

Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of slavery, including its causes and consequences and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

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Excellency,

We have the honour to address you in our capacity as Working Group on Arbitrary Detention; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of slavery, including its causes and consequences and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, pursuant to Human Rights Council resolutions 33/30, 27/1, 26/19, 24/3 and 25/13.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning the **possible return of migrants, under the partnership framework under discussion between your Excellency's Government and the Government of the State of Libya, in possible violation of the principle of non-refoulement.**

According to the information received:

Your Excellency's Government has been holding negotiations with the Government of Libya, in order to strengthen the cooperation between the two countries in seeking to "disrupt the smuggling of migrants and trafficking of humans in the Central Mediterranean route". Reportedly, the foundations of a memorandum of understanding are currently under discussion, and include provisions establishing Italian support to Libyan authorities in migration management-related activities. It has been reported that the partnership framework would comprise the provision of capacity-building to Libyan authorities, as well as the allowance of Italian military navy in Libyan territorial waters, supporting search and rescue operations conducted by the Libyan Government. Furthermore, it is alleged that the anti-smuggling and anti-trafficking strategy would include the closure of the Libyan border with Niger, which is considered to be the main passageway into the country for the majority of migrants arriving in the Sicily Channel.

It has been alleged, that ongoing conflict and insecurity have led to collapse of the rule of law in Libya since 2011, with increasing deterioration of the security environment since 2014. The country faces the breakdown of its justice system, worsened by the proliferation of armed groups, criminal gangs, smugglers and traffickers. All parties to the conflict and criminal groups allegedly perpetrate

widespread violations and abuses of international human rights law, including unlawful killings, abductions, hostage-taking, enforced disappearances and torture. According to our source, migrants in Libya are amongst the most vulnerable people in the country. Lacking tribal or other community protections, they are allegedly subject to gross violations of human rights, including arbitrary detention, extortion, torture, unlawful killings and enforced disappearance, trafficking in persons, forced labor, and sexual exploitation, and other forms of contemporary slavery with no protection provided by Libya's weak law enforcement agencies. Reportedly, migrant children and women are the most exposed. Reportedly, the latter often fall victim of rape, other sexual violence, and trafficking for sexual exploitation. Moreover, migrants leaving Libya are often subject to physical violence and intimidation. It has been reported, that migrants are embarked at gun point after several weeks of forced labour and other human rights abuses while in the country.

It has been reported, that consistent and widespread pattern of abuses are perpetrated by governmental authorities, including by members of the Department for Combatting Illegal Migration (DCIM) and the Libyan Coast Guard. The abuses allegedly occur in a wide range of migration management-related activities, including in search and rescue operations and in detention facilities, to which migrants are taken once intercepted at sea.

According to information received, the interceptions conducted by the Libyan Coast Guard are carried out in a dangerous and life-threatening manner, followed by incidents of physical aggression, robbery and extortion by members of the Coast Guards. Pursuant to Libyan Law, once intercepted, migrants are reportedly subject to mandatory and indefinite detention, in inhumane and degrading facilities run by the DCIM. Detention – whether run by DCIM or criminal groups – is reportedly characterized by the lack of formal registration, legal process or access to lawyers or judicial authorities. The deaths of migrants in detention often go unreported or migrants disappear. According to the information received, the detention facilities fail to adhere to any international legal standards, with migrants struggling in overcrowded conditions, lacking access to water, food, toilets and washing facilities.

Moreover, it is reported that Libya does not meet the criteria to be considered a place of safety for disembarkation following rescue at sea. Accordingly, the International Organization for Migration – IOM has suspended its returns programs to Libya in August 2014, including for Libyan nationals. Similarly, the United Nations High Commissioner for Refugees – UNHCR has urged all States to suspend forcible returns to Libya, including Tripoli, until considerable improvement of the security and human rights situation is verified.

While we do not wish to prejudge the accuracy of these allegations, we wish to express our heightened concern over the possible human rights implications of your Excellency's Government measures to strengthen the Libyan authorities' capacity and performance of search and rescue operations, which would imply the return of migrants to an unsafe third country. Given the rampant lawlessness and gross violence perpetrated against migrants across the country, the fragmentation of territorial control, and the plethora of armed and criminal groups operating in Libya, we are concerned that eventual cooperation between your Excellency's Government and the Government of Libya would contribute to the pervasive and consistent patterns of human rights violations in the country. In particular, we are concerned that strengthening activities, institutions and mechanisms that would increase the interception of migrants at sea and their unlawful return to Libya, a state where they are at risk of persecution and being subjected to torture and other ill-treatment, and enforced disappearance, would constitute a violation of the principle of non-refoulement. Furthermore, we wish to express concern over the apparent absence of an adequate assessment of the human rights implications of such measures, despite robust documentation that Libya does not meet the criteria to be considered a place of safety for disembarkation following rescue at sea, nor is it a safe place for migrants' return.

