

Original: English
Date: 11 November 2019

by registered mail to:
The Registrar
European Court of Human Rights
Council of Europe
67075 Strasbourg CEDEX
FRANCE

European Court of Human Rights
First Section
S.S. and others v. Italy, Application No. 21600/18

Written Submissions pursuant to Article 36 ECHR and Rule 44 of the Rules of the Court by the *Legal Clinic in International Protection of Human Rights* of the Department of Law at Roma Tre University

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List of Abbreviations

AU	African Union
CERD	United Nations Committee on the Elimination of Racial Discrimination
DCIM	Libyan Department for Combatting Illegal Migration
EU	European Union
ICC	International Criminal Court
IOM	International Organization for Migration
ISIL	Islamic State of Levant
Libya	The Libyan Republic
LYCG	Libyan Coast Guard
MEDU	Medici per i Diritti Umani
MHUB	Mixed Migration Hub (a collaborative under the North Africa Mixed Migration Task Force consisting of the Danish Refugee Council, IOM, OHCHR and RMMS)
MSF	Médecins Sans Frontières
OHCHR	Office of the United Nations High Commissioner for Human Rights
RMMS	Regional Mixed Migration Secretariat – Nairobi
Rome MRCC	Italian Maritime Rescue Coordination Centre based in Rome
Sabratha	Libyan town also known as صبراتة, Sabratah, Siburata
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
UNSC	United Nations Security Council
UNSG	United Nations Secretary-General
UNSMIL	United Nations Support Mission in Libya
USDOS	United States of America Department of State
Zawiya	Libyan town also known as Zawia, Zawiya, الزاوية, Az Zāwiyāṭ, Zauia, Zavia. Variants: الغربية الزاوية, Az Zawiya Al Gharbiyah, Ḥārat az Zāwiyah, Al Ḥārah, El-Hāra and Haraf Az Zāwīyah

1. INTRODUCTION

The present written submissions are respectfully filed with the Court pursuant to the letter of 14 October 2019 granting the *Legal Clinic in International Protection of Human Rights* at the Law Department of Roma Tre University leave to intervene in the present proceedings *ex* article 36 ECHR and Rule 44 of the Rules of the Court. The *Legal Clinic* is directed by dr. Alice Riccardi. The students who participated in the drafting of the present submissions are: Gabriella Bizzocchi, Giacomo Ciarniello, Francesca De Rosa, Maria Cristina Di Mauro, Domiziana Foti, Giulia Gasser, Claudia Langianese and Ginevra Maccarrone.

The present submissions are meant to assist the Court by providing objective and independent information on migrants' conditions of life in Libya. Provided information originates from reliable, multi-level and authoritative sources. All quoted sources are available in the public domain and may be retrieved through the Internet links provided for in the List of Accompanying Documents. All quoted sources of information are also enclosed as Accompanying Documents to the present written observations for the Court's convenience.

The present submissions focus on information available at the time of the events relevant in this case.

2. NATIONAL LEGAL AND GOVERNANCE MIGRATION FRAMEWORKS

At the time of the events in the present case, Libya did not possess a comprehensive legal and governance framework on migration, nor does it today. Notably, laws and administrative regulations have been deficient and fallen short of international standards,¹ as follows.

First, Libya has never been a party to the 1951 Geneva Convention relating to the status of refugees. It never adopted asylum legislation, nor there have ever been national asylum institutions and processes.²

Second, and as a result, migrants in Libya lacking a visa are considered "illegal" migrants. Illegal migration is a criminal offence under Libyan law, as established by: article 20 of Law No. 6 of 1987, providing that anyone who illegally enters Libya shall be sentenced to imprisonment and fined;³ and article 6 of Law No. 19 of 2010, providing that illegal migrants shall be sentenced to detention with hard labour and expelled immediately upon the execution of the sentence.⁴ It is not clear whether illegal migrants in Libya are detained by virtue of mentioned provisions (whereby a criminal trial should take place) or pursuant to some sort of administrative regime. In September 2017, the Global Detention Project reported that no "legal provisions unambiguously provid[e] for administrative forms of immigration detention".⁵ In turn, the EU attested in 2017 that "migrants and refugees ... don't have access to legal process before and while being in detention".⁶ It is also not clear whether Law No. 19 of 2010 abrogated the provisions of article 20 of Law No. 6 of 1987 providing for a maximum period of detention of three months. Irrespective of said article, however, migrants are usually held arbitrarily for indefinite periods,⁷ "during which their detention is not reviewed by competent judicial authority".⁸ Furthermore, and in any case, there is no constitutional guarantee against arbitrary detention in Libya.⁹

¹ UNSMIL, OHCHR, "*Detained and dehumanised*" *Report on Human Rights Abuses Against Migrants in Libya*, 13 December 2016, § 5.1 (hereinafter UNSMIL, OHCHR, "*Detained and dehumanised*", 2016) (Doc. 31).

² MHUB, *Detained Youth*, 1 July 2015, pp. 45 ff. (Doc. 53).

³ *Law No. 6 of 1987 on organising the entry, residence, and exit of foreigners in Libya*, 1987, art. 20 (unofficial translation) (Doc. 2).

⁴ *Law No. 19 of 2010 on combatting illegal immigration*, 2010, art. 6 (unofficial translation) (Doc. 1).

⁵ Global Detention Project, *Global Detention Project Submission to the UN Committee on Migrant Workers*, 4-13 September 2017, p. 3 (Doc. 48).

⁶ EU Commission, EU Emergency Trust Fund for Africa, *Action Fiche of the EU Trust Fund to be used for the decisions of the Operational Committee*, 12 April 2017, p. 5 (Doc. 34).

⁷ UNSMIL, OHCHR, "*Detained and dehumanised*", 2016, § 5.2 (Doc. 31); Euro-mediterranean Human Rights Network, *Asylum and Migration in the Maghreb – Country Fact Sheet: Libya*, December 2012, p. 36 (Doc. 47); UNHCR, *Submission by the UNHCR For the Office of the High Commissioner for Human Rights' Compilation Report – UPR: LIBYA*, October 2014, p. 2 (Doc. 17); Amnesty International, *Libya: Rule of Law or Rule of Militias?*, 2012 (Doc. 46).

