 15 January 2018, UNSMIL sent an official communication (UNSMIL/HRD/2018-7) to the Minister of Interior, copying the head of DCIM, urging his intervention to investigate the whereabouts of the missing women.

some returned, while others had vanished. In November 2017, a 20-year-old woman from West Africa showed UNSMIL fresh bruises on her neck, face and legs, explaining that she sustained them while trying to protect her friend from being taken away by DCIM guards. Instead, she was herself dragged to a nearby house, where she was raped by three men, including the DCIM guard.¹⁸⁷

The climate of impunity for rape and other sexual violence against migrant and refugee women and girls, coupled with the lack of female guards or safeguards, including regular independent unannounced monitoring or compliance mechanisms, create an environment where women and girls in detention are vulnerable to sexual violence and exploitation. They have no recourse to justice or redress or access to adequate sexual and reproductive-health services.

5.3.5 Forced labour

UNSMIL collected consistent accounts from male migrants and refugees about being forced to toil while held in detention centres under DCIM. In addition to work inside the facilities, mainly cleaning, cooking, offloading heavy items, and washing the vehicles of DCIM officials, detainees were reportedly taken out of detention facilities for physically difficult manual labour, including at farms and construction sites. Most received no compensation for their work, while others received small sums of money (10-20 dinars for a day's work) and some were only given food. Forced labour was reported by male migrants and refugees who were held at the DCIM-operated detention centres at al-Kararim, Janzour, Tajoura, Gharyan, Tarik al-Matar, and Tarik al-Sikka in 2017-2018.

While some interviewed migrants and refugees viewed any work as a way to escape confinement in horrid conditions, others preferred not to engage in hazardous and difficult manual labour given their frailty. All migrants and refugees confirmed that they had no choice in the matter. A migrant held at Tajoura shrugged: "*If you refuse to work, you are beaten.*"¹⁸⁸

5.4 Violations in non-migration related detention

5.4.1 Arbitrary detention and inadequate detention conditions¹⁸⁹

In addition to migration-related detention, migrants and refugees are vulnerable to arbitrary detention in prisons under the control of the Ministry of Justice or the Ministry of Interior, in relation to various accusations ranging from theft, prostitution and drug-related offences to terrorism and security-related offences. While no official statistics exist, hundreds of foreign nationals are estimated to be held in such prisons, some for years without charge or trial.

¹⁸⁷ UNSMIL Interview, Libya, November 2017.

¹⁸⁸ UNSMIL Interview, Libya, April 2018.

¹⁸⁹ Concerns described in this section also extend to Libyan detainees. However, migrants and refugees are among the most marginalized segments of Libyan society, as they have no tribal or family support networks and usually cannot afford private counsel.

Those held at facilities under the Ministry of Interior are systematically denied any due process rights and the opportunity to challenge the legality of their detention. This is most notably the case in the Mitiga detention facility controlled by the Special Deterrence Force (SDF) armed group, nominally integrated into the Ministry of Interior, where some migrants have been held for over two years incommunicado without being referred to judicial authorities and without access to lawyers and consular services.

SURVIVORS' VOICES AND ACCOUNTS – ARBITRARY DETENTION

A Nigerian man, who had lived and worked in Libya for 18 years, spent over one year held in the Mitiga detention centre without charge or trial after being handed over to SDF by armed men who kidnapped him in the street and collected a ransom from his wife. In April 2017, he and dozens of other migrants were transferred from Mitiga detention centre to the DCIM detention centre at Tarik al-Sikka. He was deported in December 2017 for being in the country illegally. He had no opportunity to explain that his residence had lapsed because he had been in detention. While held at the Mitiga detention centre, he was forced to construct and paint prison cells. He was also beaten, held in solitary confinement for six months, slept on cardboard and rags, and was denied medical treatment and family visits.¹⁹⁰

Even for the few migrants and refugees held in facilities under the Ministry of Justice, who either have been sentenced or are held in pre-trial detention in compliance with Libyan law, fair trial rights have flouted because most did not enjoy their rights to adequate defence and not to be compelled to testify against themselves or to confess guilt.¹⁹¹ Most foreign nationals could not afford to hire private lawyers and only met their court-appointed lawyers during their trial hearings. They did not discuss their cases in private with their counsel. Some detainees also complained about attending prosecution and court proceedings without translators and not understanding the charges and evidence against them. Others complained about not being given the opportunity to raise concerns about, or to retract, confessions that were extracted under torture or duress.

