Submission to the Special Rapporteur on the Human Rights of Migrants

Call for inputs: Externalization of Migration and the Impact on the Human Rights of Migrants

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

1. Examples of Externalisation Measures in Libya

A: Shifting Jurisdiction and Operations in Search and Rescue Measures (SAR): EU externalization efforts gradually transferred border migration management in the Mediterranean waters to Libya following the signatory of Libya-Italy MoU in 2017. While EU states supported implementation by enabling the European Border and Coast Guard Agency (Frontex) to engage with the Libyan Coast Guard (LCG), it further rewarded Libyan Ministry of Interiors with funding. Before signing the MoU, Italian Coast Guard and humanitarian NGOs vehicles operated throughout the Mediterranean, bringing rescued migrants directly to Italy. Following the MoU's signing, both the Italian Coast Guard and NGOs were gradually driven out of Libyan territorial waters by the 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 2022, the MoU precipitated the gradual exclusion of the Italian Coast Guard 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.

B: Executive Limitations on Rescue Operations: In July 2017, Italian authorities imposed restrictive conditions on humanitarian NGOs operating in the Mediterranean through a mandatory Code of Conduct. The reallocation of SAR jurisdiction fundamentally altered outcomes for intercepted migrants: whereas individuals rescued by Italian authorities or NGOs before the MoU were transported to Italy, those intercepted by the LCG afterwards faced forcible return and allowed refoulment via unlawful interception practices and later detention in inhumane facilities in Libya. Consequently, since 2023, mass expulsions and deportations from Libya across desert borders increased. And simultaneously, Libyan governments passed laws prohibiting NGO assistance to migrants inside Libya, exposing the effects of unlawful externalization efforts obviously correlating with mass expulsions, refoulment, unlawful killings during interceptions, and illegal pushbacks in water and on land.

C: SAR responsibility-transfer measures constitute implicit recognition of Libya as a safe disembarkation zone: Despite overwhelming reports and evidence of Libya's inability to ensure safety or dignity for migrants, EU states allow disembarkation in Libya *implicitly* recognizing it as a safe disembarkation zone. The UNHCR has explicitly stated that Libya cannot be considered a safe state due to widespread torture, indefinite detention, and the absence of an asylum framework. This negligence further facilitates extraterritorial detention of refugees, where intercepted survivors transferred to the Directorate of Illegal Migration Management centres or unofficial detention facing refoulement, mass expulsions, torture, sexual violence, and forced labour. While IOM/UNHCR have access to official disembarkation points (Tripoli, Zawiyah), a critical 45% of disembarkations occur without humanitarian oversight. These are carried out by entities, including armed groups, operating outside formal monitoring mechanisms.

2. Transparency and Monitoring

While the MoU is public, detailed implementing measures, financial reporting, and informal arrangements remain undisclosed. Direct inquiries to the EU Commission regarding monitoring mechanisms, civil society contribution, or tracing funds provided to the GNU/LCG consistently yield evasive, unclear, and non-committal responses. 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, compounded by public attacks on any 'assistance or resettlement' narrative.

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 monitoring mechanism to report violations leaving victims largely without avenues for justice.

3. Cooperating States (Libya)

Libya, as a 'cooperating state,' gains ostensible benefits from externalization, but these benefits disproportionately fuel a deeply entrenched, abusive ' profitable business model of migrant exploitation'. Authorities and affiliated armed groups reap dual rewards: receiving significant financial aid, equipment, and training from the EU and Italy, while simultaneously exploiting detained migrants to generate illicit income through forced labour, sexual exploitation, ransom demands, and extortion. This profitability has transformed migrant trafficking and exploitation into a rewarding business in Libya, prompting armed groups to actively fight for control over key departure, disembarkation, and detention zones. These arrangements create harmful dependencies, fuel widespread corruption involving migration management funds, and empower specific armed factions—thereby exacerbating internal instability and undermining broader state-building efforts.

Libya is not a signatory to the 1951 Refugee Convention, and its domestic laws criminalize irregular migration, despite Article 10 of Libya's 2011 Constitutional Declaration guaranteeing "the right of asylum by virtue of the law." The concentration of migration control funding towards Western Libyan authorities—which directly benefits GNA affiliated groups—fundamentally contributes to the continuous deterioration of human rights for migrants, asylum seekers, and refugees in and outside of detention settings.

4. Non-State Actors

IOM and UNHCR provide humanitarian aid, protection, and returns, but operate within a problematic externalization framework. IOM typically does not have access to all migrant detention centres. UNHCR, with limited capacity and a single Tripoli office, navigates an extremely volatile environment, making it impossible to provide monitoring reports without risking their operational presence. 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. In this risky environment, international and local NGOs provide critical humanitarian assistance, monitoring, documentation, and advocacy, while state authorities' involvement drastically reduces transparency, hindering the traceability of financial flows and operations. Civic space is shrinking, and access to detention centres remains extremely difficult. Moreover, migrants, out of pervasive fear, have immense difficulty trusting even local activists to report their violations, severely impeding local NGOs' work on the ground.

5. Use of Technology

European states (Frontex, national assets) deploy extensive aerial surveillance (drones, aircraft) in the Central Mediterranean, sharing intelligence with LCG to enable interceptions. Advanced technologies are likely provided to Libyan forces to enhance coordination and operations. Crucially, there is no centralized registry for migrants in Libya, making it impossible to accurately monitor SAR operations. This fundamental lack of a robust, secure, and unified data management system means that migrant numbers are always approximations, making tracking individuals incredibly difficult.

