



LIBYA

SUBMISSION TO THE UNIVERSAL PERIODIC REVIEW
36TH SESSION OF THE UPR WORKING GROUP, APRIL/MAY 2020

IMMIGRATION DETENTION

Submission from:

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ABOUT THE GLOBAL DETENTION PROJECT

The Global Detention Project (GDP) is a non-profit organisation based in Geneva that promotes the human rights of people who have been detained for reasons related to their non-citizen status. Our mission is:

- To promote the human rights of detained migrants, refugees, and asylum seekers;
- To ensure transparency in the treatment of immigration detainees;
- To reinforce advocacy aimed at reforming detention systems;
- To nurture policy-relevant scholarship on the causes and consequences of migration control policies.

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Immigration detention

The Global Detention Project (GDP) is an independent research centre based in Geneva, Switzerland, that investigates the use of detention as a response to international immigration. Its objectives are to improve transparency in the treatment of detainees, to encourage adherence to fundamental norms, to reinforce advocacy aimed at reforming detention practices, and to promote scholarship of immigration control regimes.

As per our mandate, this submission focuses on human rights concerns relating to Libya's policies on detention of refugees, asylum seekers, and migrants.

Context

Since the beginning of the 2011 civil war in Libya, the country has experienced on-going armed conflict between rival militias and government forces. The resulting lawlessness has enabled armed groups, criminal gangs, smugglers, and traffickers to control much of the flow of migrants,¹ sometimes with the direct backing of Italy and other European countries.² As the UN Support Mission in Libya (UNSMIL) and Office of the High Commissioner for Human Rights (OHCHR) recently concluded, "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."³

Despite the widespread mistreatment of migrants in Libya and the on-going violence and social unrest since the overthrow of Gaddafi, Europe has continued to negotiate plans with various entities in Libya to check the flow of transiting foreigners.⁴ These include an EU commitment to provide hundreds of millions of Euros to bolster the country's detention infrastructure, to equip maritime forces to intercept smuggling boats, and to provide training on human rights standards to staff in Libya's Department for Combatting Illegal Immigration (DCIM), which is ostensibly in charge of overseeing the country's detention system.⁵ The UN human rights commissioner has levelled severe criticism at these deals, arguing that the "increasing interventions of the EU and its member states have done nothing so far to reduce the level of abuses suffered by migrants."⁶ Despite the growing international outrage, an EU summit in mid-2018 "handed sea rescue mission responsibility" to the Libyan coastguard just as a new anti-immigrant Italian government began adopting a more heavy-handed approach that included blocking private vessels from docking asylum seekers in Italian ports.⁷

Deals have also been brokered with tribal authorities and militias linked to smuggling or human trafficking, who are closely interconnected with Libya's detention system. As one source interviewed for this report said: "You said that some of the [facilities] have links to militias. I would push back and say, 'Which facility does not have a link to a militia?' ... It's impossible today to say that all of these security forces on interim contracts being paid by DCIM who are guarding these facilities are members of a proper security force."⁸

In early 2017, the Italian government signed a Memorandum of Understanding with Libya's Government of National Accord (GNA) allowing the Libyan coastguard to intercept boats bound for Italy and return all those on-board to disembarkation zones in Libya, where they would subsequently be placed in detention. At the same time, Italy was paying rival militias to stop migrant boats in parts of the country not fully under government control, which have reportedly helped fuel armed conflict in these areas.⁹ Italy's Interior Minister argued that all migrants rescued by European vessels should be sent back to Libya.¹⁰

Migrants can end up in detention either when crossing Libya northwards or when intercepted by the Coast Guard during their attempt to reach Italian shores. Those detained—who according to various reports can number between 10,000-20,000 at any given time¹¹—often face severe abuses, including rape and torture, extortion, forced labour, slavery, dire living conditions, and extra-judicial execution.¹² Among the migrants who are particularly at risk of abuse in Libya are those from sub-Saharan countries, who are subjected to widespread racism, which has been exasperated by the crisis.¹³ Reportedly, burgeoning “slave markets” have emerged along migrant routes into Libya where sub-Saharan migrants are “being sold and bought by Libyans, with the support of Ghanaians and Nigerians who work for them.”¹⁴ In early July 2019, an air strike on Tajoura detention centre in Tripoli killed over 50 detainees and injured 130.¹⁵ Yet, people still continue to be placed in detention after being intercepted by the Libyan Coast Guard. In September 2019, UNHCR, the African Union, and Rwanda reached an agreement under which 500 people held in Libyan detention centres would be transferred on a voluntary basis to Rwanda. This mechanism will be mostly funded by the EU. While this measure allows some detainees to be taken out of detention in Libya, it consolidates EU externalisation policy, whereby the western countries move refugee processing and border controls to transit countries.¹⁶

International organisations have also been criticised for their role in Libya, in particular the IOM, which has been a key implementing partner for EU projects in the country. It has provided “human rights training” for detention centre staff, offered psychosocial support and health care, has helped renovate detention centres, and overseen an EU-financed “assisted voluntary return program,” which is one of the few ways migrants can exit detention centres. A journalist who visited Libyan detention centres quipped about the return programme: “While many of the detained migrants I spoke with in Libya expressed a desire to go home after months of suffering in decrepit facilities, it’s unclear whether their return could ever be considered voluntary. Treat anyone bad enough and they will beg to make it stop.”¹⁷ For its part, the IOM vociferously defends its operations in Libya, arguing that they cannot choose with whom they work in detention centres and that they are “one of a few humanitarian organizations providing aid inside.”¹⁸ Said the IOM's operations officer for Libya, “We are not the body that determines what is a detention center and what is not.”¹⁹ The organisation has criticised the automatic confinement of “rescued” migrants in Libyan detention centres and called for finding “alternatives,” including re-opening an IOM-run shelter.²⁰

The proliferation of actors involved in the detention of non-citizens in Libya raises a number of concerns related to oversight, jurisdiction, and accountability, as well as the real possibility that any external support for detention will inexorably amount to support for criminal activities. Pointing to militia involvement in operating detention centres in Libya—in addition to the roles played by the IOM and other non-state actors—one writer argues that the close association between detention and criminality in the country raises disturbing questions about the implications of Europe's financing of migration control: “In many countries that are targeted for more migration management assistance—like Libya—there appears to be an inevitable connection between legal and illicit forms of detention and removal because of pervasive lawlessness and corruption.”²¹

Recommendations during the 2nd cycle of UPR

During the 2nd cycle of the Universal Periodic Review of Libya (22nd session, May 2015), the following recommendations were supported by the country:

- Put an end to arbitrary detention and prevent abuses and discrimination against third-country nationals and against groups of citizens of Libya (Chile) (para. 137.129)
- Redouble efforts to protect children, migrants, and internally displaced persons (Costa Rica) (para. 137.189)
- Ensure the security of migrants in conformity with international conventions (Chad) (para. 137.184)
- Continue to take measures to promote and protect the rights of migrant workers even in situation of crisis (Philippines) (para. 137.185)
- Ensure adequate human rights protection for the migrant populations residing or transiting through its borders (Rwanda) (para. 137.186)
- Guarantee the rights of migrants, particularly those that are in transit to European countries, women, and unaccompanied children (Honduras) (para. 137.187)
- Take further steps to ensure a better protection of human rights of refugees, asylum seekers, migrants, and internally displaced persons (Kazakhstan) (para. 137.190)
- Ensure protection of the dignity of migrants, displaced persons, and refugees, whether they are deprived of movement and freedom or exposed to any risk of death (Switzerland) (para. 137.191)
- Take urgent and immediate steps to address the plight of migrants, asylum seekers, refugees, and trafficked human beings in Libya, ensuring full respect for their human rights, including preventing violence against women and violence targeting members of religious communities (Canada) (para. 137.192)
- Take all action necessary to ensure the protection of refugees and asylum seekers, including the provision of access to birth registration for all children born in Libya, and the ratification of the Convention relating to the Status of Refugees and its 1967 Protocol (New Zealand) (para. 137.193)
- Develop a comprehensive strategy to address the needs of refugees and internally displaced persons caused by the conflict, including measures to ensure access to the birth registration of all children born in Libya, with emphasis on asylum seekers from sub-Saharan Africa (Mexico) (para. 137.194)

Recommendations from other human rights bodies and current concerns

Since the Libya's previous review, several human rights bodies and civil society organisations have continued to identify a number of on-going grave concerns in Libya's immigration detention practices.