Major concerns remain regarding inhuman detention conditions, particularly in facilities run by armed groups such as the Mitiga detention facility. Migrants and refugees held there, including women, complained about being locked inside their cells without adequate lighting and ventilation throughout their detention and not being provided with any mattresses or blankets. Men held at Mitiga detention facility also described severe overcrowding, forcing detainees to sleep in shifts given the lack of room to stretch out their legs. They reported that detainees were denied access to cleaning products and medical treatment and suffered from insufficient access to washing facilities.

¹⁹⁰ UNSMIL Interview, Lagos, December 2017. For additional information on abuses at the Mitiga detention centre, where some 2,600 detainees are estimated to be held, including foreign nationals, see OHCHR, *Abused behind Bar: Arbitrary and Unlawful Detention in Libya*, 12 April 2017, available at https://www.ohchr.org/Documents/Countries/LY/AbuseBehindBarsArbitraryUnlawful_EN.pdf.

¹⁹¹ International Covenant on Civil and Political Rights, Article 14.

During visits to prisons under the Ministry of Justice, UNSMIL observed that conditions endured by sub-Saharan African nationals were visibly inferior to those granted to Libyan and Arab detainees. For instance, in al-Jawiya Prison, in Misrata, under the Ministry of Justice, the latter had access to the outdoors and prison corridors, while nationals from Sub-Saharan African countries were locked inside their cells throughout their incarceration. The conditions of their cells were also visibly poorer and less hygienic.¹⁹²

Like in DCIM facilities, migrant and refugee men are frequently forced to work while in detention. Former detainees consistently told UNSMIL that at the Mitiga detention facility, detained migrants laboured in the construction of additional prison wings. They were also tasked with the removal of bodies of detainees who had died in custody.¹⁹³

Both the Mitiga detention facility and the al-Jawiya Prison lack female guards, exposing women to additional risks of sexual abuse and exploitation. Migrant women arrested by the police or armed groups, in relation to non-migration related offences, systematically reported being strip-searched by male guards or by other female detainees while male guards watched.

5.4.2 Torture and other ill-treatment

UNSMIL has documented cases of migrant and refugee men and women held in detention in connection to non-migration related offences facing torture and other ill-treatment in a climate of impunity. Detainees are tortured in the aim of extracting information or confessions or as punishment for perceived infractions.

UNSMIL gathered dozens of accounts of torture and ill-treatment at the Mitiga detention facility. For instance, a former Tunisian detainee held there for months without charge or trial until his transfer to a DCIM detention centre in April 2017, described to UNSMIL the punishments reserved for those complaining about their conditions: “*At gunpoint, we were taken to the yard, and shot in the feet. We were then taken back to the cells and left to bleed.*”¹⁹⁴ According to him, medical treatment was denied or delayed for a few days leading to complications and even deaths. Other migrants released from Mitiga detention facility described being flogged while crawling on gravel on their bare knees.¹⁹⁵ Female migrants, including pregnant women, at the Mitiga detention centre were also reported being beaten on their backs with wooden sticks and water pipes. Several described how guards would line them up facing a wall before shooting above their heads.¹⁹⁶

SURVIVORS’ VOICES AND ACCOUNTS – TORTURE AND INHUMANE TREATMENT

A group of 16 Nigerian women arrested during house raids in Misrata in late August 2017 recounted being beaten with sticks and water pipes and being given electric shocks at a local police

¹⁹² Observations and interviews during UNSMIL visit to al-Jawiya prison in February 2018. In al-Jawiya and Jdeida Women’s Prison, foreign nationals were separated from Libyan and Arab nationals.

¹⁹³ Multiple UNSMIL interviews with foreign nationals previously detained in Mitiga, including in Nigeria, Tunisia and Libya.

¹⁹⁴ UNSMIL Interview, Libya, November 2017.

¹⁹⁵ UNSMIL Interview, Libya, August 2017.

¹⁹⁶ UNSMIL Interviews, Nigeria, December 2017.

station, while being called “whores”. They were then transferred to al-Jawiya Prison, apparently on accusations of prostitution and alcohol consumption.

Three women in the group suffered miscarriages in the subsequent two months, possibly due to beatings upon their arrest and medical neglect while in custody. They were not taken to the hospital when their bleeding started. One of the women, seven-month pregnant at the time, added: “I was feeling very sick. My friends [cellmates] started banging at the door... They [prison administration] eventually took me downstairs to give me a drip [in the local clinic], but they refused to transfer me to the hospital. When I lost the baby, I had to flush it, together with the blood clots, down the toilet.”¹⁹⁷

UNSMIL also gathered the accounts of eight Yemeni men and a 17-year-old boy who recounted being held in 13 separate prisons and other detention facilities in eastern Libya, on accusations of terrorism. They were held and interrogated by a number of security and intelligence bodies, including the Internal Security Agency, the Military Intelligence and the Department of Combatting Terrorism, which are allied to the Libyan National Army, in *de facto* control of eastern Libya. They reported being tortured during interrogations and forced to work for several months. In late 2017, they were transferred to the Tarik al-Sikka detention centre under the DCIM.¹⁹⁸

5.5 Excessive use of force

The DCIM, other State officials and members of armed groups, including those nominally integrated into State institutions, have used excessive or unwarranted lethal force in the course of law enforcement operations against migrants and refugees. They have resorted to lethal force when not strictly necessary to protect lives or prevent serious injury from an imminent threat. In doing so, Libyan State officials have breached the right to life¹⁹⁹ and failed to comply with international standards on the use of force and firearms.²⁰⁰

During a series of raids on the Gergaresh neighbourhood of Tripoli, between January and March 2017, with the announced aim of dismantling criminal networks,²⁰¹ SDF reportedly used excessive force, leading to a number of deaths among unarmed migrants and refugees who were not posing any threat. According to eyewitnesses, SDF members used machine guns, AK-47 and hand

¹⁹⁷ UNSMIL Interview, Libya, March 2018.

¹⁹⁸ UNSMIL Interview, Libya, November 2017.

¹⁹⁹ International Covenant on Civil and Political Right, Article 6. See also Human Rights Committee, General Comment No. 36 on right to life, paras. 12-14.

²⁰⁰ See UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and Code of Conduct for Law Enforcement Officials. For instance, Article 3 of the Code of Conduct for Law Enforcement Officials stipulates: “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.” Paragraph (C) states: “The use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardizes the lives of others and less extreme measures are not sufficient to restrain or apprehend the suspected offender.”

²⁰¹ See the SDF’s official FB page: <https://www.facebook.com/%D9%82%D9%88%D8%A9-%D8%A7%D9%84%D8%B1%D8%AF%D8%B9-%D8%A7%D9%84%D8%AE%D8%A7%D8%B5%D8%A9-1021745154586317/>.

grenades in their raids on buildings and businesses frequented by migrants. They did not provide any warning before shooting and shot dead several migrants and refugees in the back while the latter were trying to flee. UNSMIL spoke to four people who had relatives killed or injured, including a migrant who lost his wife and child and a migrant who was injured in the raid.²⁰² Between January and March 2017, Tripoli hospitals and morgues received a number of unidentified bodies of black men, women and children, who could be Libyans or Sub-Saharan Africans, bearing gunshot wounds.²⁰³

UNSMIL also recorded incidents of the use of excessive force by DCIM officials. For instance, on 19 November 2017, officials from Tajoura and Janzour detention centres under DCIM raided a makeshift migrant camp in Wershefana known as “Sab’a wa Ashrin” (27), using AK-47, machine guns mounted on top of pick-up trucks and hand grenades to dismantle the camp and arrest those inside. During the operation, DCIM officials allegedly killed and injured a number of migrants. UNSMIL spoke to nine eyewitnesses who were at the camp at the time of the raid. They consistently described how DCIM officials shot randomly, and they recounted seeing a number of people falling on the ground after being shot in the back as they were trying to escape. In addition, DCIM officials reportedly failed to provide any verbal warning before using firearms. In the aftermath of the raid, Tripoli morgues received the unidentified bodies of two women and one man, who appeared to be from Sub-Saharan Africa, bearing gunshot wounds. In February 2018, DCIM officials and members of the Office of the Prosecutor General told UNSMIL in meetings that investigations had been launched and several officials questioned in relation to the incident that resulted in the death of detainees. At the time of writing, no information was made available on the results of this investigation, including whether any DCIM officials have been sanctioned or referred to judicial proceedings for prosecution.

In another incident documented by UNSMIL, a group of armed men, some reportedly in military uniform, allegedly shot at Sudanese migrant workers during a raid on stores on al-Zeit Street, in Benghazi, on 7 April 2018. This led to one death and two injuries among migrant workers. According to local sources, the shooters belonged to the Special Forces, an armed group allied to the Libyan National Army.

5.6. Violations and abuses outside the context of detention

“As [a Sub-Saharan] African you are an easy target,” – Ghanaian man who has lived in Libya for over 20 years.²⁰⁴

Even migrants and refugees not in detention are vulnerable to abuse and exploitation by armed groups, criminal gangs or private Libyan citizens. They have little to no possibility to lodge complaints with the police or prosecution and to seek protection or redress.

