

SCAPEGOATS OF FEAR

RIGHTS OF REFUGEES, ASYLUM-SEEKERS AND MIGRANTS ABUSED IN LIBYA

1. Introduction

"[The guards] constantly insult us, and call us: 'you donkey, you dog'."
Gambian detainee, speaking to Amnesty International, 10 May 2013

Nearly a year after the first elections in post-Gaddafi Libya, the human rights of tens of thousands of foreign nationals, including asylum-seekers, refugees and migrants, continue to be routinely violated.

In a context of political instability and lawlessness, foreign nationals, mainly from sub-Saharan Africa, are at constant risk of exploitation, arrest and indefinite detention pending deportation. Those without "proper documentation" are particularly vulnerable as Libyan legislation criminalizes entering, staying in or leaving Libya irregularly.¹ When Amnesty International delegates were in Libya in April and May 2013, approximately 1,700 detained asylum-seekers were held indefinitely in poorly resourced "holding centres". The situation of asylum-seekers and refugees in Libya is particularly precarious as Libya widely resorts to their detention in breach of international law and the country still lacks an asylum system and national asylum legislation.

Libya continues to be heavily reliant on foreign workers, especially in the agriculture and construction sectors as well as the services industry. Despite this, the authorities have failed to develop a coherent migration policy to protect the rights of these workers and regularize their status. Such failures mean that abuses against migrant workers thrive with impunity.

Following the mass exodus of foreign nationals from Libya during the armed conflict in 2011, migration flows into Libya appear to have resumed. Once again, the country is a magnet destination for people, particularly sub-Saharan Africans and North African and Middle Eastern nationals, who are looking for economic opportunities or for international protection as they flee persecution, violence and armed conflicts in the region and beyond.

Further, many thousands of individuals arrive in Libya every year in the hope of continuing their journey to European shores. At the end of April 2013, the Libyan Coast Guard noted an increase since the beginning of the year in the number of people leaving by boat to Europe, stating that some 650 people had been intercepted at sea in the beginning of May and handed over to detention centres overseen by Libya's Department of Combating Irregular Migration (DCIM), which is under the Ministry of Interior.² According to the United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency, 24 boats carrying some 2,500 people from Eritrea, Somalia and Sudan had departed from the Libyan coast towards Europe since the beginning of March. Four of the boats were turned back by the Libyan Coast Guard as they embarked on the journey across the Mediterranean Sea.

At the same time, the Libyan authorities seem to have stepped up their efforts to combat "irregular migration". By the end of 2012, the General National Congress (GNC), the first elected body of Libya³ issued a decision to seal the country's borders with Algeria, Chad, Niger and Sudan and declared the country's southern regions as closed military areas subject to "special measures". The decision was mainly driven by security considerations and had the

¹ Foreign nationals, especially from sub-Saharan Africa, are regularly stopped at checkpoints, on the street or in their workplace for identity checks.

² See Facebook site of the Department for Combating Irregular Migration for Jabal al-Akhdar, Al-Bayda, https://www.facebook.com/permalink.php?id=511190462246849&story_fbid=593188877380340

³ The General National Congress (GNC) is tasked with passing legislation, preparing the next parliamentary elections, appointing a government, and overseeing the process of drafting the country's first Constitution.

stated aim of reducing arms and human trafficking. However, it also empowered the military commander in the south to arrest “wanted persons” and deport “infiltrators” across the border.

In January 2013, the Ministry of Interior announced the introduction of visas for all foreigners wishing to enter the country. A month later, the Libyan authorities introduced new visa rules requiring Egyptians to apply ahead of time⁴. The new regulation affected, among others, tens of thousands of Egyptian migrant workers and residents of the border town of Salloum, who initiated sit-ins at the border in protest⁵. Around the same time, the Ministry of Labour stated that it would take tough measures against any foreign national found to be in Libya “irregularly”, and announced the halting of all procedures related to the entry of foreign workers to Libya until the labour market was regulated.⁶

The country’s border crossing with Egypt at Salloum-Musaid was closed on 22 January to all foreign nationals with the exception of Egyptians holding a visa.⁷ The border closure affected mainly Syrian refugees who had previously been able to enter Libya by land provided they had a valid passport. Access into Libya for Syrians had been gradually restricted since the September 2012 attack on the US Consulate in Benghazi, following which single Syrian men without a visa were barred from entering Libya. Local media speculated that the Ministry of Interior’s January 2013 decision was motivated by fears that Syrian and Iranian nationals were spreading Shi’a political ideology in Libya, a fear widely held in the country. Libyan officials dismissed these allegations. UNHCR has to date registered some 8,100 Syrian refugees in Libya, but estimates the overall Syrian population in the country at over 100,000.

Amnesty International visited seven migrant “holding centres” as called by the Libyan authorities – in Benghazi⁸, al-Zawiya, Gharyan, Sabha, Misrata and Tripoli where foreign nationals were held unlawfully in prison-like conditions indefinitely for “migration-related offences” pending deportation. At the time of Amnesty International’s visit, approximately 5,000 migrants, refugees and asylum-seekers were held in 17 such centres run by the Ministry of Interior, according to official statistics.⁹ An unknown number of detainees were also being held by militias¹⁰ that were formed during and after the 2011 armed conflict and continue to operate without state oversight. The number of detainees fluctuates as the cycles of arrests and deportations continue. It is estimated that between 4,000 and 6,000 foreign nationals are being detained at any given time. Approximately 2,000 people are deported every month by land or by plane.

In addition to the DCIM, militias and in some cases ordinary citizens motivated by xenophobia and misguided fears about diseases, detain foreign nationals on an almost daily basis – driven by what they believe is their “national duty”. Arrests can take place anywhere at any time, although foreign nationals are most often picked up from their homes, at checkpoints and on

⁴ Libya has been introducing more stringent visa regulations for Egyptians since the end of the 2011 armed conflict.

⁵ See Egypt Independent, *Egyptians protest at Libyan border over new visa rules*, 19 February 2013 <http://www.egyptindependent.com/news/egyptians-protest-libyan-border-over-new-visa-rules>; see also Libya Herald, *Libya and Egypt to open border consulates*, 7 March 2013, <http://www.libyaherald.com/2013/03/07/libya-and-egypt-to-open-border-consulates/>

⁶ See <http://www.quryanew.com/48632>

⁷ See <http://www.libyaherald.com/2013/01/22/foreigners-banned-from-using-egypt-libya-border-crossing/>

⁸ In Benghazi, Amnesty International visited two migrant “holding centres”, one under the Ministry of Interior, and the other under the Ministry of Defence.