Any personal data collected on migrants faces a high risk due to insecure storage, a lack of digital oversight, and arbitrary legislations over digital means use in Libya. This leads to a fragmented environment and the impossibility of accurate monitoring. Avenues for justice for technology-enabled abuses are virtually non-existent in Libya. Legal frameworks are absent, and establishing direct correlation between violations and EU externalization measures against European states in their courts faces immense evidentiary challenges due to the inherent secrecy surrounding these technological deployments and Libya's unreliable data ecosystem.

6. Human Rights Implications

Migrants intercepted and returned to Libya face arbitrary and indefinite detention in official and unofficial centres, often without legal basis or due process. Systemic torture, ill-treatment (including severe beatings, electrocution, sexual violence, forced labour, and extortion) are rampant, perpetrated by state actors and armed groups in deplorable, overcrowded, and unhygienic conditions with no sanitation, inadequate food/water, or medical care in both official and unofficial detention. The FFM described such violations as amounting to crimes against humanity.

Libya's domestic legal framework, particularly Law 6/1987, criminalizes irregular entry/residence and provides no humanitarian exemptions whatsoever. Libya has not an asylum system yet. This leads to a high risk of refoulement and widespread discrimination/xenophobia, fuelled by disinformation campaigns.

LCG interceptions (aided by Europe) traps individuals and directly feeds migrants into vicious and repeated cycle of violence. Women and children face systematic sexual trafficking and exploitation. Children are explicitly not separated from adults in detention, exposing them to extremely high risks of sexual harassment, rape and other abuses. Experiences in Libya cause severe physical, mental, and psychological trauma, leading to high rates of PTSD, depression, and anxiety patients with no access to psychological support or rehabilitation.

The criminalization of irregular entry—including against refugees in practice—pervasive fear of retaliation, corruption, and a complete lack of legal representation mean migrants have no effective access to justice for such systematic and widespread violations. In fact, Libyan governments deny responsibility for crimes and continue to recruit persons involved in such abuses within LCG and the Ministry of Interiors. The south Mediterranean agreements explicitly aim to shift responsibility for migration management from the EU to neighbouring countries like Libya, Tunisia, Turkey, and Egypt, cementing a total disregard for the fundamental rights of people on the move.

7. Recommendations

To Externalising States (EU & Member States):

1. **Immediately Halt Unlawful Externalisation Measures:**
    - Italy and the EU must cease unmonitored financial and technical support to Libya and include effective and frequent detailed reporting mechanisms to ensure deterring perpetrators in Libya within any international agreements. Furthermore, they must mandate full public disclosure of detailed reports concerning prior consumed budgets and operations between externalizing states and Libya.

- Italy, and EU states must provide public access to transparent reporting explicitly showing how technical and financial funding to Libyan migration sectors is used. This funding must be demonstrably contingent on strict compliance with international human rights law. Involved States must investigate the responsibility of the Italian Coast Guard, Frontex, and various Libyan security apparatuses, including the LCG, SSA, and DCIM, for violations committed during or resulting from SAR operations in the Mediterranean Sea.

2. **Ensure Transparency & Robust Accountability:**
    - Establish genuinely independent, international monitoring mechanisms with full, unimpeded access to all migrant detention facilities and allow their investigation into suspected trafficking in Libya, with a mandate to publicly report on human rights compliance.
    - Implement accessible, safe, protected, and effective internal complaint mechanisms for migrants in Libya, ensuring avenues for redress and accountability.
3. **Rethink EU Migration Policy:**
    - End the shifting of responsibility to unsafe countries, while pressuring transit countries to establish protection mechanisms for migrants and allow NGO assistance and monitoring activities.
    - Reallocate funds from externalisation initiatives to genuine humanitarian assistance, protection, and rights-based capacity-building programs in countries of origin and transit.
4. **Strengthen Civil Society & Humanitarian Space:**
    - Ensure the protection of civic space for national and international NGOs working on migration in Libya, actively condemning disinformation, hate speech, and violence against them and migrants.
    - Empower mandated international organizations for independent, critical operation with full, and unconditional access.

To Libyan Authorities:

1. **Prioritize Human Rights & End Abuses:**
    - Implement genuine alternatives to inhumane migrant detention, establishing proper, humane shelter centres where human dignity and rights are protected and respected.

- Take urgent and decisive action to end all forms of torture, ill-treatment, sexual violence, forced labour, and extortion against migrants.
- Ensure thorough, independent, and impartial investigations into all allegations of human rights violations against migrants, leading to the prosecution and punishment of perpetrators.
- Ratify the 1951 Refugee Convention, and the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. Abolish the criminalization of irregular migration by repealing Law 6/1987 and establish a functional Libyan asylum system as per Article 10 of the 2011 Libyan Constitutional Declaration.

2. **Ensure Protection for Vulnerable Groups:**
   - Implement specific measures to protect children and women, including from sexual violence and trafficking. Ensure children are never detained with adults and have access to special care.
   - Raise public awareness of Libya's obligations under international law, and actively combat discrimination, racism, and xenophobia against migrants.
3. **Facilitate Humanitarian Access & Oversight:**
   - Repeal all repressive laws and regulations intended to impede NGO activities in Libya.
   - Guarantee full, unimpeded, and unconditional access for international organizations and civil society to all migrants wherever they are located and allow delivery of basic relief assistance.