²⁰² Multiple UNSMIL interviews in Nigeria, in December 2017, and in Italy, in June 2018.

²⁰³ During these raids, SDF also rounded-up migrants and refugees, detaining them at the Mitiga detention facility for prolonged periods without trial, as described in Section 5.4. Survivors of trafficking were among those detained after being taken from “connection houses” on accusations of prostitution.

²⁰⁴ UNSMIL Interview, Libya, March 2018.

5.6.1 Assault and theft in the streets

The climate of lawlessness in Libya affects migrants and refugees disproportionately, since perpetrators are well aware of their vulnerability, lack of support networks, and inability to seek justice and redress. In a climate where the police are largely powerless to prevent or address crime, most Libyans rely on armed groups and social networks for protection. Migrants and refugees refrain from approaching police stations or armed groups engaged in law enforcement, fearing arrest and other abuses.

For the vast majority of interviewed migrants and refugees, assaults and thefts on the streets of Libyan cities were part of their daily lives. Migrants and refugees described to UNSMIL how they limited and/or adjusted their movements to minimize the risk of theft and assault in the streets. Even in their rented accommodations, migrants and refugees said they were not safe from robbery. According to accounts gathered by UNSMIL, armed men would frequently break into their homes, stripping them of their few belongings. A Nigerian woman described to UNSMIL how “Asma boys” [as migrants refer to criminals in Libya] broke into her house, searching for money. They beat her even though she was visibly pregnant at the time. She showed UNSMIL a scar on her arm, which she claims she sustained when she shielded her face from an incoming knife stab.²⁰⁵

SURVIVORS’ VOICES AND ACCOUNTS – THEFT IN THE STREETS

A group of migrants described known patterns taking place in the Gergaresh neighbourhood of Tripoli to UNSMIL: *“The Asma boys [as migrants refer to criminals in Libya] would be lined up waiting for us, their prey, at the end of our work day, sometimes near traffic lights. They would take all our stuff: mobiles, money, necklaces, even shoes and jackets. Sometimes, they would even hold us for ransom, until someone comes with more money to bail us out.”*²⁰⁶

Migrants and refugees recounted being robbed at sea by armed men. For instance, a woman from Ghana told UNSMIL how a speedboat approached their rubber dinghy on 4 April 2017, after they had been at sea for some seven hours. The men in military fatigues robbed them of their phones, money and other valuables at gunpoint and sped away with the boat engine.²⁰⁷

5.6.2 Unpaid wages

Migrants and refugees engaged in daily work and other manual labour are vulnerable to being unpaid after completing their tasks or receiving less wages than the agreed upon sums. Migrants and refugees also recounted how they were handed over by their employers to immigration detention centres after they had completed their work.

²⁰⁵ UNSMIL Interview, Benin City, December 2017.

²⁰⁶ Multiple UNSMIL interviews, Tripoli, March 2018.

²⁰⁷ They were eventually rescued by fishermen, and the woman from Ghana ended up at the notorious Surman centre, where she remained detained for seven months. See Section 5.3.3. UNSMIL Interview, Tripoli, February 2018.

SURVIVORS' VOICES AND ACCOUNTS – UNPAID WAGES

A Nigerian migrant and mother of three described the difficulties of her daily life in Libya: *“I used to work at the Abu Salim [Emergency] Hospital in early 2017 as a cleaner, but I left afterwards because they did not pay me for 4 months. Every day, they say tomorrow, tomorrow. Sometimes, I also worked as a domestic worker in houses, but I was not paid consistently... I also tried to work for myself, selling clothes in the street in Medina [central Tripoli]. Some Libyans [in civilian dress] attacked me in broad daylight and stole my money and clothes.”*²⁰⁸

Another migrant woman described her employment as a domestic worker in Sabha for eight months, without being remunerated and without being allowed to leave the employer’s house.²⁰⁹

A 31-year-old Senegalese man told UNSMIL about his experience doing odd jobs in Sabha in 2017: *“Blacks are not respected or seen as human in this country. Sometimes, I would be paid about 30-50 dinars a day, other times I would work for days and get nothing but stale food. Once I worked in a farm for days. When the job was finished, the Libyan [employer] just drove us [migrant workers] to a remote location and left us there.”*²¹⁰

Migrants and refugees, not in an “irregular situation,” who are employed legally in sectors such as teaching and nursing, have also experienced difficulties in receiving remuneration for their work, partially due to the shortages of liquidity affecting Libyans as well as migrants. Unlike Libyans, foreign nationals do not have a social network on which to rely to access cash when it becomes available at local banks. A Syrian man, who has lived in Libya for six years with his family, lamented to UNSMIL about not being paid for the entire school year of 2017, despite having a contract with the Tobruq Secondary School.²¹¹ In the absence of mechanisms for him to enforce the contractual obligations, he left for Tripoli in search of other opportunities.