⁹ Amnesty International interview with the Head of the Department for Combating Illegal Migration, 5 May 2013

¹⁰ Large numbers of heavily armed militias operate outside of state control. Despite some governmental demobilization and disarmament efforts, many militias, which formed during the 2011 armed conflict, continue to commit serious human rights abuses with impunity, including arbitrary arrests and detention, torture and other ill-treatment and unlawful killings. The exact number of detention facilities across the country is unknown, and secret or unlawful detention by militias remains a serious concern. For more information, see Amnesty International, *We are foreigners, we have no rights. The plight of refugees, asylum-seekers and migrants in Libya* (Index: MDE 19/020/2012), 13 November 2012: www.amnesty.org/en/library/asset/MDE19/020/2012/en/775a355f-61eb-41d8-a3d8-b96dffe17504/mde190202012en.pdf; see also Amnesty International, *Libya: Rule of law or rule of militias?* (Index: MDE 19/012/2012), 5 July 2012, www.amnesty.org/en/library/asset/MDE19/012/2012/en/f2d36090-5716-4ef1-81a7-f4b1ebd082fc/mde190122012en.pdf; and *Militias threaten hope for a new Libya*, (Index: MDE 19/002/2012), 16 February 2013, <http://www.amnesty.org/en/library/asset/MDE19/002/2012/en/dd7c1d69-e368-44de-8ee8-cc9365bd5eb3/mde190022012en.pdf>

the street. After a relatively short period, foreign nationals are handed over to larger “holding centres” for the purpose of their deportation. In some cases, they are subjected to torture and other ill-treatment, as well as exploitation at all stages of this process, by both state and non-state actors.

Between May 2012 and the end of April 2013, the DCIM deported close to 25,000 foreign nationals primarily on the grounds that they were in Libya “irregularly”. Among them were 10,402 Egyptians, 6,404 Niger nationals, 1,912 Chadians and 111 Malians, the latter despite clear guidance from UNHCR as of May 2012 that states “suspend forcible returns of nationals or habitual residents of Mali to the country until the security and human rights situation has stabilized”.¹¹ In a number of facilities, detainees were held for prolonged periods as detaining authorities required that they pay for their own deportation, which can cost up to 800 dinars (approximately US\$635) for those deported by air. At a detention facility in Benghazi, Amnesty International met two Bangladeshis who had already been detained for over six months due to their inability to pay such fees.

Conditions observed in most “holding centres” visited by Amnesty International delegates fell short of international standards, and at times amounted to cruel, inhuman and degrading treatment. Foreign nationals were held in overcrowded cells, often without regular access to fresh air; many suffered from irregular access to washing and sanitary facilities and insufficient access to drinking water, hygiene products and other basic necessities. Poor hygiene standards and detention conditions have led to the spread of skin diseases and other medical problems, which have been exacerbated by insufficient treatment, and at times the denial of treatment altogether.

Amnesty International also found evidence that the Libyan authorities have started deporting foreign nationals diagnosed with infections such as hepatitis B and C or HIV. Compulsory medical tests, which were developed under al-Gaddafi’s rule as a prerequisite for foreign nationals applying for a work and residency permits in Libya, were reintroduced at the beginning of 2013.

During and immediately after the 2011 armed conflict, refugees, asylum-seekers and migrants, mainly from sub-Saharan Africa were targeted for their perceived association with the former government after rumours had spread that al-Gaddafi’s forces had used African mercenaries. Amnesty International research suggests that, at present, abuses against foreign nationals appear to be mainly motivated by misguided fears of diseases and xenophobia.

Against this backdrop, the European Union (EU) established a civilian technical mission in May 2013 aimed at building the capacity of the Libyan authorities to enhance “the security of Libya’s land, sea and air borders”. In the long term, the mission, which is known as the European Union Border Assistance Mission (EUBAM), aims to support the Libyan authorities in developing a broader “integrated border management” strategy. It is still unclear to what extent EUBAM will be involved in assisting the Libyan authorities in developing a policy towards controlling “irregular migration”, but it is likely to provide training and advice to the various agencies involved in border control, including on the “management of migration flows”.¹²

In a recently published report, the UN Special Rapporteur on the human rights of migrants criticized the EU for the “externalization of border control” by encouraging, financing and promoting detention of “irregular migrants” in non-EU border countries “as a means of ensuring that irregular migrants in third countries are stopped prior to entering the European

¹¹ See UNHCR Position on Returns to Mali, 7 May 2012, available at: <http://www.refworld.org/docid/4fa6c5262.html>, accessed on 12 June 2013.

¹² See Council of the European Union “Green light for civilian mission to support border security in Libya”, 22 May 2013, www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137189.pdf

Union.”¹³ As part of the European Neighbourhood Policy package for Libya, the EU is funding a project worth 10 million euros that aims, among other things, to enhance “migration management” and assist “vulnerable populations” in detention centres. The first health clinic in a “holding centre” was recently opened by the International Organization for Migration (IOM) with EU funding. Additionally, the Italian Ministry of Interior is funding Sahara-Med, another IOM project designed to “prevent, detect and manage irregular migration flows”. The Italian Ministry of Interior is intending to finance the refurbishment of a number of detention centres for migrants and provide them with ambulances.¹⁴

These projects pursue immigration control imperatives set by the EU and appear to disregard the human rights obligations of both Libya and the EU and its member states, including under refugee law and standards. Detention solely for the purposes of immigration control is only lawful when in strict compliance with relevant international human rights law and standards.

In 2008, the EU adopted its own directive¹⁵ outlining standards and procedures for the return of “irregular third-country nationals” from member states, whereby detention is only allowed when “there is a risk of absconding” or the individual “avoids or hampers the preparation of return”. The directive stipulates that detention should be applied for “as short a period as possible” and “shall be executed with due diligence”.¹⁶ These standards, which were developed for internal application, do not appear to inform or be consistent with the EU’s external policies and dialogue with third countries.

In sharp contrast with the EU’s external policies, in 2012, the European Parliament adopted a resolution on the “situation of migrants in Libya”. It called, among other things, on the EU and its member states to “commit to enter into further agreements on migration control with Libya only after Libya demonstrates that it respects and protects the human rights of refugees, asylum-seekers and migrants and puts in place satisfactory systems for assessing and recognising claims for international protection.”¹⁷ The resolution also calls on the European Union to “ensure adequate monitoring mechanisms are in place to ensure that human rights are observed in practice”. Sadly, EU assistance to the Libyan authorities does not appear to be driven by principles enshrined in the Returns directive and calls included in the European Parliament’s resolution, and instead contributes to perpetuating human rights abuses.

This briefing is based on the findings of a visit by Amnesty International delegates to Libya in April and May 2013, as well as other research conducted before and since. In addition to visiting seven migrant “holding centres” in Benghazi, al-Zawiya, Gharyan, Sabha, Misrata and Tripoli as well as the Libyan Red Crescent Camp in Benghazi, and speaking to detainees and officials at these facilities, Amnesty International interviewed government officials from the Ministry of Interior and the Ministry of Justice, Libyan and international NGOs, and United Nations agencies. In total, Amnesty International conducted 69 group and individual interviews with foreign nationals at these facilities.

Names and other identifying details of individuals whose cases are featured in this briefing, as well as the names and exact locations of some “holding centres”, militias or security agencies have been withheld to protect people from further abuse and reprisals, or to respect their wishes.

¹³ See Report of the Special Rapporteur on the human rights of migrants, François Crépeau, “Regional study: management of the external borders of the European Union and its impact on the human rights of migrants”, http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A.HRC.23.46_en.pdf, last accessed on 2 June 2013.