In 2019, the Migrant Workers Committee (CMW) issued recommendations to Libya as regards immigration detention.²² The committee urged Libya to amend Law No 6 to decriminalise irregular migration; release all migrants detained arbitrarily, in particular those detained on the grounds of their migration status; ensure that the detention of migrants is an exceptional measure of last resort applied for the shortest possible time, that grounds are specified in each case, giving the reasons why alternative measures cannot be implemented, and that the measure is reviewed in under 24 hours by an independent and impartial judicial authority; develop non-custodial alternatives to detention; and to ensure that migrant workers and members of their families have access to legal aid, effective remedies, justice and consular services. Further, the committee recommended that Libya prohibit the detention of

migrant children, in accordance with 2017 joint general comments of the CMW and the Committee on the Rights of the Child. According to the CMW, Libya should establish a registration system for detained migrants that is integrated with the registration system used by the Libyan Coast Guard at the disembarkation of migrants rescued or intercepted at sea, while respecting the human rights of migrants, including their right to privacy.

Further, the Committee urged Libya, in exceptional cases where detention cannot be avoided, to guarantee adequate, decent conditions in migrant detention centres, and notes that the centres should not resemble a prison facility either in appearance or purpose. In particular, the committee urges the State party to put an end to overpopulation and to ensure that those detained are provided with health care, including sexual and reproductive health services, psychological care, water, sanitation and hygiene, food, sufficient space and ventilation, outdoor recreational time, and basic necessities, including bedding, clothing, and items of personal hygiene; to ensure that children are separated from adults to whom they are not related and, if born in detention, are provided with a valid birth certificate; to ensure that women detainees are held separately from men, are guarded only by adequately trained female officers, and are protected against sexual and gender-based violence, and that specific provisions are made for pregnant and nursing women; to stipulate strict behavioural rules for guards and officials at detention facilities, to train them on human rights, gender equality, the best interests of the child and non-discrimination, and to investigate and punish in an appropriate manner State officials who violate the rights of migrants; and to strengthen mechanisms to regularly monitor conditions in migrant detention centres, and to ensure the implementation of the policy of the Ministry of the Interior granting human rights monitors and humanitarian agencies free, unannounced, and unhindered access to all migrant detention centres.

In their joint report released in December 2018, the UNSMIL and OHCHR called on Libya to release all migrants and refugees detained arbitrarily, amend Libyan legislation, including Laws no. 6 of 1987 and no. 19 of 2010, to decriminalise 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. They recommended that Libya, in cooperation with relevant stakeholders, prioritise the development and implementation of non-custodial alternatives to detention, in line with international human rights law and never allow detention of children. Pending the abolition of mandatory detention of migrants, they urged Libya to 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.

Further, the country should ensure that migrants are held in dignified and humane conditions and guarantee access to adequate and specialised medical care, including sexual and reproductive health care; sufficient and nutritious food and drinking water; recreational time outdoors; access to washing and sanitation facilities; access to basic necessities including clean bedding, clothing, and items of personal hygiene; and the means to communicate with their families. The UNSMIL and OHCHR also urged Libya to 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 and 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. They recommended that Libya 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; 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.²³

In addition to these immigration detention-related concerns, the GDP has identified the following on-going issues that may merit attention:²⁴

- Refugees, asylum seekers, and migrants are regularly exposed to indefinite detention in centres run by the Interior Ministry's Department for Combating Illegal Immigration or local militias;
- Detention conditions across the country are a matter of "grave concern," according to the UN, as detainees are forced to live in severely overcrowded facilities with little food, water, or medical care, and suffer physical abuse, forced labour, slavery, and torture;
- The automatic placement of migrants and asylum seekers interdicted at sea in detention centres places people at risk of human rights abuses, which could be attenuated by expanding the use of shelters and other non-custodial measures that have been proposed by international experts;
- There do not appear to be any legal provisions regulating administrative forms of immigration detention and there is an urgent need for the country to develop a sound legal framework for its migration polices that is in line with international human rights standards;
- There is severely inadequate data collection by national authorities concerning the locations and numbers of people apprehended by both official agencies and non-state actors;
- Libyan authorities do not recognise that women and children require special attention and thus they remain particularly vulnerable to abuse and ill-treatment, including rape and human trafficking;
- Italy and the European Union continue to broker deals with various Libyan forces to control migration despite their involvement in severe human rights abuses and other criminal activities.

