



OUT OF LIBYA

OPENING SAFE PATHWAYS FOR
VULNERABLE MIGRANTS STUCK IN LIBYA

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EXECUTIVE SUMMARY

Since the start of MSF's migration projects in Libya in 2016, we have repeatedly faced the same challenges: the impossibility of protecting migrants inside Libya, of ensuring continuity of care for serious physical and mental conditions, and of rehabilitating victims of torture. Whether inside or outside detention centres, MSF medical teams encounter migrants who are victims of and at immediate risk of trafficking, torture, sexual abuse, extortion and violence more generally. With no safe options inside Libya, this portion of the overall migrant and refugee population can only achieve safety and security by leaving Libya. This report aims to provide an overview of existing legal pathways out of Libya and MSF's experience at referring cases via those mechanisms. It attempts to address the main challenges encountered, mostly resulting from third countries' unwillingness and UN agencies' inability to fully abide with their protection mandates and obligations. As a result, MSF is proposing to develop alternative pathways for particularly vulnerable migrants.

There are few possibilities for legal and physical protection of migrants in Libya, despite the presence of at least 600,000 migrants inside the country and an established history of migrant workers arriving in search of labour opportunities. Most enter Libya irregularly and are at risk of detention under Libyan law, in addition to the threats of exploitation, trafficking and violence at the hands of employers, traffickers and militias. While this legal regime is a legacy of the Gaddafi era, the other notable driver of migrant precarity is the continuing instability and frequent armed conflict which continues to mark post-Gaddafi Libya. Various militia groups – some operating as de facto law enforcement – are directly involved in the detention business, in addition to running or being linked to human smuggling or trafficking networks. Whether inside or outside 'official' detention centres, migrants are subjected to a well-documented cycle of violence and abuse, part of a deliberate system to extort payments for release and eventually allowing them to travel further, and always facing the risk of re-trafficking.

The lack of both protection and stability partly explains the industrial-scale trafficking. Migrants, refugees and asylum seekers entering Libya via irregular land routes are commonly held by traffickers and tortured for ransom, for periods lasting months and often exceeding a year. To be a migrant in Libya is to risk being arrested, with no recourse to a legal system, and then detained in an 'official' detention centre or sold on to a trafficking network, and subjected to potentially extreme violence. Providing meaningful protection in such a context, for all intents and purposes, becomes impossible.

The safe and legal options for migrants who wish to leave Libya, however, are limited. Many will make the return journey overland – especially those seasonal migrant workers from neighbouring countries – running similar risks to those they took to come to Libya in the first place. Others will attempt to cross the Mediterranean once they can pay the fare, with increasingly high rates of interception by the Libyan coastguard, supported by the European Union, and high rates of drownings. The International Organization for Migration (IOM)'s Voluntary Humanitarian Return (VHR) program provides the possibility of repatriation to countries of origin, although the concept of 'voluntary' returns, particularly when it is the only way out of arbitrary detention, is fraught. A limited number of those who qualify as 'persons of concern' (PoCs) from the United Nations refugee agency (UNHCR)'s perspective are resettled in third countries each year. If the ultimate limitation on resettlements is the lack of places in third countries, UNHCR's inability to enforce its protection mandate – notably a proper selection of those in need of urgent international protection and resettlement based on clear and agreed criteria – deserves particular attention. The incompatibility of the usual resettlement mechanisms with the extreme circumstances in Libya demand adapted evacuation processes, which can minimise the loss of lives in Libya and at sea.

MSF regularly encounters migrants that cannot safely reside in Libya, and whose sole route to safety and security is to depart the country. While MSF will continue to refer cases to either UNHCR or IOM, MSF is also seeking to identify alternative pathways for humanitarian evacuation for particularly vulnerable migrants. These models can include an NGO role in identifying survivors of trafficking and torture in need of evacuation from Libya, in addition to NGOs and other civil society actors facilitating and funding reception in various safe countries.

Recommendations

1. To 'third countries of asylum':

i. Increase options of safe and legal pathways for people trapped in Libya. Vulnerable migrants, refugees and asylum seekers exposed to imminent life-threatening risks, including in detention centres and other places of captivity across Libya, should have access to safe and legal pathways out of Libya. A significant increase in the number of slots for resettlement to third countries of asylum should be promoted, humanitarian evacuation and resettlement flights should be scaled up and the relevant processes speeded up, including quicker and smoother transit processes through facilities in Niger or Rwanda. Complementary pathways should be expanded under an enlarged UNHCR process and parallel to it. Models providing for rapid humanitarian evacuations for critical protection cases, including life-threatening medical needs, should supplement existing UNHCR mechanisms. Such models could include and merge positive experiences with humanitarian and medical visas, humanitarian corridors, and community or private sponsorship and follow-up support, particularly where specialised care is required for survivors of torture and trafficking.

2. To IOM, the African Union and its member states, and the Libyan authorities:

ii. Ensure the speedy voluntary repatriation of all those who are willing to be repatriated. This may require governments, in particular the AU member states, as well as the AU, to set up specific procedures.

3. To UNHCR and the Libyan authorities:

iii. Agree on the overhaul of UNHCR's criteria for recognising 'persons of concern' with no limitations in terms of nationalities and prioritisation of cases based on a person's need for protection;

iv. Agree on the expansion of UNHCR's registration activities and access beyond Tripoli.

4. To the Libyan authorities:

v. Promptly facilitate IOM, UNHCR and other evacuation flights from Libya;

vi. Sign and ratify the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol;

vii. Formally recognise UNHCR and allow it the full exercise of its mandate;

viii. Immediately release all arbitrarily detained migrants, refugees and asylum seekers, and end arbitrary detention in Libya;

ix. End forced returns from Libya in particular to countries where returnees' lives may be at risk.

5. To the European Union and member states, and other international entities involved in Libya, including the United Nations and their agencies:

x. Urgently review – and if needed suspend – current cooperation agreements with Libyan authorities, programmes and activities in support of migration and border management in Libya, to ensure they are exercising sufficient due diligence and ultimately promoting human rights-based migration governance in Libya that prioritizes the protection of all migrants, regardless of status;

xi. Ensure that support to Libyan authorities is conditional to: the prompt and smooth facilitation of IOM, UNHCR and other evacuation flights from Libya; the signature and ratification of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol; a formal recognition of UNHCR and allowing it the full exercise of its mandate; the prompt release of all arbitrarily detained migrants, refugees and asylum seekers and the end of arbitrary detention in Libya; the end of forcible returns from Libya in particular to countries where returnees' lives may be at risk; acceptance of independent humanitarian access for assistance and protection.

xii. End political, financial and material support to the system of forcible returns from international waters in the Central Mediterranean Sea to Libya. As repeatedly acknowledged by international bodies, including the United Nations and the EU Commission, Libya is currently not a safe place for the purpose of disembarkation of people rescued at sea.



Dhar al-Jebel detention centre, 2019.

INTRODUCTION

On 1 October 2021, the United Nations High Commissioner for Human Rights (OHCHR) published a report on Libya qualifying the violence against migrants¹ in the country since 2016, including systematic torture in and outside official detention centres, as ‘amount[ing] to crimes against humanity’.² The report laid the blame for these crimes with the Libyan authorities, and suggested foreign players – meaning European partners of the Libyan authors of these crimes – may also be considered as responsible, or complicit, in crimes against humanity.

Regardless of those conclusions, a few days earlier, the French government announced plans for the training of a hundred Libyan militia members. Reports also confirmed European Union plans to provide three boats to the Libyan coastguard, despite the fact such delivery is likely to lead to further human rights abuses and would be considered as a provision of military equipment.³ It would thus constitute a violation of the United Nations Security Council sanctions – including an arms embargo – on Libya, unless the EU requests and

obtains an exemption from the Security Council. In 2021, the figure for interception (and return to Libya) was for the first time higher than the figure of arrivals to Europe from Libya (see Fig 2 p. 19).

Also in October 2021, militias in Tripoli nominally under the Libyan ‘Government of National Unity’ (GNU) conducted mass arrest of between 5,000 and 7,000 migrants, refugees and asylum seekers, and transferred them to detention centres.⁴ At least one was shot dead and fifteen wounded during the arrests. Later, as hundreds of migrants managed to escape from the severely overcrowded al-Mabani detention centre, between seven and more than forty migrants were killed by guards shooting at escapees as well as during attempts to re-arrest them.⁵ Later in January 2022, a sit-in of about 1,000 migrants who had been staying, protesting, and asking for aid in front of the UNHCR office in Tripoli was violently dispersed, and more than 600 arrested.⁶

This series of recent events offers a perfect illustration of the cynicism of European migration policies regarding Libya, of their collateral damage to both migrants and the establishment of rule of law in Libya, and of the hopeless situation which migrants – and humanitarian actors trying to help them – are facing in Libya.

1. Consistent with the methodology of the Office of the United Nations High Commissioner for Human Rights, this paper uses ‘migrants’ in Libya as a catch-all term for migrants, refugees and asylum seekers “as well as any person who is outside a State of which s/he is a citizen or national, or, in the case of a stateless person, his or her State of birth or habitual residence, trafficked persons, smuggled migrants, and other categories, unless specified otherwise”. The term should not be considered to imply a view regarding individual rights to asylum: indeed, as this paper discusses, the protection situation for non-Libyans in Libya is profoundly more complex than that captured by classifications of migrant workers, refugees and asylum seekers. See <https://www.ohchr.org/sites/default/files/Documents/Countries/LY/LibyaMigrationReport.pdf>

2. See <https://www.ohchr.org/sites/default/files/2021-11/A-HRC-48-83-AEV-EN.docx>

3. https://www.europarl.europa.eu/doceo/document/E-9-2022-000560_EN.html ; https://www.europarl.europa.eu/doceo/document/E-9-2022-000560-ASW_EN.html

4. Those included UNHCR-registered People of Concerns (PoCs), including some scheduled for a next evacuation flight. See <https://www.msf.org/thousands-detained-and-people-without-medical-care-after-days-arrests-libya>; <https://migration.iom.int/reports/libya-%E2%80%94-hai-alandalus-flash-update-03-october-2021>; <https://www.amnesty.org/en/latest/press-release/2021/10/libya-unlawful-lethal-force-and-mass-arrests-in-unprecedented-migrant-crackdown/>; <https://www.hrw.org/news/2021/11/03/libya-asylum-seekers-refugees-need-crisis-response>

5. See <https://www.facebook.com/1149244558432556/posts/4791645624192413/?sfnsn=mo>

6. <https://www.doctorswithoutborders.org/what-we-do/news-stories/news/libya-over-600-migrants-arrested-after-speaking-out-their-rights>; <https://www.al-monitor.com/originals/2022/01/hundreds-migrants-detained-outside-un-center-libya>



MSF doctor examining recently released survivors of torture, 2019.

MSF in Libya

MSF first worked in Libya in 2011 during the 'Arab Spring' and the subsequent civil war, to provide assistance to people affected by the conflict, at the height of the fighting. In 2016, MSF decided to focus its operations in Libya on the situation faced by migrants and began working in government-run detention centres where migrants are arbitrarily and indefinitely detained, providing detainees with basic healthcare and psychosocial support. Currently working in detention centres in Tripoli, MSF also works with migrant populations living outside detention mainly in Tripoli, Zuwara, Misrata and Beni Walid. In Zuwara, mobile clinics provide medical and social services to migrant communities. In Beni Walid, our teams offer general healthcare and facilitate medical referrals to migrants who are victims of torture and trafficking. MSF provides technical support to Libya's National Tuberculosis Programme, run by the National Centre for Disease Control (NCDC), and has been operating a tuberculosis unit in Misrata – the only facility with these characteristics in the whole Western and Central regions. At disembarkation points in Tripoli, Khoms, Zuwara and Zawiya, MSF has been providing first aid and basic medical care for migrants intercepted at sea, as well as emergency referral and follow-up care for patients in critical condition. MSF also carries out Search and Rescue (SAR) operations in the Mediterranean Sea.

In response to the COVID-19 global pandemic and to help limit the spread of the virus, MSF teams have also been conducting COVID-19-related trainings on infection, prevention, and control (IPC), awareness-raising sessions for staff and patients in our projects, and donating COVID-19 related medical supplies to MSF-supported hospitals and clinics.