¹⁴ At the time of Amnesty International’s visit to Libya in April-May 2013, representatives of the Italian Ministry of Interior were conducting a needs assessment in several “holding centres”, according to information obtained from DCIM.

¹⁵ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals.

¹⁶ See <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:348:0098:0107:EN:pdf>

¹⁷ See European Parliament resolution on the situation of migrants in Libya (2012/2879(RSP)), 20 November 2011, www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+MOTION+B7-2012-0518+0+DOC+PDF+VO//EN

Amnesty International is calling for urgent action to end the widespread violation of the rights of refugees, asylum-seekers and migrant workers in Libya, and to combat the xenophobic scapegoating of foreign nationals in the country. Among other things, it is urging the Libyan authorities to:

- adopt national asylum legislation to ensure that the rights of asylum-seekers and refugees are protected;
- end detention solely for immigration purposes of all asylum-seekers and refugees;
- stop the arbitrary detention of foreign nationals;
- take steps to counter racism, xenophobia and discrimination against foreign nationals.

Amnesty International is also calling on the European Union to ensure that co-operation on migration with Libya fully respects the rights of asylum-seekers, refugees and migrants.

2. Refugees and asylum-seekers

"Our voices need to reach the world. We're held here for no reason."

Somali asylum-seeker in detention in Sabha, 6 May 2013

Although Article 10 of the 2011 Constitutional Declaration stipulates that the "state shall guarantee the right to asylum by virtue of the law", the Libyan authorities have failed to reflect this principle in national legislation. As of May 2013, UNHCR continues to operate without an official status or memorandum of understanding, which restricts its ability to expand its activities and protection dialogue with the Libyan authorities. Under al-Gaddafi, UNHCR efforts to gain official status were repeatedly thwarted and at times the organization had to cease its activities in the country. Libya is still lacking a national asylum system despite efforts initiated by Libyan civil society to draft implementing legislation. In 2012, a drafting committee of lawyers and human rights activists was formed at the initiative of the International Organization for Cooperation and Emergency Aid, a Libyan charity. It recently submitted a draft of the law to UNHCR and Libyan ministries for comment, but the issue appears to be low on the government's list of priorities.

In the absence of a legal framework, different policies have been adopted towards the various groups of people in need of international protection, including recognized refugees and asylum-seekers present in the country. For example, in February 2013, the Ministry of Interior called on all Syrian nationals who had entered Libya without a visa to register with the Passport Office in order to obtain a residence permit and confirm their status as asylum-seekers.¹⁸ Syrians now benefit from access to medical treatment in public hospitals and have access to free education. UNHCR was also allowed to proceed with the registration of all Syrian nationals.¹⁹ However, no similar access to basic services has been granted to asylum-seekers and refugees of sub-Saharan origin, whose status remains precarious, increasing the risk that they will be detained simply because of their immigration status.

While the Libyan authorities acknowledge to international organizations that in general they should not enforce removals to Eritrea or Somalia²⁰ because of the real risk of persecution or

¹⁸ In its recent position on protection needs of Syrians fleeing the armed conflict, UNCHR goes further, stating that "many Syrians seeking international protection are likely to fulfil the requirements of the refugee definition contained in the 1951 Convention Relating to the Status of Refugees, since in many cases their well-founded fear of persecution will be linked to one of the Convention grounds". For further information, see, for example, UNHCR "International Protection Considerations with regard to people fleeing the Syrian Arab Republic, Update I", December 2012, www.unhcr.org/fileadmin/Greece/News/2012/Syria/Syria_emergency/Syria.pdf

¹⁹ See UNHCR news story, "UNHCR provides tents for hundreds of flood victims", <http://www.unhcr.org/518390e56.html>

²⁰ See, for example, "Returns to South and Central Somalia: A Violation of International Law", Amnesty International, Public Statement (Index: AFR 52/008/2013, 15 May 2013), available at <http://amnesty.org/en/library/asset/AFR52/008/2013/en/d28eda94-4ae0-43d0-85e9-1f6994a79a31/afr520082013en.pdf>.

other form of serious harm that people would face if returned, no regulations have been introduced that would protect individuals from these places from arbitrary arrest and indefinite detention.²¹ Instead, asylum-seekers and refugees, particularly those from sub-Saharan Africa, continue to be perceived as a threat to national security.

In the run-up to the second anniversary of the uprising, some 1,000 foreign nationals, including many Somalis and Eritreans, were arrested in early February 2013 in major Libyan cities as part of a wider campaign to “tighten security”. The subsequent transfer of the detainees to “holding centres” in Sabha, Qatroun and Brak Shati in the south of the country generated fears that they might be deported in violation of the principle of *non-refoulement*.²² Since then, UNHCR obtained the authorities’ verbal green light to proceed with the registration of Eritreans and Somalis held in detention facilities under authority of the Ministry of Interior. As of the end of April, some 650 people were registered. However, many more asylum-seekers are believed to be in detention – up to 1,700, according to some estimates.

The authorities have in many cases agreed to release individuals who face heightened risks in detention, including women and children, often following intervention by humanitarian agencies. Although UNHCR managed to secure the release of 1,100 people of concern throughout 2012, there is currently no mechanism that protects them from re-arrest. At the local level, detaining authorities, including militia, have shown varying levels of understanding of state policy, demonstrating a lack of consistency and a weakness within the chain of command. All directors of “holding centres” visited by Amnesty International stated that they would not return Somali and Eritrean nationals, but some extended this policy to Palestinians and Syrians and others added Malians. However, the approach to individuals of other nationalities gave rise to concern as none of the officials at the detention centres appeared to be assessing cases on an individual basis.

In 2012, the DCIM submitted a set of recommendations to the Ministry of Labour encouraging the release of all Somalis and Eritreans and the formulation of regulations that would allow them to find jobs. Since then, Amnesty International has been told that a committee has been established under the Prime Minister’s Office to examine the situation of all Somali and Eritrean nationals held in detention.

To date, however, Amnesty International is aware of only one camp in Benghazi run by the Libyan Red Crescent that provides accommodation for asylum-seekers as opposed to imprisonment. It consists of containers formerly used to house workers of an Indian company. The camp hosts approximately 600 asylum-seekers from Ethiopia, Eritrea and Somalia. Although conditions in the camp are considerably better than in “holding centres”, restrictions are imposed on the foreign nationals’, right to liberty and freedom of movement, especially women, since they can only leave the camp for work and provided that they are bailed out by a Libyan citizen²³. A brigade operating under the Ministry of Defence controls movement in and out of the camp and provides security. Once residents leave the camp, however, they face the same risks as other foreign nationals, including arrest and detention in “holding centres”.

For example, a 31-year-old Ethiopian man, who had been living with his wife at the Libyan Red Crescent camp in Benghazi for three months, was arrested on the street on 20 April

²¹ However, according to official statistics, between May 2012 and the end of April 2013, the Libyan authorities deported 11 Somali nationals. When Amnesty International inquired into the nature of these returns, the Libyan authorities explained that the individuals concerned had told them that they wished to return to their country. The organization remains concerned in any event that by detaining people who may well be entitled to international protection, the Libyan authorities are effectively pressurizing them to return, notwithstanding the ongoing real risk of persecution or other forms of serious harm in Central and Southern Somalia.