Suggested recommendations

In line with recent recommendations from the CMW, UNSMIL, and OHCHR:

- To release all refugees and migrants detained arbitrarily;
- To decriminalise irregular entry, stay or exit from the country;
- To cease automatic detention of migrants;
- To ensure that detention is an exceptional measure of last resort justified on individual circumstances of each case;
- To develop non-custodial "alternatives to detention;"
- To stop detention of children;

- In case children are detained, to ensure that they are kept separated from unrelated adults;
- To ensure that women are separated from men, guarded by female guards, and protected from SGBV;
- To close detention centres with the most problematic human rights records;
- To protect detainees from violence including torture, sexual violence, and forced labour;
- To investigate all cases of ill-treatment and deaths in custody, prosecute and punish perpetrators, and pending prosecution, remove from duty suspected DCIM officials;
- To ensure that detainees have access to legal and consular assistance and judicial review of their detention;
- To properly register all detainees;
- To allow monitoring of detention centres;
- To guarantee dignified conditions of detention, including in relation to health care, food, drinking water, access to sanitation facilities, bedding, and recreation time.

ENDNOTES

¹ United Nations Support Mission in Libya (UNSMIL), “Remarks of SRS G Hassan Salame to the United Nations Security Council on the situation in Libya,” 16 July 2018, <https://unsmil.unmissions.org/sites/default/files/srsg-ghassan-salame-briefing-uns-20180716.pdf>; United Nations Security Council (UNSC), “Report of the Secretary-General on the United Nations Support Mission in Libya,” 5 September 2014, <http://undocs.org/S/2014/653>; United Nations High Commissioner for Refugees (UNHCR), “UNHCR Position on Returns to Libya,” 12 November 2014, <http://www.refworld.org/docid/54646a494.html>; United Nations High Commissioner for Refugees (UNHCR), “Libya Factsheet,” February 2015, www.reliefweb.int/report/libya/unhcr-factsheet-libya-february-2015

² Associated Press, “Italian Effort to Stop Migrants Fuels Bloody Battle in Libya,” 5 October 2017, <https://www.voanews.com/a/libya-militias-migrants-sabratha/4057716.html>

³ UN Support Mission in Libya and UN Human Rights Office of the High Commissioner, “Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya,” December 2018, <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>

⁴ Human Rights Watch (HRW), “Libya: Whipped, Beaten, and Hung from Trees,” 22 June 2014, <http://www.hrw.org/news/2014/06/22/libya-whipped-beaten-and-hung-trees>; Amnesty International, “Amnesty International Report 2013. The State of the World’s Human Rights,” 23 May 2013, <https://www.amnesty.org/en/documents/pol10/001/2013/en/>; Council of the European Union (CEC), “Council Conclusions on Libya. Foreign Affairs Council meeting 20 October 2014,” October 2014, <http://www.consilium.europa.eu/media/25118/145200.pdf>; C. Malmström, “Answer Given by Ms Malmström on Behalf of the Commission,” *European Parliament*, 12 June 2014, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2014-002692&language=EN>

⁵ European Union, “Factsheet: EU-Libya Relations,” 22 January 2018, https://eeas.europa.eu/headquarters/headquarters-homepage_en/19163/EU-Libya%20relations,%20factsheet; P. Tinti, “Nearly There, but Never Further Away,” *Foreign Policy*, 5 October 2017, <https://bit.ly/2fUztGs>

⁶ United Nations Office of the High Commissioner for Human Rights, “UN Human Rights Chief: Suffering of Migrants in Libya Outrage to Conscience of Humanity,” 14 November 2017, <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22393&LangID=E>

⁷ B. Riegert, “Libya Takes Over from Italy on Rescuing Shipwrecked Migrants,” *Deutsche Welle*, 5 July 2018, <https://www.dw.com/en/libya-takes-over-from-italy-on-rescuing-shipwrecked-migrants/a-44546754>

⁸ Anonymous source (representative from international human rights group), Skype call with Tom Rollins (Global Detention Project), May 2018.