We wish to recall your Excellency's Government that the prohibition of refoulement is explicitly included in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, ratified by Italy. Furthermore, the prohibition of return to a place where individuals are at risk of torture and other ill-treatment is enshrined in Article 3 of the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), also ratified by Your Excellency's Government. This absolute prohibition against refoulement is stronger than that found in refugee law, meaning that persons may not be returned even when they may not otherwise qualify for refugee or asylum status under article 33 of the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under the CAT must be assessed independently of refugee or asylum status determinations, so as to ensure that the fundamental right to be free from torture or other ill-treatment is respected even in cases where non-refoulement under refugee law may be circumscribed.

In addition, the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions (Principle 5) establishes that no one shall be involuntarily returned or extradited to a country where there are substantial grounds for believing that he or she may become a victim of extra-legal, arbitrary or summary execution.

We would like to recall to your Excellency's Government that the International Covenant on Civil and Political Rights (ICCPR), provides that every individual has the right to life and security of the person, that this right shall be protected by law, and that no person shall be arbitrarily deprived of his or her life (article 6). We would like to recall the jurisprudence of the Human Rights Committee, according to which the State party has

a special responsibility of care for an individual's life when in custody, and that it has to take adequate and appropriate measures to protect his/her life.

In addition, we would like to draw attention to article 9.1 of ICCPR, which provides that everyone has the right to liberty and security of person. The enjoyment of the rights guaranteed in the ICCPR is not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (CCPR/C/21/Rev.1/Add.13 (2004), para. 10). The detention of migrants and asylum seekers should thus be a measure of last resort. The ICCPR further stipulates that all persons deprived of their liberty be ensured the right without delay to control by a court of the lawfulness of the detention (art. 9 (4)). We would also like to draw your attention to article 10 of the ICCPR, which provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

In addition, the International Convention for the Protection of All Persons from Enforced Disappearance, ratified by your Excellency's Government, establishes that no one shall be subject to enforced disappearance, which is considered to be the “arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”. It further specifies in Article 16, that no State Party shall expel, return (“refouler”), surrender or extradite a person to another State where there are substantial grounds for believing that he or she would be in danger of being subjected to enforced disappearance. A similar provisions is contained in article 8 (1) of the 1992 Declaration on the Protection of All Persons from Enforced Disappearances.

We would also like to refer to the provisions of the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (the Palermo Protocol). Its article 8 (2) states: When a State Party returns a victim of trafficking in persons to a State Party of which that person is a national or in which he or she had, at the time of entry into the territory of the receiving State Party, the right of permanent residence, such return shall be with due regard for the safety of that person and for the status of any legal proceedings related to the fact that the person is a victim of trafficking and shall be preferably be voluntary.

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

Please be informed that a communication with the same content is being sent to Libyan authorities and a letter with similar content will also be sent to the European Union.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide all information or additional comments in relation to these allegations.
2. Please provide information on the measures and precautions taken to ensure that any agreement signed with the Government of Libya is respectful of your Excellency's Government's obligations under international law. In particular, to ensure that migrants intercepted at sea will be taken to places of safety, in accordance of international human rights obligations and standards, particularly the principle of non-refoulement.
4. Please explain whether your Excellency's Government has already conducted an assessment of the situation of migrants, including trafficked persons and those at risk of trafficking, in Libya and whether it is aware of the arbitrary detention, torture, unlawful killings and enforced disappearance, forced labour, sexual exploitation and extortion of migrants.
5. In this regard, please share your Excellency's Government's strategy with respect to the assessment of human rights implications of any migration management programmes and policies that your Excellency's Government might implement, renew or reinforce, in coordination with the Government of Libya, and what independent oversight mechanisms your Excellency's Government will put in place to ensure that it is duly informed of the consequences of the returns to Libya for the individuals returned and therefore that returns to Libya effectively do not lead to human rights violations.
6. Please provide information on existing mechanisms to promote capacity-building and support search and rescue operations conducted by Libyan authorities under already existing partnership framework approaches, as well as their respective human rights implications assessments, in accordance to your Excellency's Government's obligations under international law.

7. Please specify how trainings to Libyan authorities address the human rights of migrants, victims of trafficking and those at risk of trafficking in a comprehensive way.
8. Please provide information regarding how the proper identification of all potential protection needs and respect for international and human rights law – particularly with regard to the principle of non-refoulement – are taken into account when carrying out the partnership framework.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible of the alleged violations.

We intend to publicly express our concerns as we are of the view that the information upon which the press release is going to be based is sufficiently reliable to indicate a matter warranting immediate attention. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issues in question.

Your Excellency's Government's response will be made available in a report to be presented to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

José Antonio Guevara Bermúdez
Vice Chair of the Working Group on Arbitrary Detention

Houria Es-Slami
Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

François Crépeau
Special Rapporteur on the human rights of migrants

Urmila Bhoola
Special Rapporteur on contemporary forms of slavery, including its causes and consequences

Nils Melzer
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment