



Mawazin

Irregular migration in Libya



Mawazin Magazine

IRREGULAR MIGRATION IN LIBYA

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Adala for All (Justice for All) is a non-profit association comprising a network of lawyers and jurists who provide free and voluntary legal assistance to victims and seek to bolster the role of lawyers in supporting victims, foremost through promoting fair trial guarantees and access to justice. The association strives to raise the legal community's awareness of the rights guaranteed in accordance with the binding agreements establishing international humanitarian and human rights law.

Our Principles

Our five core principles are:

Humanity, neutrality, independence, voluntary service, and the universality of human rights.

These principles are at the heart of Adalah for All's approach towards achieving its objectives, and constitute the ethical, operational, and institutional framework for the work of the association.

Adala for All does not discriminate among victims on the basis of gender, nationality, race, religious belief, class, or political opinion. We strive to provide assistance and alleviate suffering, guided only by the individual's needs, and give precedence to the most urgent cases.

Our Network

The Adala for All association relies on a network of lawyers and jurists, on both sides of the Mediterranean, who provide legal aid to victims free of charge and voluntarily. The association has two operating offices, in France and the Netherlands. In the first stage of its operations, Adala for All is focused upon bolstering its network and developing its approach towards the fulfilment of its objectives in Libya and other North African countries.

The **Adala For All** association works on five axes:

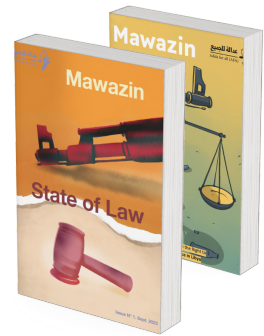
Providing Legal Advice

Providing victims of human rights violations with free legal consultations via a network of lawyers, in addition to introducing them to rights and how to defend them before the authorities at the local and international levels.



Mawazin Magazine

A periodical magazine publishing research articles by legal experts on obstacles to accessing justice, and the extent of state authorities commitment to fair trial standards and obligations arising from international agreements and conventions.



Lawyers For Human Rights Academy

Training of lawyers and members of the judiciary in international standards pertaining to access to justice and fair trial.



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Marsad (the Observatory) of Adala For All Association (AFA) focuses on monitoring restrictions on public liberties and access to justice.



Know Your Rights Campaign

“Know Your Rights” is an awareness-raising campaign based on the provision of valuable legal information. It is of concern to Libyan citizens in general and targets, in particular, the more vulnerable groups to verbal or physical abuse or violations in any form in Libya.





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JUSTICE DENIED

IRREGULAR MIGRATION THROUGH LIBYA

Fathi AGEILA

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Introduction

On 24 March 2023, the Independent Fact-Finding Mission on Libya presented detailed findings to the Human Rights Council at the 52nd session. The findings included, “The Mission found reasonable grounds to believe that the exploitation of migrants entailed violations of international human rights law and international humanitarian law and the commission of crimes against humanity. Furthermore, the smuggling, trafficking, enslavement, forced labour, imprisonment, and extortion of migrants generated significant revenue for individuals, armed groups, and State institutions. State affiliated entities in Libya received technical, logistical, and monetary support from the European Union and its member States for inter alia the interception and return of migrants to Libya.”

Numerous international reports circulated about the grave violations migrants are exposed to in Libya. Various institutions, international and local issued these reports, revealing horrific details of crimes against migrants and asylum seekers in Libya. This article attempts to investigate the causes of impunity by evaluating the criminal policy of the Libyan legislator, and whether this policy is consistent with international conventional and customary standards, to which Libya is committed before the international community. The article further addresses the consequences of the continuation of these policies on the responsibility of the state as a legal entity, and on the personal criminal responsibility of individuals responsible for state institutions related to irregular migrants.

Conflict resolution between domestic criminal laws and Convention rules applicable to acts of irregular migration

There is a clear conflict in the applicable legal rules after reviewing the provisions of the laws on irregular migration. International agreements and conventions affirmed the right to freedom of movement and stressed the non-criminalization of acts of irregular migration. Meanwhile, the Libyan legislator issued several local criminal legislations punishing acts of irregular migration, and failing to regulate the right to asylum. It is necessary, to consider the national and international legal framework and investigate the existence of a hierarchical relationship between them that would help give priority to the applicable rules, in order to resolve this conflict.

At the national level, the Libyan legislator criminalized acts of irregular migration for the first time in 1962, with the provisions of Law 17/1962. In 1987, the Libyan legislator issued law 6/1987, new legislation, abolishing previous provisions. Law 6/1987 focused on regulating the entry, residence, and exit of foreigners in Libya, stipulating punishment for acts of irregular immigration with imprisonment not exceeding three months and a fine not exceeding one hundred dinars or one of these two penalties. Law 6/1987 was amended in accordance with the provisions of Law 2/2004, which the legislator increased the punishment for human smugglers after their punishment was equal to the punishment for an irregular migrant. In 2010, the Libyan legislator issued Law 19/2010, which the legislator increased the punishment for acts of irregular migration, so that the penalty became imprisonment with labor and a fine not exceeding one thousand dinars.

In August 2011, the Libyan National Transitional Council issued the Constitutional Declaration (the country's interim constitution), where the legislator affirmed the necessity of respecting the right to freedom of movement, and further stipulates the respect of the right to asylum. Article 14 of thereof stipulates that the state must guarantee freedom of movement. Article 10 further stipulates that "The State shall guarantee the right of asylum by virtue of the law. The extradition of political refugees shall be prohibited."

In 2013, the Constitutional Chamber of the Supreme Court issued a ruling of the supremacy of the rules of international law and treaties ratified by Libya, over the rules of internal legislation, regardless of its legislative hierarchy, and without the need for the issuance of any internal legislation. The legislator's ratification of an international treaty is a declaration to enforce the rules of the international treaty and give it a force over local legislations.



The Constitutional Appeal 1/57 stated, “International agreements ratified by the Libyan state shall be effective as soon as the procedures for their ratification by the legislative authority in the state are completed, and they shall have priority in application over internal legislation, if a conflict occurs between their provisions and the provisions of internal legislation, the provisions of the agreement shall have the priority of implementation, without the need to amend any internal legislation that may conflict with it.”

Following the aforementioned ruling, the Constitutional Chamber has expanded the sources of positive human rights, with the rules of ratified international agreements have become effective against the national legislator. The Libyan state bears responsibility for the failure of the national legislator in this regard, and may not invoke the provisions of internal legislation to ward off responsibility. Article 27 of the Vienna Convention on the Law of Treaties stipulates, “A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.” It is also not permissible for persons to ward off individual criminal liability by adhering to the provisions of domestic legislation. The rules criminalizing acts attributed to individuals have acquired the status of peremptory rules in international law, which are not refuted by adherence to the formal concept of criminal legality. International reports documented many cases of premeditated killing, torture, enforced disappearance, enslavement, and other violations committed within a widespread or systematic framework, which falls within the jurisdiction of the International Criminal Court, in accordance with the referral decision issued by the Security Council.

Libya has ratified the United Nations Convention against Transnational Organized Crime and its attached protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, and the Protocol against the Smuggling of Migrants by Land, Sea and Air. Therefore, the provisions of international and individual criminal liability will be primarily referred to international agreements, and then the national law that is compatible with the rules of the international agreement. The provisions of the Protocol stipulate that the actions of migrants may not be criminalized, recognizing migrants as a victim of the crime and not a perpetrator of it.

2013 was considered a hopeful year for human rights, with the issuance of the aforementioned Constitutional Chamber ruling, and further prompting the Ministry of Justice to prepare a draft law on human trafficking that provides for the protection of victims of human trafficking. However, discussions to approve, draft and legislate this law have been forgotten and neglected.

“EACH YEAR, INTERNATIONAL REPORTS ARE ISSUED DOCUMENTING CASES OF ATROCITIES IN LIBYAN PRISONS AND THE DETENTION CENTERS OF HUMAN TRAFFICKERS.”

These reports further condemn the practices of forces supported by the Libyan state, which fail to even adhere to the standards of national law. The report of the Independent Fact-Finding Mission was issued to reveal practices supported by European Union countries. The EU countries continue to provide support to institutions violating the rights of migrants in a manner that could be interpreted as the EU countries employing the Libyan authorities to violate the right to freedom of movement on their behalf. The nature of the assistance provided by some EU countries determines the intentions of these countries to deny the right to freedom of movement. The EU countries provide the authorities with the necessary equipment to intercept migrants and forcibly return them to Libyan territory, that is, to arrest, rape, torture, among all kinds of heinous crimes committed by human traffickers that use Libyan territory as the scene of their crimes.

Despite the predominance of international agreements in any legal controversy, and despite the clarity of the Constitutional Chamber’s ruling in revealing the supremacy of international agreement rules over internal legislation,

“THE ‘ILLEGAL IMMIGRATION DEPARTMENT AND PROSECUTION’ IN THE LIBYAN COURTS CONTINUE TO APPLY LAW 19/2010 ON COMBATING ILLEGAL IMMIGRATION,”

while ignoring the aforementioned conflict in favor of the rules of applicable international agreements regarding the incidents of irregular migration.

“THE BEHAVIOR OF THE LIBYAN LEGISLATOR IS CONTRADICTIONARY AND INCONSISTENT, RATIFYING THE INTERNATIONAL AGREEMENT, AND ISSUING LEGISLATION THAT OPPOSES THE PRINCIPLES OF THE INTERNATIONAL AGREEMENT.”