⁹ Associated Press, “Italian Effort to Stop Migrants Fuels Bloody Battle in Libya,” 5 October 2017, <https://www.voanews.com/a/libya-militias-migrants-sabratha/4057716.html>

¹⁰ InfoMigrants, “Salvini Calls for Migrants to go Back to Libya,” 17 July 2018, <http://www.infomigrants.net/en/post/10685/salvini-calls-for-migrants-to-go-back-to-libya>

¹¹ InfoMigrants, “Up to 10,000 Migrants in 20 Centers Under the Sun, IOM Libya,” 3 July 2018, <http://www.infomigrants.net/en/post/10363/up-to-10-000-migrants-in-20-centers-under-the-sun-iom-libya>; Amnesty International, “Libya’s Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants,” 11 December 2017, <https://www.amnesty.org/download/Documents/MDE1975612017ENGLISH.PDF>

¹² P. Tinti, “Nearly There, but Never Further Away,” *Foreign Policy*, 5 October 2017, <http://europeslamsitsgates.foreignpolicy.com/part-3-nearly-there-but-never-further-away-libya-africa-europe-EU-militias-migration>

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- ¹³ Al Jazeera, "Libya: The Migrant Trap," 8 May 2014, <http://www.aljazeera.com/programmes/peopleandpower/2014/05/libya-migrant-trap-20145483310400633.html>; R. Seymour, "Libya's Spectacular Revolution has been Disgraced by Racism," *The Guardian*, 30 August 2011, <http://www.theguardian.com/commentisfree/2011/aug/30/libya-spectacular-revolution-disgraced-racism>
- ¹⁴ International Organisation for Migration (IOM), "IOM Learns of 'Slave Market' Conditions Endangering Migrants in North Africa," 4 November 2017, <https://www.iom.int/news/iom-learns-slave-market-conditions-endangering-migrants-north-africa>
- ¹⁵ Reuters, "Bombed Tripoli migrant detention center being emptied: U.N.," 10 July 2019, <https://www.reuters.com/article/us-libya-security-migrants/bombed-tripoli-migrant-detention-center-being-emptied-un-idUSKCN1U511O>
- ¹⁶ Mixed Migration Centre, "A New Normal: Evacuations from Libya to Niger and Rwanda," September 2019, <http://www.mixedmigration.org/articles/a-new-normal-evacuations-from-libya-to-niger-and-rwanda/>
- ¹⁷ P. Tinti, "Nearly There, but Never Further Away," *Foreign Policy*, 5 October 2017, <http://europeslamsitsgates.foreignpolicy.com/part-3-nearly-there-but-never-further-away-libya-africa-europe-EU-militias-migration>
- ¹⁸ O. Belbesi, "Returned to Libyan Shores and Held in Detention Centres: What are the Practical Alternatives?" *IOM Libya/Reuters*, 18 August 2018, <https://news.trust.org/item/20180816142408-bats4/>
- ¹⁹ P. Tinti, "Nearly There, but Never Further Away," *Foreign Policy*, 5 October 2017, <http://europeslamsitsgates.foreignpolicy.com/part-3-nearly-there-but-never-further-away-libya-africa-europe-EU-militias-migration>
- ²⁰ O. Belbesi, "Returned to Libyan Shores and Held in Detention Centres: What are the Practical Alternatives?" *IOM Libya/Reuters*, 18 August 2018, <https://news.trust.org/item/20180816142408-bats4/>
- ²¹ M. Flynn, "Kidnapped, Trafficked, Detained? The Implications of Non-state Actor Involvement in Immigration Detention," *Journal on Migration and Human Security*, 2017, <http://cmsny.org/publications/jmhs-kidnapped-trafficked-detained/>
- ²² Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, "Concluding Observations on the Initial Report of Libya, CMW/C/LBY/CO/1," 8 May 2019, <https://www.ohchr.org/EN/Countries/MENARegion/Pages/LYIndex.aspx>
- ²³ UN Support Mission in Libya and UN Human Rights Office of the High Commissioner, "Desperate and Dangerous: Report on the Human Rights Situation of Migrants and Refugees in Libya," December 2018, <https://www.ohchr.org/Documents/Countries/LY/LibyaMigrationReport.pdf>
- ²⁴ Global Detention Project, "Immigration Detention in Libya: 'A Human Rights Crisis'", August 2018, <https://www.globaldetentionproject.org/countries/africa/libya>