²² *Refoulement* refers to the forcible return or expulsion of individuals to a country where they would be at risk of human rights abuses. Amnesty International considers that the principle of *non-refoulement*, set out in Article 33 of the 1951 UN Convention relating to the Status of Refugees and numerous other international instruments, is part of customary international law.

²³ In general men find work more easily, and are therefore allowed to move more freely outside of the camp. Women however, are only allowed to leave when they find work, usually as domestic workers.

2013. He was on his way to buy groceries in the local market when he was stopped by armed men during an identity check. As he could not show bail papers from the camp, he was taken to a nearby “holding centre” known as Souq al-Hadiqa. He had no means of contacting his wife and feared further separation as the authorities were preparing a transfer of detainees to Tripoli. He had been held in detention for four days at the time of Amnesty International’s visit.

Unaccompanied or separated children are also at risk of arrest and indefinite detention. Amnesty International met a small number of such children in three “holding centres”. They did not receive any preferential treatment in terms of family contact, access to fresh air or general conditions, and were held together with adults.

In Tweisha “holding centre” outside of Tripoli, most of the minors were aged 16 and 17, although Amnesty International met two unaccompanied Somali children aged 10 and 13 respectively²⁴. Both had recently been registered by UNHCR as asylum-seekers. Abdelkarim Ahmed Hussein and Abdi Hassan Mohammad were detained in a mass arrest around May 2012. They had been held in the facility for one year without the means to contact their families. Their detention violated, among other things, the UN Convention on the Rights of the Child, according to which the detention of minors should only be used as a last resort and “for the shortest appropriate period of time”. Both were released from Tweisha “holding centre” in June 2013 together with 12 other children from Somalia who had been registered by UNHCR.

Amnesty International considers that children – in particular, unaccompanied or separated children – should never be detained solely for immigration reasons given that immigration detention cannot be said to be in their best interests, ever. The detention of children solely for immigration purposes, whether they are unaccompanied, separated or held together with their family members, can never be justified and represents an abject failure of the obligation to respect, care for and protect children’s human rights.

Amnesty International is also concerned that refugees, asylum-seekers and migrants continue to be held solely for immigration purposes arbitrarily without any consideration for their legal status or protection need, indefinitely and for long periods in very poor conditions.

In general, Amnesty International opposes the use of detention solely for immigration control purposes.

3. Torture and other cruel, inhuman or degrading treatment and punishment

In the process of taking over migrant “holding centres” from militias that controlled them immediately after the conflict, the Ministry of Interior started redeploying trained police officers. However, former militia members have also been allowed to join the DCIM, and some have formally assumed the positions of guards and prison administrators. Worryingly, these men were integrated into the new apparatus without adequate training in prison management, search and security procedures, riot control and human rights principles. The Libyan authorities also failed to introduce specific vetting mechanisms to remove all those who were reasonably suspected of ordering, committing or allowing the use of torture and other ill-treatment.

In early 2013, the Ministry of Interior issued instructions calling for the humane treatment of all foreign nationals held under its authority, and forbidding physical ill-treatment.²⁵ Although

²⁴ 14 children were held in the Tweisha “holding centre” at the time of Amnesty International visit on 10 May 2013

²⁵ Amnesty International interview with the Head of the Department of Combating Irregular Migration, Tripoli, 5 May 2013

there have been some improvements in the treatment of foreign nationals in detention, torture and other ill-treatment persist, both in detention and during arrest.²⁶

Some detainees reported being beaten upon arrest by militiamen and during their first days in detention if they were not immediately transferred to migrant “holding centres”. For instance, a 36-year-old Sudanese man told Amnesty International that he was abused upon arrest in mid-March 2013 at the Bir al-Ghanam checkpoint by a group of armed men belonging to the Department of Combating Crime under the Ministry of Interior. He said that he was blindfolded, had his hands tied and was thrown inside the boot of a vehicle, before being taken to the department’s headquarters. He continued:

“Once we arrived, they did not untie me. I was thrown on the floor, and they started beating me all over the body with water pipes and electric wires. Five or six would beat me for some time; then they would take a break and resume again. They wanted me to confess that I had been drinking.”

A 49-year-old Algerian, who had been living in Libya since 1996, also reported abuse at the hands of the same department. At the beginning of February 2013, at about midnight, four men armed with Kalashnikov rifles stormed into the farm where he had been working near Bir Al-Ghanam and stole all his possessions, including mobile phones, identity documents, savings and clothes, before they arrested him and took him to their base. He described his ordeal to Amnesty International:

“I was held at the Department of Combating Crime for 55 days. During this time, they tortured me four times. On the first day, they beat me with water pipes and applied electric shocks for 20 minutes. They let me rest for some time, and then started again. Every few days, the torture would start again. They did not let me call my embassy or my family, who still doesn’t know where I am. They arrested me only because I am Algerian.”

At the time of the interview in mid-April, the man had not regained full mobility in one of his fingers, which he said was broken as a result of the beatings. He had been held in a migrant “holding centre” for 17 days following his transfer from the Department of Combating Crime.

A group of seven Egyptian construction workers whom Amnesty International met in a detention facility near Gharyan described how they were arrested and ill-treated by police officers; they were transferred to a migrant “holding centre” purportedly to affect their deportation despite their claims that they had valid work and residency papers. On 25 April, a group of approximately 15 security officers dressed in civilian clothes entered their home in Tripoli as they were having dinner. The security officers allegedly tied the men’s hands behind their backs and pushed them onto the floor. They then stepped on the men’s heads and opened fire in the air in order to intimidate them, after which they kicked them and beat them with sticks all over their bodies.

In the migrant “holding centre” in Sabha, which Amnesty International visited in May 2013, detainees appear to have been systematically subjected to torture and other ill-treatment until the end of March 2013. Interviews in at least five different rooms of the facility seem to corroborate the same pattern of abuse, which consisted mainly of repeated beatings with cables and hoses. Beatings seem to have been applied randomly during food distribution and ordered or condoned by the director in charge at the time. In some cases, the beatings were applied as punitive measures following searches for mobile phones, or after failed escape attempts. One group of detainees said they were beaten after they rushed to fetch bottled water that was brought to the facility in the beginning of May 2013. They explained to Amnesty International that they ran because they were thirsty.