Migrant workers' guesthouse', Nasmah, 2020.

I. UNDERSTANDING THE SITUATION OF MIGRANTS IN LIBYA

The 2011 fall of Gaddafi's regime and the Libyan civil war left the country with a multitude of armed factions competing for power. In 2014, Libya split into western and eastern governments, each with its own coalition of loosely aligned militias. These two camps are themselves fragmented into highly autonomous cities and into communities of varying degrees of loyalty to each camp. Entire areas, especially in the South, are beyond the control of any government. Since 2011, there is no unified state in Libya, or even no functioning state at all. There is no unified army either, but rather militia coalitions that are barely hidden behind names as diverse as 'Libyan Arab Armed Forces', police, coastguard, coastal security, border guard, anti-terrorist, anti-migration forces, and so on.

The 'official' Government of National Unity (GNU), formed following a UN-led process and therefore recognised by the UN, was supposed to be more inclusive than its predecessor, the (also UN-supported) Government of National Accord (GNA). But it remains contested from all sides, including by the House of Representatives (HoR) based in Tobruk in the East, who as of February 2022 have appointed a competing government.⁷ The GNU's plurality in fact hides power-sharing agreements between the most influential cities in western Libya (Misrata, Zintan, Zawiyah, etc.), and behind them the most influential communities since the revolution. These agreements are fragile and are constantly evolving and being renegotiated. Far from controlling armed forces and territories, the GNU depends on militias for its own security; militias who are in turn loyal only to their community and territory, and often bitter rivals amongst themselves. Libya thus remains an unstable and dangerous country. This is particularly the case for migrants, refugees and asylum seekers working in Libya or transiting through it, especially those from sub-Saharan Africa.



Medical consultation for a recently released survivor of torture, 2019.

1. Migrants in Libya

By November 2021, there were an estimated 600,000 migrants of more than 44 different nationalities in the country.⁸ The majority of migrants come to work and send money back home, and stay in Libya for several years: they are the labour force (construction workers, agricultural workers, etc.) on which the Libyan economy heavily depends. A minority try to reach Europe, in search of safety and better living conditions than in their home countries, and than in Libya.

Since 2011, an increasing number of migrants, including those who initially had no intention of reaching Europe, have attempted to cross the Mediterranean. There are two reasons for this relative increase in crossing attempts:

- The worsening security situation in Libya, particularly for migrants,
- The high cost of remaining in Libya as a migrant, due to higher amounts spent to get to Libya but also to move around the country itself, to pay ransoms or bribes to be released from arbitrary detention and in some cases to leave Libya.

Libya is not a safe country.⁹ The absence of a cohesive state and security sector, coupled with repeated civil

war episodes since 2011, led to a high level of insecurity in the cities and on the roads.

For migrants, Libya is particularly dangerous because most are in an irregular situation, and both irregular entry into Libya and the intention to leave the country clandestinely are considered as grounds for detention under Libyan law.¹⁰ With no formal legal protections, migrants are exposed to exploitation and arbitrary detention in unofficial and official facilities at the hands of private employers, human traffickers and armed forces, including various militias who perform quasi-policing and law enforcement roles. In particular, since 2011, sub-Saharan migrants have been systematically detained by traffickers, in warehouses that can hold hundreds of migrants, and tortured to pressure relatives or community members abroad to pay a ransom – often thousands of dollars – for them to be released. Such detention and daily torture, often in multiple warehouses and towns, can exceed a year. Some nationalities or communities are considered richer and are therefore particularly targeted: this is the case in particular for Eritreans, and to a lesser extent Ethiopians and Somalis, who are ‘charged’ much higher ransoms in dollars and euros, and who suffer from repeated incidents of kidnappings and extortion.

8. See <https://dtm.iom.int/reports/libya---migrant-report-38-july---september-2021>. The data is weak and it is possible that there are more than that – a figure as high as two million is not impossible, if one adds estimations given by main sub-Saharan embassies and communities in Libya.

9. See <https://www.ohchr.org/sites/default/files/2021-11/A-HRC-48-83-AEV-EN.docx> and <https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protection/1680a1abcd>

10. See https://reliefweb.int/sites/reliefweb.int/files/resources/082_determinants_of_detention.pdf

According to the 2021 OHCHR report, 'There is also evidence that most of detained migrants are Sub-Saharan Africans and that they are treated in a harsher manner than other nationalities, thereby suggesting discriminatory treatment.'¹¹ Since 2011, slavery or forced labour for periods of up to several years has also been a reality faced by sub-Saharan migrants in Libya. Those who cannot buy their freedom can be enslaved for years, forced to work and traded between 'bosses' or 'owners'. Even in some official detention centers, a main way to get released is to be sold to employers who will then have detained migrants work without payment, at least until their so-called 'debt' is reimbursed. Among the 'forced labour' cases, there are also cases of forced recruitment of migrants as fighters by Libyan armed forces, some of which have resulted into deaths. Women are also victims of sexual slavery, trafficking, rape and often forced to prostitution. Organ trafficking has also been reported.

Since the Gaddafi era, migrants are in principle systematically tested for communicable diseases

such as HIV, tuberculosis and hepatitis: the underlying assumption is that sub-Saharan migrants are carriers of infectious diseases, including COVID-19 of late. That belief, and the formal testing system, thus carries other risks for further discrimination and violence. Those who test positive to HIV or hepatitis B, or who do not possess a negative test result, must, according to Libyan law, be deported, regardless of the risks (safety or health) that they face in their country of origin. It is also extremely difficult for a migrant, especially those with HIV or hepatitis, to access health care in Libya, which pushes patients into hiding.

In addition, Christian sub-Saharan migrants (from the Horn of Africa or West Africa) also risk suffering from religious persecution. For example, in April 2019, in a Tripoli detention centre, guards shot at Eritrean Orthodox Christians who were praying, killing at least three and injuring about 20¹²; while in other locations across Libya Daesh executed Ethiopian, Egyptian and South Sudanese Christians.¹³



Eritrean Christians praying in Dhar al-Jebel detention centre, 2019.

11. See <https://www.ohchr.org/sites/default/files/2021-11/A-HRC-48-83-AEV-EN.docx>

12. <https://www.irishtimes.com/news/world/africa/calls-for-libyan-shooting-to-be-investigated-as-war-crime-1.3872945>

13. <https://www.nytimes.com/2015/04/20/world/middleeast/isis-video-purports-to-show-killing-of-ethiopian-christians.html>



Dhar al-Jebel detention centre, 2019.

2. Detention dilemmas

The above outlines the reasons why Libya cannot be considered as a 'safe country' for migrants, a fact repeatedly recognized by UN agencies and the EU. Yet, in spite of such statements of principle, potential 'safe countries' able to welcome migrants stranded in Libya have not acted in consequence. On the contrary, the EU and some of its member states continue to support or fund the Libyan coastguard, who intercept migrants at sea and return them to Libya, very often to detention centres. This is despite human rights bodies, including the OHCHR and the Council of Europe's Commissioner for Human Rights, pointing out the EU's individual and collective responsibility on the deaths at sea and the abuses in Libya. In 2019 and in subsequent reports in March 2021 and April 2022, the latter specifically mentioned the human rights risks of the cooperation on interceptions with countries outside the EU, and recommended to suspend it.¹⁴ While the EU and UN also officially condemn Libya's arbitrary and indefinite detention of, in particular sub-Saharan, migrants¹⁵, the EU and UN agencies also indirectly support the detention system, such as funding works in detention centres that are implemented by the International Organization for Migration (IOM).¹⁶ Recently, EU officials were labelling detention centres as 'reception centres'. By March 2022, about 1,500 migrants were reportedly detained in official facilities, after substantial

fluctuations in numbers, which at times went above 10,000.

Like the EU and UN, MSF has been advocating for the release of migrants from arbitrary detention and for the closure of detention centres. MSF has occasionally obtained the release of migrants from detention centres – including for medical reasons justifying a referral to hospital – and contributed to the closure of detention centres that were particularly dangerous for migrants. These include centres, such as Gharyan Al-Hamra and Khoms, which were closed thanks to advocacy efforts targeting UNHCR (who then engaged the Libyan authorities) as well as MSF advocating bilaterally with the Libyan authorities. Yet MSF has little leverage to obtain the release of migrants from detention and the closure of detention centres when compared with UNHCR.

However, released migrants are not necessarily safer outside detention. In Tripoli, released individuals are provided with an 'urban' package of assistance from UNHCR. This includes emergency cash provided upon arrival or within the month after arrival. The financial support provided by UNHCR and its implementing partners is extremely limited and available to a reduced number of individuals as a one-off assistance.

14. <https://rm.coe.int/lives-saved-rights-protected-bridging-the-protection-gap-for-refugees-/168094eb87> and <https://rm.coe.int/a-distress-call-for-human-rights-the-widening-gap-in-migrant-protectio/1680a1abcd>

15. See <https://www.ohchr.org/sites/default/files/2021-11/A-HRC-48-83-AEV-EN.docx>

16. <https://www.tni.org/files/publication-downloads/outourcingoppression-report-tni.pdf>

Partly due to the cost of housing and increased pressure by Libyan authorities on Libyan landlords hosting migrants, the lack of shelter is also a critical protection concern. Various attempts by the UNHCR, Libyan and international civil society actors at providing shelter for migrants have proven limited and precarious. Following the police raids in Zuwara from mid-June 2021 and the mass arrests in Tripoli in October 2021, which included the destruction of buildings housing migrants,¹⁷ many reported being left sleeping outdoors even after having paid the rent to landlords in advance. Migrants released from detention centres have been repeatedly harassed, robbed, attacked, exploited for unpaid work, and sometimes kidnapped or arrested by armed gangs or militias – as occurred on a large scale in October 2021 and January 2022.

As a result of these difficult conditions, migrants released from detention sometimes requested to be returned to detention centres, and some have indeed returned to detention by themselves, including by paying bribes to guards. The reasons are complex and vary from individual to individual. In some cases, such as Gharyan Al-Hamra and Khoms detention centres, migrants preferred to stay in detention hoping that this would facilitate their access to UNHCR registration and assistance, at a time where detained migrants seemed to be prioritized for resettlement (arguing that this played as a pull factor, UNHCR stopped registering people in detention centres).

Aid in detention raises a number of questions and dilemmas. Bearing witness to abuses inflicted in detention facilities, MSF teams frequently question the ethics of treating people who continue to be deprived of freedom and exposed to abuses in detention.¹⁸ Providing relief to migrants in Libya in general can appear akin to pushing Sisyphus' rock, such as treating victims of torture whose fragile existence once they leave MSF care means they are likely to again be arrested, kidnapped, detained and/or tortured.

Further, women, men and children who are reported to be constantly exposed to verbal and physical abuse experience a dehumanizing rhetoric and treatment which affect their sense of belonging to the human community. These experiences have evoked historical comparisons with concentration camps.¹⁹

These are just some of the ethical concerns which have convinced MSF, as early as 2018, that our medical intervention must be completed by measures and advocacy to better protect migrants while searching for solutions out of the detention system. It is for these reasons that MSF is ultimately aiming that our patients reach a safe place, which clearly means, in the current circumstances, getting them out of Libya.

17. Including a shelter hosting nearly 100 Eritreans, funded by an Eritrean diaspora organization in the United States.

18. In addition to various reports of migrants sold from detention centres to traffickers, MSF can point to numerous examples where our medical teams are directly treating the wounds and illnesses deliberately inflicted by the detention system. This includes Kararim detention centre in Misrata, where MSF teams protested the repeated presentation of patients who had been tortured by the guards, and Zliten detention centre, where MSF protested the acute malnutrition of migrants who were being deliberately underfed.

19. A comparison often made by visitors to the detention centres, as well as international observers, including German diplomats in 2017 and more recently Pope Francis. See <https://www.theguardian.com/world/2017/jan/30/german-report-libya-abuses-pressure-migrant-flows> and <https://arabic.cnn.com/world/video/2021/10/25/v112566-pope-francis-likens-libyan-migrant-detention-centres-concentration-camps>. The comparison is also made by Libyans and migrants; for instance detained migrants tasked by Libyan guards to watch the other inmates or act as intermediaries are commonly called *kapo*.



Dhar al-Jebel detention centre, 2019.

II. EXISTING SAFE AND LEGAL PATHWAYS OUT OF LIBYA

Until now, the majority of our patients who have left Libya have done so without MSF's support: by crossing the sea. Many have attempted the crossing several times before succeeding. Many have also failed: either they were returned to Libya, generally by the Libyan coastguard, or they died at sea.

Apart from crossing the Mediterranean, there are also migrants who have tried to leave Libya by land, including towards Tunisia and towards Niger.²⁰ This includes 2,000 Sudanese from Darfur who hoped for better security in Niger, and also that their requests for asylum and relocation to a northern, safe country would be taken into account by UNHCR in Niger.²¹ There are also consistent flows of migrant workers who make the

return journey (overland or through regular or chartered commercial flights) to their countries of origin on their own, especially those from Chad, Niger and Nigeria, who have an established history of 'circular migration', seeking temporary work in Libya. This is often with the help of their community in Libya, and sometimes of their embassy.

Although neither safe nor legal under international law, the Libyan authorities or armed forces also conduct overland deportations, notably toward Chad, Egypt and Sudan, regardless of the risks faced by those forcibly returned during the overland journey or across the Libyan border.²² Until its recent closure, the 'Al-Mabani' detention centre, which was opened in 2021 in Tripoli as a 'Gathering and Return Centre', was one of a number of facilities used to hold migrants prior to overland deportation.²³

20. See <https://ftdes.net/refoulement-de-migrants-subsahariens-vers-la-frontiere-libyenne-face-a-la-deterioration-de-la-situation-humanitaire-en-libye-limperatif-de-sauver-des-vies-devient-de-plus-en-plus-menace/>

21. See <https://www.smallarmssurvey.org/resource/diaspora-despair-darfurian-mobility-time-international-disengagement> The process was particularly slow, but a number of them were able to be relocated to a third country.

22. See https://www.ohchr.org/sites/default/files/2021-12/Unsafe_and_Undignified.pdf

23. *Ibid.*



Detainees at Dhar al-Jebel detention centre waiting for the bus who will drive them to the airport. In May 2019, 16 detainees of Dhar al-Jebel detention centre agreed to be returned to Ethiopia by IOM.

1. Returning home: the International Organization for Migration (IOM) process

In recent years the return process has increasingly been handled by IOM, bringing home migrants who expressed a willingness to return under their 'voluntary humanitarian returns' (VHR) program, with financial support by the European Union.²⁴ However, given the lack of alternatives, particularly for migrants in indefinite detention, the 'voluntary' nature of the return is highly debatable, to say nothing of the concept of 'humanitarian' returns.²⁵ VHR is a major way to get released from detention, but the voluntary nature of return from a closed facility is questionable, in particular when returnees remain detained until departure.

Aside from this, access challenges limit IOM outreach and further delay the identification processes of cases willing to register for VHR flights, especially in areas considered as remote or insecure, such as Beni Walid. In such places and in detention centres, people who wish to return home can remain stranded for several months, and even more than a year. Part of IOM's operations is to advocate for the release from detention centres of individuals who register for VHR, along with the relevant embassies, and to provide so-called 'alternatives to detention' (sheltering, community hosting) while the VHR procedure is being completed. MSF witnessed that the procedures also depend on the reactivity of

relevant countries of origin and their willingness to take back their nationals. Bureaucratic constraints related to the presence or absence of consular services in the country proved to be challenging: some embassies are not present in Tripoli, and others are not even present in Tunis.

Further, since the COVID-19 pandemic, flights have been commonly delayed due to lockdowns, travel restrictions, limited consular services, and other containment measures. In 2021, the whole process has been repeatedly halted by the Libyan authorities, for unexplained reasons. VHR flights were suspended because of the pandemic for most of 2020, then resumed until they were put on hold by Libyan authorities from April to June 2021, resumed again in July with flights to Egypt and Pakistan, then were suspended again in August.²⁶ Such a decision seemed paradoxical given the Libyan authorities' stated willingness to send migrants back home. Other IOM interventions were reduced during the first half of 2021 and the agency's access to detention centres was impeded for over a month in April-May 2021. Only 1,311 migrants were returned before October 2021, when VHR flights resumed with the return of 127 migrants to Gambia and of 140 to Bangladesh.²⁷ Then in November, 163 migrants were returned to Nigeria and 32 'Somalis'

24. Under the EU-IOM Joint Initiative for Migrant Protection and Reintegration and through the Italian Ministry of Foreign Affairs' Migration Fund.

25. See <https://cdn.odi.org/media/documents/12385.pdf>, p. 62

26. <https://reliefweb.int/report/libya/iom-condemns-killing-six-migrants-detention-centre-tripoli>

27. <https://www.amnesty.org/en/latest/press-release/2021/10/libya-unlawful-lethal-force-and-mass-arrests-in-unprecedented-migrant-crackdown/> ;

<https://www.iom.int/news/iom-resumes-voluntary-humanitarian-return-assistance-flights-libya-after-months-suspension>

28. <https://www.migrationjointinitiative.org/news/32-somali-migrants-assisted-return-safely-libya>

to Somalia.²⁸ At that date there were reportedly 10,000 individuals registered by IOM and waiting for repatriation from Libya.²⁹ Over 50,000 individuals were returned between 2017 and 2021.

MSF regularly refers cases to IOM, from detention centres or outside, to access to various services,

including VHR. MSF will continue to advocate with countries of return in sub-Saharan Africa to speed up the process, and with IOM for ensuring returns are voluntary. Such flights should not be the only option available to migrants in search for safety, and IOM could also contribute to humanitarian corridors out of Libya.



Dhar al-Jebel detention centre, 2019.

2. Evacuations to a third country: the UN refugee agency (UNHCR) process

There are currently two safe, legal and internationally supported pathways to get out of Libya. As mentioned above, IOM's VHR offers a legal, regular way to leave Libya to return home, free of charge and with the agency's support. This voluntary repatriation, however, can only concern those who do not feel at risk in their country of origin. For the persons for whom returning represents a risk for their life and dignity, the normal pathway should be an asylum claim and resettlement in a safe 'third country', mostly in Europe and North America. However, this process, handled by UNHCR, is far more restrictive and difficult to access.

Since 2017, the UN refugee agency has been registering 'asylum seekers' in Libya. Registration is the first and mandatory step to be able to access further services. It should, in theory, provide some protection - although UNHCR documents and registration numbers have proven of little use to avoid arrest and detention in

Libya. After registration, only a restricted number of persons receive a 'Protection Needs Assessment' to determine what services UNHCR could provide.³⁰ Only after this assessment, interviews are conducted in order to determine refugee status then eligibility for resettlement to safe 'third countries' in Europe and North America, usually via two transit countries (Niger and Rwanda), through a system known as Emergency Transit Mechanism (ETM).

UNHCR in Libya is facing critical problems. Firstly, UNHCR's presence does not have a formal legal basis: Libya has not ratified the 1951 Geneva Convention relating to the Status of Refugees nor its 1967 Protocol, and hence has no national asylum system. The country does not officially recognise UNHCR and does not have a host agreement (accord de siège) or a memorandum of understanding with the agency.³¹ Thus the formal legal instruments that would normally exist between

29. <https://www.iom.int/news/iom-resumes-voluntary-humanitarian-return-assistance-flights-libya-after-months-suspension>

30. Main services in the 'urban package' are a one-time emergency cash assistance (the most common service), a one-time emergency food package, provision of hygiene kits, individual health care screening and assistance, and housing arrangements.

31. <https://www.refworld.org/docid/5f1edee24.html>

UNHCR and a host country do not exist and UNHCR does not appear optimistic of any improvement in coming years. Yet the UN agency appears to be authorized to operate by the Libyan authorities, at least in Tripoli.

UNHCR is reportedly not authorized to open 'field offices' outside of Tripoli, but still seems to have been able to operate in other parts of Libya. Apparently some leverage on Libyan authorities could be exercised, when advocating for transfers between detention centres (especially from detention centres located in conflict areas), release from detention and closure of detention centres (in the case of fighting or abuses). MSF thus has the impression that there has been only limited international pressure on Libya to sign the Geneva convention and respect international laws and practices regarding refugees and migrants. This legal limbo or exceptional regime is used as a justification by international actors for the fact that UNHCR is not able to apply its proper, usual standards in Libya.

In practice, IOM and UNHCR divide their labour in Libya: while UNHCR considers the 'persons of concerns' (PoCs, i.e. potential asylum seekers), IOM focuses on migrants seen as 'economic migrants', thus perpetuating a problematic distinction, mainly based on countries of origin. This framework does not take into account much more complex patterns and individual stories. According to UNHCR, "restrictive [Libyan] governmental policies (...) only permit persons of designated nationalities to register with UNHCR", so that only nine origin countries are recognised as legitimate for asylum seekers to be registered in Libya.³¹ Those include four Middle-Eastern countries (Iraq, Palestine, Syria and Yemen) and five sub-Saharan countries (Eritrea, Ethiopia, Somalia, Sudan and South Sudan). Some countries at war, such as the Central African Republic and Mali, are not taken into account. This seems to indicate that the list, like many legal justifications applied to migrants in Libya, is based on the application of a framework dating back to the Gaddafi era. Yet, some countries at war, where conflict started after Gaddafi's fall, are included on the list: this is the case of Syria, Yemen and South Sudan. The two latter were added to the list in 2018, which suggests UNHCR still has some leverage to expand the list, but also to consider individual cases outside of the nine nationalities, although only 'on exceptional grounds'. By December 2021, of more than 40,000 registered PoCs in Libya, only 133 were from nationalities other than those nine on the list.³² Similarly, IOM has sometimes voluntarily returned home migrants from those nine nationalities, for instance Somalis and Sudanese. For example, 32 'Somalis' were returned to Somalia in November 2021. A flight to Sudan was planned at the same period,

in preparation of which Sudan's then Foreign Affairs minister Mariam al-Mahdi visited Libya and met with Sudanese migrants who were willing to return, in the Sudanese embassy in Tripoli, on 22 October 2021.³³ Three days after, a military coup took place in Sudan, leading to the suspension of the flight. As for 'Somalis' (which are often labelled by their ethnicity and may not be necessarily coming from Somalia), UNHCR and IOM have come to consider them as a 'mixed' community of migrants and refugees. When they express their willingness to return home, both agencies conduct 'joint counselling' to ensure that individuals from Somalia are aware of their eligibility for UNHCR registration as PoCs. Generally, IOM refused to return people from nationalities eligible as PoCs and preferred to refer them to UNHCR.

After this national filtering, UNHCR mostly focuses on evacuating women (in particular those at risk or victims of trafficking), children (unaccompanied and separated) and families (in particular female-headed households) as a shorthand for 'vulnerability'.³⁴ This appears to be because of a problem of magnitude that goes beyond UNHCR: the numbers of resettlement places in 'third countries' are extremely limited. Prior to the COVID-19 pandemic, UNHCR was evacuating approximately 2,400 per year from Libya (in 2018 and 2019), but since the pandemic's restrictions on travels, numbers dramatically fell. In 2020, a record number of 4,400 slots was reportedly allocated, but because of the pandemic, only 811 were evacuated from Libya. Germany, for instance, remained with more than 250 slots unfilled. In 2021, Norway granted 800 slots, of which only 139 were filled. That year, around 2,000 slots were allocated for Libya (a number which did not even allow to compensate for the 2020 lost slots), but no dedicated evacuation flights took place before July, when one flight evacuated 133 asylum seekers from Eritrea, Somalia, South Sudan and Sudan to Rwanda.³⁵ Flights were then suspended again in August, not only due to COVID-19, but also due to a blanket ban of humanitarian flights by the Libyan authorities.³⁶ The ban was lifted in October, allowing, all in all, the 2021 departures to reach the number of 1,662.³⁷ Other UNHCR interventions were reduced in 2021 and the agency's access to detention centres was impeded for over a month in April-May 2021.

