



**OMCT**  
SOS-Torture Network

# HOW TO ACHIEVE POSITIVE CHANGE FOR MIGRANTS, REFUGEES, AND ASYLUMS SEEKERS IN LIBYA?

Recommendations for the Libyan authorities

MARCH 2023

The World Organisation against Torture (OMCT) works with around 200 member organisations which constitute its SOS-Torture Network, to end torture, fight impunity and protect human rights defenders worldwide.

Together, we are the largest global group actively standing up to torture in more than 90 countries. Helping local voices be heard, we support our vital partners in the field and provide direct assistance to victims.

Our international secretariat is based in Geneva, with offices in Brussels and Tunis.

# Table of contents

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Executive Summary	4
Introduction	7
I. Acknowledging challenges	9
II. Recent developments	12
Conclusions	14
Recommendations	17

# Executive Summary





This paper highlights the major factors contributing to the difficult human rights situation of migrants, refugees, and asylum seekers in Libya as well as acknowledging the many challenges that stand in the way of achieving positive change regarding this issue such as the ongoing political and military instability, the entrenched racism and discrimination within Libyan society and the prevalence of impunity. It goes on to give an update on the recent developments related to the situation of migrants, refugees, and asylum seekers in the last few months based on data provided by our partners from the Libyan Anti-Torture Network (LAN), a group of Libyan civil society organisations operating in Libya, monitoring, and documenting cases of human rights abuses.

Overall, it is clear that the situation in Libya, when it comes to migration, is going from bad to worse. Therefore, it is important that the Libyan authorities take urgent measures to respect and protect human rights and improve the situation of people in mixed migration flows, including migrants, refugees, and asylum seekers in the country.

The objective of this paper is to present a series of recommendations aimed at supporting Libyan authorities' legal, institutional and security reforms in line with international standards. The paper also calls on Libyan authorities to facilitate effective independent monitoring systems for the prevention of violations in detention centres.

For this purpose, the recommendations will cover the following:

- Libyan legal framework
- Living conditions in detention facilities
- Legal recourse for detained migrants, refugees, and asylum seekers
- Effective monitoring of detention facilities
- Border management and migration flow
- Investigating cases of abuses against migrants

# Introduction



## INTRODUCTION

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Since the rule of Muamar Gaddafi and his Al-Jamahiriyah system that lasted for over 40 years, migration has always been an issue in Libya. Libya's national legal framework criminalizes irregular migration and sets penalties from prolonged detention to payment of fees against migrants and the host community. Libyan law allows detention of migrants in what is referred to as "rehabilitation centres" while in fact migrants are held in prison-like unhygienic and overly crowded premises where detainees are exposed to torture and other forms of cruel, degrading, and inhumane treatment. Legislation concerned with "combating migration" neither ensures protection nor foresees humanitarian exemptions.

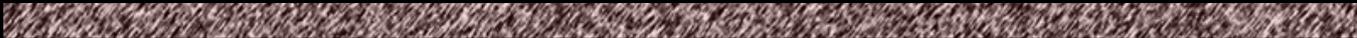
The presence of entrenched racism and discrimination within Libyan society constitutes a significant element influencing the way the migration issue has been handled, and how migrants, refugees, and asylum seekers continue to endure mistreatment.

Following the 2011 uprising in Libya, people had hoped for positive changes to happen. Unfortunately, human rights in Libya have been assigned to a backburner, and with the situation worsening as conflicts have burgeoned, militias, armed groups, and security forces continue to arbitrarily detain countless numbers of foreigners, especially irregular migrants. Political division, the normalization of the militia-rule culture, and corruption remain driving factors for the collapse of the rule of law and the decentralization of state institutions in Libya.

For several years, Libyan political and military factions based respectively in the East and West of the country failed to reach any agreement to assign a unified government, but rather argue over the legality of election processes and the legitimacy of each party.

This continued state of division and of political and military instability contributed largely to the spread of impunity and lawlessness. Additionally, the systematic abuses and crimes committed against migrants including human trafficking, sexual exploitation, unlawful killings, forced labour, and rape have been documented inside and outside of detention.

# I. Acknowledging challenges



## I. ACKNOWLEDGING CHALLENGES

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Testimonies recorded by our local partners from the Libyan Anti-Torture Network (LAN) confirm reports alleging that armed forces affiliated with both governments are involved in people smuggling and human trafficking networks. In addition, Libyan coastguard efforts to intercept migrants at sea, supported by the European Union, facilitate the return of vulnerable persons including asylum seekers and refugees to unhygienic and overcrowded detention centres managed by the Directorate for Combating Illegal Migration (DCIM) where they are denied access to adequate food, water, toilets, and medical care. Local and international humanitarian NGOs are consistently denied access to these centres by the Libyan authorities.