⁸ UNSMIL, OHCHR, "*Detained and dehumanised*", 2016, § 5.2 (Doc. 31).

⁹ Global Detention Project, *Global Detention Project Submission to the UN Committee on Migrant Workers*, 4-13 September 2017, p. 3 (Doc. 48).

3. CONTROL OVER THE TERRITORY

Governmental authorities in power since 2011 have not been able to either regain control of the whole Libyan territory or to secure monopoly of the use of force.¹⁰ The main centres of power existing in Libya at the time of the facts of the present case were:

- in the west, the Government of National Accord (GNA): through 2017 it struggled to hold control of the territory, especially in the south of Tripoli. In October 2017 the Anti-ISIL Operations Room, a force affiliated to the GNA, took control of Sabratha;¹¹
- in the east, the Libyan National Army (LNA), organized under the command of general Khalifa Haftar, loyal to the Parliament of Tobruk: through 2017 it expanded control over territory. There were clashes between the LNA and armed groups in Benghazi and Darnah.¹² An ICC warrant of arrest against Busayf Al-Werfalli, the commander of the Al-Saiwa/Al-Saiqa brigade, a militia supporting Haftar, was issued on 15 August 2017 for alleged war crimes committed between June 2016 and July 2017 in Benghazi and surrounding areas;¹³
- in Tripoli, the General National Congress (GNC): although it had not controlled any relevant institutions since 2016, in 2017 it was still described as “able to undermine the efficiency of the GNA” through the support of some non-state armed groups.¹⁴

Moreover, countless non-state armed groups and militias operated across the country. *Inter alia*:

- in the south, where the situation “remained precarious”, the presence of armed groups led to widespread criminality, whereas “tenuous security and a proliferation of arms” was coupled with clashes between local tribes (e.g. Tobu/Tebu), foreign armed groups (especially from Chad and Darfur) and the LNA;¹⁵
- ISIL, which lost control of its headquarters Sirte in December 2016, was still present and retained the ability to conduct terrorist attacks.¹⁶ The UNSC reported the presence of sleeper cells around the country, including in the west;¹⁷
- Ansar al-Sharia, a non-state armed group affiliated to Al-Qaeda, was based in the east and in some cities in the western region, such as Derna.¹⁸

4. ACTORS INVOLVED IN THE MANAGEMENT OF MIGRANTS

Both institutional and non-state actors have been involved in the management of migrants in Libya. Notably, the institutional actors are: the LYCG, responsible for search and rescue operations; and the DCIM, a division of the Interior Ministry of the GNA, bearing the nominal responsibility for the management of official migrant detention centres. Non-state actors are criminal organizations and non-state armed groups. UN sources, political analysts and journalists reporting directly from Libya have consistently affirmed that both the LYCG and the DCIM are infiltrated by criminal organizations and armed groups to such an extent that it is virtually impossible to disentangle their respective operational structure, as follows.

Inter alia, UNSMIL recognized in December 2016 that both the LYCG and the DCIM “are subjected to pressure from armed groups”, the latter being “the most powerful actors in the system of smuggling, trafficking, and abuse”. This entails that “[b]oth the LYCG and DCIM staff members have worked with armed groups, smugglers and traffickers to exploit migrants for profit”.¹⁹ This is confirmed by the UNSC Panel of Experts on Libya, which reported in June 2017 (when Italy sat in the UNSC as an elected member) that migrant smuggling and human trafficking is a “business” for armed groups, which established links with criminal networks and members of the LYCG for such purpose. The Panel specifically referred to Zawiya as a paradigmatic example of the blending between non-state armed groups, criminal groups and the LYCG.

¹⁰ Istituto della Enciclopedia Italiana, *Treccani Atlante Geopolitico 2016*, 2016, pp. 531-537 (Doc. 84).

¹¹ UNSC, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 12 February 2018, UN Doc S/2018/140, §§14-15 (hereinafter UNSC, *Report of the UNSG on the UNSMIL*, 2018) (Doc. 27).

¹² European Council on Foreign Relations, *A Quick Guide To Libya's Main Players*, December 2016, p. 3 (Doc. 83).

¹³ ICC, *Prosecutor v. Mahmoud Mustafa Busayf Al-Werfalli, Case Information Sheet*, July 2018 (Doc. 36).

¹⁴ N. Missaglia, *Chaos in Libya: A Background*, in *Istituto per gli Studi di Politica Internazionale*, 2 February 2017 (Doc. 85).

¹⁵ UNSC, *Report of the UNSG on the UNSMIL*, 2018, §§21-23 (Doc. 27).

¹⁶ Central Intelligence Agency, *The World Factbook – Libya*, accessed on 27 October 2019 (Doc. 37).

¹⁷ UNSC, *Report of the UNSG on the UNSMIL*, 2018, §28 (Doc. 27).

¹⁸ BBC, *Guide to key Libyan militias*, 11 January 2016 (Doc. 59).

¹⁹ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, § 5.2 (Doc. 31).

Indeed, according to the Panel, the detention centre in Zawiya is in fact controlled by a local militia (al-Nasr) also “involved in intercepting migrants and transferring them” to the detention centre.²⁰

As to analysts, both Gabriele Iacovino (Director of Ce.S.I., Centro Studi Internazionali) and Mattia Toaldo (European Council on Foreign Relations) reportedly recognized the proliferation of militia groups self-identifying as members of the LYCG and answering to local powers rather than to the central authority.²¹

Journalists reporting directly from Libya confirmed the abovementioned, especially with respect to the management of migrants in the areas of Zawiya and Sabratha.

