Submission to the Special Rapporteur on the Human Rights of Migrants
Call for input: Externalization of migration governance: new trends and specific aspects

Contribution on Libya by the World Organisation Against Torture (OMCT)
and the Libyan Anti-torture Network (LAN)

1. Recent trends and human rights violations

EU externalization efforts, initiated by the Libya-Italy MoU in 2017, gradually transferred border migration management to Libya. This strategy inadvertently amplified the political leverage of both eastern and western Libyan authorities. They have strategically used migration as an instrument to secure international recognition and to exert pressure on the EU. EU support, including Frontex engagement and funding, reinforced this problematic political dynamic.

Before signing the MoU, Italian Coast Guard (ICG) and humanitarian NGOs vehicles operated throughout the Mediterranean, bringing rescued migrants directly to Italy. Following the MoU's signing, both the ICG and NGOs were gradually driven out of Libyan territorial waters by the Libyan Coast Guard (LCG), which later asserted a monopoly over SAR operations—even beyond its territorial waters. In May 2017, Italy provided the LCG with four patrol vessels, significantly enhancing its capacity to conduct maritime SAR missions. This agreement received formal EU endorsement during the Malta summit in February 2017, with operational authority for SAR activities shifting to the LCG. Renewed without amendments in February 2020 and automatically again in November 2025, the MoU precipitated the gradual exclusion of the ICG and NGOs. The LCG subsequently asserted unilateral control over SAR activities, including in international waters, despite lacking jurisdictional authority beyond its maritime borders—all occurring with Frontex's knowledge and approval.

The EU's integrated approach, as evidenced by high-profile meetings, operational support (such as through EUNAVFOR MED IRINI), and bilateral cooperation efforts, aims to enhance regional stability and maritime security, and de facto supports the third country's capacity for migration management. The continuation of this cooperation, despite compelling evidence and published reports detailing the systematic commission of atrocities against migrants and the flourishing of transnational human trafficking, suggests a failure of due diligence. Specifically, the provision of resources, training, and coordination to authorities known to perpetuate human rights violations may establish a legal nexus for complicity under international criminal law.

The focus of recent multilateral and bilateral discussions on "strengthening cooperation in the Mediterranean region" and "managing migration flows," with an apparent omission of explicit human rights safeguards and refugee protection obligations, reinforces the critical review that externalization efforts prioritize sovereign border control over adherence to jus cogens norms and international human rights law. The systemic risk of increased expulsions and the reported link to the enrichment of trafficking networks further underscore the potential for the EU's actions to contribute to, or facilitate, ongoing criminal enterprises and rights violations.

This policy of externalization has led to a documented escalation of violence against both migrants and humanitarian actors. Most recently, in August 2025, the Libyan Coast Guard (LCG) conducted a deliberate and violent attack by opening fire with automatic weapons on the humanitarian Search and Rescue vessel *Ocean Viking* in international waters. This incident, which heavily damaged the vessel

and endangered the lives of the crew and 87 survivors on board, has led to a criminal proceeding being filed before Italian prosecutors, who have opened an investigation. Furthermore, the humanitarian organization SOS MEDITERRANEE has filed a legal complaint in France accusing the LCG of attempted murder. The fact that the patrol boat used in the attack was reportedly donated by Italy under an EU-funded program highlights the direct complicity of European policy in the escalating violence.

Compounding this crisis, the recently finalized EU Pact on Migration and Asylum proposals, particularly the revised *Return Regulation* and changes to the 'safe third country' concept, risk institutionalizing this externalization model. By potentially removing the requirement for a 'meaningful connection' between an asylum seeker and a transit state, the new EU framework could more easily justify the transfer of protection responsibility to countries like Libya, despite overwhelming evidence that they are not a Place of Safety. This effectively codifies a policy that further exposes migrants to the dangers of the LCG and risks systematic violation of the principle of *non-refoulement* at a European level.

2. Laws and the responsibility vacuum

Externalization policies function by leveraging specific legislative frameworks in both externalizing and third States to create a legal shield and a responsibility vacuum.