Since UNHCR began its flights from Libya in November 2017 through to the end of 2021, approximately 7,500 asylum seekers were evacuated or resettled from Libya. About half of those cases transited through Niger, and the others through Rwanda, another transit centre in Romania and direct flights to Italy.³⁸ Most ended departing to third countries

31. *Ibid*

32. Private correspondence, UNHCR, 11 January 2022

33. <https://www.alnailin.com/13215230.htm>

34. According to IOM data, approximately 10% of migrants in Libya are women and an additional 10% are children, including 2% who are unaccompanied or separated.

See <https://dtm.iom.int/reports/libya---migrant-report-38-july---september-2021>

35. <https://data2.unhcr.org/fr/documents/details/88753>

36. https://reliefweb.int/sites/reliefweb.int/files/resources/humanitarian_access_snapshot_-_migrants_and_refugees_-_sept_2021.pdf

37. See <https://data2.unhcr.org/fr/documents/details/88753>; <https://www.unhcr.org/news/press/2021/10/61601d7c4/unhcr-appeals-end-arrests-asylum-seekers-libya-calls-urgent-resumption.html>; <https://data2.unhcr.org/en/dataviz/184?sv=0&geo=0>

38. <https://data2.unhcr.org/fr/documents/details/88753>

through resettlement, as well as, for smaller numbers, 'humanitarian admission' (280 between September 2017 and August 2021), 'private sponsorship' (47), and family reunification (22).³⁹

By 1 November 2021, 41,404 asylum seekers were registered by UNHCR in Libya, a figure which dwarfs the numbers of resettlement slots.⁴⁰ It should also be noted that the number of registered people has been fairly stable – around 50,000 – over the past few years, in spite of the fact that new PoCs are regularly registered and few leave: thus in 2019, about 60,000 were registered, and for a period, registrations mounted up to 1,000 a month. In 2021, registration reportedly reached 500 to 600 a month, with over 8,000 registered (or issued with new documentation) during the last three months of the year, after the October arrests encouraged UNHCR to lighten criteria.

The stability in the number of PoCs seems to be due to a regular cleaning of the lists. Described by a UNHCR official as 'an active inactivation policy', this process began in 2019, two years after the first registrations, and became continuous since. If people do not renew by themselves their registration, they can be delisted, reportedly after one or two years without contacts and three phone calls on their contact number. But many migrants do not have phones, and others often have them confiscated by armed Libyans (whether thieves, militias who rob or arrest them, guards of detention centres, kidnappers or traffickers). In addition, many also disappear or die in Libya or at sea.

Although the blame rests first and foremost with Libyan authorities for not allowing exit flights⁴¹, the primary responsibility for insufficient slots lies with

third countries. However, UNHCR must also bear responsibility for the slow pace of their processes. Migrants listed for evacuation wait months or years in Libya, in spite of the immediate risks they face in the country and the fact that transit facilities in Niger and Rwanda are sometimes only half full – for instance, by August 2021, only 273 of the 600 slots in Niger, and 297 of the 500 in Rwanda, were filled.⁴² Those evacuated from Libya also wait for months or years in the two transit countries before being actually resettled, and even before knowing if and where they will be resettled. Indeed, third countries might refuse to take some cases, and, depending on information provided by the refugees themselves or denunciations by other refugees, exclusion clauses to the refugee status can apply.⁴³ Some, including rejected asylum seekers, have also been offered refugee status or 'local integration' in Rwanda and Niger itself, or voluntary return from Rwanda or Niger, which is likely to be unsatisfying for most.⁴⁴ This raises questions on the information given on the possible outcomes prior to the flight from Libya.⁴⁵ Such functioning of the ETM suggests a policy aimed at satisfying European demands for maintaining refugees south of the Mediterranean, as well as transit countries' attempts at painting themselves as welcoming refugees. However, some third countries, such as France, Germany and Sweden, complained, at times, that asylum seekers remained waiting in Niger for long periods while the slots they offered remained unfilled. Third countries also complained that they were referred large shares of cases who had not been evacuated from Libya, but were refugees from countries neighbouring Niger and Rwanda; and of inaccuracies within UNHCR individual files, leading to complications in asylum processes.

39. *Ibid*

40. <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Update%2019%20November%202021.pdf>

41. Ironic, since the official justifications for the October 2021 arrests included 'deporting irregular migrants' from Libya.

42. See https://www.ohchr.org/sites/default/files/2021-12/Unsafe_and_Undignified.pdf

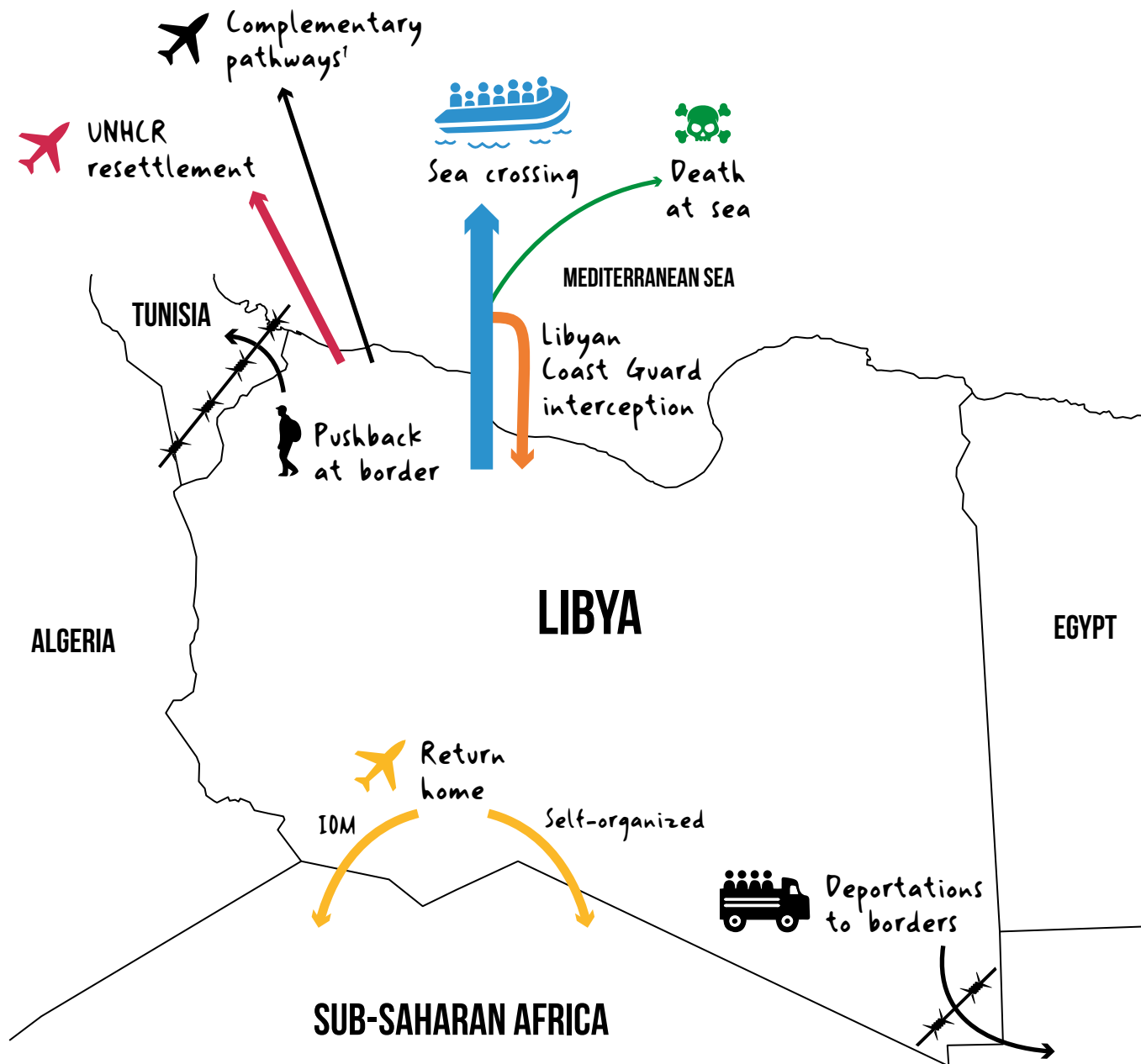
43. For instance, 'those who have committed war crimes, crimes against humanity, terrorist acts or other serious criminal offences are excluded from refugee status under Article 1F of the Refugee Convention'. This is however problematic as it often only relies on suspicions (for instance the simple fact of having been enrolled in military service) and does not take in consideration the possible forced nature of military, violent or even criminal activities – in the same line than trafficking or forced labour for example –, whether they took place in countries of origin or in Libya.

44. <http://www.against-inhumanity.org/2021/12/13/detained-and-abused-refugees-in-libya-an-interview-with-unhcr/>

45. See <https://ec.europa.eu/info/sites/default/files/report-migration-asylum.pdf>

Fig. 1

WAYS OUT OF LIBYA

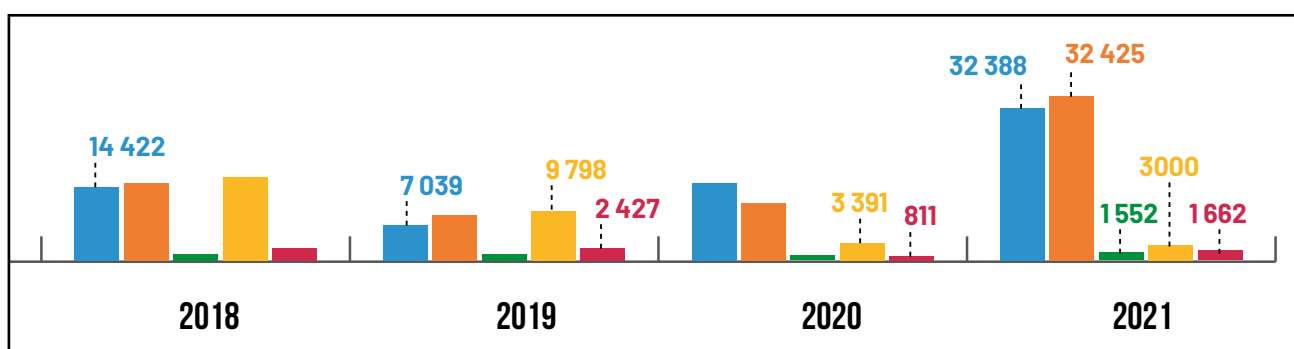
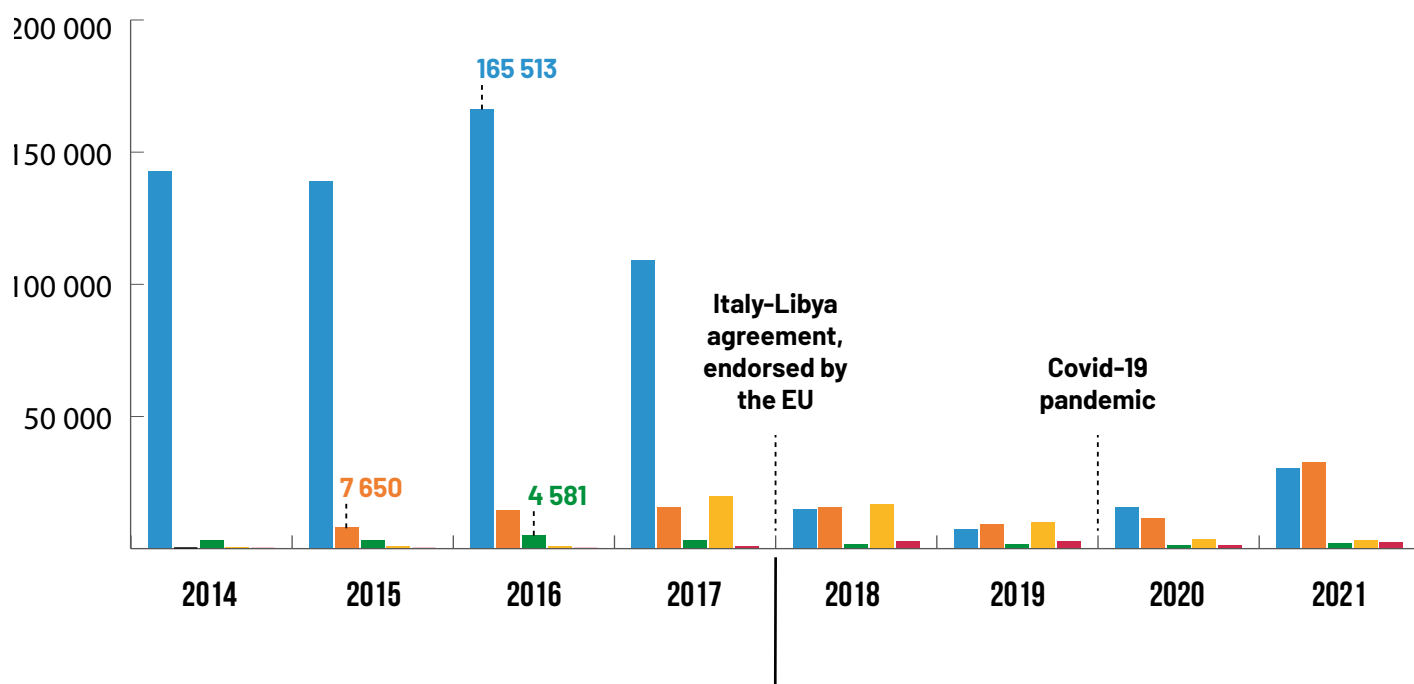


1. Direct corridor (Italy), Humanitarian admission, Private sponsorship, Family reunification

Fig. 2

WAYS OUT OF LIBYA

2014 - 2021



Boat arrivals in Europe

Arrivals in Italy from Libya and arrivals in Malta. UNHCR Malta does not report the embarkation country, though nationality data of arrivals indicates there is a low likelihood that boats are arriving in Malta from other north African countries (e.g. Tunisia, Egypt).

Libyan Coastguard (LCG) interception

Source: UNHCR, IOM (2021).

NB: People intercepted may be counted several times: the same year, one may try to cross and be intercepted several times. There may also be some overlap between all five categories: for example, the same year, someone may try to cross and be intercepted one or several times, then succeed crossing, or die at sea (or even opt for 'voluntary return' or be selected for a UNHCR flight).

Deaths/missing at sea

Conservative data: actual numbers are likely to be much higher. Data is for Central Mediterranean route as a whole.

IOM Voluntary returns

UNHCR departures

UNHCR evacuations commenced Nov 2017. Figures prior to 2019 do not include resettlements. There are some discrepancies between UNHCR's reporting for annual and cumulative departures.



John consulting an MSF doctor in Gharyan al-Hamra detention centre, 2019.

John's crossing

Like most Eritrean refugees and asylum seekers, John, now 38 years old, left his country to escape the mandatory, indefinite 'national service', which the United Nations describes as "akin to slavery". In 2013, he crossed the border to Ethiopia. "So many were in Ethiopia before I came," he remembers, "living in refugees camps, registered by UNHCR. They're still there. I didn't expect I could be resettled. Crossing was the only way." In 2017, he left Ethiopia to Sudan then across the Sahara to Libya. He paid \$2,000 to cross the Mediterranean but by late 2017, realizing the high rates of deaths at sea, decided rather to try to register with the UNCHR in Libya, who was then beginning registration, in the hope of being resettled to a third country. He was detained in several trafficking places and in four detention centres, beginning with Tareq al-Matar detention centre in Tripoli, where, like others, he entered of his own accord in February 2018 hoping to be registered by UNHCR. He was registered in March 2018.

In September 2018, as fighting resumed in Tripoli, he was transferred to Janzur detention centre, then to Dhar al-Jebel detention centre near Zintan, where many detainees contracted tuberculosis. At the beginning of 2019, the director of the detention centre and doctors of a UN-funded international NGO selected some forty detainees, including some of the most sick, and promised them they would refer them to hospital in Tripoli. Instead they were brought to Gharyan al-Hamra detention centre and locked in a container. Eight died in five months.

MSF met John when it began intervening in Gharyan al-Hamra detention centre in April 2019. The area was disputed between pro- and anti-GNA forces, and regularly bombed and shelled by both sides, with the detention centre visited by forces who tried to recruit migrant detainees as fighters. As a result, MSF requested for the about thirty survivors to be evacuated, which was eventually agreed in July 2019. Employees of a UN-funded international NGO promised them they would go to a transit facility before being resettled in third countries, but instead UNHCR drove them to Tripoli and gave each an 'emergency cash assistance' of 450 Libyan dinars (at the time about \$100) to pay for their housing and food. "UNHCR said we were going to live safe in this city, but for us Tripoli is neither free nor safe."⁴⁶

46. That incident was at the origin of an attempt by an Eritrean diaspora organization in the United States to fund a shelter, which hosted more than 100 Eritreans, until its destruction in October 2021, showing how attempts at providing shelter to migrants are precarious in Libya.

John then lived in the Gergaresh neighbourhood, in a derelict building crowded with 110 mostly Eritrean refugees, up to twelve sharing each room. When they went out, John and his housemates were frequently assaulted for their money, beaten and even stabbed and shot. When they moved to the UNHCR office in search of assistance, they were robbed by militias at checkpoints. Gunmen even sometimes entered their building to take their money and phones at gunpoint.

“Some of us tried to work but were often not paid. I worked for two months as a cleaner in a hospital. Once a friend working at the same hospital collected salaries for him and me, but the militias guarding the gate of the hospital took all the money, he could do nothing.”

At the hospital, a militia commander who was bringing wounded soldiers proposed John to recruit him as a fighter for \$1,000 a month. “I saw many refugees recruited that way, and then injured. We fled Eritrea not to become soldiers, how could we make war in Libya?”

Some of them were so scared by the situation in Tripoli that they wanted to return to detention centres. “One, who had tuberculosis, entered Abu Salim detention centre by himself, jumping over the wall. Others even paid to enter detention centres.”

Their life became even more difficult with the COVID-19 pandemic. Some of John’s friends who had gone shopping were jailed for a few days, beaten or fined. “Those who used to work couldn’t find jobs anymore. Employers were afraid that black Africans would infect them with Corona. We were thin because of other diseases and lack of food, but when people saw us in the streets, they believed we had Corona.”

John did not want risk his life at sea and was hoping UNHCR would eventually evacuate him. “I waited for two years and five months. They didn’t call and interview me. I became hopeless. Even those who were interviewed by the UNHCR lost hope and crossed to Italy, so what was I waiting for? Why to stay in Libya if UNHCR is not calling me? Trying to cross the sea is facing death but staying in Libya is facing death too.”

In November 2020, after nearly four years in Libya, John boarded on a boat packed with one hundred passengers, which succeeded reaching the Italian island of Lampedusa on its own. “Refugees in Libya, even those registered by UNHCR, are becoming hopeless, that’s why they’re trying to cross the sea.”

Of the forty who were in Gharyan with John, most are still in Libya. Two died of tuberculosis in Tripoli. Four were evacuated by UNHCR. Eight tried to cross the sea, among whom four, including John, succeeded in reaching Europe. One was caught by the Libyan coastguard and brought back to detention. One was rescued after his boat was sunk by an armed gang, and brought back to Libya. Two died at sea.

“So many died in Libya during the three years I spent there. I can’t say it in words. I spent eight years on the way. I lost a lot, I can’t get back what I lost.”



A psychologically distressed migrant is restrained by co-detainees in order to prevent him to harm himself or others. Migrants show high rates of psychological trauma, due to violence and indefinite detention. 2019.

3. Gaps in the resettlement process

Refugees and asylum seekers face a number of issues with the quality of UNHCR's selection process in Libya.

Firstly, as mentioned above, UNHCR considers as PoCs individuals from only nine nationalities. Individual trajectories and vulnerabilities, as well as the risks to their lives if they remain in Libya or are returned home, are not assessed for a large part of the migrant population present in Libya. It is however difficult to establish a clear pattern from UNHCR here, mainly due to the agency's lack of transparency regarding these matters, including with applicants themselves.

Even within these eligible nationalities, some are not registered. Many do not have access to UNHCR, because they live in locations where UNHCR is not present. UNHCR focuses on Tripoli, arguing they are not authorized by the Libyan government to operate or open an office outside the capital city. However, in 2020 and 2021, 'exceptional' and limited UNHCR activities, including registration missions on the ground and remote registration, took place out of Tripoli, in places considered as sufficiently safe, such as Misrata, with the agreement of both national and local authorities.⁴⁷ Lack of clearance from Libyan authorities, lack of security, including on the road, and remoteness have repeatedly justified UNHCR's refusal to operate in

places such as Zuwara, Zawiya, Zintan or Beni Walid. MSF has witnessed a number of cases where UNHCR attempted to tell migrants to travel to Tripoli from other cities in Libya simply in order to register, despite the substantial risks that such a journey poses to migrants' safety. UNHCR's offices – or offices of other UN agencies and NGOs where UNHCR occasionally operated – in the capital are difficult to access for migrants outside Tripoli, or even those who live in some remote neighbourhoods of the Libyan capital: transport is expensive, in particular for migrants, and the risk of being arrested or kidnapped is high. However, UNHCR remains reluctant to use remote registration, although MSF hopes some progress could be made in the particular case of Zuwara.

Further, until 2020, UNHCR mostly focused on migrants in official detention centres, at the detriment of those not detained, which in turn led to cases where migrants preferred – and sometimes paid – to remain in detention or to enter a detention centre to gain access to UNHCR in the hope of being resettled. According to a UNHCR official, "80% of registered PoCs did put themselves in detention centres". Taking into account such 'pull factors', and to match with its condemnation of the detention system, UNHCR has decided to stop registering and interviewing migrants in detention

47. MSF has even taken the unusual step of offering to collect individual data to support registration of PoCs in cases where UNHCR or its partners cannot access a place. This led MSF to facilitate several remote registration sessions in Misrata and to push for similar processes in detention centres elsewhere, the latter with limited success - meaning that detained individuals from the nine qualifying nationalities continue to be held in what UNHCR and the OHCHR condemn as 'arbitrary detention' and are not registered as 'PoCs' to UNHCR.

centres. Since December 2020, this has been UNHCR policy, making it virtually impossible for unregistered, detained asylum seekers to be registered, or even to be considered by UNHCR for advocacy for release. UNHCR's presence in detention centres stopped with the COVID-19 pandemic in early 2020, with the agency later resuming activities in detention with a clear position of not registering. UNHCR currently intervenes in detention for the sole purpose of biometric verification, checking whether already-registered PoCs are among detainees and eventually advocating for their release, when possible.

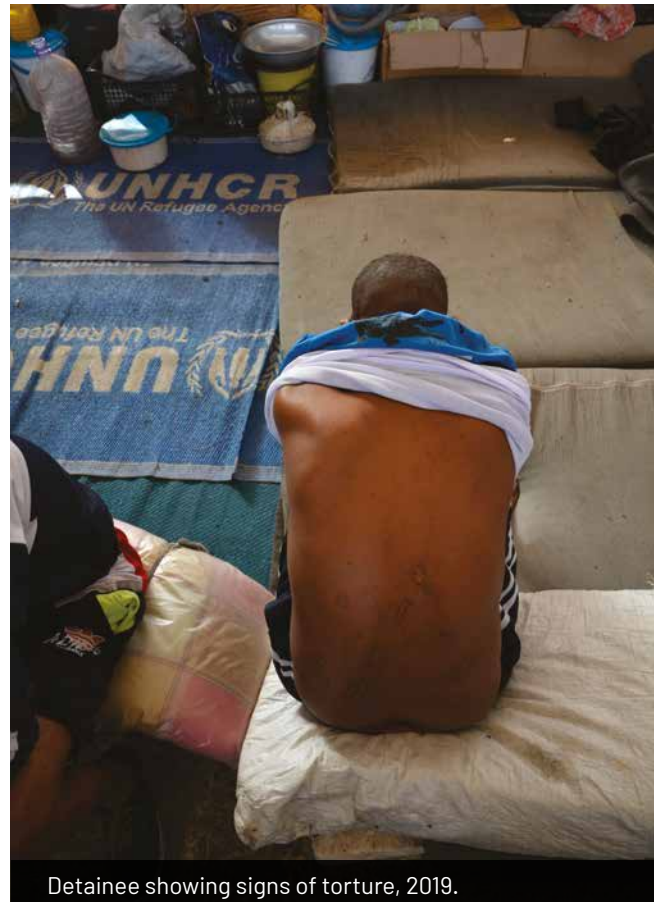
In addition, asylum seekers belonging to the eligible nationalities are sometimes rejected, for instance when their identity is questioned, with no process to appeal rejection decisions. Some are also removed from lists when, as mentioned above, UNHCR is no longer able to contact them. Some are unable to renew their registration because they have difficulties accessing UNHCR.

Above all, UNHCR is cruelly short of slots in third countries, which leads to a strict prioritization selection among those registered. Priority for resettlement is given to women, minors and families. However, UNHCR has occasionally refused to recognise couples and has at times separated families, for instance resettling a wife while leaving her husband in Libya. As the process is slow, registered minors who do become adults while still in Libya lose their priority for resettlement or family reunification, in addition to access to services, protection and care to which they are entitled as minors.⁴⁸ It is extremely difficult for a single adult man to be resettled, although, in principle, 'elderly' individuals are also prioritized.

Individuals falling under the exclusion clause of the Geneva Convention cannot access resettlement, which is problematic as it is based only on assumptions and does not consider the potential forced nature of such acts. Exclusion decisions cannot be appealed. Furthermore, migrants have alleged that UNHCR's Libyan staff have discriminated between asylum seekers to be registered on the basis of race or religion. Arab nationalities such as Syrians were reportedly prioritized at the detriment of sub-Saharan Africans, and Muslims preferred to Christians. This is despite the fact that in Libya, sub-Saharan Africans can be considered as more vulnerable than Arabs, and Christians more vulnerable than Muslims.

Finally, UNHCR does not appear to take into account the date of entry in Libya of the asylum seeker, although the length of the stay is clearly an aggravating vulnerability factor.

Generally, acute vulnerabilities due to violence, risks and other circumstances in Libya or in other transit countries along the route are not systematically



Detainee showing signs of torture, 2019.

considered, leading to a restrictive understanding of vulnerabilities. Those that should be better taken into account include medical conditions which cannot be treated neither in Libya nor in the country of origin, and require a rapid evacuation (but risk on contrary justifying a deportation by Libyan authorities); trauma due to abuses in Libya (including torture, sexual violence and slavery), for which rehabilitation is not available either in Libya, or in origin countries; and high risks of discrimination against sub-Saharan Africans, non-Muslims, or those with known or apparent diseases and disabilities. In principle, UNHCR also considers medical cases for who treatment is unavailable in Libya, survivors and victims of trafficking, torture and violence, including women and girls at risk or survivors of sexual and gender-based violence, and persons with diverse sexual orientations or gender identities as PoCs, eligible to resettlement, regardless of their nationality.⁴⁹ For instance, among those evacuated in late 2021 were said to be "survivors of violence and/or torture, and persons with medical conditions or legal and/or physical protection needs."⁵⁰ UNHCR specified that only medical cases in need of a life-saving medical intervention or treatment that is unavailable in Libya can be accepted by third countries for resettlement or humanitarian admission.⁵¹ But even within this category, not to mention the broader category of people at risk or victims of violence, torture and trafficking, only a limited number of adult men have been evacuated, and mostly belonging to the nine nationalities.

48. See <https://mixedmigration.org/wp-content/uploads/2021/05/MMC-UNHCR-Full-Roadmap-A4-132pp-web.pdf>, p. 109

49. <https://www.unhcr.org/60d320a64.pdf>, p. 91. On medical cases, see <https://www.unhcr.org/protection/resettlement/46f7c0ee2/unhcr-resettlement-handbook-complete-publication.html>, p. 257.

50. <https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR%20Libya%20Update%202019%20November%202021.pdf>

51. See <https://www.unhcr.org/46f7c0ee2.pdf> Section 6.4 on medical needs implies that people with chronic condition will not meet the criteria for resettlement on medical grounds.

Defining 'vulnerabilities'

According to the United Nations Network on Migration's July 2021 *Guidance Note* on 'Regular Pathways for Admission and Stay for Migrants in Situations of Vulnerability'⁵²:

"There is no commonly agreed definition of 'situations of vulnerability' in international law but it has been understood as arising from both personal factors (such as physical and mental health, age, gender, sexual orientation and gender identity, ethnicity, race, religion, nationality, disability, pregnancy, maternity or migration status) as well as situational factors (including circumstances faced in countries of origin, transit or destination such as exclusion from health care, detention and risks of deportation). Therefore, a range of factors can give rise to situations of vulnerability for migrants. These factors may intersect or coexist simultaneously, influencing and exacerbating each other and also evolving or changing over time as circumstances, locations and duty bearers change.

Based on the above understanding, migrants who face situations of vulnerability include: (...)

Migrants who face vulnerable situations during their journey and at destination. (...)

Migrants who are at heightened risk because of their identity or personal circumstances, for example, pregnant or nursing women, trafficked persons, survivors of sexual and gender-based violence, persons in poor health (including those living with HIV), persons with disabilities, older persons, and children (including unaccompanied or separated children), all of whom can be particularly at risk. Some will experience discrimination due, inter alia, to their age, gender, ethnicity, race, nationality, religion, language, sexual orientation and gender identity or migration status. Many experience discrimination on several and often intersecting grounds. (...)

Migrants who might be at risk of death, torture, and other cruel, inhuman, and degrading treatment or punishment, or other irreparable harm (non-refoulement under international human rights law); (...)

Migrants suffering from serious or chronic health conditions; (...)

Survivors of torture; (...)

Survivors of crime, including in the context of transit migration; (...)

Survivors of forced labour or other forms of labour exploitation; (...)

Migrants subjected to aggravated forms of smuggling."

UNHCR acknowledges its evacuations processes are mostly limited to the 'purpose of resettlement', and that being a survivor of torture is not a sufficient basis for evacuation. Resettlement mechanisms do not appear well-adapted to the situation faced by vulnerable migrants in Libya, because the selection process largely ignores protection needs due to the situation in Libya, because many are unable to access the UNHCR, and because the process itself is slow. Whether registered or not, some of those migrants are at immediate risk of being kidnapped again, victims of violence, tortured, trafficked or killed. Others are likely to try to cross the sea, then to be intercepted and brought back to detention, or to die at sea. Many, also, are likely to lose contact with UNHCR or other international organizations.

Yet it is impossible – and morally questionable – to keep even those registered waiting for months or years for processes whose outcomes are unlikely and uncertain, and on which information is limited.

UNHCR has repeatedly stated that "resettlement is not a right". But there are rights – rights to life, dignity and safety – that are not guaranteed for migrants in Libya, which should encourage UNHCR and IOM to overhaul their core protection mandates. If and when such mandates are not achievable, MSF believes both agencies should support practical solutions in the form of rapid evacuations that are better adapted to the human rights situation than resettlement.

52. The note specifies that such vulnerable migrants do not necessarily meet the refugee definition but should nevertheless be eligible to other protection pathways. 'The identification of gender, sexual orientation and gender identity, ethnicity, race, religion, nationality political or other opinion, as factors of migrants' vulnerability is without prejudice to the more specific circumstances where they give rise to refugee status.' See https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/guidance_note-regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf, pp. 4-5 and 8.

Moussa's journey

Moussa⁵³ is a 33 years old man from the Central African Republic (CAR). In 2013, his parents were murdered by 'anti-Balaka' Christian militias opposed to Muslim rebels and communities, and their shop in the PK5 Muslim neighbourhood of CAR's capital Bangui was burnt. He fled with his younger brother to a refugee camp in Cameroon.

In 2017, they left to Nigeria, Niger then Algeria, where they were sold between traffickers and tortured for ransom. They escaped after three months and decided to cross to Libya in the hope to board on a boat to Europe. But as they entered Libya in May 2018, they were separated and each of them was again sold, this time as slaves. Moussa was forced to work in a farm for two months, without payment.

In September 2018, the two brothers boarded on separate boats. "I told my brother that, as we are from the same family, it is better to board on separate boats so that both won't die. After one day at sea, my boat was arrested by the Libyan coastguard and brought back to Libya. As I climbed the stairs of the detention centre, I phoned my brother and he didn't pick. I fainted. When I woke up, I was told my brother had disappeared at sea with one hundred passengers."

Moussa was released from the detention centre in exchange for working as a house cleaner, without payment. He escaped after a month. As he does not belong to one of the nine nationalities recognized by UNHCR, he was not registered as a PoC. Since the death of his brother, he suffers from mental health issues.



Migrant workers' 'guesthouse', Nasmah, 2020.

53. His name has been changed.



MSF medical consultation in Dhar al-Jebel detention centre, 2019.

III. WHAT MSF DID, TRIED, AND IS TRYING TO DO

1. Referrals to UNHCR

Since 2017 and the beginning of UNHCR evacuations from Libya, MSF has persistently attempted to refer people to UNHCR, with limited success. In 2021, among MSF-OCP⁵⁴ patients referred to other actors in Libya, 82% were referred to UNHCR, and 10% to IOM (for VHR and other services); MSF⁵⁵ referred 527 cases to UNHCR. More than half of MSF-OCP referrals were already registered with UNHCR – MSF’s referrals were thus aimed at prioritization for resettlement, release from detention, or access to services (material and financial support, shelter, medical aid) provided by UNHCR to registered PoCs within Libya. A handful of cases referred by MSF were subsequently resettled, although it is impossible to know how much the referrals were instrumental in the process, since they

were already registered and thus matched with UNHCR criteria in terms of nationalities.⁵⁶

Other cases referred to UNHCR by MSF were not registered yet, and were thus referred for registration. Among them, many ended being registered, nearly all from the nine nationalities.⁵⁷

Most of the patients referred by MSF-OCP in 2021 belonged to one of the nine nationalities, in particular Somalia, Eritrea and Sudan. Most had suffered torture and other violence along their journey and included critical medical conditions and unaccompanied minors (nearly a third of all OCP’s referrals).

Since August 2019, at least 71 MSF-OCP patients referred to UNHCR were evacuated from Libya through transit countries (Niger or Rwanda), including four in 2021, and should be resettled in third countries.⁵⁸ All of them were from Eritrea and Somalia, matching with UNHCR nationalities criteria. Most of those were unaccompanied minors, falling under UNHCR’s vulnerabilities priorities, with the exception of five Eritrean adult men evacuated to Niger in late 2019.

According to UNHCR, cases not belonging to the nine nationalities are only considered when they are referred by other organizations. In 2021, MSF-OCP referred to UNHCR seven cases with asylum claims who did not

54. MSF Operational Center Paris, or MSF-France. MSF-OCA (Operational Center Amsterdam), also operating in Libya, referred patients to UNHCR too, with similar aims and outcomes.

55. OCP and OCA, see note above.

56. Presentation of detailed case dossiers by MSF for critical cases to UNHCR appears to have resulted in their evacuation by UNHCR (cases outside the nine nationalities), although this only applies to three cases in 2021 and is an extremely time-consuming process.

57. It is similarly impossible to know how much our referrals were instrumental in getting them registered, since they matched with UNHCR criteria and due to the lack of feedback on the outcomes of the registration process or on the reasons for rejection.

58. We do not know how many were eventually rejected for resettlement and proposed refugee status or local integration in Niger or Rwanda.

belong to one of the nine nationalities. Four of them were registered, among whom one ended up being evacuated from Libya in November 2021. This shows there is some room for registering and resettling people outside of the nine nationalities, but so far only on exceptional grounds, and based on extreme vulnerabilities. Those registered were from Cameroon, Djibouti, the Democratic Republic of Congo and Guinea. They could be considered as particularly vulnerable because they were unaccompanied minors, victims of trafficking, victims of sexual and gender-based violence (including forced marriage in their country of origin)

and/or LGBTI cases. One was also eligible for family reunification with relatives in Europe.⁵⁹

Regardless of nationality, for those few successful cases, the process was extremely slow: generally more than a year and up to two years from the first referral to the evacuation. During this period, migrants remain at risk and in dire need of protection, and suffering as well from a lack of information on possible outcomes. Those few successful cases also often benefitted from the support of other UN institutions, and a handful of European embassies or governments.