The Libyan legislator ratified the United Nations Convention against Transnational Organized Crime and its protocols, and further issued legislation only six years after implementing the convention. Law 19/2010 contradicts Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air, and further contradicts both the Covenant and the Universal Declaration of Human Rights.

The Libyan judiciary fails to recognize that the Libyan state's continued detention of irregular migrants holds it internationally legally responsible for the violations occurring to migrants inside detention centers. Law 19/2010 is unconstitutional and suppresses a basic human right. Article 5 of the Protocol against the Smuggling of Migrants by Land, Sea and Air stipulates, "Migrants shall not become liable to criminal prosecution under this Protocol for the fact of having been the object of conduct set forth in article 6 of this Protocol." This protocol considered the irregular migrant to be a victim of the crime and not a perpetrator of it. Article 6 of the Protocol criminalizes the acts of smuggling migrants to obtain, directly or indirectly, a financial or other material benefit.

Article 13 of the Universal Declaration of Human Rights further stipulates, "Everyone has the right to freedom of movement and residence within the borders of each state. Everyone has the right to leave any country, including his own, and to return to his country." The International Covenant on Civil and Political Rights stipulates that this right be respected and its enjoyment be regulated in a manner that does not conflict with the origin of the right. Article 12 of thereof stipulates, "1- Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence. 2. Everyone shall be free to leave any country, including his own."

Ten years after the implementation of the United Nations Convention against Transnational Organized Crime and its protocols, the Libyan legislator issued Law 24/2023 criminalizing the "settlement" of foreigners in Libya. The Libyan legislator maintained the criminal penalty for irregular migrants stipulated in Law 19/2010, and further added new forms of criminalization contradicting the essence of applicable international agreements in particular.

“
THE EXISTENCE OF LIBYAN
LAWS CRIMINALIZING
IRREGULAR MIGRATION
INDICATES THAT THE
LIBYAN LEGISLATOR
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THE RATIFIED
INTERNATIONAL
OBLIGATIONS IMPOSED
ON THE LAW.

”

Rather, the legislator issues legislation contradicting the performance of these agreements, and further supports systematic policies against this vulnerable group of people.

The criminalization of irregular migration leads to depriving this group of people from enjoying the necessary legal protection and health care, which every human must enjoy.

The institutions responsible of the detention of irregular migrants are riddled with corruption, similar to many state institutions in Libya.

Active Libyan laws criminalizing irregular migration

1. Law 6/1987 (equality between the victim and the executioner)

This law criminalizes entering or residing in Libyan territory irregularly, and punishes irregular migration and human smuggling with imprisonment not exceeding three months and a fine not to exceed one hundred dinars, or one of these two penalties.

Law 6/1987 fails to distinguish between human smugglers and perpetrators of violations against migrants, migrants themselves, and asylum seekers. The law randomly equates them in criminalization, violating the provisions of international human rights law. This law further stipulates the forcible deportation of migrants to their countries.

The aforementioned law was amended by Law 2/2004, recognizing the distinction between migrants and migrant smugglers and increasing the punishment for migrant smugglers to imprisonment for a period of no less than one year and a fine not to exceed one thousand Libyan dinars. This amendment maintains the criminalization of irregular immigration acts.

2. Law 19/2010 (breach of International Covenants)

Law 19/2010 did not explicitly repeal all the provisions of Law 6/1987, but rather posed a complementary relationship between the two laws, with law 19/2010 completing what Law 6/1987 did not provide.

This law was issued after Libya ratified the United Nations Convention against Transnational Organized Crime and its protocols but failed to respect the provisions of this convention. Under the provisions of this law, the legislator increased the penalty for irregular immigrants to imprisonment with hard labor and a fine not to exceed one thousand dinars.

The biggest defects in this law include the lack of emphasis on legal guarantees for migrants and those referred to the competent authority for investigation and trial. The Libyan legislator stipulated in Article 10 of the law, "When arresting illegal immigrants, the body mentioned in the foregoing paragraph – the Ministry of Interior – shall treat them in a humanitarian manner that preserves their dignity and rights and that does not violate their money or moveable property."

The general protection and guarantees provided by the Libyan Code of Criminal Procedure are what led the Libyan legislator to limit himself to this brief paragraph. However, the legislation should have considered that this group of people is the weakest among those detained on remand. Following up on the court's work, it became clear that many migrants do not know how to obtain their rights and are not fluent in the Arabic language, and in some cases, they are at risk of being ignorant of their rights in prison amid a lack of psychological and moral support.

The vulnerability of migrants constitutes an exceptional circumstance and an urgent call for including all legal guarantees in the law against illegal immigration, including the necessity of an interpreter at all stages of the investigation, the right to contact a lawyer, pre-investigation health care, and other special guarantees for migrants, including providing means of contacting the country of departure to request legal or material assistance.

In this law, the Libyan legislator criminalized several forms of irregular migration, including the crime of entering or residing in Libyan territory without permission or a permit from the competent authorities, with the intention of settling there or crossing to another country, with punishment of imprisonment with labor and a fine not to exceed one thousand dinars. The legislator criminalized the employment of irregular migrants and punished these acts only with a fine ranging between one thousand and three thousand dinars. The legislator further placed the burden of reporting irregular immigrants directly on the citizen by stipulating the criminalization of failure to report irregular immigrants. The Libyan legislator further punished public employees for not reporting cases of irregular migration stipulated in this law with imprisonment for a period of not less than one year and a fine of not less than one thousand dinars and not to exceed five thousand dinars. If this act was committed by negligence, the legislator punished with a fine not less than five hundred dinars and not to exceed five thousand dinars. The legislator has restricted the right of the victimized immigrants to file a complaint about the crimes committed against them by obliging public employees to report an immigration crime. There are also additional economic expenses in the event of requesting health services, as a result of the immigrant's fear of being arrested when seeking medical assistance from public hospitals.

The law stipulates the forcible deportation of foreigners from the territory of the Libyan state, provided that the Ministry of Interior is responsible for making the deportation decision. This text is criticized for its neglect of some important consequences, explained in the following points:

- Failure to stipulate a method to appeal this administrative deportation decision, with the only option of resorting to the administrative judiciary to appeal this decision, and the consequent burden on the deportee, as the administrative judiciary is criticized for the length of the procedures and high costs. Some legislation remedied this deficiency by stipulating the possibility of appealing the deportation decision before the urgent administrative judiciary and required the urgent judicial departments to have a deadline not to exceed twenty days to decide on the appeal.

- Failure to organize cases in which the deported person is unable to return to the country of origin due to inability to return, or due to not carrying travel documents indicating political status or nationality. Some other cases require humanitarian intervention, as returning some people to the country of departure means inevitable death, as is the case in many countries in Africa that are experiencing numerous political and humanitarian crises.

The legislator further stipulates mandatory confiscation, where the court may order mandatory confiscation of items, vehicles, and tools used in irregular immigration if proven that they are owned for reasons other than in good faith.

3. Law 24/2023 regarding combating the resettlement of foreigners in Libya

Ten years after drafting a law criminalizing human trafficking, which was long forgotten and neglected, Law 24/2023 was issued, disappointing many and shocking to all those following Libyan human rights affairs. This law is the first law concerned with irregular immigration and was issued after the Constitutional Declaration of 2011, and the aforementioned Constitutional Chamber ruling issued in 2013. This law is considered repressive, ignoring the rules of the Constitution, the rulings of the Supreme Court, and the rules of modern criminal policy. This law further uses vague and loose wording, facilitating deviation from the rule of legality. The law added a new description of irregular migration, which indicates the legislator's expansion of criminalization, contrary to what rational criminal policy requires.

The crime of irregular migration is an artificial organizational crime. Criminologists have agreed that there is no criminal risk in this type of crime. Therefore, depriving the freedom of an irregular migrant does not remove any criminal danger from society. Rather, society bears the costs of restricting freedom and creates an environment of persecution, violence, and extortion within detention institutions. Numerous modern criminal policy scholars have criticized short-term custodial sentences for many reasons.

The aforementioned law ignores the provisions of the Constitution and completely ignores asylum. There is no indication that those seeking political or humanitarian asylum are exempt from the application of the provisions of this repressive law. Article 10 of the Constitutional Declaration stipulates, "The State shall guarantee the right of asylum by virtue of the law." The criminalization of Libya as a domicile is unconstitutional and contradicts the international agreements ratified by Libya.

Conclusion

Following this article review of this legal controversy, it is clear that international agreements have dismissed criminalization as a solution to the negative effects of irregular migration. The agreements propose other administrative and financial solutions that would achieve the community's economic and security goals in protecting the local community and the immigrant community from injustice, abuse, and unfairness.

The Libyan legislator's insistence on ignoring alternative solutions leads primarily to the deviation of legitimate violence into illegitimate violence, resulting in atrocities inside official detention centers, and worse atrocities in dens of human trafficking groups.

The continuation of these extremist and repressive criminal policies facilitates creation of criminal nests with economic power and corrupt money, which could undermine the foundations of the democratic system that Libyans seek to achieve.

The criminalization of irregular migration and authorizing a repressive apparatus such as the Stabilization Support Service to arrest desperate immigrants does not lead to the rule of law. The Stabilization Support Service was established to protect the security of the state, but it established an administration to collect money from immigrants and even traffic in them.