As to Zawiya, Nancy Porsia affirmed in 2017 that the commander of the LYCG in town, Abd al-Rahman Milad (alias Bija), has also acted as the “undisputed leader of the human traffic trade” there, working “under the protection of Mohamed Koshlaf, ... the head of the security department of Zawiya’s refinery” and commander of the Al-Nasr Brigade.²² The UNSC Panel of Experts on Libya validated Porsia’s information, by recognizing Koshlaf among the “main facilitators” of migrant smuggling in western Libya²³ and affirming that Koshlaf and Milad “had leverage over the coast guard hierarchy, according to internal sources in the coast guard”.²⁴ On 7 June 2018, the UNSC Libya Sanctions Committee sanctioned both Koshlaf and Milad.²⁵ As to the latter, the UNSC Narrative Summary of Reasons for Listing states that:

“Milad heads the regional unit of the Coast Guard in Zawiya that is consistently linked with violence against migrants ... Milad and other coastguard members, are directly involved in the sinking of migrant boats using firearms. Al-Milad collaborates with other migrant smugglers ... Several witnesses in criminal investigations have stated that they were picked up at sea by armed men on a Coast Guard ship called *Tallil* (used by al-Milad) and taken to the al-Nasr detention centre, where they are reportedly held in brutal conditions and subjected to beatings”.²⁶

According to a recent Italian journalistic investigation, Milad participated to a meeting held on 11 May 2017 in Italy together with Italian government officials to discuss the management of migrants, although his name had been previously mentioned in articles published on main Italian newspapers including *The Post Internazionale*, *Il Messaggero*, *Il Mattino*, *La Repubblica* and *l’Espresso*.²⁷ Moreover, Nancy Porsia wrote on the website of the Istituto per gli Studi di Politica Internazionale (ISPI) in 2017 that “Rome is also aware of the level of endemic corruption present also within the Libyan Coast Guard. In the framework of Operation EUNAVFOR MED, sufficient information has been gathered concerning the role of the Coast Guard in Zawiya ... in migrant smuggling. Milad ... has been controlling the migrant smuggling business ... since 2015”.²⁸ According to Milad himself, his trip to Italy was facilitated by IOM and he travelled with a regular visa.²⁹

As to Sabratha, Reuters, the Associated Press and *Le Monde* (whose reportages have been widely quoted in the Italian press)³⁰ reported of an agreement struck in Summer 2017 directly between two militias – namely the Brigade 48 and the Brigade of the Martyr Anas al-Dabashi/al-Ammu militia, the latter headed by Ahmed Dabbashi (alias Amu/Al Ammu), also listed by the UNSC Libya Sanctions Committee as “main facilitator” of migrant smuggling in western Libya,³¹ through his role of “Commander of the Anas al-Dabbashi militia, Leader of a transnational trafficking network”³² – and the GNA and Italy to “combat trafficking” in exchange

²⁰ UNSC, *Final report of the Panel of Experts on Libya established pursuant to resolution 1973 (2011)*, 1 June 2017, UN Doc S/2017/466, p. 103 (hereinafter UNSC, *Report of the Libya Panel of Experts*, 2017) (Doc. 30).

²¹ L. Misculin, *The Libyan Coast Guard does not exist*, in *Il Post*, 26 August 2017 (Doc. 73).

²² N. Porsia, *The kingpin of Libya’s human trafficking mafia*, in *TRT World*, 20 February 2017 (Doc. 76).

²³ UNSC, *Report of the Libya Panel of Experts*, 2017, § 258 (Doc. 30).

²⁴ *Ibidem*, Annex 30, § 1 (Doc. 30).

²⁵ UNSC, *UNSC Consolidated List*, accessed on 28 October 2019, pp. 85, 131 (Doc. 26).

²⁶ UNSC, *Abd Al Rahamn Al-Milad*, accessed on 28 October 2019 (Doc. 25).

²⁷ N. Scavo, *La trattativa nascosta. Dalla Libia a Mineo, il negoziato tra l’Italia e il boss*, in *L’Avvenire*, 4 October 2019 (Doc. 77).

²⁸ N. Porsia, *Stuck in Libya. Migrants and (Our) Political Responsibilities*, in *ISPI online*, 2 February 2017 (Doc. 86).

²⁹ *Esclusivo: l’intervista di Francesca Mannocchi a Bija*, in *La7*, 25 October 2019 (Doc. 62).

³⁰ *Inter alia*: *Il Fatto Quotidiano*, *Migranti*, *Le Monde*: “Accordo tra l’Italia e i trafficanti libici per fermare i flussi”, 14 September 2017 (Doc. 67); *Il Post*, *L’Italia ha fatto un accordo con i trafficanti di migranti*, 30 August 2017 (Doc. 68).

³¹ UNSC, *Report of the Libya Panel of Experts*, 2017, § 258 (Doc. 30).

³² UNSC, *UNSC Consolidated List*, accessed on 28 October 2019, p. 131 (Doc. 26).

of “equipment, boats and salaries”,³³ including by “preventing migrants from leaving, often by locking them up”.³⁴ All quoted reportages documented that the Italian government did not confirm the deal.

5. MIGRANTS’ SEARCH AND RESCUE AT SEA

The following paragraphs reflect the fact that most of the information regarding interceptions/search and rescue operations at sea involving the LYCG originates from UN and NGOs’ reports, and the press. Information originating from State actors (in particular from Italian organs) is instead scarce. In this respect, on 13 October 2017 the Italian National Press Federation (Federazione Nazionale Stampa Italiana) published the open letter of a number of Italian journalists denouncing that competent Italian authorities (Rome MRCC, Italian Navy, Italian Coast Guard) had ceased issuing press releases/answering journalists’ inquiries on the condition of migrants in the Mediterranean Sea, and at disembarkation ports both in Italy and in Libya.³⁵

5.1. Search and rescue operations

In December 2016, both UNSMIL and the UNSG expressed concerns about abuses and human rights violations committed by the LYCG during maritime search and rescue operations.³⁶ In June 2017 (when Italy was a UNSC elected member) the UNSC Panel of Experts on Libya clearly denounced LYCG’s involvement in: “migrant smuggling and trafficking in persons”;³⁷ the “sinking of migrant boats using firearms”;³⁸ and the 17 August 2016 attack against a MSF’s vessel.³⁹ This latter incident was also confirmed by the UNHRC.⁴⁰ According to the UNSC Panel of Experts, the commander of the LYCG in Zawiya (Abd al Rahman Milad, alias Bija) was “directly involved in the sinking of migrants boats”.⁴¹ In September 2017 UNSMIL further: documented the use of “firearms, physical violence and threatening language” by LYCG officials during search and rescue operations inducing “panic among people in unseaworthy vessels seeking assistance ... some of whom jump into the water without life jackets”; reported that LYCG officials “jump[ed] on board of migrant vessels without warning”; and affirmed that LYCG boats “collid[ed] with vessels in distress”.⁴²