- **Externalizing States (EU/Italy):** The strategy is predicated on avoiding the application of international and EU law obligations, particularly the principle of non-refoulement, by ensuring migrants are interdicted by non-European actors outside of the destination State's jurisdiction. This shifts the operational border through extra-territoriality. The LCG's assertion of unilateral control over SAR activities, including in international waters, with the knowledge and approval of Frontex, fundamentally altered outcomes: migrants intercepted by the LCG face forcible return and detention, contrasting with those previously rescued by Italian authorities or NGOs.
- **Third States (Libya):** The core legal provisions that enable abuse are Law No. 19 of 2010 and Law 6/1987, which criminalize the irregular entry, stay, and exit of non-Libyans. This legislative framework effectively deems all irregular migrants as criminals, preventing them from reporting crimes and subjecting them to immediate detention, refoulement, torture, and forced labour. Crucially, Libya has also not ratified the 1951 Refugee Convention.

Externalization measures have resulted in a profound dilution of responsibility and an accountability gap. By delegating border control to third-country actors like the LCG and state-affiliated militias, externalizing States attempt to evade legal consequences for the resulting human rights violations, which are committed outside their territory.

3. Motivations and impact on third States

The motivation for third States is twofold: financial aid and the empowering of specific armed factions that control migration routes. This profitability has transformed migrant trafficking and exploitation into a rewarding business, prompting armed groups to actively fight for control over key departure, disembarkation, and detention zones.

- **Governance and Human Rights:** Externalization has destabilized governance by creating a system of "*migration proxy warfare*," where migration management functions are delegated to armed groups and militias affiliated with the state (GNU and affiliated groups). This has

fuelled a local "*abuse-for-profit*" economy and led to the proliferation of informal detention centres and systematic human rights violations against migrants, asylum seekers, and refugees. The arrangements create harmful dependencies, fuel widespread corruption involving migration management funds, and empower specific armed factions, exacerbating internal instability and undermining broader state-building efforts.

- **Social Cohesion:** The policies have exacerbated social and racial tensions, manifesting in public hate speech and violent attacks against migrants and asylum seekers, particularly those of African descent.
- **Migration Patterns:** Externalization has not been effective in reducing migration towards externalizing States; instead, LCG interceptions directly feed migrants into a vicious cycle of violence as the death rate at sea has risen alongside the increase in interceptions, and the profitability of the business has likely increased smuggling and trafficking by incentivizing armed groups. The lack of safe and legal pathways makes dangerous, irregular crossings the "*almost unique way out*" of Libya, increasing reliance on smugglers and traffickers.

5. Transparency

Examples of mechanisms aiming to promote transparency and accountability are severely lacking, and where they exist, they are ineffective:

- **Reporting/Due Diligence:** While the MoU is public, detailed implementing measures, financial reporting, and informal arrangements remain undisclosed. Direct inquiries to the EU Commission regarding monitoring mechanisms or tracing funds provided to the GNU/LCG consistently yield evasive, unclear, and non-committal responses. EU funds provided for migration control in Libya are often implemented without human rights review, conditionality, or restriction on the use of the funding. Agreements are increasingly informal, bypassing traditional parliamentary or public oversight.
- **Monitoring/Oversight:** Monitoring is severely hampered by restricted access and security. UNHCR's operational status in Libya is limited due to the absence of a formal agreement with Libyan authorities. While IOM has access to official disembarkation points (Tripoli, Zawiyah), a critical 45% of disembarkations occur without humanitarian oversight, carried out by entities operating outside formal monitoring mechanisms.
- **Complaint Mechanisms:** Migrants and NGOs have no access to complaint mechanisms in Libya due to their criminalization, pervasive fear, and lack of legal aid. Since the end of the UN Fact-Finding Mission on Libya's mandate, there is no international monitoring mechanism to report violations leaving victims largely without avenues for justice.

6. Technology and private actors

Technology is a critical facilitator of the externalization strategy, primarily through surveillance and data-sharing systems:

- **Surveillance and Interception:** Externalizing States (Frontex, national assets) utilize advanced systems, including aerial real-time surveillance and drones over the Central Mediterranean, to detect migrant vessels and coordinate interception operations carried out by the LCG.