²⁶ Amnesty International has documented numerous cases of torture and other ill-treatment in detention facilities controlled by the state and by armed militias. See Amnesty International, *Libya: Rule of law or rule of militias* (MDE 19/012/2012), 5 July 2012; see also *We are foreigners, we have no rights. The plight of refugees, asylum-seekers and migrants in Libya* (Index: MDE 19/020/2012), 13 November 2012

Around the beginning of March 2013, some 20 Eritrean and Somali nationals held in Sabha, who had attempted to escape, were taken out of their rooms into the corridor. One by one, they were allegedly forced to lie on a bed, with their wrists and ankles tied to the frame, and beaten on the soles and the tops of their feet. They were then forced to strip to their underwear. Guards soaked their bodies with water, and started beating them on their backs with a cable. In May, many of the detainees still had visible marks of beatings on their backs that were consistent with their allegations. The DCIM subsequently conducted an internal investigation, which led to the removal of the director and other people suspected of ill-treatment. Despite these measures, Amnesty International documented a number of cases of beatings on the soles of the feet (*falaqa*), whippings with cables, and slaps, which took place at the end of April and the beginning of May 2013.

Detainees also alleged the use of firearms as a means of riot control in one facility. A Gambian man spoke of events he witnessed at a migrant “holding centre” in Sabratha in December 2012:

“There was a problem between Nigerian detainees and the police officers in Sabratha. I was held there for a few weeks before they transferred me to Sabha. The Nigerians were not happy with the conditions and wanted to be deported back to Nigeria as soon as possible. The police asked them to go back into their rooms, but the Nigerians wouldn’t, so then the officers opened fire at them. Two Nigerian men were injured and a third person died. I was standing next to the police and saw everything.”

In another facility, detainees said they were subjected to humiliating and degrading treatment, in addition to beatings. A Malian man spoke of how the prison administration forced detainees to run during food distribution:

“They make us run to collect our food at breakfast. If we do not run, they whip us with sticks and metal bars, and kick us. Around two months ago, they [the guards] beat me with a stick on my face and my left eye because I was slow.”

Detainees also reported beatings amounting to torture and other ill-treatment if they did something considered to be an infraction of rules by the detaining authorities. Those caught after unsuccessful escape attempts are also subjected to punitive beatings. In one facility, detainees told Amnesty International that after catching two Egyptian men who tried to escape, prison guards forced them on their knees in the courtyard and beat them with various objects, including hoses.

Others complained about being verbally abused, including through the use of insulting and degrading language. A Gambian detainee held in Tripoli told Amnesty International:

“They [the guards] don’t even enter our room because they say that we smell and that we have illnesses. They constantly insult us, and call us: ‘you donkey, you dog’. When we are moving in their way, they look disgusted and slap us sometimes. We are tired; we want to go home. We miss our families.”

Asylum-seekers in the Libyan Red Crescent camp in Benghazi also reported abuse and extortion at the hands of the brigade, Libya Shield, which is in charge of guarding the camp. Several Ethiopian men complained that members of the brigade beat them as they entered or left the camp or took money they carried. Other men complained of beatings amounting to torture, inflicted by the brigade as a disciplinary measure; some reported having their heads shaved as punishment.

Women in the camp also reported abuse. Several Ethiopian women told Amnesty International that they suffer from harassment and disciplinary beatings amounting to torture by Libya Shield members. In what appears to be an attempt to impose religiously motivated sex

segregation in a mixed Muslim-Christian camp, members of the brigade allegedly direct insults at women who fail to cover their hair fully, and call them “dogs” if they see them speaking to men.

An 18-year-old married Ethiopian woman said that she was subjected to *falaqa*, a method of torture, in a place known as the “container” near the camp’s entrance where she was taken after armed men entered her room and found her hosting two male friends for dinner with her husband. All four were subjected to beatings on the soles of their feet with a metal bar and a plastic tube.

Several female detainees in other facilities told Amnesty International that they were beaten by militiamen upon arrest. A 45-year-old woman from Niger held in an official prison under the Ministry of Justice said that she was beaten by a group of men in fatigues, who forced their way into her Tripoli home around mid-February 2013 in search of drugs. She said that she was thrown on the floor, stepped on, and beaten with rifle butts, before being transferred to what she said looked like a police station but was manned by men in military dress in the Fernaj area of Tripoli. She said that during her three nights in custody there, she was punched and had her face hit with a stick during interrogation.

Many of the cases reported to Amnesty International, including beatings as a disciplinary measure, amount to torture in breach of Libya’s obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

4. Lack of due process

Libyan law criminalizes entering, staying in or leaving Libya irregularly, for example without the appropriate visa or through unofficial border posts. It criminalizes such actions without distinguishing between migrants and refugees, victims of trafficking or others in need of international protection. The 2010 Law on Combating Irregular Migration allows for the indefinite detention, followed by deportation, of those considered to be irregular migrants²⁷.

Deportation is currently carried out without any procedural safeguards, and foreign nationals do not have any means of challenging the decision to deport them. Amnesty International knows only of a few foreign nationals who were brought before a judge in relation to a “migration offence”. For instance, it met three detainees at a “holding centre” in Benghazi who had been sentenced to a fine and three months’ imprisonment for entering Libya “irregularly”.

At times, individuals in an irregular situation are handed over to “holding centres” after they have served prison sentences, generally for ordinary criminal offences such as theft. Generally, however, they are never brought before a judicial authority and do not have access to a lawyer or interpreter.

In most “holding centres”, foreign nationals complained that they had not received consular assistance, at times due to a failure of the authorities to contact relevant embassies. Many people in need of international protection complained that they did not have access to UNHCR.

In some cases, detainees reported that they had been arrested despite having a regular status in Libya. For example, an Egyptian man aged 52 was captured by members of a militia outside his home in the Abu Sleem neighbourhood of Tripoli at 10am on 30 April 2013. The militiamen asked to see his identity documents, ignored his explanation that his passport was in his home, and arrested him. They took him to the military base of the 20th Brigade in Abu Salim. The following day, he was transferred to a migrant “holding centre”. At the time of Amnesty International’s visit, the man did not have the means to contact his family or embassy

²⁷ See Amnesty International, *Libya: Rule of law or rule of militias* (MDE 19/012/2012), 5 July 2012

to ask for help. While his initial detention to ascertain his identity and immigration status might have been justified, he continued to be detained despite his continued claims that he was staying in Libya regularly. At the time of Amnesty International's visit, he had not been brought before a judge.

Under Article 36 of the Vienna Convention on Consular Relations, the Libyan authorities have the obligation to notify detained foreign nationals "without delay" of their right to consular assistance. Further, the state is also obliged to inform the detainee's consular services, if he or she so requests²⁸. Libya has the obligation to prevent arbitrary arrest and detention and to afford anyone deprived of their liberty an effective opportunity to challenge the lawfulness of their detention before a court (Article 9 of the International Covenant on Civil and Political Rights).

Due to a lack of an appeal system, international humanitarian agencies are currently the only recourse for many foreign nationals to challenge a deportation order and intervene with the authorities. However, their visits are insufficient, often due to a lack of capacity.

5. Exploitation

Foreign nationals, particularly those from sub-Saharan countries, and including refugees and asylum-seekers, continue to be exploited both inside and outside detention and remain at the mercy of the Libyan nationals they come across, including for work reasons. Several Sudanese men in one "holding centre" told Amnesty International that they were working without pay at the facility in exchange for their eventual release. On arriving at the facility they had been promised that if they did the cleaning and some of the construction work without pay they would be allowed to leave in four to six weeks. Some said they were also taken to work in other facilities.

