



Joint position paper on the human rights of migrants in Libya FIDH - LFJL

The 61st ordinary session of the African Commission for Human and People's Rights (ACHPR) is currently taking place in Banjul, The Gambia. The International Federation for Human Rights (FIDH) and Lawyers for Justice in Libya (LFJL) take this opportunity to make recommendations regarding the issue of human rights violations that migrants face en masse in Libya. In doing so, both organisations have prioritised issues and measures that they believe are essential and needed urgently in order to guarantee a greater protection to migrants in Libya.

BACKGROUND

Libya remains the main transit country for migrants attempting to reach Europe through the Central Mediterranean route, the second biggest migratory route to Europe. With migrants arriving from the south, east and west of its borders, the country is seeing increasingly high levels of migration with an estimated 381,463 migrants arriving between December 2016 and March 2017.¹ The Central Mediterranean route is by far the most deadly, accounting for approximately 65% of estimated worldwide migrant deaths in 2016.² In 2017 alone, more than 2,900 migrants died in the Mediterranean.³ Those who survive in the Mediterranean are regularly returned to Libyan shores by the Libyan Coastguard, pursuant to the 2017 Memorandum of Understanding between Libya and Italy in relation to border security and migration.⁴

In Libya, migrants are subjected to widespread human rights violations including torture, forced labour and slavery, as well as sexual violence. The International Organisation for Migration (IOM) estimated that 71% of migrants travelling to Europe through the Central Mediterranean route have been subjected to human trafficking and exploitation.⁵ To this day, between 4,000 and 6,000 migrants remain arbitrarily

¹ IOM, *IOM Displacement Tracking Matrix: 381,463 Migrants in Libya*, 28 April 2017, available at: <https://www.iom.int/news/iom-displacement-tracking-matrix-381463-migrants-libya>.

² IOM, *Migrant Fatalities Worldwide*, available at: <https://missingmigrants.iom.int/latest-global-figures>.

³ IOM: <https://missingmigrants.iom.int/region/mediterranean>.

⁴ *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*, 2 February 2017, available at: http://eumigrationlawblog.eu/wp-content/uploads/2017/10/MEMORANDUM_translation_finalversion.doc.pdf

⁵ IOM, *Analysis: Flow Monitoring Surveys the Human Trafficking and Other Exploitative Practices Prevalence Indication*, 6 October 2016, p.3, available at: http://migration.iom.int/docs/Analysis_-

detained in both official and unofficial detention facilities where they suffer dire living conditions and inhuman and degrading treatment. In February this year, the Office of the United Nations Office High Commissioner for Refugees (**UNHCR**) and IOM stated that Libya could no longer be considered a safe third country.⁶ As a result, migrants should not be returned to Libya or any other third country that does not have the resources, infrastructure or legal framework to protect them.

Since 2006, the African Union (**AU**) has been attempting to address these issues through various policies and initiatives. These include the African Common Position on Migration and Development (2006) and the Migration Policy Framework for Africa (2006), which articulate the AU's overarching approach to migration and provide guidelines for governments and subregional organisations to develop concrete plans of action on migration. In complementary initiatives, the AU Commission launched the Initiative Against Trafficking in 2009, followed by the Horn of Africa Initiative in 2014, in order to tackle human trafficking and smuggling. Although these are steps in the right direction, the guidelines provided have yet to yield results to match the scale of the migration crisis. Indeed, the results of these initiatives remain limited, as does their implementation.⁷

The situation of migrants is further jeopardised by the weak Libyan legal framework on migration. Libyan law does not include any concept of refuge or asylum, nor does it implement any asylum and migration systems and procedures. Having said that, some limited guarantees for the rights of migrants exist. Article 10 of the 2011 Constitutional Declaration, for example, provides that the "state shall guarantee the right to asylum in accordance with the law. The extradition of political refugees shall be prohibited."⁸ Article 10 however does not appear to be enforced and no asylum procedure has been put in place. Moreover, as a state party to a number of international conventions, Libya has the international obligation to prohibit and prevent torture and cruel, inhuman and degrading treatment,⁹ arbitrary detention¹⁰ and human trafficking and smuggling.¹¹

_Flow_Monitoring_and_Human_Trafficking_Surveys_in_the_Mediterranean_and_Beyond_-_6%20_October_2016.pdf.

⁶ UNHCR, *Joint UNHCR and IOM statement on addressing migration and refugee movements along the Central Mediterranean route*, 2 February 2017, available at: <http://www.unhcr.org/afr/news/press/2017/2/58931ffb4/joint-unhcr-iom-statement-addressing-migration-refugee-movements-along.html>.

⁷ European Centre for Development Policy Management (ECDPM), *African Union frameworks for migration: current issues and questions for the future*, June 2011, No. 108, p. 13. Available at: <http://ecdpm.org/wp-content/uploads/2013/11/DP-108-African-Union-Frameworks-Migration-Issues-Questions-Future-2011.pdf>

⁸ Constitutional Declaration, 2011, art. 10, available at: <https://www.ndi.org/sites/default/files/Handout%204%20-%20Libya%20Draft%20Interim%20Constitution.pdf>.

⁹ Convention Against Torture, 1984, art. 2-4.; International Covenant for Civil and Political Rights, 1966, art.7; African Charter on Human and People's Rights, 1981, art. 5.

¹⁰ International Covenant for Civil and Political Rights, 1966, art. 9; African Charter on Human and People's Rights, 1981, art. 6.