- **Digital Tools and Data-Sharing:** Technologies like the Migration Information Data Analysis System (MIDAS) are deployed in transit and origin countries for seamless biometric data collection. This data is shared among various agencies (IOM, Europol, Frontex). Also, there is no centralized registry for migrants in Libya, making accurate tracking impossible. Any personal data collected on migrants faces a high risk due to insecure storage, a lack of digital oversight, and arbitrary legislation, meaning data protection is not ensured.

The use of technology often exacerbates human rights risks by facilitating interceptions that lead to refoulement and detention. Proving a direct link between the human rights violations and EU externalization measures is immensely difficult due to the secrecy surrounding the technological deployments. The proliferation of digital technologies has outpaced the development of sufficient safeguards and oversight. Travelers are often unaware they are subject to biometric procedures like MIDAS.

Digital tools risk perpetuating and reinforcing systemic discrimination and racism by facilitating bias-based profiling related to ethnicity, region, gender, and religion, and contribute to the perception of migrants as security threats.

Furthermore, to ensure data protection and create avenues for justice, it is recommended that States prohibit the use of highly biased technologies like AI-based emotion recognition tools and immediately conduct Human Rights Impact Assessments (HRIA) and Data Protection Impact Assessments (DPIA) before any technological deployment.

The role of non-state actors is critical and deeply problematic. Crucially, many 'official' Libyan entities (e.g., LCG, SSA) are linked to or are themselves involved in large-scale human trafficking with non-state traffickers and ransom gangs. Accountability and redress mechanisms are non-existent against armed groups due to operating constraints and the security environment.

7. Persons in vulnerable situations and intersectional discrimination

- **Systemic Risks:** Women and girls on the move face an extreme and pervasive risk of sexual trafficking and exploitation at every stage of the externalization process, including interception, detention, and transfer. This violence is often undocumented due to social stigma and impunity. LGBTIQ+ migrants face particularly high risks; for instance, those with diverse Sexual Orientation, Gender Identity and Expression, and Sex Characteristics are more likely to be sexually victimized. Transgender women are at specific risk in detention, including being held in cisgender male spaces and losing access to gender-affirming care. Protection gaps include the absence of gender-sensitive reception facilities and formal complaint procedures, contributing to their invisibility and making SGBV deeply interlinked with these violations.

- **Racial Discrimination:** The policy creates a climate where racial discrimination and xenophobia against migrants are embedded in externalization and openly practiced and incited by authorities and public campaigns as it targets migration flows originating predominantly from Sub-Saharan Africa.

- **Protection Gaps:** Children on the move, particularly unaccompanied or separated children, face grave risks, including sexual violence and trafficking. A critical protection gap is the widespread practice of detaining children, often with adults, in conditions that fall far short of

international standards, with no access to special care or specialized procedures. Unaccompanied or separated children lack any reliable, functional system for identification, tracing, or placement in a protection-focused environment, instead being subjected to the general detention system.

- **Intersectionality of Harm:** The combination of an irregular migration status, race, nationality, gender, and socioeconomic status significantly increases a migrant's exposure to harm. For women and gender-diverse people, the denial of legal migration pathways forces them onto dangerous routes where their irregular status increases their vulnerability to abuse, exploitation by smugglers, and reluctance to seek help from authorities. This framework, which relies on surveillance technologies that are inherently biased, extends a neocolonial framework onto African borders, further compounding the structural violence.

- **Civil Society:** In this risky environment, international and local NGOs provide critical humanitarian assistance, monitoring, documentation, and advocacy. However, civic space is rapidly shrinking due to government-backed campaigns of intimidation and official rhetoric that targets local and international organizations, as well as community leaders who support migrants. On 2 April 2025, the Tripoli-based Internal Security Agency (ISA) announced the closure of ten international NGOs supporting people on the move in Libya. The ISA cited the NGOs' alleged involvement in "hostile activities" and accused them of conspiring to "settle illegal migrants of African origin in Libya," a plan it labelled "a hostile act aimed at altering the country's demographic composition and posing a threat to Libyan society." It also claimed that the United Nations High Commissioner for Refugees (UNHCR) was "implicated in these crimes" and announced it would take "deterrent measures" against it. The ISA further accused the NGOs of promoting "atheism, Christianism, homosexuality and immorality.