Furthermore, the Libyan Government puts into place arbitrary measures against civil society actors to limit their engagement, de facto shrinking civic space. Both, the denial of access to detention centres and the shrinking of civic space hamper effective monitoring and block humanitarian assistance and access to aid. As a result, migrants inside and outside of detention facilities feel abandoned and are left in an extremely vulnerable position. They are too terrified to report crimes and refuse to have their stories of violations documented even when they are well informed about the confidentiality of the documentation process.

Not even refugees and asylum seekers registered with the UNHCR are safe in Libya since a great number remains arbitrarily detained. From January to December 2022, Ain Zara detention centre hosted approximately 1.000 to 2.500 detained individuals of whom the overwhelming majority are asylum seekers.

Those numbers include holders of asylum seeker cards and those, who have an appointment for a registration interview with the UNHCR in Libya.

In fact, [UNHCR has been asked by the Libyan Government](#) in Tripoli to leave the country or suspend activities on several occasions between 2020 and 2021. Asylum seekers and refugees claim that UNHCR is closing its doors to victims whenever the government conducts group arrests of people in mixed migration flows, including asylum seekers, who allegedly possess UNHCR-issued documentation.

Such illegal practices and policies are not only documented in territories under the control of the GNU government, but also in the East of Libya, where the Libyan Arab Armed Forces (LAAF) are having jurisdiction over and de-facto control. The LAAF is also directly involved in human smuggling and trafficking of migrants and refugees. Moreover, the LAAF has been known to regularly enforce mass expulsions of intercepted and detained migrants back through the desert in the South where they will die of thirst and starvation or get kidnapped by ransoms gangs.

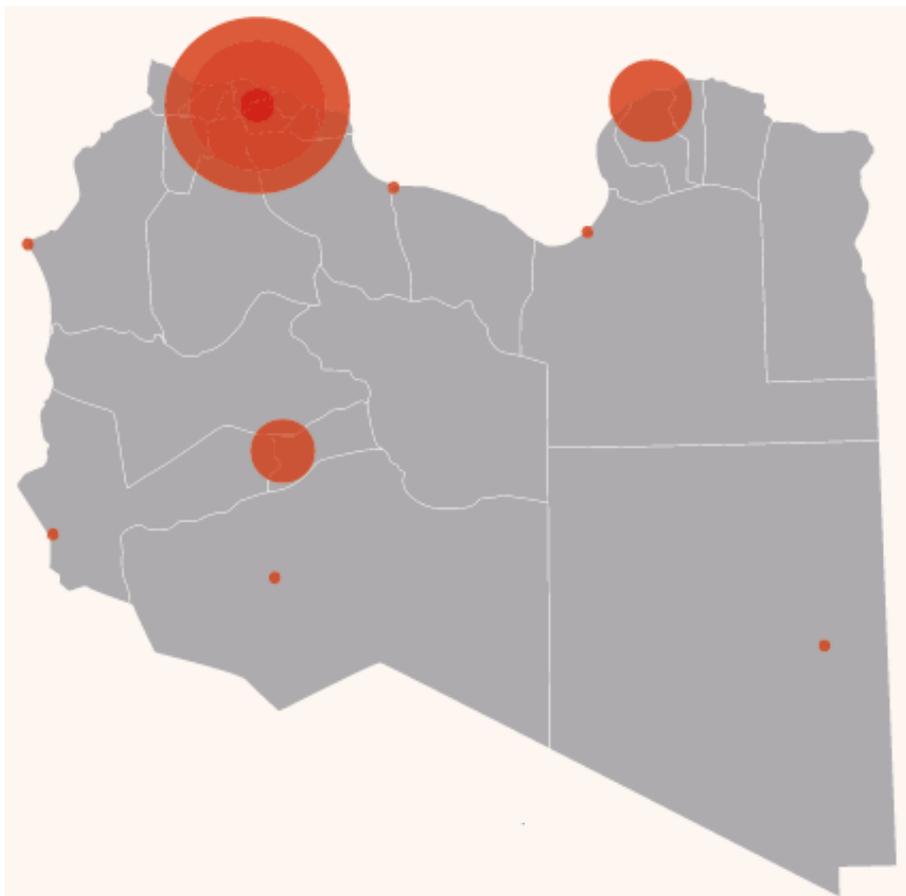
Migration routes through the Sudanese borders towards Libya are extremely dangerous due to the desert's hard conditions where hundreds of migrants have been reported dead or missing. In January 2023, 600 migrants detained in Al-Kufra DCIM facility were expelled by the LAAF. This number included Sudanese asylum seekers registered at the UNHCR many of whom are believed to have died in the desert since.