The Anti-Settlement and Immigration Department is responsible for the atrocities occurring in Abu Salim, Ain Zara, and Abu Issa. The Anti-Settlement and Illegal Immigration Department under its jurisdiction further committed crimes against humanity, in relation to violent maritime interdiction operations off the coast of Zawiya. This administration is affiliated with the state, and the state bears responsibility for the violations committed by its members before the international community.

This criminalization policy generates huge sums of money for influential institutions in the state, which prevents any political or judicial decision to enforce the provisions of international agreements on Libyan territory. Justice will continue to be denied until a decisive decision is taken by the International Criminal Prosecutor pursuant to the 2011 Security Council referral.

LIBYA - THE ROLE OF NGOS ON MIGRATION MANAGEMENT IN TRANSIT SITES

Abdelrhman ZAYID

An independent researcher and journalist, focusing on rights and humanitarian issues.

Introduction

Libyan civil society faces challenges of the migration crisis within a restricted space shaped by local policies and European pressure. Since the outbreak of the Libyan civil war in 2011, political efforts have varied to guarantee the success of the democratic transition phase and to strengthen democratic mechanisms, including the independence of the third sector (civil society). However, local policies have recently tended to restrict Libyan civil society spaces, negatively affecting the work of human rights and humanitarian organizations. The external policy of the European border externalization system further supports armed groups implementing border management programmes. The European Union funds and supports legalized armed groups that intercept migrants at sea and take them to detention centers. Armed groups fulfill their role by further implementing local policies on non-governmental organizations through campaigns of arbitrary arrests of activists and human rights defenders.

Externalization and civil society - the Gaddafi period

A transit country is subject to multiple arrangements as a gateway for irregular migration. Governments and international organizations coordinate to reach the goal of border externalization policies.[1] The term “border externalization” describes the expansion of border and migration controls beyond so-called “migrant-receiving countries” in the Global North, and into neighboring or “migrant-sending countries” in the Global South. The term “border externalization” further refers to a range of practices from border controls and rescue operations to measure and address migration motives.[2] Libya is one of the sites with the most irregular migration in the Global South because of its vast borders as a transit country and as a major departure point to Europe, although Libya also acts as a host country for migrants and refugees.[3]

For decades, Libya has been the subject of Global North migration-related interventions. European donors (destination countries) fully funded numerous programs, initiatives, and activities, while UN agencies and civil society organizations implemented them on the ground, with a large focus on of migration management, protection, and humanitarian assistance. This is partially due to the global phenomenon of “a significant expansion and deepening complexity of subcontracting arrangements, auditing techniques, partnership frameworks and global compacts linking metropolitan states, multilateral agencies, NGOs and private companies.”[4]

Structurally, during the Gaddafi regime, the third sector did not differ much from its counterparts in autocratic states. The legal framework for civil associations in Libya was distinguished by severe restrictions and lack of independence, effectively hindering any emergence of a true civil society. As a result, the number of civil society associations before 17 February was 274.[5] Law 19/2001 addresses relations between local and international organizations, stipulating that it is not permissible to join or participate with any foreign organization or accept donations from it except with the approval of the competent authorities.[6] However, there was limited space allowing the presence of a limited number of UN agencies and humanitarian organizations involved in implementing migration management programs.

Migration management is defined as a technocratic and managerial approach that “presents itself as practical, realistic, humane, and benefits all parties involved, whether countries of origin, countries of destination, and migrants alike.”[7]

[1] Phillips, M., and Missbach, A., 2017. Introduction: Special Issue on Transit Migration – Renewing the Focus on a Global Phenomenon. *International Journal of Migration and Border Studies*, 3 (2-3), 113–120

[2] Stock, I., Üstübcü, A. & Schultz, S.U. Externalization at work: responses to migration policies from the Global South. *CMS* 7, 48 (2019). <https://doi.org/10.1186/s40878-019-0157-z>

[3] Achtnich, M., 2022. Bioeconomy and Migrants’ Lives in Libya. *Cultural Anthropology*, 37 (1), 9–15.

[4] Duffield, M., 2001. Governing the Borderlands: Decoding the Power of Aid. *Disasters*, 25 (4), 308– 320.

[5] 42 ص 2015، واقع جمعيات حقوق الإنسان في ليبيا: صعوبات العمل ومتطلبات النشاط،

[6] المادة 20 من القانون 111 لسنة 1970، والمادة 14 من القانون 19 لسنة 2001

[7] Cuttitta P (2020) Non-governmental/civil society organizations and the EU-externalization of migration management in Tunisia and Egypt. *Population, Space and Place* 26(7): 1–13.

Irregular Migration



Migration management further presents to stakeholders as a middle-ground approach addressing migration-related concerns, bringing together multiple relevant actors, and also providing a response to the need for international migration governance.[8] Humanitarian border work is generally defined as traditional humanitarian work conducted in accordance with humanitarian principles that takes place in borderlands and is focused on alleviating suffering at borders.[9]

In early 2000, the lifting of the international embargo on Gaddafi was an important factor in the formulation of multilateral agreements to govern migration through civil society. Within the EU's border externalization policy, Libya accepted Italian and European funding and equipment for migration management, and agreed to return people who crossed the sea to Italy to its territory.[10] The European Union funded numerous migration management programs implemented by international and local organizations. The International Organization for Peace, Care and Relief (IOPCR) is one of the few Libyan NGOs with a direct relationship to border externalization policies. IOPCR was founded in 2000, but only began working in the field of migration in 2006. Moreover, IOPCR is a state-led institution indirectly created by the Gaddafi regime.[11] Regarding foreign organizations, the Libyan authorities allowed the International Organization for Migration (IOM) to open its offices in 2006, and the Italian Refugee Council (CIR), a humanitarian non-governmental organization charged with protecting refugees and asylum seekers, began its humanitarian activities in 2009. The CIR participated in a project funded by the European Commission aiming to provide humanitarian assistance to refugees and migrants, and further monitor the situation of a number of detention centers inside Libya.[12] Therefore, the European border externalization policy was one of the factors creating suitable conditions for NGOs to work in the field of migration in Libya.

After the CIR opened its office in Libya, a sharp conflict emerged between the policies of the border management system and humanitarian migration programs. In May 2009, Italian authorities began returning people from international waters to Libyan ports. The Italian government then responded to claims that the returns would violate the principle of non-refoulement, by stating that the presence of the CIR in Libya guarantees that the rights of returnees are respected.[13] CIR further filed an application against Italy with the European Court of Human Rights (ECHR), resulting in a court ruling condemning Italy for violating the prohibition of inhumane treatment, the prohibition of collective expulsion, and the right to an effective remedy, putting an end to interceptions and forced returns to Libya.[14]

[9] Pallister-Wilkins, P., 2017. Humanitarian Borderwork. In: C. Günay, and N. Witjes, eds. *Border Politics: Defining Spaces of Governance and Forms of Transgressions*. Cham: Springer International Publishing, 85–103

[10] Paoletti E (2010) The migration of power and North-South inequalities. *The Case of Italy and Libya*. Basingstoke: Palgrave.

[11] Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752-770. <https://doi.org/10.1177/23996544221143905>

[12] نفس المرجع السابق

[13] Stranieriinitalia.it (2009) Immigrati: Pezzotta a Maroni, governo non scarichi sue responsabilit a su CIR. <https://stranieriinitalia.it/attualita/immigrati-pezzotta-a-maroni-governo-non-scarichi-sue-responsabilita-su-cir/>

[14] ECtHR, *Hirsi Jamaa and Others v. Italy*, Appl. No. 27765/09, 23 February 2012.

<https://hudoc.echr.coe.int/fre#%22itemid%22:%22002-102%22>

Humanitarian organizations further addressed this issue, as a number of them continued to relay information to international human rights organizations on forced and illegal returns of asylum seekers, which helped launch advocacy campaigns through naming and defamation, as happened in the case of the Eritreans.[15]

Migration management - After February 17

After the toppling of Gaddafi, the legislative laws restricting the third sector were lifted, and civil society enjoyed the right to freedom of association. Since then, about 3,000 NGOs have been officially registered,[16] while foreign organizations witnessed a tremendous growth in the number of humanitarian border work organizations. In 2016, the Libya INGO Forum (LIF) was founded as an independent network of 23 international NGOs implementing humanitarian programs, or in the process of preparing humanitarian programs, to respond to the needs of marginalized populations living in Libya.[17] The dynamics of the relationship between international and local organizations varied, with international organizations playing the role of supporting and enhancing the capabilities of local non-governmental organizations, and also playing the role of applying governmental policies.

Independent civil society is recognized as a new phenomenon in Libyan society, leading many emerging local organizations to face numerous challenges in implementing migration management programs. International non-governmental donors and organizations and local organizations believe that Libyan civil society needs to be “professionalized.”[18] Libyan civil society is characterized by “very limited capacity,” and the “lack of independence” of many of the organizations from political actors or warring parties makes some of them “untrusted” by donors.[19]

International organizations and the EU launched several projects to support the development of Libyan civil society organizations. The International Centre for Migration Policy Development (ICMPD) is implementing numerous projects funded by the EU aimed at training local civil society on “strategic and institutional management of migration in Libya.”[20] Moreover, ICMPD is implementing numerous “professionalization” projects to provide local organizations with the necessary capabilities to compete in the global market for international cooperation, in terms of developing proposals, applying for funding, managing resources, monitoring projects, and preparing reports to donors.[21]

[15] Human Rights Watch (2010) Libya: Do Not Deport Eritreans.

<https://www.hrw.org/news/2010/07/02/libya-do-not-deport-eritreans#>

مرجع سبق ذكره. عبير امينية ونزيهة التركي، واقع جمعيات حقوق الإنسان في ليبيا: صعوبات العمل ومتطلبات النشاط، 2015، ص 43 [16]

[17] The Libya INGO Forum (LIF) <https://libyaingoforum.org>

[18] Altai Consulting (2015) Libya Civil Society Mapping. <http://www.altaiconsulting.com/wp-content/uploads/2017/06/Libya-Civil-Society-Mapping-Altai-Consulting-SJD-PUBLIC.pdf>

[19] Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752-770. <https://doi.org/10.1177/23996544221143905>

[20] European Union in Libya (2018), 27 Libyan Civil Society Organizations trained to networking skills and migration knowledge with European Union support.

<https://www.facebook.com/EUinLibya/photos/a.348384115244307/1911559828926720/?type=3&theater>

[21] Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752-770. <https://doi.org/10.1177/23996544221143905>

Despite the European border externalization policy strengthening the capabilities of Libyan civil society, it further reinforced human rights violations and a culture of impunity. Italy and the EU continued to fund border management programs by supporting, equipping, and training the Libyan Coast Guard.[22] According to UNHCR:

“DURING RESCUES/INTERCEPTION OPERATIONS AT SEA, THE LIBYAN COAST GUARD (LCG) HAVE REPORTEDLY BEEN INVOLVED IN HUMAN RIGHTS VIOLATIONS AGAINST REFUGEES, ASYLUM-SEEKERS AND MIGRANTS, INCLUDING THE DELIBERATE SINKING OF BOATS USING FIREARMS.

The LCG have also been accused of colluding with smuggling networks.”[23] International observers have continued to report the complicity of government officials involved in human trafficking operations, including officials from the Ministry of the Interior and the Department of Combating Illegal Migration.[24]

This indicates that the priority of the security aspect in border externalization policy reflects that humanitarian border work may be considered an essential protocol to legitimize security operations against migrants in search and rescue areas (SAR).

In terms of land, access to detention centers in Libya is one of the problems facing local and international organizations interested in humanitarian border management.

“TRANSITIONAL GOVERNMENTS DO NOT ALLOW ALL ORGANIZATIONS TO ACCESS AND OPERATE EXCEPT IN DETENTION CENTERS UNDER THE DIRECT CONTROL OF THE DEPARTMENT OF COMBATING ILLEGAL MIGRATION. UNOFFICIAL DETENTION CENTERS ARE DIFFICULT FOR ORGANIZATIONS TO ACCESS.[25]

However, the problem of the conflict between humanitarian principles and normalization of detention centers is emerging, with some NGOs (ACTED, Intersos, among others) preferring not to operate in these centers, while other NGOs take a “be there” approach, believing that being inside detention centers is a necessary step toward achieving long-term goals in ending migration detention, or at least improving their conditions.[26]

Some organizations working on migration management programs in Libya avoid being a subcontractor for projects funded by destination countries, as these institutions provide direct support to Libyan border management programs.

[22] Pijnenburg A (2018) From Italian Pushbacks to Libyan Pullbacks: Is Hirsi 2.0 in the Making in Strasbourg? *International Journal of Migration and Law* 20(4): 396–426

[23] UNHCR, *supra* note 27, at para. 22. See also Panel of Experts on Libya, Letter dated June 1, 2017 from the Panel of Experts on Libya addressed to the President of the Security Council, ¶¶ 104–05, U.N. Doc. S/2017/466 (June 1, 2017).

[24] US Department of State (2020) 2020 Trafficking in Persons Report: Libya. <https://www.state.gov/reports/2020-trafficking-in-persons-report/libya/>

[25] UN High Commissioner for Refugees (UNHCR), UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea, September 2020, available at: <https://www.refworld.org/docid/5f1edee24.html>

[26] Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752-770. <https://doi.org/10.1177/23996544221143905>

The European Emergency Trust Fund for Africa (EUTF for Africa) faced criticism for funding forced returns from international waters managed by the LCG.[27] On land, the Italian Agency for Cooperation and Development (AICS) has fostered corruption within Libyan detention centers by handing over aid for detainees to center managers, who in turn sell it to third parties.[28] Thus, humanitarian organizations are adopting more independent work models to avoid conflict with their humanitarian goals and principles.

Doctors Without Borders (MSF) is one of the organizations that refuses EU grants for border management projects.[29] MSF's independence has contributed to advocacy, criticism, and condemnation of ongoing violations by armed groups funded and supported by the European Union and Italy.

Restricting civil society spaces

In March 2019, many indicators clarified attempts to transform Libya into a hybrid state. The Presidential Council of the Government of National Accord approved Regulation no. 286 of 2019 for the work of the Commission of Civil Society.[30] Regulation no. 286 was based on Law 19/2001 of the Gaddafi regime, with the aim of restricting the third sector.

Despite this backward regulation, a group of local organizations succeeded in blocking the regulation before the Libyan judiciary, temporarily suspending attempts to restore previous legislative laws for the formation of associations.[31] In March 2023, the Prime Minister of the Government of National Unity office issued Circular no. 7 of 2023, stipulating the regulation of the work of civil society institutions in accordance with Law 19/2001.[32] Accordingly, the Aman against Discrimination and the Hiwar Organization for Democratic Transition filed a lawsuit before the Al-Bayda Court against Circular no. 7, in which the court ruled that the circular was null and that Resolution no. 321 of 2023 emanating from it regarding the formation of a "Committee to Support and Regulate the Work of Civil Society Institutions"[33] was abolished. Successive interim governments continue to seek restricting civil society organizations by stopping the flow of information about human rights violations issued by local organizations and sent to international organizations to complete advocacy campaigns, including naming and defamation.

[27] Doctors Without Borders (2022) Italy-Libya agreement: Five years of EU-sponsored abuse in Libya and the central Mediterranean.

<https://www.msf.org/italy-libya-agreement-five-years-eu-sponsored-abuse-libya-and-central-mediterranean>

[28] ASGI (2020) Profili critici delle attività delle ONG italiane nei centri di detenzione in Libia con fondi A.I.C.S.

<https://sciabacaoruka.asgi.it/wp-content/uploads/2020/08/finale-rev.-1-Rapporto-analisi-progetti-ONGLibia.pdf>

[29] Melissa Phillips (2023) Advocates, Implementers or Allies? NGOs between Humanitarian Borderwork and Migration Management in Libya, *Journal of Intercultural Studies*, 44:1, 110-124, DOI: 10.1080/07256868.2022.2159937

[30] قرار المجلس الرئاسي رقم 286 لسنة 2019م بشأن اعتماد اللجنة التنظيمية لعمل المفوضية [30]

<https://ccs.ly/kararat.html>

[31] عبد الرحمن زايد، مجتمع مدني يقوده العنف [31]

<https://raseef22.net/article/1089031-%D9%85%D8%AC%D8%AA%D9%85%D8%B9-%D9%85%D8%AF%D9%86%D9%8A-%D9%8A%D9%82%D9%88%D8%AF%D9%87-%D8%A7%D9%84%D8%B9%D9%86%D9%81>

[32] منشور رقم 7 لسنة 2023 م بشأن تنظيم عمل مؤسسات المجتمع المدني [32]

<https://lawsociety.ly/legislation/%D9%85%D9%86%D8%B4%D9%88%D8%B1-%D8%B1%D9%82%D9%85-7-%D9%84%D8%B3%D9%86%D8%A9-2023-%D9%85-%D8%A8%D8%B4%D8%A3%D9%86-%D8%AA%D9%86%D8%B8%D9%8A%D9%85-%D8%B9%D9%85%D9%84-%D9%85%D8%A4%D8%B3%D8%A7/>

[33] منظمة الأمان لمناهضة التمييز العنصري <https://x.com/aoadlibya/status/1734160428454867110?s=20>

The state of conflict over the restructuring of civil society and the absence of constitutional legislation granting civil society independence are among the determining reasons for the position toward official institutions by organizations implementing land-based migration management programs. Following recent attempts to restrict civil society, organizations working in humanitarian border management inside Libya fear having their registration within the Commission of Civil Society canceled or their request to renew denied. This is evident from the absence of advocacy campaigns by onshore organizations. Humanitarian organizations present at sea and deployed in search and rescue (SAR) areas have not stopped campaigning for advocacy and denouncing the violations that happen to migrants inside Libya, which may be seen as disruptive factors for border management programs.

Donors and some onshore international organizations pressure local organizations to comply with restrictive local decisions. Civil society organizations are working not on behalf of the Libyan authorities, but on behalf of their (mostly European) donors to fill the gaps from the incompetence of the Libyan authorities.

Despite the re-registration of numerous Libyan organizations in the Global North to avoid normalization with the modern autocratic procedures of Libyan commissions of civil society, European donors and UN agencies require local organizations to renew their registration through Libyan institutions.[34] However, numerous donors located in the Global North who are not registered with the Commission of Civil Society have contracted with many Libyan organizations that are no longer able to re-new their registration within Libya.[35] This “be there” approach of donors and international organizations influences local humanitarian organizations in favor of the autocratic policies of the Libyan authorities.

The reduction of civil society spaces further affects local human rights organizations and border management programs in different aspects. The effective role of Libyan human rights organizations lies in observing and monitoring the transitional governments regarding their international obligations. Libya has not ratified the 1951 Refugee Convention amid absence of national laws or administrative bodies to deal with refugees and asylum seekers. However, Libya has ratified the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture (CAT).