An Egyptian man being held in a "holding centre" told Amnesty International that the only reason for his arrest and continued detention was a verbal disagreement he had with his previous employer who then fired him. The Egyptian man said that he had been legally working in Libya for several months without any problems. He alleged that he was arrested because of his employer's personal connections to people in the detention centre. His passport was taken from him and he had not been informed of any charges against him nor told for how long he was to be detained. When Amnesty International met him he had already been detained for at least 10 days.

A 30-year-old detainee from Niger in a "holding centre" told Amnesty International in April 2013:

"I had been living in Misrata for over a year when a Libyan man asked me to work for him on a construction site. He needed me to dig a large hole, which took me three hours. When I finished, he gave me 35 dinars, but I protested expecting more. The boss refused and threatened me with his gun. He then called his 'brothers' for help. They took me to a checkpoint, where armed men beat me badly with a cable and a piece of wood. I was transferred to this detention centre 10 days ago. People thought I was dead when they saw me."

A Sudanese man in a "holding centre" told Amnesty International in May 2013 that Kremiya Police Department in Tripoli stole 4,000 dinars (approximately US\$ 3,170) from him during arrest and confiscated his passport. Another migrant arrested in the same operation alleged that 2,000 dinars (approximately US\$ 1,585) was taken from him.

6. Inadequate detention conditions and hygiene

²⁸ See Vienna Convention on Consular Relations, 1963, available at: http://untreaty.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf

Since 2012, the DCIM has been steadily gaining control over detention facilities formerly run by militias and today controls 17 “holding centres” across the country. In parallel, some steps have been taken to improve detention conditions.²⁹ The provision of food was outsourced to a catering company and is now standardized and delivered on a regular basis. According to the Head of the DCIM, ambulances have been provided to some of these facilities and, as of May 2013, renovation works were under way in five migrant “holding centres”, including in Ghadames, Ghat, Sabha and Brak Shati in the south, and al-Guweia in the north-west of the country. The DCIM expects to renovate additional facilities with EU funding.³⁰ A “holding centre” for women was recently opened in Soroman, west of Tripoli.

As they stand, these efforts are not sufficient, and thousands of people continue to be held in inadequate conditions falling short of international standards. In most of the seven “holding centres” visited by Amnesty International in April and May 2013, detainees suffered as a result of overcrowding, a lack of clothes, irregular access to washing and sanitary facilities, and insufficient access to drinking water, hygiene products and other basic necessities, such as mattresses and blankets. Some alleged that they had been wearing the same clothes for six months. In two places visited by Amnesty International delegates, detainees did not have regular access to fresh air. Many lacked the means to contact their families and notify them of their arrest, sometimes for as long as six months.

The Sabha “holding centre”, which Amnesty International visited in early May 2013, stands out as a place with particularly harsh detention conditions that amount to cruel, inhuman or degrading treatment, falling short of international human rights standards as outlined in the UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. At the time of the visit, some 1,300 migrants, asylum-seekers and possibly refugees were held in the centre, temporarily established in an old state prison that had been shut down in 2007 due to its inadequate conditions.

In old, poorly ventilated and overcrowded rooms, some detainees were forced to sleep on the floor without blankets, while others only had thin and dirty mattresses. Most detainees had been transferred to the facility in March 2013 pending completion of the renovation of the city’s main “holding centre”. They reported that, until mid-April, some of them were forced to sleep in or near the washroom due to overcrowding. The vast majority of detainees did not have access to fresh air and natural sunlight, and were only allowed to leave their rooms for a few minutes three times a day to collect their meals.

The prison lacked a functioning sewage system, which led to blocked drains and affected the overall hygiene of the centre. Uncollected garbage was piled up in rooms and corridors.

During Amnesty International’s visit, around 80 detainees, who complained of itchiness on their hands and genitals suggesting scabies, were held in a courtyard in the sun as suggested by doctors who had visited a couple of weeks earlier. However, the courtyard had insufficient shade and detainees lacked sufficient access to drinking water and sanitary and washing facilities. Many complained that they were forced to urinate into plastic bottles. Some alleged that they were also defecating in the open space.

²⁹ Amnesty International’s discussion of conditions of detention in this section should not be interpreted as an unqualified endorsement of detention for immigration purposes in Libya. Indeed, as stated above, the organization opposes people being detained solely for immigration purposes as it considers that in the vast majority of cases such detention, as it is practiced today in Libya, is inconsistent with relevant international human rights law and standards. Further, the organization considers that in a number of instances that it has recently documented in Libya, immigration detention would be unlawful even just on the basis of its lack of adherence with relevant international standards governing the treatment of people in detention, including UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

³⁰ As stated above, Amnesty International is concerned that EU funding to the Ministry of Interior is driven by EU immigration control imperatives, and contributes to the perpetuation of human rights violations.

In a “holding centre” in Benghazi known as Souq al-Hadiqa, detainees were held in a courtyard surrounded by a brick wall without adequate shade, seating or access to washing and sanitary facilities. At the time of Amnesty International’s visit, they were sitting on the ground on thin blankets, which they alleged were infested with insects. They reported being allowed to use sanitary facilities in the compound only once or twice a day. Sometimes, they were slapped by guards if they asked to use them. Due to inadequate conditions inside the accommodation area, detainees were only brought inside at night to sleep. They said they had to drink water from the tap, which they complained was salty, because they were not given enough bottled drinking water.

7. Lack of adequate medical care

“We don’t want illnesses in our country. We are scared for our women and children. Would you allow them to spread in your country?”

Head of a “holding centre” for migrants, 2 May 2013

Poor hygiene standards and detention conditions have led to the spread of skin diseases and other medical problems such as chest infections, fever, dehydration and chronic diarrhoea. Many detainees told Amnesty International that they suffered from lice and flea bites. In the Sabha “holding centre”, a large number of detainees said they had scabies and others complained of chronic vomiting and appeared very weak.

Tweisha located on the outskirts of Tripoli is currently the only “holding centre” equipped with a fully staffed health clinic. The clinic was recently opened by IOM with EU funding and is expected to treat and screen 20 to 25 people a day. Other “holding centres” visited by Amnesty International lacked functioning medical services and relied on visits by doctors from nearby hospitals or provided by international humanitarian agencies. In many cases, however, these visits appeared to be sporadic and failed to address the needs of patients, including those diagnosed with chronic diseases. In most cases, detainees suffering from illnesses alleged either delays or a lack of referrals to medical institutions, and the detainees felt they had been given inadequate treatment by visiting doctors.

The lack of financial and human resources was the most often cited explanation for medical neglect. The director of one facility explained that he was forced to use a private car for transfers to medical institutions in the absence of an ambulance provided by the state. In Sabha, the detaining authorities said that they were unable to provide detainees diagnosed with scabies with adequate treatment as they lacked a budget to purchase clean clothes, new mattresses, blankets and treatment.

Budgetary constraints are not, however, the only explanation. In nearly all facilities visited by Amnesty International, staff demonstrated a high level of prejudice and xenophobia towards foreign nationals, in particular sub-Saharan Africans. They accused sub-Saharan Africans of being the source of diseases, suggesting that these were inherent rather than acquired diseases. In most cases, they refused to acknowledge the impact of poor detention conditions on the health of detainees.