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Furthermore, because of the conflict between East and West authorities, many Syrian detainees in Tariq al-Sikka holding valid passports were arrested in the West because they entered Libya through Bnina Benghazi airport. The LAN reported that 22 Syrian migrants including three minors, were subjected to five months of arbitrary detention, after which they initiated a hunger strike to petition their release. These individuals were confined to a prison located in the Western municipality of Zawiya, where they were subjected to severe inhumane living conditions. The victims had been apprehended in October 2022 within the town of Ajaylat.

It has also been reported that in recent months, the flow of migrants crossing the Mediterranean Sea from the Eastern part of the Libyan coast has increased significantly. The LAN documented several cases of dead bodies of migrants that landed on the Eastern shores. These bodies carried marks of bullets and burns which are believed to have been the result of targeting migrants' boats in the sea by the Libyan Coast Guards.

**Migrants' situation in Libya has become a story of never-ending suffering and trauma. It is time to change the narrative.**



*Figure 1: Map of the concentration of detention centres per region*

# II. Recent developments



## II. RECENT DEVELOPMENTS

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In January 2021, Libyan prosecution and courts have reportedly started to receive complaints raised by representatives of detained migrants, refugees and asylum seekers demanding their release. Our partners from the Libyan Anti-Torture Network (LAN), communicated two such complaints in Western Libyan courts representing a Syrian and a Sudanese refugee in detention. However, as reported by the LAN, the initial proceedings suggest that judges refrained from looking into the “illegality” of the detention process and were rather concerned with “the possibility to either repatriate or pay a fine according to Libyan law”. Lawyers, who represent foreign individuals possessing valid residence permits and official documentation, have reported a pattern of conduct whereby authorities arbitrarily disregard inquiries regarding their clients' refugee status as a means to justify their apprehension and imprisonment.

The LAN noted that several workers from Morocco and Egypt, for example, were apprehended in group arrests with other migrants and held in prolonged detention. Foreign workers have been limitedly able to access a lawyer, and in many instances their official papers would expire while they are still held in the DCIM centre. As a result, several workers had to pay fines/ransoms to be released even when judges were informed that the arrest was illegal.



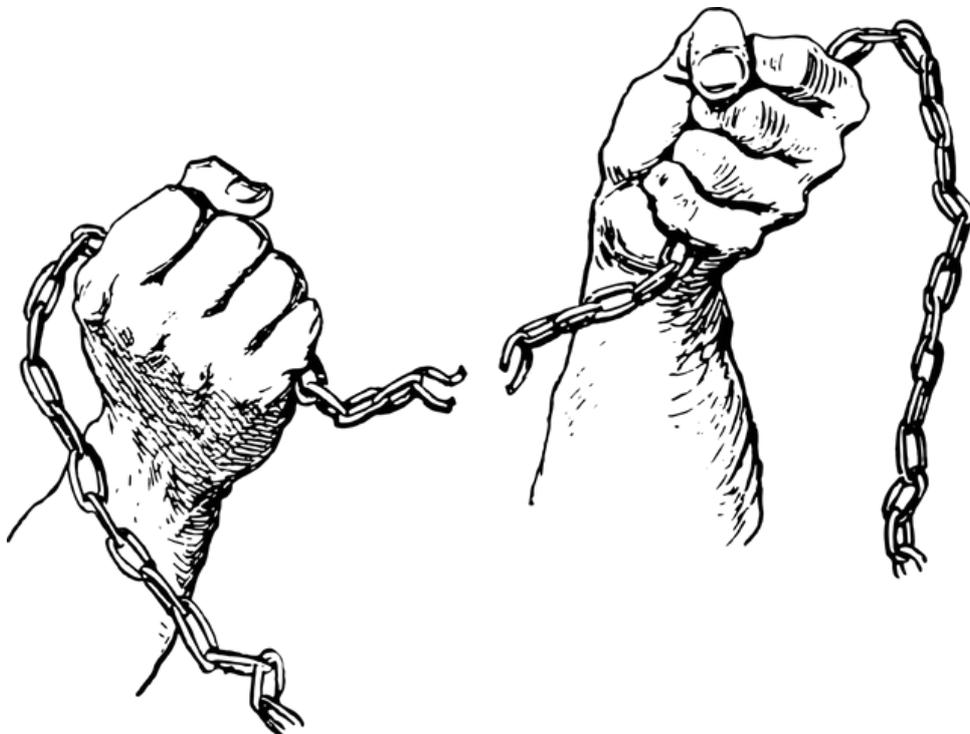
Certain developments in the government's tone and dialogue reflected in recent [statements over migration issues](#) indicate that state authorities are aware of the deteriorating situation of people in mixed migration flows in Libya. Around the end of 2022, the Head of the Government of National Unity in Tripoli, Mr Abdul Hamid al-Dbeibeh, delivered a speech during his meeting with Libyan officials including the head of the Directorate for Combating Illegal Migration (DCIM), where he recognised the gravity of the situation in the migrant detention centres in Libya, going as far as to equate these facilities with “hangars” and describing the living conditions as “unbearable”. Mr al-Dbeibeh also stressed the importance of a “real humanitarian action, given the religious obligation to respect the principles of Islam”.