Migrants and refugees employed in the public sector face challenges due to the lack of liquidity in Libyan banks, and most have not been able to withdraw cash or transfer their salaries to their home countries for over two years. For instance, an Indian nurse, who has worked in Libyan hospitals for 10 years, has not been able to withdraw his salary for the last two years. He lived through armed clashes in the vicinity of Sabratha hospital in September-October 2017 and had to be evacuated from hospital housing due to the violence. He no longer feels safe in Libya, but he is unwilling to go home empty-handed after having worked for two years in a difficult security environment without remuneration.²¹² His situation is not unique. For instance, UNSMIL is aware of some 40 foreign nationals – mainly from India, the Philippines and eastern European countries – working without being able to withdraw their salaries from their bank accounts in al-Zawiya for over two years.²¹³

²⁰⁸ UNSMIL Interview, Tripoli, March 2018.

²⁰⁹ UNSMIL Interview, Italy, June 2018.

²¹⁰ UNSMIL Interview, Tripoli, March 2017.

²¹¹ UNSMIL Interview, Tripoli, April 2018.

²¹² Multiple UNSMIL interviews, Tripoli, March 2018.

²¹³ UNSMIL Interview, Tripoli, March 2018.

5.6.3 Access to health or denial of medical treatment

Migrants and refugees, particularly those in an “irregular situation” in Libya, have little to no access to public health services, including emergency services. Limited resources and the general breakdown of public health services have been suggested by various sources as possible reasons for the exclusion of migrants and refugees from public health services.²¹⁴ Others also cited unfounded fears of the spread of infectious diseases, a reflection of commonly held misperceptions and stereotypes regarding migrants’ health.

Most migrants refrain from approaching public hospitals given well-founded fears of denial of service and even arrest. For example, a 25-year-old Somali woman told UNSMIL about being arrested in Sabha when she accompanied her sick cousin to the Sabha Medical Centre in February 2017. They spent months in detention in horrid conditions, and her cousin did not receive any medical treatment.²¹⁵ A 30-year-old mother of two from Cameroon recounted being turned away from a large Tripoli hospital while in labour in March 2017. She ended up giving birth at home with the assistance of friends.²¹⁶

Some humanitarian actors, including MSF, have entered into agreements with private health-care providers to treat injured, sick or pregnant migrants and refugees. Nonetheless, a number of private clinics have refused to admit migrant and refugee patients during the violence engulfing Tripoli since 26 August 2018,²¹⁷ even when the cost of their treatment was covered by humanitarian actors. Reportedly, they had received instructions from security actors to only treat Libyans.

5.7 Human rights defenders assisting migrants and refugees

Libyan human rights defenders and individual volunteers who assist migrants and refugees, particularly in areas known as hotspots for smugglers, including Bani Walid, Sabha, Sabrata, Surman and Tripoli, are frequently at risk of violence from non-State actors. Their assistance aims at alleviating migrants’ and refugees’ suffering, by providing humanitarian assistance and medical first aid, inside and outside detention centres. As a result, several migrants and refugees were saved from starvation and provided with life-saving medical treatment, while others were helped to return home or escape their captors. The Migrants’ Rights Network, a coalition of NGOs established in April 2018, further engages in monitoring, advocacy, humanitarian assistance and training to address the situation of migrants and refugees in Libya.

²¹⁴ See UNSMIL/OHCHR, *Health Care under Attack*, 22 May 2018, available at https://www.ohchr.org/Documents/Countries/LY/21052018_Attacks_on_Health_Care_EN.pdf.

²¹⁵ UNSMIL Interview, Tripoli, November 2017.

²¹⁶ UNSMIL Interview, Tripoli, June 2017.

²¹⁷ See Section 5.3.

6. Recommendations

To address the horrific systemic violations and abuses of human rights suffered by migrants in Libya with impunity, Libya's approach to managing migration must be overhauled, with human rights protections placed at the centre of response plans. Further, as armed groups and criminal gangs continue to enrich themselves from trafficking in persons, smuggling of migrants and refugees, extortion and other abuses against migrants and refugees, tackling such crimes is not only in line with Libya's obligations under international law, but also essential to the establishment of the rule of law and the building of national institutions in Libya.