2. Complementary pathways

Those migrants in vulnerable situations who do not easily meet the refugee definition may still be eligible for complementary (or subsidiary) protection, including pathways out of Libya.⁶⁰ Such pathways allow states to abide with obligations under international law in addition to asylum, such as protecting children and survivors or people at risk of torture, trafficking and sexual and gender-based violence, but also the right to health and principles of equality and non-discrimination.⁶¹

Alongside its 23 September 2020 Communication 'on a New Pact on Migration and Asylum', aiming "to reduce unsafe and irregular routes and promote sustainable and safe legal pathways for those in need of protection"⁶², the European Commission issued a recommendation to "promote the putting in place or making further use of humanitarian admission models and other complementary pathways as an additional means of admission to expand the number of places offered through safe and legal pathways, in addition to resettlement."⁶³

According to the United Nations Network on Migration's Guidance Note quoted above, complementary pathways notably include "humanitarian admission programs, refugee family reunification, private sponsorship."⁶⁴ Those three models already allowed the evacuation of vulnerable migrants, including cases referred by MSF, from Libya, albeit in very limited numbers and under exceptional circumstances. MSF is advocating for the development of these and related models for migrants in Libya.

a. Humanitarian admission/visas

For critically vulnerable cases who do not match with UNHCR criteria or who are in need of faster processes, MSF has advocated directly with third countries, requesting evacuations on humanitarian grounds. The 2018 Global Compact on Migration encourages states to "develop or build on existing national and regional practices for admission and stay of appropriate duration based on compassionate, humanitarian or other considerations."⁶⁵

Concepts such as 'humanitarian considerations', 'humanitarian grounds', or 'humanitarian admission' remain ill-defined. However, 'humanitarian admission' or 'humanitarian visas' can allow vulnerable migrants, in need of protection, medical care or family reunification, to legally and safely enter a third country. Some third countries issue humanitarian visas only for people who almost certainly qualify for asylum, to be rapidly evacuated, in a context where their asylum claim can be more easily processed than in transit countries such as Libya: it can thus be a way to expedite an asylum process. However, as noted by the United Nations Network on Migration, "even where not strictly required by international law, extending pathways of admission or stay for compassionate, humanitarian, or other considerations can also be done as an exercise of discretion, international cooperation and solidarity."⁶⁶ States, not least members of the European Union and the Schengen space, thus have discretionary power to issue humanitarian visas.⁶⁷ Beneficiaries can include people who need evacuation for humanitarian reasons

59. The seven cases referred, but not all registered, are from Cameroon, Djibouti, the DRC, Guinea, Nigeria and Togo, and are political opponents and victims of war in their country of origin, victims of trafficking, forced prostitution and forced labour in transit countries, other sexual and gender-based violence (including forced marriage in their country of origin and pregnancy from rape in Libya) and/or eligible to family reunification with relatives in Europe.

60. https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/guidance_note_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf, p. 7.

61. *Ibid.*

62. https://eur-lex.europa.eu/resource.html?uri=cellar:85ff8b4f-ff13-11ea-b44f-01aa75ed71a1.0002.02/DOC_3&format=PDF, p. 2.

63. https://ec.europa.eu/info/sites/default/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf, p. 5. 'Besides resettlement, [member states] should consider in particular establishing or scaling up other forms of legal pathways for vulnerable people in need of international protection'. *Ibid.*, p. 9.

64. https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/guidance_note_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf, p. 7.

65. <https://undocs.org/A/RES/73/195>, p. 13.

66. https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/guidance_note_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf, p. 7.

67. See <https://curia.europa.eu/jcms/upload/docs/application/pdf/2017-03/cp170024en.pdf>

(such as the need for life-saving medical intervention or treatment), for which other type of visas, including visas for admission for medical treatment, may be applicable as well.⁶⁸ Recently, the new German coalition's 'contract' indicated a willingness to enlarge and speed up (through digital processes) the use of humanitarian visas for 'vulnerable' people.⁶⁹ A 2018 European Parliament resolution calling for the establishment of a European humanitarian visa "as one means to address the intolerable death toll in the Mediterranean and on the migration routes to the Union" has remained at a deadlock.⁷⁰

Since 2018, MSF succeeded to facilitate the evacuation of particularly vulnerable patients with critical medical conditions for which treatment was not available in Libya, such as multi-drug resistant tuberculosis or heart failure. One European state granted humanitarian visas to a dozen patients, including nine Eritreans (including four unaccompanied minors, and a family of three) and a Sudanese. Thus, all of our patients who received humanitarian visas fit with UNHCR criteria, and were registered PoCs, meaning they could have also been prioritized for UNHCR resettlement process. Yet humanitarian visas likely allowed them a quicker evacuation from Libya than UNHCR process. Third countries also prefer to avoid 'secondary movements' and will be reluctant to issue visas for people who may be eligible to family reunification in another country.

There is, however, room for issuing humanitarian visas for cases not coming from the nine origin countries recognised by UNHCR in Libya. There also rests the possibility for cases to be evacuated under a 'humanitarian' scheme not based on a likely successful asylum claim but for other reasons, such as family reunification or medical treatment unavailable in Libya or in the country of origin.

b. Family reunification

MSF has also advocated for evacuations on the grounds of family reunification, involving contacts with family members already in third countries (including Belgium, France, Italy and the United States). In practice, the family reunification was then processed through UNHCR, or more exceptionally through a humanitarian visa.

It is not possible to indicate the exact figure of cases successfully evacuated through this scheme – as outcomes are not communicated and requests for follow-up are unanswered – but MSF believes that, out of more than 200 cases referred between 2017 and

2021 by MSF-OCF, between 10 and 15 were reunited with their family in a third country. All in all, UNHCR reports 22 cases of family reunifications from Libya since 2017.⁷¹ Regardless of the uncertainties with the data, these figures appear small in comparison to the much higher number of claims for family reunification in Libya. This is mostly due to very restrictive criteria for family reunification in third countries, usually requiring that an individual can only be reunited with immediate family members (spouse, minor children, parents), and thus the process appears extremely limited and slow. Another obstacle is the lack of consular representations in Libya.

c. The Italian humanitarian corridor

The idea of a 'humanitarian corridor' is effectively an expansion of that of humanitarian admission on a larger scale, and on a similar legal basis. MSF Italy was involved in initial discussions for such a project with the Italian government and Italian faith-based organizations, particularly the Community of Sant'Egidio, as well as the Federation of Protestant Churches in Italy and the Waldensian Table.⁷²

Sant'Egidio began to raise the idea of a humanitarian corridor in Italy after a deadly shipwreck near Lampedusa in 2013. It succeeded in opening a humanitarian corridor for Syrian refugees in Lebanon to Italy, with a first memorandum of understanding with the Italian government for 1,000 people in 2015. In 2017, a similar protocol allowed the opening of a corridor for 500 refugees from the Horn of Africa (Eritrea, Somalia and South Sudan), which was renewed for 600 more.

The same year, a similar protocol with the French Ministries of the Interior and Foreign Affairs, and involving four other charities⁷³, allowed the opening of a corridor to France for around 500 Syrians and Iraqis, which was renewed in 2021 for a further 300 people.⁷⁴ Similar protocols for Syrians were discussed with other European countries. All in all, since 2015, such corridors allowed the evacuation to Europe of more than 4,200 refugees from the Middle East and the Horn of Africa, first identified by Sant'Egidio in Lebanon and Ethiopia, respectively.

In May 2021, Sant'Egidio and the faith-based organizations mentioned above signed a similar agreement with the Italian government and UNHCR, leading to the opening of a humanitarian corridor from Libya to Italy for 500 people over a year, with a possible renewal for another year. A first flight of 90 people⁷⁵ departed from Libya in November 2021, a second one of

68. Those may however require funding unavailable to vulnerable migrants. See https://migrationnetwork.un.org/sites/g/files/tmzbd1416/files/docs/guidance_note_-_regular_pathways_for_admission_and_stay_for_migrants_in_situations_of_vulnerability_final.pdf, p. 9.

69. https://portal.ieu-monitoring.com/editorial/dare-more-progress-agreement-of-germanys-new-coalition-now-online?utm_source=ieu_monitoring&utm_medium=web&utm_campaign=portal

70. https://www.europarl.europa.eu/doceo/document/TA-8-2018-0494_EN.html#title1; <https://www.europarl.europa.eu/legislative-train/carriage/humanitarian-visas-%E2%80%93-amendment-of-the-eu-visa-code/report?sid=5801>

71. <https://data2.unhcr.org/fr/documents/details/88753> It is not clear whether those include MSF cases.

72. https://www.humanitariancorridor.org/wp-content/uploads/2019/12/REPORT_FRA_WEB.pdf

73. Five partners have implemented this protocol at the initiative of Sant'Egidio, the Protestant Federation of France, the Protestant Mutual Aid Federation, the Catholic Relief Caritas France and the Conference of Bishops of France.

74. The process then involved Sant'Egidio, the Semaines sociales de France and the French Ministries of the Interior and Foreign Affairs.

75. In the UNHCR press release the number of individuals differs from the final count (93 instead of 90), possibly because a Guinean family which was on the manifesto left Libya by its own means. See <https://www.unhcr.org/news/press/2021/11/619fa3c84/evacuation-flights-libya-italy-bring-hope-vulnerable-asylum-seekers.html>



Detained migrants on their way to be evacuated out of Libya, Dhar al-Jebel detention centre, 2019.

99 in February 2022, and more flights are scheduled to depart later in 2022.

The selection process is chiefly done by UNHCR, but Sant'Egidio and other charities involved appear to be able to select a share of the cases. As Sant'Egidio has no presence in Libya, they would rely on actors present on the ground, including MSF. Importantly, the Italian government, UNHCR and Sant'Egidio agree that the selection should not be restricted to the usual UNHCR criteria in Libya, but include survivors of violence, torture and detention as well as people at risk because of medical condition, not limited to the nine countries of origin.⁷⁶ On the ninety passengers on the first flight, nine belonged to other nationalities (namely Burundi, DRC, Nigeria and Rwanda) than the nine usually recognised as PoCs. The corridor also allows family reunification in a wider sense than the usual criteria (e.g. expanded to siblings, uncles and aunts). Cases registered by the UNHCR but not seen as eligible to resettlement can also be selected.

On the first flight, three MSF cases were flown to Italy.⁷⁷ They included two Somalis, including one woman, a survivor of torture and detention, who had lost her baby in a shipwreck, asking for family reunification with her husband in Italy; and an adult man, a survivor of torture and trafficking, with severe medical conditions (HIV and tuberculosis) for which treatment is unavailable in Libya, and whose chance of surviving without access to treatment were estimated at 50% after a year. The third case was from the Democratic Republic of Congo (DRC), showing that there is some room for evacuating patients from other countries than the nine on the UNHCR list, and that MSF can be instrumental for such cases. The case from DRC is a 12-year old child, unaccompanied since his mother died in Libya, and who is eligible for family reunification with his sister who had crossed by herself to Italy.

These three successful cases were referred to the flight by three different pathways: MSF advocacy directly to UNHCR, who accepted to register and select the DRC minor, after a nine-month long process; MSF advocacy to the Italian embassy to Libya, who requested UNHCR to select the Somali medical case after another lengthy twelve-month process; and an MSF request to Sant'Egidio for the Somali family reunification case. Considering that the latter is quicker and more efficient, MSF hopes to be able to facilitate the evacuation of more patients through this process. Another case from outside the nine nationalities had been approved on the first flight, that of a family from Guinea with a nine-month old baby suffering from a life-threatening neurological condition. The case had been exceptionally registered by UNHCR and greenlighted after months-long advocacy by MSF. The lack of a clear feedback and the endless waiting, however, drove the mother and her baby to embark in a hazardous journey to leave Libya on their own, through Mali. Unfortunately, the baby died en route shortly before the flight to Italy, demonstrating the critical importance of information and rapid processing.