[34] مقابلة المؤلف مع أحد أعضاء منظمات المجتمع المدني المحلي. ديسمبر 2023

[35] مقابلة المؤلف مع أحد أعضاء منظمات المجتمع المدني المحلي. ديسمبر 2023

[36] Kristin M Bakke, Neil J Mitchell, Hannah M Smidt, When States Crack Down on Human Rights Defenders, *International Studies Quarterly*, Volume 64, Issue 1, March 2020, Pages 85–96, <https://doi.org/10.1093/isq/sqz088>

Governments restrict the flow of information about their own poor performance of human rights violations in response to pressure from civil society organizations to comply with ratified international human rights treaties.[36] Civil society continues to face restrictions even if the state has ratified the International Covenant on Civil and Political Rights and the Convention against Torture.[37] This reduction of civil society spaces made a positive impact on European border management programs funding the Libyan Coast Guard and the Department of Combating Illegal Migration responsible for human rights violations against migrants, refugees, and asylum seekers.

Successively, tension increased between local and international organizations and between United Nations agencies. The IOM faces criticism with focus on “Who is the IOM organization intended to protect?” due to its clear mandate and support for state policies, and its relationship with member states.[38] Furthermore, voluntary returns or “assisted voluntary return” programs clearly aim to keep people away from Europe, as people arbitrarily detained indefinitely are not in a position to make any voluntary choice.[39]

In terms of UNHCR, many NGOs consider UNHCR’s funding a major problem, due to the agency’s high degree of willingness to compromise with the authorities, including Libyan authorities, by accepting asylum applications from citizens of only nine countries, or by limiting the provision of services to refugees.[40]

Hybrid security sector

The interim governments pursued security sector governance policy with a direct impact on the third sector and migration governance policy. Since 2011, armed groups have gradually taken control of the state through a process of institutionalization, paving the way for their representatives to reach the upper levels of the military, security services, and civilian government.[41] By 2022, the influence of legalized armed groups on civil society organizations became clear. Armed groups launched arrest campaigns against human rights defenders, women’s rights activists, journalists, and civil society groups, which created an atmosphere of fear, pushing people into hiding or exile.[42]

[36] Kristin M Bakke, Neil J Mitchell, Hannah M Smidt, When States Crack Down on Human Rights Defenders, *International Studies Quarterly*, Volume 64, Issue 1, March 2020, Pages 85–96, <https://doi.org/10.1093/isq/sqz088>

[37] نفس المرجع السابق

Kristin M Bakke, Neil J Mitchell, Hannah M Smidt, When States Crack Down on Human Rights Defenders, *International Studies Quarterly*, Volume 64, Issue 1, March 2020, Pages 85–96, <https://doi.org/10.1093/isq/sqz088>

[38] Ashutosh, I., and Mountz, A., 2011. Migration management for the benefit of whom?

Interrogating the work of the International Organization for Migration. *Citizenship Studies*, 15 (1), 21–38.

[39] Crane, Austin, and Victoria Lawson. 2020. “Humanitarianism as Conflicted Care: Managing Migrant Assistance in EU Assisted Voluntary Return Policies.” *Political Geography* 79: 1–11.

[40] Cuttitta, P. (2023). Bridgeheads of EU border externalisation? NGOs/CSOs and migration in Libya. *Environment and Planning C: Politics and Space*, 41(4), 752–770. <https://doi.org/10.1177/23996544221143905>

[41] Wolfram Lacher, (2023). Libya’s Militias Have Become the State. *SWP Comment 2023/C 44*, 31.07.2023, 6 Pages [doi:10.18449/2023C44](https://www.swp-berlin.org/en/publication/libyas-militias-have-become-the-state)

<https://www.swp-berlin.org/en/publication/libyas-militias-have-become-the-state>

[42] OHCHR (2023) Libya: Urgent action needed to remedy deteriorating human rights situation, UN Fact-Finding Mission warns in final report.

<https://www.ohchr.org/en/press-releases/2023/03/libya-urgent-action-needed-remedy-deteriorating-human-rights-situation-un>

The influence of armed groups surpassed the third sector to have different roles in border management programs. The Stability Support Apparatus, an armed group directly affiliated with the Government of National Unity, intercepts refugees and migrants at sea and sends them to detention centers under its control. These detention centers are considered unofficial sites that are not controlled by the Ministry of Interior, and organizations working in humanitarian border management are not allowed to access them.[43] Migrants and refugees detained within these centers are frequently subjected to forced labor and sexual violence, including forced prostitution.[44]



ARMED GROUPS AS AN ACTOR IN BORDER MANAGEMENT PROGRAMS HAVE A DIRECT RELATIONSHIP TO THE EUROPEAN BORDER EXTERNALIZATION SYSTEM.



Tariq ben Zeyad militia, affiliated with Saddam Haftar, the son of Khalifa Haftar, intercepts refugee boats trying to escape from Libya, with the aid of logistical support from the European Union border agency Frontex and the Maltese government.[45] Saddam Haftar oversaw smuggling networks in the eastern region through new routes to the Global North. The first flight takes Bangladeshi and Syrian migrants by plane, via Syria, to Benghazi airport and then on boats to Europe, likely in cooperation with Russia's Wagner Group. By 2023, more than half of arrivals to Italy from Libya came from Haftar's eastern routes.[46]

Conclusion

Amid a fragile transit state, Libyan civil society faces the challenges of the migration crisis within a narrow space restricting it from carrying out its humanitarian work. Despite interim governments supporting the independence of non-governmental organizations in the early stages of the conflict, and supporting the border externalization system to increase the efficiency of civil society organizations, they have recently moved locally toward formulating autocratic laws to restrict civil society, and internationally toward supporting border externalization policies for hybrid security governance implementing autocratic policies. However, the interim governments are expected to allocate specific space to humanitarian organizations as an essential component of the European border externalization system.

[43] Amnesty International (2022) Libya: Hold Stability Support Authority militia leaders to account. <https://www.amnesty.org/ar/latest/news/2022/05/libya-hold-stability-support-authority-militia-leaders-to-account/>

[44] نفس المرجع السابق <https://www.amnesty.org/ar/latest/news/2022/05/libya-hold-stability-support-authority-militia-leaders-to-account/>

[45] Lighthouse Reports (2023) Frontex and the pirate ship. <https://www.lighthousereports.com/investigation/frontex-and-the-pirate-ship/>

[46] Lorena Stella Martini and Tarek Megerisi (2023) Road to nowhere: Why Europe's border externalisation is a dead end. <https://ecfr.eu/publication/road-to-nowhere-why-europes-border-externalisation-is-a-dead-end/>

MEMORANDUM OF UNDERSTANDING BETWEEN THE EUROPEAN UNION AND TUNISIA

CIRCUMSTANCES, FRAMEWORK, AND LIMITS

Massaoud ROMDHANI

A human rights activist and defender, former president of the Tunisian Forum for Economic and Social Rights and the Tunisian League of Human Rights (Vice president)

On 16 July 2023, the European Union (EU) signed a memorandum of understanding with Tunisian President Kais Saied, following a series of repeated visits by Giorgia Meloni, head of the far-right “Brothers of Italy” party and Prime Minister of Italy. The President of the European Commission, Ursula van der Leyen, and the Prime Minister of the Netherlands, Mark Rutte, and Giorgia Meloni, represented the European Union in signing the memorandum of understanding.

The memorandum explored many aspects of cooperation, including economic, commercial, energy, and digital transition, but the issue of immigration received the most attention, raising criticism for the explicit marginalization of issues on the rights of migrants and asylum seekers. The memorandum was signed as thousands of sub-Saharan African migrants lived in extremely difficult conditions in Tunisia, facing racist speech criminalizing their presence in Tunisia and forced displacement to the Libyan and Algerian borders, causing numerous casualties in the desert. Numerous international human rights organizations criticized the signing of such an agreement with the Tunisian government in complete disregard of the violations of human rights amid totalitarian rule, suppressing every opposing authority and attacking all independent institutions.

The organizations considered this agreement as turning a blind eye to the principles of a previous partnership that stipulates the necessity of respecting human rights. This is considered an endorsement of the authoritarian regimes in the southern Mediterranean, regimes that have mastered, through decades of experience, blackmailing Western countries after confirming that “the EU views relations with other countries on the southern coast only from the perspective of immigration.” [1]

Migration season to the north

The EU has become preoccupied with irregular migration as a basic condition for partnership with the southern Mediterranean countries, while considering pressure for a framework agreement with Tunisia as vital. Tunisia is a country of origin with increasingly harsh economic and social conditions. Year after year, with thousands of citizens not fortunate enough to obtain a Schengen visa to Europe must travel by sea, regardless of the risks. Tunisia is also a transit country, visited every year by large numbers of sub-Saharan Africans suffering in their countries from repulsive factors, including poverty, unemployment, civil wars, climate change, and political crises. In order to survive, they temporarily stay in Tunisia until they have the opportunity to cross to the European coasts. [2]

2023 was considered exceptional for irregular migration. According to the United Nations High Commissioner for Refugees, the number of irregular migrants who arrived in Italy during the first five months reached 50,000, (19,000 migrants in 2022), and half of them left from the Tunisian coast.