NGOs operating at sea certified that the LYCG has several times put rescue operations at risk.⁴³ *Inter alia*: Sea-Watch denounced that, on 11 May 2017, a Libyan patrol boat approached at high speed to the rescue area, heading to a wooden boat full of migrants;⁴⁴ MSF/SOS Mediterranee reported that during a rescue operation on 23 May 2017 the LYCG fired Kalashnikov shots in the air, creating chaos and scaring migrants who jumped into the water.⁴⁵ On 14 June 2017, during a meeting of the Italian parliamentary monitoring committee on migration, the MSF advocacy director stated that the LYCG did not follow standard rescue procedures and expressed concern about the “wild west” situations created by the LYCG during rescue operations.⁴⁶

³³ M. Michael, *Backed by Italy, Libya enlists militias to stop migrants*, in *Associated Press*, 29 August 2017 (Doc. 74).

³⁴ A. Lewis, S. Scherer, *Exclusive: Armed group stopping migrant boats leaving Libya*, 21 August 2017 (Doc. 58); J. Gautheret, F. Bobin, *Entre la Libye et l’Italie, petits arrangements contre les migrants*, in *Le Monde*, 14 September 2017 (Doc. 70).

³⁵ Federazione Nazionale Stampa Italiana, *Istituzioni silenziose su migranti e Libia, appello di un gruppo di giornalisti: “Fateci raccontare quel che accade”*, 13 October 2017 (Doc. 63).

³⁶ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, pp. 19-21 (Doc. 31).

³⁷ UNSC, *Report of the Libya Panel of Experts*, 2017, § 258 (Doc. 30).

³⁸ *Ibidem*, § 105 (Doc. 30).

³⁹ *Ibidem*, § 59 (Doc. 30).

⁴⁰ UNHRC, *Report of the UN High Commissioner for Human Rights on the situation of human rights in Libya, including on the effectiveness of technical assistance and capacity-building measures received by the Government of Libya*, UN Doc A/HRC/34/42, 13 January 2017, § 47 (Doc. 19).

⁴¹ UNSC, *Report of the Libya Panel of Experts*, 2017, § 105 (Doc. 30).

⁴² UNSC, *Report of the Secretary-General pursuant to Security Council resolution 2312 (2016)*, UN Doc S/2017/761, 7 September 2017, § 6 (Doc. 29).

⁴³ O. Spaggiari, *Mediterraneo: tutti gli attacchi della Guardia Costiera libica alle ONG*, in *Vita*, 8 November 2017 (Doc. 80).

⁴⁴ Redazione Agi, *Duello in mare tra Ong e guardia costiera libica*, in *Agi*, 10 May 2017 (Doc. 82).

⁴⁵ O. Spaggiari, *Mediterraneo: tutti gli attacchi della Guardia Costiera libica alla ONG*, in *Vita*, 8 November 2017 (Doc. 80).

⁴⁶ Parlamento italiano, Comitato parlamentare di controllo sull’attuazione dell’Accordo di Schengen, di vigilanza sull’attività di Europol, di controllo e vigilanza in materia di immigrazione, *Seduta n. 51*, 14 June 2017, p. 7 (Doc. 41).

In February 2017, the newspaper The Times published a video footage in which LYCG officials, among whom is recognizable the commander of the LYCG in Zawiya (Abd al Rahman Milad, alias Bijia), whipped and beat the migrants they have rescued.⁴⁷

5.2. Disembarkation

The UNHCR documented the existence of 16 disembarkation points in Libya in September 2017,⁴⁸ where migrants were landed upon interception by the LYCG. In December 2016 UNSMIL affirmed that, upon disembarkation, “migrants are typically transferred to DCIM detention facilities or to private houses and farms, sometimes for a fee, where they are often subjected to forced labour and, in the case of women, to rape and other sexual violence”.⁴⁹ The EU Trust Fund for Africa, in its report supporting the funding of a 90mln euros project in April 2017 confirmed that “[w]hen migrants and refugees are rescued or intercepted at sea ... by the Libyan Coast Guards, they are returned to points of disembarkation on the shore, before typically being taken to detention centres”.⁵⁰

6. MIGRANTS’ DETENTION CENTRES

Official migrants’ detention centres in Libya have been nominally under the control of the DCIM since 2011.⁵¹ However, some detention centres are under the de facto control of non-state armed groups.⁵²

Upon return from his visit to Tripoli in May 2017, the UN High Commissioner for Refugees Filippo Grandi expressed “shock at the harsh conditions in which refugees and migrants are held” in detention centres,⁵³ as also reported in Italian media.⁵⁴ In 2017, UNSMIL reportedly visited nine detention centres and “observed inhuman conditions”.⁵⁵ In a 2016 report, UNSMIL had already described conditions of detention as “generally inhuman, falling short of international human rights standards”.⁵⁶ Human rights NGOs whose staff was accorded access to detention centres in 2017 confirmed that centres did “not meet any national, regional, or international standards”.⁵⁷ On 2 August 2017, during a meeting of the Italian parliamentary monitoring committee on migration, Federico Soda, Director of the IOM coordination office for the Mediterranean, reported that migrants’ conditions in the twenty detention centres visited by the IOM were “awful” (*pessime*).⁵⁸

Inter alia, UN and NGOs have consistently affirmed that in detention centres migrants are arbitrarily detained and their documents are confiscated.⁵⁹ Furthermore, they are not registered upon arrest: thus, it is impossible to keep record of their destiny, although it is known that some are held for extended periods, some are transferred in different detention centres or secret locations, while others disappear.⁶⁰ Moreover, they do not have access to the judicial system.⁶¹

⁴⁷ B. Trew, T. Kington, *Video shows Libyan Coastguard whipping rescued migrants*, in *The Times*, 14 February 2017 (Doc. 60).