The European Union and its Member States must also reconsider the human costs of their policies and efforts to stem migration to Europe and ensure that their cooperation and assistance to the Libyan authorities are human rights-based, in line with their own obligations under international human rights and refugee law, and do not, directly or indirectly, result in men, women and children being trapped in abusive situations with little hope of protection and remedy.

UNSMIL and OHCHR make the following recommendations, in line with recommendations made in their joint report "*Detained and Dehumanized: Human Right Abuses against Migrants in Libya*", issued on 13 December 2016,²¹⁸ which remain largely unmet two years later, as well as the Global Compact for Safe, Orderly and Regular Migration of December 2018:

6.1 To the Libyan authorities:

- Release all migrants and refugees detained arbitrarily, prioritizing:
 - individuals in vulnerable situations, including children, in particular those who are unaccompanied or separated; families; pregnant and nursing women; survivors of trafficking, torture and rape; persons with particular physical or mental health needs; and persons living with disabilities; and
 - individuals identified by UNHCR to be in need of international refugee protection.
- Amend Libyan legislation, including Laws no. 6 of 1987 and no. 19 of 2010, to decriminalize irregular entry, stay and exit from the country, and end the practice of mandatory or automatic detention of migrants, ensuring that any immigration infractions are treated as administrative, rather than criminal, offences.
- In cooperation with relevant stakeholders, prioritize the development and implementation of non-custodial alternatives to detention, in line with international human rights law.

²¹⁸ See footnote 5.

- Introduce and effectively implement counter-trafficking legislation that ensures protection of survivors and victims and prosecution of perpetrators in proceedings meeting international fair trial standards.
- Ensure that any administrative sanctions applied with respect to immigration infractions are reasonable, necessary, and proportionate, ensuring that all migrants have meaningful access to justice, and never allow for the detention of children.
- Pending the abolition of mandatory detention of migrants:
 - Ensure that female detainees are held separately from male detainees, and are guarded only by adequately trained female officers; and introduce measures to protect female detainees from sexual and gender-based violence and sexual exploitation;
 - Ensure that children are separated from adults to whom they are not related; and ensure that children born in detention are provided with valid birth certificates;
 - Further reduce the number of DCIM detention centres; ensure the prompt closure of centres with the most problematic human rights records, including Zuwara, Shuhada al-Nasr/al-Zawiya and Gharyan; and remove from duty DCIM officials against whom there are reasonable suspicions of involvement in human rights violations and corruption, pending effective prosecutions and investigations;
 - Ensure that migrants are held in dignified and humane conditions. At a minimum, detainees must: 1) have access to adequate and specialized medical care, including sexual and reproductive health care; 2) have sufficient and nutritious food and drinking water; 3) be granted recreational time outdoors; 4) have adequate access to washing and sanitation facilities; 5) have access to basic necessities including clean bedding, clothing and items of personal hygiene; and 6) be granted the means to communicate with their families;
 - Protect detainees from torture, ill-treatment, sexual violence, forced labour and other forms of abuse, including by investigating allegations of violations and deaths in custody and removing from duty suspected perpetrators, pending judicial investigations and prosecutions;
 - Grant human rights monitors and humanitarian agencies free, unannounced and unhindered access to all detention facilities where migrants are held; and ensure that these actors can carry out interviews with migrants in privacy and without fear of reprisals for the migrants involved;
 - Ensure that those detained enjoy their due process rights, are granted the right to challenge the legality of their detention in front of judicial authorities and have access to lawyers and consular representatives; and

- Together with relevant stakeholders, and under the oversight of independent monitoring mechanisms, work on the establishment of a registration system for detained migrants to facilitate family tracing and reunification requests; and track migrants moved between centres and prevent disappearances of migrants from detention and any other abuses, while respecting the human rights of migrants, including their right to privacy. This system should be integrated with the registration system used by LCG at disembarkation of migrants rescued or intercepted at sea.
- Respect the principle of *non-refoulement* under international human rights and refugee law, including the prohibition to return anyone to a place where the individual is at risk of death, torture and other cruel, inhuman or degrading treatment or punishment, or other irreparable harm, whether directly or indirectly; and ensure that all individuals who are unable to return to their countries of origin are provided appropriate protection and assistance, including adequate shelter and basic necessities.
- Ratify the 1951 Refugee Convention and its 1967 Protocol and put in place an effective national asylum legislation and other relevant legislation and institutional arrangements, based on Libya's commitments under the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa and the Libyan Constitution, safeguarding the rights and status of asylum-seekers and refugees in Libya and regulating conditions of their stay in terms of reception arrangements and access to basic services and rights. Pending this, formally recognize and facilitate the work of UNHCR, including by allowing it to register asylum claims and to provide assistance to all individuals seeking refugee protection regardless of their nationality.
- Carry out independent, impartial and thorough investigations into all allegations of violations or abuses of human rights against migrants, including unlawful killings, excessive use of force, torture, unlawful deprivation of liberty, rape and other sexual violence, forced labour and exploitation, regardless of whether these alleged violations or abuses took place inside or outside detention, or whether the alleged perpetrators are smugglers, traffickers, members of criminal gangs, members of armed groups or State officials (including DCIM or LCG personnel); and bring those responsible to justice in proceedings meeting international standards for fair trial. Investigations should be conducted into allegations of abuse and other actions by LCG personnel, including any actions which may have endangered the lives of migrants at sea, with a view to removing individuals responsible from duty pending a full judicial investigation and prosecution.
- Take steps to combat prejudice, racism and the social stigmatization of migrants, including through public awareness raising campaigns both at community and government levels.

- In line with the OHCHR Recommended Principles and Guidelines on Human Rights at International Borders,²¹⁹ ensure that LCG officials responsible for search and rescue are able to conduct their work in a human rights-compliant manner, including understanding their obligation to save lives, refrain from excessive use of force, ensure the human rights, safety and dignity of all persons rescued, and address the specific needs of survivors. LCG should allow search and rescue operations by humanitarian rescue vessels in full respect of international maritime law standards.
- Take measures to enable migrants to report crimes committed against them without fear of being arrested, detained or deported because of their migration status.
- Instruct public health facilities that migrants cannot be denied access to public health care services because of their nationality or migration status.
- Establish safe and regular channels and facilitate entry and work opportunities for migrants, in accordance with the right to decent work, and establish effective complaint mechanisms to ensure that migrant workers, regardless of their migration status, can lodge complaints against employers and obtain remedies.

6.2 To the European Union and its Member States:

- In line with recommendations of the United Nations Committee against Torture, take all necessary legal, political and diplomatic measures to ensure that any cooperation and/or support provided under bilateral or regional migration management agreements with Libyan institutions is consistent with international human rights, refugee and other relevant international law obligations. Effective and independent human rights monitoring of the conditions on the ground in Libya should be established, including ensuring that cooperation and/or support provided to Libya is not contributing to or facilitating, directly or indirectly, human rights violations.
- In all its donor agreements with Libyan authorities, United Nations agencies or others, put in place independent monitoring mechanisms to track the overall human rights impact of European Union-funded activities and allocate specific resources intended to ensure that human rights mainstreaming, including the principles of *non-refoulement* and due diligence, are adhered to. Moreover, the European Union should require, as an explicit and monitored conditionality, that recipients of aid publicly report on how these requirements are met. In the specific context of detention, require United Nations agencies and other recipients of aid to report on progress to promote the overhaul of the detention system and establishment of alternatives to detention, based on qualitative and quantitative indicators, targets and benchmarks to measure progress.

²¹⁹ OHCHR, Recommended Principles and Guidelines on Human Rights at International Borders, Guideline 4, available at https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf.

- Ensure that training, material assistance and other support provided to LCG, DCIM, and other Libyan security forces adopt a robust human rights approach and that stringent screening and vetting procedures are applied to ensure that those involved in human rights violations or complicit in trafficking or abusive smuggling are excluded.
- Make additional support to the Libyan authorities and cooperation in the field of migration contingent upon the development of a clear plan for and implementation of concrete steps to: release all migrants and refugees detained arbitrarily; end the mandatory and automatic detention of migrants and refugees in irregular situations; and develop viable human rights-based alternatives to detention.
- Continue to advocate with the Libyan authorities for the opening of safe spaces for migrants and refugees and alternatives to detention, as well as improved access for the United Nations, humanitarian NGOs and other relevant actors to provide life-saving assistance and monitoring of all places of detention. All efforts to protect and assist migrants and refugees should be made in full respect of their human rights, including the principle of *non-refoulement*, regardless of their status or nationality.
- Refrain from encouraging a shifting responsibility for search and rescue operations in international waters to LCG; deploy sufficient vessels for such operations in the central Mediterranean Sea; allow humanitarian rescue vessels to operate in compliance with relevant international law; and ensure that those rescued are allowed to disembark at the nearest port of safety in Europe.
- Ensure that any return from any area where European Union Member States exercise jurisdiction or effective control, including extraterritorially, is only carried out in accordance with international law, with due procedural guarantees, and in full respect of the prohibition of arbitrary and collective expulsion and the principle of *non-refoulement*; and ensure that no support to or cooperation with LCG contributes to bringing rescued migrants and refugees back to Libya. This requires ensuring that LCG officials understand and abide by their obligation to save lives; to refrain from excessive use of force; to ensure the human rights, safety and dignity of all persons rescued; and to address the immediate assistance needs of survivors.
- Expand safe and regular entry channels for migrants and refugees to Europe, including ensuring: access to asylum; increasing the availability of refugee resettlement (including through private sponsorship); humanitarian admission including for survivors of trafficking; family reunification; educational visas; labour mobility at all skill levels; and other visa categories.
- Provide additional support for the establishment of legal services for migrants and refugees detained in Libya, as well as appropriate medical and psychological services for survivors of torture, rape and other sexual violence, and other abuses.

6.3 To United Nations agencies and other international actors working in Libya:

- United Nations agencies working in the field of migration in Libya, to agree on human rights-centered common principles of engagement and standard operating procedures.
- United Nations agencies providing support to DCIM, LCG or other Libyan State security forces engaged in migration control, to fully implement and comply with the Human Rights Due Diligence Policy and mitigating measures to reduce the risk of human rights violations, including by suspending from programme activities individuals or units found engaging in grave violations of human rights, refugee law or international humanitarian law.
- United Nations agencies and UNSMIL to adopt a comprehensive joint advocacy strategy vis-à-vis the Libyan authorities, including calls to: 1) release migrants and refugees detained arbitrarily; 2) end the mandatory and automatic detention of migrants and refugees in irregular situations and develop viable human rights-based alternatives to detention; 3) grant UNHCR a formal agreement to operate in Libya and unhindered access to all migrants and refugees regardless of nationalities held in all detention facilities in Libya; and 4) grant human rights monitors and humanitarian actors unimpeded access to migrants and refugees, including to all detention facilities across Libya, as well as in the context of disembarkation.
- United Nations agencies operating in Libya, to engage in a policy dialogue with the Libyan authorities on a human rights-centered approach to migration management.
- International actors providing humanitarian assistance, including health services and engaging in protection and human rights monitoring activities, to ensure a functioning system for sharing available information on migrants and refugees, including those in detention, with a view to improving cooperation on referrals and follow-up on individual cases of migrants and refugees, particularly those in specific conditions of vulnerability.
- All actors providing services and/or conducting monitoring in detention centres, to commit to upholding highest standards and safeguards in the delivery of services and conduct of activities, and continuously to bring access restrictions and challenges to the attention of the Libyan authorities, donors and other relevant stakeholders.
- International actors engaged in the repatriation of migrants to ensure that appropriate safeguards are in place to guarantee that no individual is returned to the risk of harm or serious human rights violations, including by:
 - Ensuring individual and thorough screening of all migrants and refugees in a private setting and by trained staff, checking for all indicators of vulnerabilities and risks, including re-trafficking, that may require protection under international human

rights and refugee law, with an effective and rights-based system of referrals in place for refugees and migrants in vulnerable situations who cannot return;

- Ensuring that migrants and refugees are fully and adequately informed in languages known to be understood by them about all aspects of their decision to return; and
- Ensuring that all determinations of age and the best interests of children are carried out by qualified actors and that appropriate protection is offered when needed by children.

6.4 To countries of origin:

- Facilitate the voluntary, humanitarian and sustainable repatriation of stranded migrants, in full respect of migrants' human rights.
- Work with the European Union and other donors on human rights and development programmes aimed at: making returns sustainable; providing rights-based alternatives to irregular migration; and ensuring that those returned, including survivors of trafficking and other abuses, are provided with adequate and tailored medical and psychological services and opportunities for reintegration.
- Investigate and, where appropriate, prosecute human trafficking and abusive smuggling offences, while ensuring respect for the fair trial rights of those accused, as well as the rights and security of smuggled and trafficked persons.
- Strengthen regional cooperation and coordination to put in place joint regional protection and prevention measures and mechanisms.
- Conduct awareness-raising campaigns on the risks associated with irregular migration, particularly through Libya, targeting groups in specific situations of vulnerability, including young women and girls.