Therefore, the statements of the European side revolved around the extent of the Tunisian party’s response to playing the required role of stopping irregular migration and protecting the European borders from the “encroachment” of migrants and asylum seekers. After signing the memorandum, von der Leyen said, “We need an effective cooperation, more than ever.” [3]

Negligence of human rights and the crime of forced deportation

European right-wing governments disregarded respect for human rights principles and further utilized fear of migrants as a Trojan horse for winning elections, priding themselves on their ability to lure autocrats from the Southern Mediterranean to assign them to monitor European borders and prevent the arrival of migrants. However, numerous European human rights and parliamentary voices have denounced the memorandum and the circumstances of its signing.

[1] INFOMIGRANTS, “EU and Tunisia sign agreement to fight illegal migration.” 17 July 2023.

[2] France 24, “Le pacte entre l’UE et la Tunisie, un nouveau “modèle” face à la crise migratoire?” 17 July 2023.

[3] ecre, “EU External Partners: EU’s Dodgy Deal with Tunisia Sparks Outcry Amid Continued Crack-down Against Sub-Saharan Migrants by the Regime.” 26 July 2023.

According to Human Rights Watch (HRW),

“
THE EU IS CONSIDERED A PARTNER IN THE VIOLATIONS OCCURRING AGAINST AFRICAN MIGRANTS BY THE TUNISIAN AUTHORITIES FOR ABANDONING ITS MANY PLEDGES TO PROMOTE HUMAN RIGHTS AND DEMOCRACY.
”

This “controversial” memorandum of understanding failed to refer to “ending the violations against black Africans in the country (Tunisia), and further failed to announce measures to address these violations.”

HRW mentioned a similar agreement that occurred in 2008 between Muammar Gaddafi and the Italian government of Silvio Berlusconi, according to which African migrants and asylum seekers were detained “indefinitely,” with the aim of preventing them from reaching Europe. [4]

According to the Legal Agenda, the forced deportation of African migrants to the Libyan and Algerian borders is a full-fledged crime against humanity, and the responsibility of the European Union is no less than the responsibility of the Tunisian authorities. The coincidence of the crimes against humanity in Tunisia with the signing of the memorandum of understanding between Tunisia and the Union is indicative of this liability, with the EU’s main focus addressing migration, and the European complicity in the atrocities that occurred and continue to occur in Libya against migrants. [5]

Preventing the collapse of the Tunisian economy

The EU, at the level of most of its governments and decision-makers, seems to disregard human rights issues in the Southern Mediterranean, whether at the level of the governments’ internal performance and the extent of their commitment to the principles of democracy and human rights, or with regard to dealing with migrants and asylum seekers.

The most important points following the Memorandum of Understanding include the extent to which Tunisian authorities are able to prevent migrants from reaching the European borders by any means, the return of Tunisian deportees from European countries, the commitment of Tunisian authorities to repatriate their citizens, and the willingness to pump some funds to prevent Tunisia from reaching a state of bankruptcy, [6] to ward off the influx of hundreds of thousands of immigrants to Europe. Josep Borrell, High Representative of the Union for Foreign Affairs and Security Policy, stated a few months before the memorandum, “the situation in Tunisia is very dangerous and collapse must be prevented,” and warned that “if Tunisia collapses economically and socially, this means that we will face waves of new immigrants.” [7]

[4] HRW, “Migration Obsession is Killing EU’s Commitment to Human Rights.” 21 September 2023.

[5] The Legal Agenda, Mahdi Elleuch, “Forced deportation of migrants to the desert: A crime against humanity met with denial.” 18 August 2023.

[6] The agreement stipulates Tunisia to be granted 675 million euros as an economical support this year, including 105 million euros allocated to managing irregular migration.

[7] Josep Borrell, EEAS Press Team, “the situation in Tunisia is very dangerous and collapse must be prevented.” 20 March 2023.

Harmonious speech

What encouraged European governments to rush to conclude an agreement with Tunisia was not only the density of irregular migrants or the difficult economic circumstance that makes the Tunisian state accept concessions, but mainly the racist rhetoric discourse presented by the Tunisian authorities, which is very consistent with the extreme right-wing discourse in Europe. In February 2023, the Tunisian President Kais Saied sparked critical reactions for his comments after the National Council meeting that Tunisia was being targeted by immigration and the presence of large numbers of sub-Saharan Africans is a “conspiracy” aimed at changing the country’s demographic composition. Saied further claimed that these immigrants were the reason for the increase in crime. Many human rights organizations and international organizations condemned Saied’s speech. The President of the African Commission said, “The shocking statements of the Tunisian authorities against our African brothers contradict the principles and mission of the African Union.” [8] Amnesty International recognized, “Saied’s discriminatory and hateful remarks during a National Security Council meeting triggered an upsurge in anti-Black racist violence, with mobs taking to the streets and attacking Black migrants, students and asylum seekers, and police officers detaining and deporting scores.” [9]

Difficulties of implementation

Despite the signs of relief expressed by the European parties, especially Meloni and van der Leyen, with the Tunisian party playing its assigned role to prevent migrants from reaching the European borders, after a few weeks of smiles and handshakes accompanying the signature, many difficulties surfaced, turning victory into disappointment.

The first of these obstacles came from within the European Parliament, which recognized the agreement as support for the Tunisian regime, facing widespread criticism within European circles since Kais Saied seized power on 25 July 2021, dissolving the democratically elected parliament, undermining the judiciary, and restricting the opposition. Numerous members of the European Parliament criticized the memorandum and dealing with “dictatorship in Tunisia.” Member of Parliament Birgit Sippel said, “We are now again financing an autocrat without political, democratic scrutiny here in the house.

[8] African Union, “The Chairperson of the African Union Commission strongly condemns the racial statements on fellow Africans in Tunisia.” 24 February 2023.

[9] Amnesty International, “Tunisia: President’s racist speech incites a wave of violence against Black Africans.” 10 March 2023.

This will not be a solution. It will strengthen an autocrat in Tunisia.” [10] Sippel further criticized the Tunisian authorities’ deportation of African migrants to the southern Tunisian border, considering that the Tunisian authority has thrown migrants into the desert without food, water, or anything else.” [11]

“
CRITICISM OF THE MEMORANDUM WAS NOT LIMITED TO THE EUROPEAN PARLIAMENT, BUT SOME EUROPEAN GOVERNMENTS EXPRESSED THEIR REPUDIATION DUE TO THE HASTE AND NEGLECT OF THE HUMAN RIGHTS FILE.
”

Germany’s minister for foreign affairs, Annalena Baerbock, said, “human rights and procedural faults ruled it out as a blueprint for the future.” [12] Baerbock added, “Democracy, human rights and the rule of law must guide us in our cooperation – something that was not given suitable consideration, in the agreement with Tunisia.” [13]

Thus, EU countries do not share the same position regarding dealing with migrants, while the right-wing government in Italy and some other governments close to it, based their electoral narrative on confronting irregular migration and saw the memorandum as an important turning point and the beginning of a “real partnership” with the countries of the southern Mediterranean. However, other governments believe that other factors, including human rights and the rule of law, should be considered.

Tunisia changes its position

Angry voices within the European space embarrassed the Tunisian government. The Tunisian government saw that it met the demands of the EU. Its adoption of a harsh rhetoric toward immigrants, forcing them to return to their homes, displacing many on the border, and taking back Tunisians who did not have European residency, would satisfy the EU and force it to remain silent, stopping the “human rights topic.” The Tunisian government failed to realize that the EU is not a homogeneous bloc and that European spaces are full of contradictions and different points of view, reflecting the diversity of interests and convictions.

[10] euronews, “MEPs blast European Commission for signing deal with Tunisia’s ‘cruel dictator.’” 18 July 2023.

[11] Ibid.

[12] Reuters, “Germany’s Baerbock joins chorus criticizing EU migration deal with Tunisia.” 22 September 2023.

[13] Ibid.



Thus, the official Tunisian reaction was tense, and even angry, threatening to retract the initial agreement. Perhaps the main reason was the sharp criticism raised by the European Parliament toward the situation in Tunisia, both toward immigrants and the official political orientation. The Tunisian government considered these criticisms as blatant interference in internal affairs. In September 2023, about two months after the memorandum,

Tunisia further refused the visit of a delegation from the European Parliament's Foreign Affairs Committee, headed by German Michael Gahler, which aimed to "take an in-depth look at the political situation." Gahler added, "This conduct is unprecedented since the democratic revolution in 2011. We continue to be ready for, and we insist on a dialogue on critical issues and remind this parliament has always approved the comprehensive cooperation agenda including the strengthening of democracy and financial support as agreed in the association agreement." [14]

Such critical European positions left the Tunisian authorities angry, including the Tunisian President. On 2 October 2023, Saied said, "Tunisia, which accepts cooperation (with the European Union), does not accept anything resembling favor or charity." Saied added, "Tunisia rejects what was announced during last few days by the European Union." In September 2023, The EU announced aid to Tunisia in the amount of 127 million euros with the aim of combating irregular migration.

"It's Europe or death at sea."

Another reason for European frustration about the possibility of Tunisia playing a pivotal role in stopping the flow of migrants, whether Tunisians or sub-Saharan Africans, was the Italian Ministry of the Interior recording an increase in the number of arrivals by 30 percent during the six weeks following the memorandum versus the six weeks preceding the 16 July 2023, date of signature. [15]

Had Tunisia overlooked immigration control, especially after its president and foreign minister declared that the country "will not be the guardian of European borders"? Was there an intention to be lax to further bargain with the EU, as the regimes in North Africa did during the decade preceding the so-called Arab Spring?