Two MSF patients from outside the nine nationalities, including a Nigerian HIV patient and a Cameroonian woman accepted for family reunification with her daughter, boarded the second flight in February 2022. In the coming weeks a larger number of MSF patients are likely to be evacuated through this corridor, including a dozen survivors of torture and medical cases who will be received by MSF in Italy, ensuring continuity of care. In that model, the UNHCR remain the main actor in term of identification and referral, but the reception in Italy is partly made by NGOs. Italy is reportedly supportive of the development of this model across the EU, based on positive experiences nationally.

76. A 2020 ruling by the Italian Supreme Court underlined that an international protection request should consider the transit countries, in that case Libya, and not only threats in countries of origin. See <https://www.meltingpot.org/2020/02/cassazione-i-giudici-devono-valutare-le-diverse-circostanze-che-determinano-una-situazione-di-vulnerabilita-e-analizzare-in-caso-di-significativo-legame-anche-il-paese-di-transito/>

77. 13 more people on the flight may be former MSF patients in Suq al-Khamis DC, whose detainees were referred to UNHCR as a group in 2019.

'Corridors' and 'Sponsors'

The crucial role of NGOs in third countries is giving to those recent humanitarian corridors models a dimension close to the mechanisms of 'community sponsorship' or 'private sponsorship'.⁷⁸ Those are particularly developed in North America, in particular Canada, but also in Germany, and have already concerned cases from Libya (47 between September 2017 and August 2021). Sponsors can include private citizens and civil society organizations, including NGOs, community based organizations, faith-based organizations, associations, foundations, cooperatives, but also local authorities, universities, companies, trade unions and trade associations. Another related model used in Canada is 'private resettlement', which does not involve financial sponsorship by a host in a third country, but rather a partnership between the government of a third country and a private actor (e.g. NGO) who may not necessarily belong to that country but will refer candidates to resettlement and still cover the costs of the process. Sponsorship thus involves a public-private partnership between a government, facilitating legal admission, and private actors, providing financial, material, social or legal support but also possibly involved in the identification process and departure arrangements. The financial dimension, as well as positive experiences in term of local integration, makes this model attractive to both governments and societies in third countries.

According to the September 2020 European Commission recommendation mentioned above:

"Several Member States have implemented community sponsorship schemes, which can underpin resettlement, humanitarian admission and other complementary pathways. In all cases, private sponsors, groups of private individuals or non-profit organisations can play a structured role in welcoming and integrating those in need of international protection. (...)

"Based on a strong partnership between the State and civil society organisations, individuals or groups of individuals, private sponsors usually provide financial, practical and moral support for the admission or integration of refugees. (...) [Community sponsorship models] help increase the number of admission places available to those in need of protection, enable faster and more efficient integration, improve public support for refugees and resettlement and help prevent irregular onward movements of resettled persons.

"Other forms of community sponsorship beyond resettlement, which can serve as a model, include what some Member States and private organisations refer to as 'humanitarian corridors', namely the community sponsorship model currently implemented by faith-based organisations in Italy, France and Belgium in cooperation with the respective national governments. Under this model, private sponsors are involved in all stages of the admission process, from identifying those in need of international protection to transferring them to the Member State concerned. They also take charge of reception and integration efforts and bear the related costs.

"Considering the benefits of community sponsorship, the Union should further promote an EU approach to community sponsorship building on existing Member State experience. (...)

"Member States are invited to cooperate closely with civil society to put in place or expand community sponsorship schemes as a humanitarian pathway for admission, where the private sponsors, groups of private individuals or non-profit organisations are involved in different stages of the programme – from identification of those in need of international protection in the non-EU country to integration following their arrival.

"In designing those community sponsorship schemes, Member States and their partners should define transparent and non-discriminatory selection criteria for those in need of international protection. From the start of the programme, they should ensure that the respective roles and responsibilities of civil society and government are clearly defined in the pre-departure and post-arrival phase. Member States remain responsible for the security checks and admission procedures and need to guarantee that appropriate safeguards and safety nets are in place.

"Member States are invited to put in place or expand community sponsorship schemes that aim to ensure better and faster integration and social inclusion of those granted international protection in the host societies and improved public support by creating more welcoming and inclusive societies."⁷⁹

78. <https://op.europa.eu/fr/publication-detail/-/publication/1dbb0873-d349-11e8-9424-01aa75ed71a1/language-en/format-PDF/source-114630059>

79. https://ec.europa.eu/info/sites/default/files/commission_recommendation_on_legal_pathways_to_protection_in_the_eu_promoting_resettlement_humanitarian_admission_and_other_complementary_pathways.pdf, pp. 5-6 and 9-10.

d. The French corridor project

MSF is aiming to replicate this Italian model with a similar corridor to France, for 100 patients over one year. The 'private/community sponsorship' dimension of the project would be developed through both MSF and Sant'Egidio. The identification process would be fully operated by MSF, without the involvement of UNHCR. Through its already existing mission for migrants in France, MSF would also provide much needed medical and psychological follow up, while the French branch of Sant'Egidio would provide for legal aid for asylum claims. While it is expected that all or most beneficiaries' medical conditions will mean that MSF would initially be in charge of accommodation, evacuees will be welcomed by Sant'Egidio's volunteer groups as soon as practicable, who will support their integration for a period of 12 to 18 months. During this period Sant'Egidio and MSF commit to be in charge of all relevant costs, similar to arrangements for refugees who came through earlier corridors between Lebanon and France. The project would be based on a memorandum of understanding to be negotiated with the French government, similar to the one the government and Sant'Egidio signed for the Lebanon corridor. The project also received the support of the Association nationale des villes et territoires accueillants (ANVITA – French National Association of Welcoming Cities and Territories), gathering elected representatives of local authorities.



Dhar el-Jebel detention centre, 2019.

3. Next steps

Several years of experience have taught MSF teams in Libya, in the course of medical activities, to identify highly vulnerable cases whose safety and security is at immediate risk. Rather than replicating the UNHCR approach, MSF identifies and prioritises cases based on immediate protection risks, particularly for cases for whom there are limited risk mitigation options inside Libya. Individuals often fall under several vulnerability criteria. We will include particularly vulnerable cases falling outside of the UNHCR nationalities criteria, but who could still be eligible for protection in various third countries. Cases registered by UNHCR can also be considered, taking into account the unlikelihood of their rapid evacuation through the UNHCR process.

Patients can be particularly vulnerable due to:

- their physical medical condition: illness and disability, including as a result of torture in Libya; diseases for which treatment is unavailable in Libya or in the country of origin, and which may expose them to persecution in Libya (HIV, hepatitis, TB including multi-

- drug resistant TB, etc.); pregnant women (including unwanted pregnancies resulting from rape); victims of organ trafficking;
- psychological vulnerability and other mental health conditions, including due to torture suffered in Libya;
- their age (minors but also elderly); there are also patients who arrived in Libya as minors but became adults once in Libya, and thus risk losing their priority for evacuation by UNHCR;
- their sexual orientation or gender identity;

Other patients requiring particular attention include:

- married men who were not recognised as married by UNHCR and separated from their spouse;
- individuals registered for several years and not prioritized by UNHCR;
- victims or people identified as at heightened risk (including escapees) of trafficking, sexual slavery and forced prostitution;
- victims or people identified as at heightened risk of religious persecution: Christians from Ethiopia, Eritrea, or more generally from sub-Saharan Africa;

- patients with a national or ethnic origin particularly targeted by Libyan traffickers who torture migrants for ransom: Eritreans, Ethiopians, Somalis, Sudanese;
- people from countries or communities not taken into account by UNHCR and yet with credible political asylum claims, including refugees from war zones in Central and West Africa.
- individuals coming from countries in principle taken into account by UNHCR but nevertheless excluded, including cases rejected under an exclusion clause. Those may include people who may have had a military experience, even if not necessarily voluntarily, in Libya or in their country of origin: Eritreans fleeing compulsory military service, Darfuris forcibly recruited as mercenaries, etc.

MSF is aware that some third countries are ready to open new pathways, while other may want only to evacuate vulnerable migrants and asylum seekers from Libya through the resettlement channel. MSF still hopes that the latter can be ready to support our attempts to have the most vulnerable patients registered by UNHCR, prioritized for resettlement or considered for

complementary pathways. MSF also advocates for third countries to provide more slots for resettlement, and to provide a larger share of them for refugees stuck in Libya, given their acute vulnerabilities, the lack of safety within Libya and the high risk for them to be victims of serious human rights violations.

Being aware that the freedom of movement within the Schengen space may lead to secondary movements, regardless of the current territorial validity of humanitarian or asylum visas, MSF intends to pay attention, for each patient, to the existence of family links or communities in some third countries. More generally, MSF will take into account the patients' consent to being resettled to a given country and to their preferred destinations.

Lastly civil society organizations and humanitarian actors, including MSF, could follow MSF patients once they will be evacuated to third countries, by providing a comprehensive package, including medical care, psychosocial support, legal aid and accommodation.



Sabratha detention centre after the release of all detainees, 2020.



Dhar al-Jebel detention centre, 2019.

CONCLUSION

Libya remains a dangerous place for migrants, with protection options which are either poorly functioning or non-existent. The risk of arrest and detention remains ever-present – as seen in October 2021 and January 2022 – as does the systemic abuse, violence and extortion, outside and inside detention centres. Of critical concern are those migrants with urgent protection needs, and at immediate risk of further violence, exploitation and trafficking. Such migrants are faced with a series of poor options: take to the sea at the risk of interception, further detention or drowning, or remain in Libya at risk, hoping they will get access to extremely slow and uncertain UNHCR registration and evacuation processes. The lucky few that do depart with UNHCR face substantial waits that bely the urgency of their protection needs.

The alternative is not only in the increase of resettlement slots, but, as already demonstrated with a few successful humanitarian evacuations, in the expansion of existing mechanisms for complementary pathways, and the development of new models. These include humanitarian admissions or corridors and community or private sponsorship, which would provide for the evacuation of priority cases from Libya. Such models can allow humanitarian actors such as MSF, alongside other civil society organizations, both in Libya and in third countries, to play a crucial role in both the identification of the beneficiaries and their reception in third countries. Among other benefits, both the United Nations and the European Union recognize that the opening of such safe and legal pathways can also contribute both to fighting the trafficking of migrants (aggravated by the lack of such pathways) and to the successful integration of refugees in third countries. Complementary pathways could also allow safe third countries to assume their responsibilities to provide protection and timely evacuation from Libya that will prevent further abuse, trafficking, violence and torture directed at people who already survived what the United Nations qualifies as crimes against humanity.



List of acronyms

| | |
|-----------------|---|
| CAR | Central African Republic |
| COVID-19 | Coronavirus Disease 2019 |
| DRC | Democratic Republic of Congo |
| ETM | Emergency Transit Mechanism |
| EU | European Union |
| GNA | Government of National Accord |
| GNU | Government of National Unity |
| HIV | Human Immunodeficiency Virus |
| HoR | House of Representatives |
| IOM | International Organization for Migration |
| IPC | Infection, Prevention, and Control |
| MSF | Médecins Sans Frontières |
| NATO | North Atlantic Treaty Organization |
| NCDC | National Centre for Disease Control |
| NGO | Non-Governmental Organization |
| OCA | MSF Operational Centre Amsterdam |
| OCP | MSF Operational Centre Paris |
| OHCHR | Office of the United Nations High Commission for Human Rights |
| PoC | Persons of Concern |
| SAR | Search and Rescue |
| UN | United Nations |
| UNHCR | United Nations High Commissioner for Refugees |
| VHR | Voluntary Humanitarian Return |

About the report

This report was written by Jérôme Tubiana and Steve Purbrick, both in charge of advocacy on migration and refugee issues, in particular in Libya, for MSF-OCP. Both have worked in Libya for MSF-OCP between 2018 and 2021. Photographs are by J. Tubiana/MSF, and infographics and design by Sarah Imani/MSF. The authors warmly thank MSF-OCP's protection and advocacy officers in Libya for their support.