⁴⁸ UNHCR, *LIBYA: Disembarkation points*, 27 September 2017 (Doc. 13).

⁴⁹ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, § 6.4 (Doc. 31).

⁵⁰ EU Commission, EU Emergency Trust Fund for Africa, *Action Fiche of the EU Trust Fund to be used for the decisions of the Operational Committee*, 12 April 2017, p. 5 (Doc. 34).

⁵¹ Global Detention Project, *Libya Immigration Detention Profile*, February 2015, § 2.8 (Doc. 50).

⁵² UNSC, *Report of the Libya Panel of Experts*, 2017, p. 103 (Doc. 30).

⁵³ I. Founten, *As Libya crisis deepens, UNHCR chief steps up assistance*, in *UNHCR News*, 22 May 2017 (Doc. 65).

⁵⁴ F. Paci, *Libia, l'orrore dei 34 centri di detenzione. “Donne e bimbi rinchiusi tra gli escrementi”*, in *La Stampa*, 16 August 2017 (Doc. 66).

⁵⁵ UNHRC, *Situation of human rights in Libya, and the effectiveness of technical assistance and capacity-building measures received by the Government of Libya*, 21 February 2018, UN Doc A/HRC/37/46, § 44 (hereinafter UNHRC, *Situation of human rights in Libya*, 2018) (Doc. 18).

⁵⁶ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, p. 15 (Doc. 31).

⁵⁷ MSF, *Human suffering: Inside Libya’s detention centres*, 1 September 2017 (Doc. 55).

⁵⁸ Parlamento italiano, Comitato parlamentare di controllo sull'attuazione dell'Accordo di Schengen, di vigilanza sull'attività di Europol, di controllo e vigilanza in materia di immigrazione, *Seduta n. 55*, 2 August 2017 (Doc. 40).

⁵⁹ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, p. 15 (Doc. 31).

⁶⁰ MSF, *Human suffering: Inside Libya’s detention centres*, 1 September 2017 (Doc. 55).

⁶¹ UNHRC, *Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya: detailed findings*, 2016, UN Doc A/HRC/31/CRP.3, § 259 (hereinafter UNHRC, *OHCHR Libya Investigation*, 2016) (Doc. 20).

Furthermore, already in 2015 UNSMIL was reporting that overcrowding and limited ventilation were causing infectious diseases, including scabies and chickenpox.⁶² In 2017 it further noted that migrants were “crammed into hangars with appalling sanitary conditions, little space to lie down, and no or extremely limited access to light, ventilation or appropriate hygiene facilities”,⁶³ while reporting insufficient food, malnutrition, non-potable or dirty water.⁶⁴

In 2016 UNSMIL documented “numerous accounts of migrants detained in DCIM centres who were subjected to torture and other ill-treatment by DCIM guards”, including but not limited to: verbal and physical abuse, electric shocks, shots fired, beatings with metal rods and sticks, suspension in contorted positions. The abuses were such as to cause hearing and vision loss.⁶⁵ In 2015 it reported that women and children were subjected to corporal inspections by male guards.⁶⁶

Against this background, migrants do not have access to health care and hospitals refuse to visit them. In 2017 MSF denounced that migrants requiring medical treatment were hidden by the guards from its staff and reported that some patients disappeared unexpectedly from visited detention centres.⁶⁷

According to the data and testimony collected by MEDU from 2014 to 2017, the 85% of migrants transiting through Libya was subjected to torture and inhumane treatment; the 79% was detained in overcrowding cells; the 70% was deprived of water, food and health care; the 65% was subjected to physical violence.⁶⁸

7. VULNERABLE GROUPS

7.1. Sub-Saharan African migrants

Libya lacks comprehensive legislation to prevent and prohibit racial discrimination.⁶⁹

Racism and discrimination towards people of sub-Saharan origin in Libya have been widely documented by the UN, NGOs and the press.⁷⁰ Sub-Saharan African migrants have been targeted due to their ethnicity, undocumented status or religion.⁷¹ The Danish Refugees Council reported in 2013 that routine abuses and rights violations include name-calling, stone-throwing, arbitrary detention, beatings, robberies, lack of due legal process, extortion, exploitative labour practices and forced eviction from lodgings.⁷² Data reported by the Regional Mixed Migration Secretariat in 2014 testify that the 97% of sub-Saharan African migrants does not denounce such issues to the police, mainly because they think it to be useless (45%) or out of fear (45%).⁷³

⁶² UNSMIL, *The situation of migrants in transit through Libya en route to Europe*, 10 May 2015 (Doc. 32); MHUB, *Detained Youth*, 1 July 2015, p. 65 (Doc. 53).

⁶³ UNHRC, *Situation of human rights in Libya*, 2018, § 44 (Doc. 18).

⁶⁴ UNSMIL, *The situation of migrants in transit through Libya en route to Europe*, 10 May 2015 (Doc. 32); UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, pp. 15-16 (Doc. 31).

⁶⁵ Ibidem, pp. 17-18 (Doc. 31).

⁶⁶ UNSMIL, *The situation of migrants in transit through Libya en route to Europe*, 10 May 2015 (Doc. 32).

⁶⁷ MSF, *Human suffering: Inside Libya’s detention centres*, 1 September 2017 (Doc. 55).

⁶⁸ MEDU, *Rapporto sulle condizioni di grave violazione dei diritti umani dei migranti in Libia (2014-2017)*, December 2017, p. 2 (Doc. 52).

⁶⁹ CERD, *Report of the Committee on the Elimination of Racial Discrimination: Sixty-fourth Session (23 February-12 March 2004), Sixty-fifth Session (2-20 August 2004)*, 1 October 2004, UN Doc A/59/18(SUPP), p. 22 (Doc. 3).

⁷⁰ UNHCR, *Mixed Migration Trends in Libya: Changing Dynamics and Protection Challenges - Executive Summary*, June 2017, p. 6 (Doc. 15); Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2016 - Libya*, 12 July 2016 (Doc. 54); Global Detention Project, *Immigration Detention in Libya*, February 2015, pp. 2-3 (Doc. 49); D. Searcey, J.Y. Barry, *Sub-Saharan African Migrants Face Old Enemy in Libya: Bigotry*, in *The New York Times*, 12 September 2017 (Doc. 61).

⁷¹ Minority Rights Group International, *State of the World’s Minorities and Indigenous Peoples 2016 - Libya*, 12 July 2016 (Doc. 54); S. Hamood, *African Transit Migration through Libya to Europe: the Human Cost*, January 2006, p. 40 (Doc. 87).

⁷² Danish Refugee Council, “*We Risk Our Lives for Daily Bread*” – *Findings of the Danish Refugee Council Study of Mixed Migration in Libya*, December 2013, p. 5 (Doc. 39).

⁷³ Regional Mixed Migration Secretariat, *Going West: a contemporary mixed migration trends from the Horn of Africa to Libya and Europe*, July 2014, p. 58 (Doc. 56).

7.1.1. Slavery

Slavery and the slave trade are prohibited by articles 425 and 426 of the Libyan Penal Code.⁷⁴ Nonetheless, in April 2017 the UN News service reported that hundreds of sub-Saharan African migrants were being bought and sold openly in modern day slave markets in Libya.⁷⁵ In August 2017, the Italian newspaper La Repubblica published a video exposing such trade.⁷⁶ Furthermore, in November 2017 the CNN published images showing an auction of enslaved people in Libya: they were sub-Saharan African migrants, victims of trafficking or enslaved. They were sold from a base of 900 Libyan dinars to 1200. CNN was told of auctions in nine locations: Zuwara, Castelverde, Sabratha, Garyan, Alrujban, Kabaw, Alzintan, Gadamis and Sabha, but they are believed to be many more.⁷⁷ Again in November 2017, IOM staff in Libya “documented shocking events on North African migrant rounds, which they have described as ‘slave markets’”.⁷⁸

The UN Special Rapporteurs on contemporary forms of slavery, on the human rights of the migrants and on trafficking in human beings have condemned the sale of sub-Saharan African migrants in Libya,⁷⁹ echoed by the Chairman of the AU Commission on the African migrants⁸⁰ and the UNSC.⁸¹

7.2. Women

In 2017, the Danish Refugee Council estimated that the overall percentage of women migrants in Libya, Mali and Niger was close to 30-40%, via interviews conducted with 37 smugglers (located in Sabha and Tripoli): 43% of them reported that half or more of their clients were women, while the 10% stated that they transported almost only women.⁸²

According to a 2017 UNICEF report cited by the Italian press,⁸³ women are often arrested at border crossings and checkpoints where they experience abuse and gender-based violence, including the provision of sexual services or cash in exchange for crossing. More than one third of the women interviewed said that their assailants wore uniforms or appeared to be associated with military and other armed forces.⁸⁴

Once detained, information originating from a variety of sources confirms that migrant women in Libya are particularly vulnerable to rape and other forms of sexual violence, and sexual exploitation.

As to sexual violence, the report of the UNSG covering the events taking place in Libya from 22 August 2017 to 12 February 2018 documented that “[m]igrant women and girls were subjected to rape, forced prostitution and other forms of sexual violence at the hand of State officials, members of armed groups, smugglers and traffickers.”⁸⁵ This added to the 2017 report, where the UNSG attested that “[m]igrant women and girls were particularly vulnerable to gang rape and other sexual violence and exploitation at the hands of officials, including from staff of the Department for Combating Illegal Migration, members of armed groups, smugglers and traffickers.”⁸⁶ In 2016, survivors and eyewitnesses described to UNSMIL staff what happened inside so-called “connection houses” (places where smugglers and traffickers hold migrants during transit),⁸⁷ farms and DCIM detention centers: migrant women were threatened with guns, knives and beaten when they resisted sexual assaults at the hand of rapists generally described as extremely violent. Interviewed women explained

⁷⁴ CERD, *UN Committee on the Elimination of Racial Discrimination: State Party Report, Libya*, 18 June 2003, UN Doc CERD/C/431/Add.5 (Doc. 4).

⁷⁵ UN News Service, *African migrants reportedly being sold in ‘slave markets’ in Libya, UN agency warns*, 12 April 2017 (Doc. 24).

⁷⁶ La Repubblica, *video: Migranti, racconto dell’inferno libico: venduti come schiavi, picchiati e poi costretti a imbarcarsi*, 29 August 2017 (Doc. 72).

⁷⁷ N. Elbagir, R. Razek, A. Platt, B. Jones, *People for sale: where lives are auctioned for \$400*, in CNN, November 2017 (Doc. 75).

⁷⁸ IOM, *IOM Learns of ‘Slave Market’ Conditions Endangering Migrants in North Africa*, 4 November 2017 (Doc. 6).

⁷⁹ OHCHR, *Libya must end “outrageous” auctions of enslaved people, UN experts insist*, 30 November 2017 (Doc. 10).

⁸⁰ AU, *Statement of the Chairperson of the African Union Commission on the plight of African migrants in Libya*, November 2017 (Doc. 33).

⁸¹ UNSC, *Statement by the President of the Security Council*, 7 December 2017, UN Doc S/PRST/2017/24 (Doc. 28).

⁸² Danish Refugee Council, *Hidden figures: Women on the move in Libya*, 2017, p. 3 (Doc. 38).

⁸³ Il Post, *Le violenze sui migranti in Libia*, 28 February 2017 (Doc. 69).

⁸⁴ UNICEF, *A Deadly Journey for Children: The Central Mediterranean Migration Route*, February 2017, p. 6 (Doc. 22).

⁸⁵ UNSC, *Report of the UNSG on the UNSMIL*, 2018, § 50 (Doc. 27).

⁸⁶ Ibidem, § 37 (Doc. 27).