Victims of torture and other ill-treatment also reported that they were denied medical care. An Eritrean detainee told Amnesty International that he was beaten on his genitals by a guard around January 2013. As a result of the trauma, he is unable to urinate. Since his torture, he had been taken to hospital only once for urinary catheterization. At the time of Amnesty International’s visit, he was lying on the floor in pain, unable to move.

A 28-year-old Nigerian man detained under the authority of the DCIM in Sabha told Amnesty International that he had been tortured, causing permanent injury. Around the beginning of 2013, he said he complained to guards of overcrowding and poor conditions at a detention facility in Tripoli where he was then held. He had a valid Nigerian passport, so he urged them to speed up his deportation. In response, the guards reportedly fired a gunshot at his feet, wounding his toe. They then forced him to lie on his stomach on a bed, and tied both his

hands and legs with wires to the bed frame. As he was lying in the spread-eagled position, they beat him on his lower back with a rifle butt. Four months after the incident, the man still could not walk or stand up, and required assistance from fellow detainees when using the toilet. He said that he reported a fracture of his spine, but his medical condition has not been diagnosed as he has never been medically evaluated or treated. At the time of Amnesty International's visit, he was lying on a mattress in a corridor unable to sit up. When discussing the man's case with the director, Amnesty International was told that hospitals refuse to accept cases that require long-term care.

8. Deportation on medical grounds

"If you have good blood you will work. If you have bad blood, they will send you back."
Migrant from Niger in a "holding centre" in Misrata, 20 April 2013

As of the beginning of 2013, the Libyan authorities started reintroducing medical tests aimed at identifying viral diseases such as hepatitis B and C and HIV. A valid health certificate issued by the Ministry of Health is a requirement imposed by Libyan legislation on foreign nationals who wish to obtain a work and residency permit, and many migrants agree to undergo the test voluntarily in the hope of finding jobs.

These tests, developed during al-Gaddafi's rule, violate the International Labour Organisation (ILO) Code of Practice on HIV/AIDS and the world of work. Guideline 8 of the Code stipulates that, "HIV testing should not be required at the time of recruitment or as a condition of continued employment". Further, the ILO reaffirmed the non-discrimination principle in a set of recommendations adopted in 2010, whereby member states should refrain from discriminating against or stigmatizing workers, including job applicants "on the grounds of real or perceived HIV status or the fact that they belong to regions...perceived to be at greater risk" of HIV infection.³¹

In a meeting with Amnesty International, the Head of the DCIM stated that the test was implemented in all facilities under his control out of concern for public health, and its results did not constitute medical grounds for deportation. At the local level, however, Amnesty International met a number of directors who stated that they did deport any foreign national found to be HIV positive, or suffering from hepatitis B or C. In some "holding centres", the administration acknowledged that they also deport anyone with syphilis or tuberculosis. To justify the practice, some said that Libya does not have the means to provide the necessary treatment. Others cited public health and national security concerns, expressing fears that diseases might spread in Libya.

For example, the Head of the migrant "holding centre" in al-Zawiya told Amnesty International that, since March 2012, his office had deported some 350 people diagnosed with hepatitis or HIV, including individuals who had valid travel documents. In Sabha, the director of the facility stated that he had deported at least 200 people identified as HIV and hepatitis positive, including Nigerians and Ghanaians. He confirmed that this policy extended to foreign nationals who had entered Libya and lived in the country legally. The head of the Preventative Security detention facility in Benghazi told Amnesty International that, since the beginning of 2013, some 60 detainees with transmissible diseases had been transferred to Sabha pending deportation.

Most foreign nationals Amnesty International met in the various facilities said they had been subjected to medical tests upon transfer; in some cases they complained that they were made to pay for their own tests. Others reported that they had not been shown the results, and were worried about their health.³¹

³¹ See http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_142613.pdf

Testing for HIV/AIDS should always be performed with the informed consent of the individual, and preceded and followed by counselling; the results should be given to the person concerned but otherwise kept confidential.

Deportation of foreign nationals on medical grounds has been reported in the Libyan media and on social media websites. On 18 December 2012, the DCIM Head in Wadi Shati was quoted confirming the arrest of 60 irregular migrants with “AIDS and hepatitis”, and calling on Libyan citizens to report any irregular foreign nationals without a valid health certificate, reminding them of the seriousness of their diseases.³² In April 2013, the official Spokesman of the Preventative Security agency was quoted concerning the deportation of 35 irregular migrants diagnosed with “AIDS, hepatitis, malaria and syphilis”. At the end of April, the local branch of the DCIM in Jabal al-Akhdar/Bayda in the east stated that the large influx of migrants was the main cause for the “spreading of hepatitis, AIDS and other infectious and serious diseases”. It added that these diseases represent “the main threat” in Libya at a time when security agencies and medical institutions are unable to absorb such a large number of patients and migrant workers.³³ It confirmed the recent deportation of 150 foreign nationals diagnosed with hepatitis and 13 people diagnosed with AIDS.

Carrying out health checks is allowed in the immigration context upon entry to a county in order to identify and prevent the spread of transmissible diseases. It is also permitted in detention as a preventative measure, or if it is needed for the purpose of treating a patient. UNAIDS, the Joint UN Programme on HIV/AIDS, deems that travel restrictions on HIV positive individuals are discriminatory, and stresses that no evidence exists that such restrictions protect public health.³⁴

Importantly, no individual should be deported on the grounds of their health status and medical condition; instead, their medical needs should be addressed in a non-discriminatory way according to health provision standards consistent with a national health policy applicable to all residents of Libya, Libyan citizens and foreign nationals alike. In prisons, medical treatment should be provided in accordance with principles set out in the UN Standard Minimum Rules for the Treatment of Prisoners and the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

During its visits to “holding centres”, Amnesty International met dozens of foreign nationals who had been diagnosed with transmissible diseases such as hepatitis. All said that they had not been provided with any form of treatment since their diagnosis. In some facilities, the authorities had made an attempt at isolating detainees with transmissible diseases from the general detainee population.³⁵ However, in at least two “holding centres”, there appeared to be no categorization of detainees according to their medical condition, due to a lack of space or training. In the Sabha facility, detainees diagnosed with hepatitis had been held with detainees diagnosed with scabies, and were therefore exposed to a serious risk of scabies.