¹¹ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000; Protocol against the

RECOMMENDATIONS

To the African Union (AU):

- **Strengthen regional implementation and monitoring mechanisms to improve national implementation of regional and sub-regional migration policy**

The AU must continue its efforts to tackle human trafficking and smuggling in Africa and to ensure that the initiatives addressing migration-related issues in Africa that it has adopted are being implemented by its member states towards a greater protection of the human rights of migrants in the continent. As emphasised by the ACHPR Special Rapporteur on Refugees, Asylum-Seekers, Displaced Persons and Migrants on the occasion of the 2017 World Refugee Day, the AU needs to adopt a common policy at the regional level concerning refugee issues.¹²

The AU should ensure that its member states respect, protect and fulfil their human rights obligations.

- **Conduct country visits to transit countries including Libya**

We call on the Special Mechanisms of the African Commission on Human and Peoples' Rights (ACHPR), and notably the Special Rapporteur on Refugees, Asylum seekers, Migrants and IDPs and the Special Rapporteur on Prisons, Conditions of Detention and Policing in Africa, to visit the country. We urge the ACHPR to monitor adherence to human rights standards in Libya and to carry out investigations into allegations of human rights violations.

- **Strengthen protections for migrants, refugees and asylum seekers by providing redress for migration-related human rights violations**

Due to the lack of functioning institutions, infrastructure and legal framework in Libya, migrants cannot access justice in Libya. As a result, they cannot seek redress for the human rights violations to which they were subjected. The ACHPR should therefore uphold access to justice in order to fill this gap and be more responsive to communications that were filed before it in order to protect the rights and freedoms guaranteed in the African Charter on Human and People's Rights, as defined by its mandate.

Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, 2000.

¹² Declaration by the ACHPR Special Rapporteur on Refugees, Asylum-Seekers, Displaced Persons and Migrants on the occasion of the World Refugee Day, 20 June 2017, available at: <http://www.achpr.org/news/2017/06/d292>.

- **Increase collaboration with civil society to raise awareness on the human rights of migrants**

The AU and its member states, including Libya, should improve public perceptions of migrants in Libya and raise awareness of their human rights on the ground in order to guarantee their protection. In Libya, dark-skinned migrants are particularly targeted and subjected to discriminatory treatment. It is therefore necessary to engage both migrants and the host society, to avoid discrimination, xenophobia and violence against migrants. States, the media, the private sector, civil society and migrants all have an important role to play in generating an accurate and constructive discourse on migration.

To Libya:

- **Protect the human rights of all migrants by establishing asylum procedures that meet international standards**

Libya must comply with its domestic and international obligations guaranteeing the human rights of migrants. Additionally, Libya should ratify the 1951 Refugee Convention and bring its legislation in line with it by establishing asylum procedures complying with human rights standards. To that extent, Libya should encourage the development and effective implementation of national laws to protect the rights of all migrants.

Libya should guarantee the respect and protection of the right to freedom from torture and inhuman or degrading treatment of all migrants. As such, it must ensure that no migrant is subjected to torture in detention facilities or in any other facilities over which it has direct or indirect control under any circumstances.

- **Set up vetting and monitoring mechanism for recruiting staff in detention facilities to end impunity for violations and ensure accountability**

Detention facilities are being run by the Department for Combating Illegal Migration (**DCIM**). Those in charge of running the facilities are members of militias who have been regularised to join DCIM. Militias are selected without any vetting process to hold accountable those who have committed human rights violations and abuses. In addition, these regularised militias have not been trained on best practices for handling detainees. Libya should take immediate steps to include effective vetting mechanisms of all detention facilities and of the human rights records of current and prospective DCIM members to ensure that any administrators or guards reasonably suspected of committing human rights abuses are suspended from their duties or are prevented from taking such positions in the first place.

Additionally, Libya must bring militia run detention facilities under the control of the Ministry of Justice as a first step to ensure that all facilities can be inspected and accessed. It should also implement monitoring mechanisms in detention centres in order to monitor human rights violations occurring in these facilities and hold perpetrators of such violations to account.

- **Facilitate country visits by the Special Mechanisms of the ACHPR**

Libya should uphold its standing invitation extended since 2015 to UN Special Procedures and ACHPR Special Mechanisms and facilitate their visit to the country by communicating with them. This will allow the Special Mechanisms to observe the human rights situation in Libya, more particularly the living conditions that migrants suffer in Libya, and to make adequate recommendations for the country to uphold its human rights obligations.

- **Cease cooperation with, and support of, Europe's anti-immigration policies**

In February 2017, Italy announced the launch of a new fund of 200 million euros in order to help African countries, including Libya, to reinforce the control of their borders to prevent people from crossing the Mediterranean. Cooperation between Italy and Libya is active in terms of material aid to DCIM and migrant detention centres. Some sources even state that cooperation exists between the Italian government and militias in order to clamp down migratory routes that cross Libya¹³. Also, a proposition was made by France to open "hotspots" in Libya, where migrants would be pre-screened for asylum claims¹⁴.

Such cooperation between European Union (EU) member states and Libya is intended to prevent the entry of migrants on European soil, among which many asylum seekers. It undermines the absolute prohibition of torture guaranteed by Article 3 of the Convention against torture, as well as the right for anyone to leave a country enshrined in Article 13 of the Universal Declaration of Human Rights. Therefore, Libya should cease entering into international agreements with EU member states which undermine the human rights of migrants to benefit European anti-immigration policies.

13 <https://www.nytimes.com/2017/09/17/world/europe/italy-libya-migrant-crisis.html> Italy, Going It Alone, Salls the flow of migrants. But at what cost? The New York Times, 17 September 2017

14 <http://www.france24.com/en/20170728-hotspots-libya-french-president-macron-announcement-migrant-crisis-refugees> Hotspots in Libya, president Macron's troubling statement, France 24, 28 July 2017