⁸⁷ UNSMIL, OHCHR, *“Detained and dehumanised”*, 2016, p. 15 (Doc. 31).

that they had been advised to take a three-month contraception injection before departure.⁸⁸ In detention centers, pregnant women are reportedly left alone giving birth.⁸⁹ In 2017, an article in the Italian newspaper *Il Corriere della Sera* referred the testimony of a Nigerian woman describing how she and other women in Libya were raped in front of their own children.⁹⁰

As to sexual exploitation, UNSMIL reported in 2016 that migrant women travelling without male relatives in Libya were particularly vulnerable to being forced to work as sex workers.⁹¹ A 2017 UNHCR report affirmed that trafficking for sexual exploitation appeared to be increasing, affecting Nigerian and Cameroonian women in particular.⁹² In September 2017 the Italian weekly *L'Espresso* described how Italian organized criminal networks work together with traffickers in Libya in order to take mostly under-age Nigerian girls from their home country to Italy where they are coerced into prostitution, passing through Libya where they are kept in connection houses in which they are repeatedly raped.⁹³

7.3. Children

According to UNICEF, in 2017 the 9% of migrants in Libya were children and 41% of them were unaccompanied.⁹⁴ Although indeed mothers and children try to cross Libya together, they are often separated once they arrive at detention centers. This is evidenced by the fact that the number of unaccompanied migrant children in Italy is higher (in 2015: 92%) than in Libya.⁹⁵

When in Libya, migrant children are generally at risk of abuse and human rights violations, vulnerable to armed groups involved in smuggling, trafficking and children exploitation. The ¾ of migrant children interviewed by UNICEF in 2016 maintained that they had been subjected to violence, harassment and aggressions by adults during their journey. Some of them declared that they were abused by people who seemingly wore a uniform or claimed to be part of the armed forces.⁹⁶ Both girls and boys were sexually assaulted and forced into prostitution, and some of the girls were pregnant when they arrived in Italy, having been raped.⁹⁷

When detained, children are often held together with adults, thereby increasing the risk of abuses.⁹⁸ Many of the children interviewed by UNICEF in 2016 said that they were treated like animals in detention centers, harassed, beaten daily and kept without potable water, food and medical care for long periods of time.⁹⁹ In this respect, The Netherlands' Office of the Commissioner General for Refugees and Stateless Persons added that every child in Libya faces a risk of disruptions in food supply and health services.¹⁰⁰

8. IMPUNITY ASSOCIATED WITH MIGRANTS-RELATED CRIMES

There is virtually no international organization, State, human rights NGO and press agency which has not attested a severe and pervasive impunity in Libya, also in the months preceding the events of the present case.¹⁰¹

⁸⁸ Ibidem, pp. 21-22 (Doc. 31).

⁸⁹ F. Paci, *Libia, l'orrore dei 34 centri di detenzione. "Donne e bimbi rinchiusi tra gli escrementi"*, in *La Stampa*, 16 August 2017 (Doc. 66).

⁹⁰ A. De Simone, *"Io, prostituta nigeriana: violentata in Libia, picchiata in Italia, ho un debito da 50 mila euro": così le ragazze vengono costrette a vendersi*", in *Il Corriere della sera*, 18 July 2017 (Doc. 57).

⁹¹ UNSMIL, OHCHR, *"Detained and dehumanised"*, 2016, pp. 21-22 (Doc. 31).

⁹² UNHCR, *Refugee and migrant flows through Libya on the rise – report*, 3 July 2017 (Doc. 14).

⁹³ F. Mannocchi, *Noi vendute per sesso dalla Nigeria all'Italia*, in *L'Espresso*, 11 September 2017 (Doc. 64).

⁹⁴ UNICEF, *Libia, al via interventi di UNICEF e OIM per i minori migranti bloccati nel paese*, 19 December 2017 (Doc. 21).

⁹⁵ UNICEF, *Deadly Journey for Children: The Central Mediterranean Migration Route*, February 2017, p. 6 (Doc. 22).

⁹⁶ Ibidem, p. 4 (Doc. 22).

⁹⁷ UNICEF, *Danger every step of the way*, June 2016, p. 3 (Doc. 23).

⁹⁸ MHUB, *Detained Youth*, 1 July 2015, p. 62 (Doc. 53).

⁹⁹ UNICEF, *Deadly Journey for Children: The Central Mediterranean Migration Route*, February 2017, p. 4 (Doc. 22).

¹⁰⁰ The Netherlands' Office of the Commissioner General for Refugees and Stateless Persons, *Libya: Vulnerable Groups*, 19 December 2014, p. 20 (Doc. 42).

¹⁰¹ UNSMIL, OHCHR, *"Detained and dehumanised"*, 2016 (Doc. 31); UNHRC, *OHCHR Libya Investigation*, 2016 (Doc. 20); USDOS, *2016 Country Reports on Human Rights Practices – Libya*, 3 March 2017 (Doc. 44); UK: Foreign and Commonwealth Office, *Human Rights and Democracy Report 2017 – Libya*, 16 July 2018 (Doc. 43); MHUB, *Detained Youth*, 1 July 2015 (Doc. 53); Global Detention Project, *Global Detention Project Submission to the UN*

Generally speaking, UNMSIL reported in December 2016 that increasingly since 2011, and particularly since 2014, the Libyan justice system has been “severely hampered due to ongoing fighting and insecurity”. Many courts “have not been functioning” and armed groups have “threatened and attacked judges, lawyers and prosecutors”. Consequently, “[h]uman rights violations and abuses have not been addressed adequately”.¹⁰² Furthermore, according to the OHCHR, violations have been committed by different actors in disparate geographical areas, thus creating enormous challenges in “overcoming the prevailing impunity and securing accountability”.¹⁰³

More specifically, UNSMIL/OHCHR reported in 2016 that “[t]he breakdown in the justice system has led to a state of impunity, in which armed groups, criminal gangs, smugglers and traffickers control the movement of migrants through the country”.¹⁰⁴ A joint study conducted in 2015 by UN and national agencies dealing with migration confirmed that the “descent of Libya into lawlessness has created an environment where police, militias, smugglers, traffickers, criminal gangs, and civilians can detain migrants, asylum-seekers and refugees with impunity”.¹⁰⁵ Moreover, according to the director general of Finland’s National Board of Customs, who headed a EU mission to Libya in 2013, it is “nearly impossible to identify and reprimand crew members [of the LYCG] on the boats as they don’t wear uniforms or name tags, making it easier for corrupt crew to act with anonymity and impunity”.¹⁰⁶ In May 2017 the ICC Prosecutor denounced to the UNSC the “serious and widespread [international] crimes allegedly committed against migrants attempting to transit through Libya”, declaring her intention to open an investigation into migrants-related crimes with the aim to put an end to impunity.¹⁰⁷