The authorities in Tunisia and their fluctuations are difficult to understand. The only certainty is that European security policy had proven its failure to achieve the protection of its borders, and that illegal migration was not linked to the extent of the intensification of border guarding. Rather, the crises happening in the southern Mediterranean make the region of North Africa, Middle East, and the African coast, a repulsive region for its citizens.

[14] The Guardian, "MEPs refused entry to Tunisia two months after signing of migration deal." 14 September 2023.

[15] Lorenzo Fruganti, "Tunisia: stabilità cercasi." 18 September 2023.

Selim Kharrat, the president of Al Bawsala, a Tunisian human rights organization and watchdog of immigration issues, stated, “It doesn’t matter if you double the number of police officers or double the number of control operations. There will still be migrants seeking a better life, [16] regardless of the risks.”

Migrants face numerous risks, including the possibility of drowning, since migrants have begun to venture into boats that do not meet safety standards, with the number on deck exceeding four or five times the boat’s load. The United Nations Children’s Fund (UNICEF) announced that the number of children who died or went missing in the Mediterranean during the year 2023 tripled, compared to 2022, and “this is in the midst of European negotiations on migration,” while “the Mediterranean Sea has become a graveyard for children.” According to the United Nations, “the factors of war, violence, and poverty are what push children to flee their countries of origin without accompaniment.” [17]

Failure of the security approach

For decades, with the increase of irregular migrants, Europe has addressed migration from a purely security perspective. Europe focused on complex monitoring methods and concluded agreements with countries of origin and transit countries to assign them to monitor and prevent irregular migrants from reaching its borders. This approach has cost Europe strenuous diplomatic efforts and huge sums of money, most of which goes to other than what was allocated to it, due to the absence of transparency, accountability and independence of institutions. Despite the major security efforts, the number of migrants continues to increase. When security is intensified and aggravated in some corner of the Mediterranean, smugglers, who earn huge sums of money, are able to find other, more expensive and more dangerous ways for migrants, which does not deter them from boarding the “death boats.”

The agreements concluded with the countries of the South of Mediterranean remain mostly ineffective, given that any regime, no matter how their borders are monitored and no matter how intensified their security patrols, often fail to monitor their shores, due to the lack of capabilities and the complexity of the network of relations of smugglers with border guards and security agencies. These same regimes often use immigration to put pressure on the EU, either to extort more money, or to silence European countries that still remember previous treaties of human rights, good governance, and democracy when signing partnership agreements with countries of the South.

[16] Stephen Quillen, “‘It’s Europe or death’: Why no amount of EU money has stopped migrants fleeing Tunisia.” 20 August 2023.

[17] RTS, “La Méditerranée, un ‘cimetière pour les enfants’, selon l’Unicef.” 29 September 2023.

Summary

The Memorandum of Understanding between Tunisia and the European Union revealed that European governments no longer care about international laws and treaties to protect migrants and asylum seekers, including the Geneva Convention and its Protocols amended in 1967. European countries are further prepared to completely ignore previous treaties requiring a minimum level of respect for human rights when dealing with countries of Southern Mediterranean, including the Barcelona Declaration of 1995, formed between the countries of the European Union and the countries of the Southern Mediterranean. The Barcelona Declaration is the founding act of a comprehensive partnership based on respect for human rights, public freedoms, freedom of expression and association with peaceful dimensions, and respect for freedom of conscience and religious freedoms. [18]

The right-wing governments that won the elections, using the fear of the influx of “hordes of immigrants,” transformed immigration from a humanitarian, economic, and social phenomenon into a purely security phenomenon, in which several factors intersect. The most important of these factors include the fear of changing European identity, stigmatizing immigrants with all kinds of stereotypes, as the main cause of unemployment, terrorism, and crime.

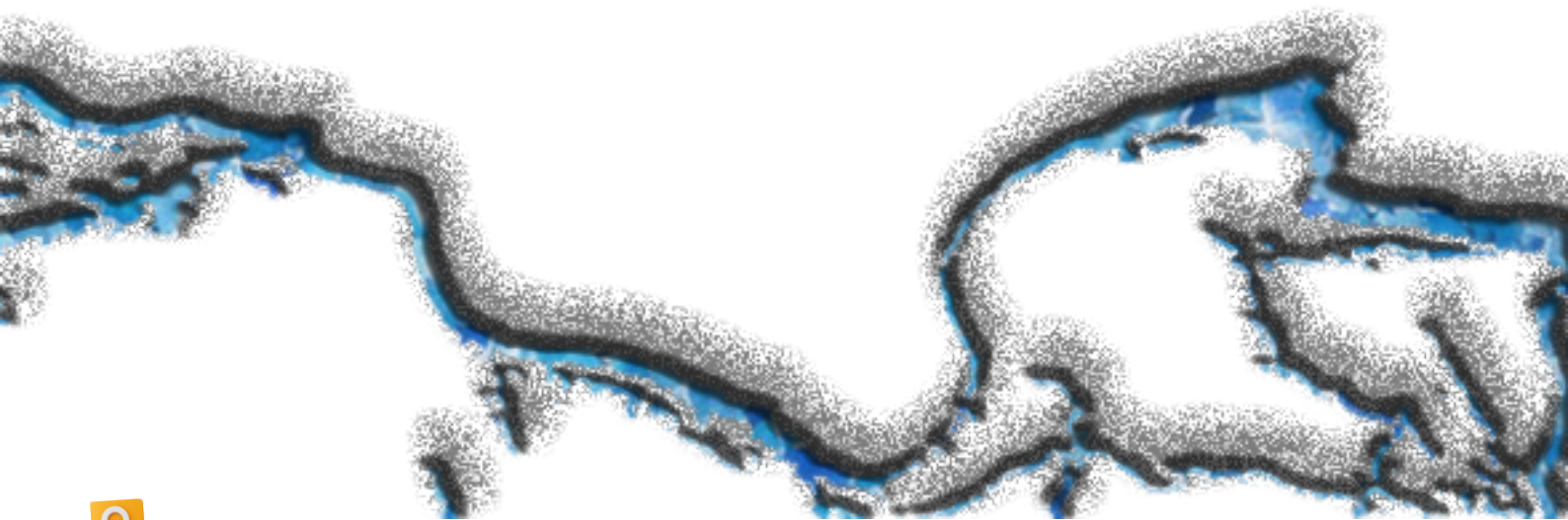
These right-wing governments need an ally that identifies with its rhetoric and deals with immigrants with the same cruelty as they treat those inside detention centers in Italy and other European countries before they are forcibly deported to their countries of origin. However, these European governments found in the Tunisian authorities a stubborn ally, capable of retreating at any moment, either to improve the terms of negotiation and barter, or because of anger at some voices criticizing the Tunisian human rights record, including those voices that rose during the accountability session in the European Parliament on 18 July 2023, issued by Leftist and Green MEPs, who considered the memorandum to be normalization of the dictatorship and a trade in the rights of refugees.

Thus, the Memorandum of Understanding failed to take legal form to become a binding agreement for the Tunisian and European parties, given the division within the European Parliament, and the Tunisian justification for national sovereignty and the independence of decision-making. Meanwhile, irregular migrants and asylum seekers continue to arrive in increasing numbers, as the suffering in their countries escalates, and with no regard to memorandums of understanding, treaties, intensified security on the borders, and not even with the dangers of riding in “death boats,” as one said, “In any case, we are dead in our homelands.”

[18] Barcelona declaration. Euro-Mediterranean Conference. 27-28 November 1995.

INTERVIEW

MIGRATION AND MIGRANTS



Interview with Tarek LAMLOUM

A human rights activist on the file of migrants and asylum seekers in Libya, an advocate at the Belaady Organization for Human Rights, and a member of the Libyan Anti-Torture Network.

1

How do you evaluate the Libyan experience in dealing with immigration and migrants file in Libya before and after the revolution?

The immigration file in Libya is characterized by a specific pattern of exploitation from successive authorities, whether after the revolution or the totalitarian authority before the revolution.

The pre- and post-revolution authorities both exploited the immigration file to pressure European governments and prompt many political gains. The immigration experience remains the same with authorities using the same approach as in the past. Since 2011, the ferocity of successive governments formed through legalized militia groups has increased, turning the issue of immigration and asylum seekers into a source of livelihood and an important financial resource.

2

What is Libyan civil society's role on immigration issues?

Civil society continues to play a major role and is perhaps the only party attempting to put pressure on all sides to improve the conditions of immigrants, despite attempts from successive governments and security services to restrict and prevent freedom of work, and to portray civil society in public opinion as a foreign hand trying to tamper with national security. However, civil society continues to handle most crises, including the COVID-19 pandemic, and plays a role in monitoring the conditions of workers, immigrants, and detainees.

3

Does the state support civil society to take on that role? Is there a partnership, or are there restrictions?

The partnership between the state and civil society is gradually disappearing, amid governments' approach of restricting civil society, and accusations of treason against civil society.

The approach of ruling authorities, whether in the East or the West of Libya, has been apparent in fighting civil society, leaving civil society with no choice but to put pressure on international ruling authorities.



Are the main smuggling routes and paths in Libya identifiable? What about the assembly locations controlled by smugglers?

Migrants are detained in numerous smuggling warehouses across Libya until the number of people for the journey is complete and they can set out for sea.