Medical tests are also performed at official border crossings. A Malian technician contracted by a major international electronics company, said that he was detained after his health check showed that he might have hepatitis B. He told Amnesty International:

“I arrived in Tripoli International Airport on 13 January 2013 with a valid passport and working visa, which I received at the Libyan embassy in Cameroon, where I permanently reside. Upon arrival, I was subjected to a blood test, and then told that I might have hepatitis B. As the test

³² See <http://www.quryanew.com/46294>

³³ See <http://tinyurl.com/lzdlvox>

³⁴ See Statement of the UNAIDS Secretariat to the Sixty-First World Health Assembly, Agenda Item 11.9 – Health of Migrants, Geneva, 21 May 2008, available at: http://www.unaids.org/en/media/unaids/contentassets/dataimport/pub/presstatement/2008/20080522_wha_travel_restrictions_unaids_statment_en.pdf

³⁵ Amnesty International opposes the segregation of HIV and hepatitis positive detainees. In a detention context, isolation is only appropriate for readily transmissible diseases such as tuberculosis until they are non-infectious. HIV and hepatitis infections can be avoided by behaviour.

was inconclusive, I was told that the test would need to be repeated to confirm the diagnosis. After having spent a night in the airport, I was told that I would be taken for treatment. Instead, they brought me here [Tweisha migrant “holding centre”]. Four months later, I am still waiting to be treated. Since then, I have not received any medical treatment or had the opportunity to contact my family. Every two weeks, IMC [International Medical Corps] doctors visit the facility, but sometimes we are not informed of their presence.”

The deportation of individuals based on their medical condition violates international human rights standards. The ILO Recommendations stipulate that destination countries should not exclude migrant workers “on the basis of their real or perceived HIV status”

9. Conclusion and recommendations

Libya’s transition process has been marred by continued lawlessness and violence, including unlawful killings and other serious human rights abuses perpetrated with impunity by militias. Increasingly, state institutions, including the police, but also ministries and the courts have come under attack. During the conflict, many police stations were damaged and burnt, while hundreds of police officers perceived as supporting the al-Gaddafi government were arrested; others failed to report back to work for fear of reprisals. Unsurprisingly, restoring security and establishing the rule of law has often been stated as a priority by the new Libyan authorities. Worryingly, in the public discourse, national security has been linked to a gradual closure of borders, including for asylum-seekers and refugees, and the “fight against irregular migration”.

In parallel, governments appointed since the conflict have pledged their commitment to upholding human rights standards. Several steps have indeed been taken by the current government, in particular by the Ministry of Justice, to combat human rights abuses, mainly in detention. However, the rights of foreign nationals, including refugees, asylum-seekers and migrant workers, have remained a low priority. In April 2013, the General National Congress enacted a law on Torture, Enforced Disappearances and Discrimination. Notably, the criminalization of discrimination is limited to Libyans only, as opposed to anyone on Libya’s territory or under its jurisdiction regardless of their nationality.

Amnesty International is concerned that the EU has continued to tighten its co-operation with the Libyan government over “migration management” despite well-documented human rights abuses, including torture and other ill-treatment, exploitation in and outside of detention, deportation without procedural safeguards, and the continued lack of effective protection for refugees and asylum-seekers.

Amnesty International urges the Libyan authorities to protect the rights of foreign nationals in Libya, be they refugees, asylum-seekers or migrants. Similarly, Amnesty International urges the EU and its member states in their dealings with the Libyan authorities to ensure that these rights are protected. In co-operating with Libya, the organization reiterates its call on the EU and its member states to respect these rights, and act in full compliance with their human rights obligations.

In light of the findings set out in this briefing, Amnesty International makes the following recommendations:

To the Libyan authorities

- Ensure that the rights of asylum-seekers and refugees are protected by adopting national asylum legislation consistent with international refugee law and standards; sign a memorandum of understanding with UNHCR; ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and refrain from adopting policies that result in refugees being denied international protection by, for example, increasingly closing its borders.

- Take concrete steps to end detention solely for immigration purposes of all asylum-seekers and refugees in Libya, in particular by immediately ending the detention of unaccompanied or separated asylum-seeking children. No one should be detained solely for being an asylum-seeker or a refugee. Asylum-seekers and refugees should not be penalized, including by being detained, for “illegal entry or stay”.³⁶ Immigration detention should only be used according to a lawful purpose other than the person concerned being an asylum-seeker or a refugee.
- Ensure individuals are not detained solely for immigration purposes unless it is absolutely necessary and in strict compliance relevant international human rights law and standards, and always as a measure of last resort, and for the shortest time possible.
- Amend national legislation by setting a maximum permissible immigration detention period pending deportation.
- Ensure that individuals held are informed of the reasons of their arrest and have the possibility to challenge the lawfulness of their detention. Individuals subjected to deportation must enjoy procedural safeguards, including the ability to challenge individually the deportation decision, and access to legal counsel and interpretation services.
- Ensure that all foreign nationals in detention, except asylum-seekers and refugees and others who may reasonably appear in need of international protection pending a detailed assessment, have the right to notify to their embassies immediately upon arrest and transfer into custody; grant all detainees the right to re-establish and maintain family contact while in detention, and provide them with means to do so.
- Take steps to prevent arbitrary arrests of foreign nationals, and ensure that they are treated humanely in adequate conditions free from torture, ill-treatment and exploitation. Investigate all allegations of torture and other ill-treatment and ensure that those reasonably suspected of ordering, committing or allowing such acts are removed from positions where they can repeat these violations.
- End a policy of deportation based on health status, and ensure that all foreign nationals infected with transmissible infections such as HIV and hepatitis, as well as skin diseases such as scabies, have access to non-discriminatory medical care consistent with a human rights compliant national health policy and health provision standards applicable to all residents of Libya.
- Take steps to counter racism, xenophobia and discrimination against foreign nationals by actively challenging public perceptions about refugees, asylum-seekers and migrants, in particular those from sub-Saharan Africa, by designing public awareness raising campaigns.
- Develop a coherent migration policy to protect the rights of migrants, regularize their status, and protect them from exploitation on the labour market.

To the European Union

- Ensure that co-operation on migration with Libya fully respects the rights of asylum-seekers, refugees and migrants, and put adequate monitoring mechanisms in place to ensure that these rights are observed in practice. Ensure that a human rights strategy is devised by the newly established EUBAM mission in any technical assistance provided to the Libyan authorities in building its capacity in border management, and that a human rights impact assessment is carried out when devising policies and programmes and prior to the implementation of any activities.
- Commit to enter into further agreements on migration control with Libya only after Libya demonstrates that it respects and protects the human rights of refugees, asylum-seekers and migrants and puts in place a satisfactory system for assessing and recognizing claims for international protection, in line with recommendations outlined by the European Parliament resolution on the situation of migrants in Libya.

³⁶ Depriving asylum-seekers or refugees of their liberty solely because they have entered or stayed “illegally” would amount to a penalty under Article 31(1) of the Refugee Convention.

- Ensure that EU assistance does not contribute to or perpetuate human rights violations, including by adopting a human rights-based approach to any projects implemented in the context of the detention of foreign nationals. In particular, any health clinics funded by the EU in the context of detention should not be used for the screening of detainees with a view to their deportation on medical grounds.

To European countries

- Commit to enter into further agreements on migration control with Libya only after Libya demonstrates that it respects and protects the human rights of refugees, asylum-seekers and migrants and puts in place a satisfactory system for assessing and recognizing claims for international protection; member States which have already entered into agreements with Libya on migration control should set such agreements aside immediately.
- Call on the Libyan authorities to comply with international human rights and refugee law in the framework of any bilateral political and technical cooperation dialogue