Furthermore, the OHCHR attested in February 2016 that the lack of “real access to judicial process” for migrants and the absence or inefficiency of monitoring systems entails that “[t]here is no oversight in relation to ... the commission of human rights violations and abuses” committed inside migrants’ detention facilities.¹⁰⁸ Reportedly, even the Libyan Ministry of Interior itself, whose competence has always included the oversight over migrants’ detention centres, “since the 2011 conflict ... has had no capacity or resources to continue doing so”.¹⁰⁹

9. INVOLVEMENT OF IOM AND UNHCR IN THE MANAGEMENT OF MIGRANTS

The main international actors involved in the management of migrants in Libya are the IOM and the UNHCR. The former has suspended its return programs to Libya since 2014,¹¹⁰ while the latter has urged all States to suspend forcible returns to Libya and has ruled out that Libya may be considered a safe third country since November 2014.¹¹¹ In 2017, IOM and UNHCR activities conducted in relation to migrants in Libya were mainly three.

First, both provided urgent humanitarian assistance to migrants rescued at sea upon disembarkation. In September 2017, UNHCR declared to be present in 6 disembarkation points out of 16. In 2017, it affirmed that its involvement consisted in “the provision of life-saving assistance and protection monitoring”.¹¹² Said information confirms the assessment provided by Amnesty International in 2017, whereby “UNHCR is only allowed to conduct preliminary protection assessment ... and the agency has very little space to advocate against individuals’ transfer from a disembarkation zone to detention”.¹¹³ Similarly, in August 2017 IOM

Committee on Migrant Workers, 4-13 September 2017 (Doc. 48); N. Scavo, *Inchiesta. “violenze ai migranti, in Libia clima di impunità”*, in *Avvenire.it*, 10 August 2018 (Doc. 78).

¹⁰² UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, § 5.2 (Doc. 31).

¹⁰³ UNHRC, *OHCHR Libya Investigation*, 2016, § 319 (Doc. 20).

¹⁰⁴ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, p. 6 (Doc. 31).

¹⁰⁵ MHUB, *Detained Youth*, 1 July 2015, § 4.6.1 (Doc. 53).

¹⁰⁶ K. Zurutuza, *Europe’s Libyan gamble*, in *Politico*, 3 February 2017 (Doc. 71).

¹⁰⁷ F. Bensouda, *Statement of the ICC Prosecutor to the UNSC on the Situation in Libya*, 9 May 2017 (Doc. 35).

¹⁰⁸ UNHRC, *OHCHR Libya Investigation*, 2016, § 259 (Doc. 20).

¹⁰⁹ *Ibidem*, § 253 (Doc. 20).

¹¹⁰ UNSMIL, OHCHR, “*Detained and dehumanised*”, 2016, p. 8 (Doc. 31).

¹¹¹ UNHCR, *UNHCR Position on Returns to Libya*, November 2014, §§ 12, 14 (Doc. 16).

¹¹² UNHCR, *Libya: Activities at Disembarkation, monthly updated*, November 2017 (Doc. 11); UNHCR, *Libya: Activities at Disembarkation, monthly updated*, September 2017 (Doc. 12).

¹¹³ Amnesty International, *Libya’s Dark Web of Collusion: Abuses Against Europe-Bound Refugees and Migrants*, 11 December 2017, p. 41 (Doc. 45).

declared to be delivering “lifesaving equipment”.¹¹⁴ According to the Global Detention Project, also IOM cannot oppose the transfer of rescued migrants to detention centres.¹¹⁵ In this respect, the IOM’s operations officer in Libya reportedly said in an interview of early October 2017 that IOM is “not the body that determines what is a detention center and what is not”.¹¹⁶ An article authored by the Chief of IOM Mission in Libya confirms that “[t]he groups of returned migrants are taken by the Libyan Directorate for Combatting Illegal Migration (DCIM) to an official migrant detention centre”, although the author condemned “[t]he practice of automatically taking people from the water to detention”.¹¹⁷

Second, both entities were granted by DCIM “access to detention centres to provide humanitarian assistance such as hygiene kits and other items of immediate necessity, as well as basic medical care”.¹¹⁸ Yet, both have denounced the conditions inside detention centres, also through joint statements: *inter alia*, in 2017 they described conditions of detention “generally inhuman”.¹¹⁹

Third, according to the Situation Reports uploaded on its website, IOM has been providing so-called “voluntary humanitarian returns” since 2015,¹²⁰ assisting in the return of migrants stranded in Libya to their countries of origin, including Mali, Sudan, Nigeria, Ethiopia and Yemen.¹²¹ Human rights NGOs have questioned the voluntariness of returns. According to Amnesty International, “[g]iven the alternative of indefinite detention and the torture or other ill-treatment in detention, as well as the absence of an asylum system, the extent to which these returns are genuinely voluntary remains questionable, particularly for those with a claim to asylum”.¹²² This position was recently shared by Human Rights Watch.¹²³

Rome, 11 November 2019

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¹¹⁴ IOM, *UN Migration Agency Increases Support for Migrants Rescued off Libyan Coast*, 29 August 2017 (Doc. 9).

¹¹⁵ Global Detention Project, *Libya Immigration Detention Profile*, February 2015, § 1 (Doc. 50).

¹¹⁶ P. Tinti, *Nearly There, but Never Further Away*, in *Foreign Policy*, 5 October 2017 (Doc. 81).

¹¹⁷ O. Belbeisi, *Returned to Libyan shores and held in detention centres: What are the practical alternatives?*, in *Thomson Reuters Foundation News*, 18 August 2018 (Doc. 79).

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