“THE SMUGGLERS’ WAREHOUSES ARE DIVIDED INTO TWO SECTIONS, A SECTION THAT HOSTS THOSE WHO CAN MAKE LARGE PAYMENTS. THESE ARE CONSIDERED SEVEN-STAR LOCATIONS AND PROVIDE ALL NECESSITIES OF LIFE. A SECOND SECTION RECEIVES POOR IMMIGRANTS, MOST OF AFRICAN NATIONALITY.”

In the section that hosts poor immigrants, we find the painful reality of bad practices, torture, and killing, while human traffickers rely on protection from the militia controlling the border area of the smuggler.

The migration routes and paths vary greatly in Libya due to constant changes in the political situation and control of territory. These paths vary according to the ruling parties and the exchange of power between successive governments in Libya. For example:

Waves of migration extend from sub-Saharan African countries, including Sudan and Chad, to the Kufra District in Libya via the southeastern route. Upon the immigrants’ arrival in Kufra, a new path begins for them. Few have luck in crossing and reaching the Libyan coastal cities quickly, and numerous others are often detained again by new smugglers demanding additional payments to allow them to proceed toward the cities of Zuwara, Sabratha, or Zawiya, with an agreement to facilitate their access to the coast and perhaps the sea.

Tripoli is a destination for some immigrants, either for temporary work or to register with UNHCR. The rest of these migrants, more often than not, end up in the Kufra detention center for periods of up to a year, and are usually released to continue their journey toward coastal cities in Libya.

At the end of 2019, a new route opened between Tunisia and Libya, creating a complicated case to understand and organize. Tunisia is only bordered by two African countries, Libya and Algeria, but in recent years Tunisia has witnessed an influx of thousands of people seeking to cross from Libya, or register with the UNHCR in Tripoli. Many individuals seeking to enter Libya from Tunisia have already been in Libya or arrived in Benghazi Airport, including Syrians, arriving in Libya legally and departing by sea. Many are returned by the Tunisian Coast Guard to Tunisia, or are rescued from sea and returned to the Libyan border due to weather changes.

Many are returned by the Tunisian Coast Guard to Tunisia, or are rescued from sea and returned to the Libyan border due to weather changes. Many seek return to Libya themselves, where they enter through smuggling routes through the desert, due to the possibility of returning from Libya to Syria via Benghazi Airport, in addition to the fact that the options available to exit Libya via sea remain realistic. The Tunisia-Libya line still operates to this day.

Since the beginning of 2019, flights have been added from Benghazi Airport to Damascus Airport in Syria, after strengthening relations between the government of eastern Libya and the Syrian Republic. Cham Wings Airlines began operating approximately three weekly flights, carrying dozens of Syrian immigrants, including women and children, with a large number of unaccompanied minors being transported directly from Benghazi Airport and heading to the city of Zuwara, where they can cross the sea in boats. Some of those minors spent fewer than twenty days in Libya, while the fate of many others remains unknown. This air route has become more in demand, expanding the range of flights. Now Benghazi Airport receives flights from Iraq, Lebanon, and Egypt, in addition to Syria. Military investments are evident in this sector, providing security clearances and contracts for workers in this sector.

The Egypt-Tobruk line has been utilized for decades without much change and is usually taken by migrants from Egypt and Sudan. It was used by Syrians before the opening of Benghazi Airport in 2019. Migrants regularly cross this line through the Egyptian desert, reach the Libyan border in the Amsaad area, then head to the city of Tobruk. The fate of many of those migrants remains unclear. Many are detained inside warehouses in Tobruk, Bi'r al-Ashhab, and other border areas. After arriving in Tobruk, migrants are divided. Some remain in the eastern cities of Libya to work, while others choose to take sea boats from Tobruk. Other migrants head west from Tobruk to the city of Ajdabiya, then pass through the city of Bani Walid and head to coastal cities. However, the movement of migrants from Tobruk to the west has slowed significantly, after the opening of the ports of eastern Libya, and the increase of boats departing from these areas to Europe. For this reason, most migrants prefer to travel to the sea from Tobruk, rather than face the dangers of the road to western Libya.

Many fake companies organized flights through Mitiga Airport, bringing workers from Egypt and Asian countries to Libya, to work in local companies. However, those workers faced financial exploitation with the promise of work permits. The goal of these trips was not to employ these workers in Libya, but rather to facilitate the entry of migrants who made payments to cross the sea, without any intention of helping them work in the country.



What relations exist between smugglers and armed militias and with the official authorities?

Today, the situation in Libya has worsened with criminals and human smugglers of the past becoming the present protectors of the country and holding official positions.

6

Is there any effective measures to confront smugglers?

That is hard to believe, amid numerous reasons preventing the occurrence of any successful measure in confronting the phenomenon of human trafficking. Some of these reasons include the dispersion and the great division in Libya, and the existence of several governments at the same time, reaching the presence of three governments at the same time, and the involvement in smuggling of many people affiliated with the governments and have strong influence in society.

7

Has Libya realistically been a destination country of settlement and resettlement for immigrants who failed to reach Europe? Is this possibility of danger likely?

Libya has not been a destination for any immigrants, either before or after the 17 February Revolution. Many cases of immigrants who failed to leave Libya by sea more than four times, yet still prepared for the fifth attempt have been documented. This possibility is hard to conceive and is merely a “scarecrow” used to terrify the masses and justify the numerous violations and criminal acts of the ruling authorities.

8

What is the situation of shelter centers today? Has the interest of the international community and international justice influenced the reduction of various violations faced by immigrants in shelter and detention centers in Libya?

Today, shelter centers are better described as detention centers. These centers are not centers for sheltering human beings. Many detained immigrants in these centers face forced labor, enslavement, and torture. Reports of the mission or investigation committees may impact as much as 30 percent of the situations in these centers. These reports are a source of fear for some militia leaders and have inclined them to change the status of the centers.

9

What is the fate of irregular immigrants returned by state bodies from their attempts to reach Europe by sea? What programs do authorities or civil society provide them?

The fate of irregular immigrants varies from one place to another. The fate of those returned through Tripoli is to remain in detention centers for a period of time. They may be released after paying a ransom. Sometimes, civil society plays a successful role in releasing some of those immigrants when their demands are met. Sometimes civil society fails to release any, facing evasion of their demands or being portrayed as traitors. In places under the militias, including Zawiya, Sabratha, and Warshafana, immigrants may face detention for a year or longer without any reason, and in most cases, they are released after paying a ransom.

As for the programs, there are no programs by the state. The programs that are offered from time to time are for the sole purpose of taking pictures. As for the programs presented by civil society, they also depend on the satisfaction of the authorities, and if the programs are approved, they are restricted within certain limitations.

10

Did the agreement between the Tunisian and Libyan Interior Ministries announced this summer, after accusations of expelling migrants, bring about any tangible change?

This agreement posed no positive impact in serving the interests of the victims, who are migrants and asylum seekers. On the contrary, major allegations indicate that there are uncontrolled parties affiliated with the border guards that receive migrants from the Tunisian side or the border and transport them to unknown destinations. The only party authorized to receive migrants is the Immigration Service affiliated with the Ministry of Interior. Currently, the ministry had no knowledge of the fate of those who are returned from the border.

11

What is the Libyan state strategy on the immigration file? What are the features or broad lines of this strategy, if any?

The Libyan state has no strategy on the immigration file worth mentioning. Successive governments and officials continue to issue random decisions. Their allegiance is tribal and regional, and some of them are involved in human trafficking.

12

Can the political and security situation in Libya be exploited to pass a memorandum similar to the one signed by Tunisia, which the Italian government is promoting as a model to be emulated?

Certainly, this is what is happening on the Libyan-Tunisian border and in the areas of Batin al-Jabal, al-Assah, and Nalut, in terms of handing over and receiving immigrants, arbitrary arrests, and forced disappearances.

13

Regarding the European Union's border export policy, is there hope for a corresponding Greater Maghreb policy? Or will the Greater Maghreb countries and people continue to pay the price for the lack of a Greater Arab Maghreb?

Evidence and practices over the past years indicate that all people from the Greater Maghreb are shackled and unable to impose an independent policy that considers human rights.

14

What about the human capital flight from Libya abroad?

The human capital flight existed for a long time in Libya, as measured by the population of Libya compared to the people who managed to remain in Europe and America. For example, numerous Libyan doctors remain in the United Kingdom and in the rest of European capitals. Large waves of human capital flight moved to Turkey and Egypt after the recent wars in Libya. The United Nations High Commissioner for Refugees reports large numbers of Libyan asylum seekers. The United Nations High Commissioner for Refugees confirmed in its latest bulletin that 57,149 Libyans applied for asylum from 2011 to 2022. Many of them were highly skilled professionals.

15

Does Libya conduct screening processes for those entering its territory according to their legal status?

Since the era of Gaddafi, Libyan authorities have deliberately considered everyone who entered their territory to be illegal immigrants who must be punished according to local law. This approach is not correct as for the those entering Libya. Some of them are immigrants, and a large number are seekers of asylum and protection and fleeing countries of conflict, including Syrians or Now Sudan, Yemen, Somalia, and other six nationalities recognized by the UNHCR. The contradiction in Libya is that since the Gaddafi era, the Libyan government has allowed the presence of UNHCR offices, allowing migrants to be registered, and arresting the migrant as soon they leave the UNHCR office, and imprisoning them on charges of being an illegal immigrant. Libya continues to burden itself with violations and violates its international obligations toward those seeking protection.



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