Even though this statement is an explicit recognition of the terrible conditions of people in mixed migration flows residing in Libya and the inhumane environment they are forced to live in, no legal reform has been proposed yet, particularly about improving the situation of asylum seekers, refugees, and stateless persons.

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However, the LAN members observe that recent announcements may imply that Libyan state authorities are considering to “show interest in meeting state’s obligation under international law, but also to give the state-integrated perpetrators the time to escape responsibility of crimes committed in DCIM centres even when crimes committed are not subject to any statute of limitation”. For example, recently, the Stability Support Apparatus (SSA) under the Government of National Unity (GNU) announced the closure of the notorious and extremely contentious detention centre, namely the Al-Maya facility located West of Tripoli. However, the facility has not yet been closed.

These recent developments could potentially be the starting point for improving living conditions in centres run by the DCIM and, more generally, creating a better setting for migrants, refugees and asylum seekers in Libya. It is then essential that Libyan authorities follow up with concrete actions and decisions. Therefore, the OMCT decided to issue this paper in order to provide Libyan authorities with a number of recommendations that could be implemented for the purpose of protecting the dignity and improving the human rights of migrants, refugees and asylum seekers in Libya and addressing this never-ending cycle of violence.



# Conclusions





People in mixed migration flows, including migrants, asylum seekers, refugees, and stateless persons remain extremely vulnerable in Libya. As recent as the second week of February 2023, 400 migrants were intercepted and returned to DCIM detention facilities in Libya according to the International Migration Organization (IOM), who estimates that the overall number of dead migrants at sea amounts to 800, in 2022.

The OMCT's partners from the Libyan Anti-Torture Network (LAN) recorded at least 230 cases where migrants were found dead in 2022 on the shores of Sirte, Zawiya, Benghazi, Tukara, Bani Walid, Derna, Tripoli, Sorman, Garabulli, Sabratha and Tobruk, in addition to hundreds of cases of tortured and ill-treated migrants in DCIM detention facilities in the East, West and South of the country, including asylum seekers and refugees.

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In 2023, one of the LAN members documented the disappearance of 73 migrants at sea. Out of these 73, only 11 dead bodies were found, and 7 survivors swam alive to Libyan soil. It is believed the victims perished at sea after the vessel transporting them sank within Libyan waters in the Mediterranean Sea.

These shocking statistics reflect a terrible deterioration of the situation calling for an urgent intervention. Under international law, Libya is obliged to provide at least the minimum standards of safe living for migrants. Nevertheless, Libya remains a country of lawlessness where migrants, foreign workers, refugees, and asylum seekers feel abandoned and threatened.

In order for the Libyan Government to address the migration issue successfully, legal reforms need to be urgently undertaken and implemented and detention facilities for migrants must be opened for monitoring. An independent and transparent local mechanism mainly investigating human trafficking as well as crimes committed against migrants needs to be established.

# Recommendations

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## **i. Legal framework**

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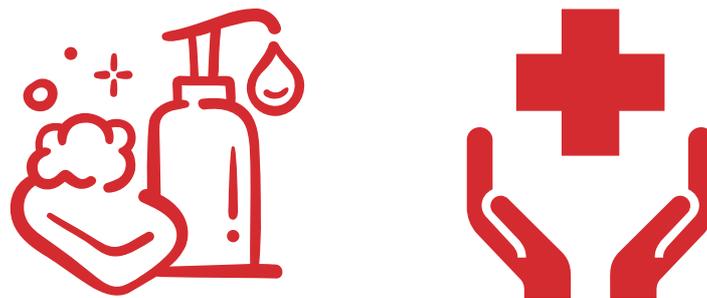
- 1** • Current national legislation criminalising irregular migration, which is still in effect, must be abolished or amended. Such laws allow for the arrest and ill-treatment of people in mixed migration flows as they are being classified as criminals under abusive and discriminative provisions. This legal framework is incompatible with human rights law and contributes to the prevalence of racism and discrimination against all foreigners and workers in the country. The Government should seek to include clear provisions about humanitarian exemptions for migrants fleeing political persecution and intimidation in their home countries, as well as for those fleeing wars and other economic and humanitarian conditions in their homeland. Libya's legislations concerned with migration must align with Article 7 and 10 of the constitutional declaration, which stress the safeguarding of fundamental and basic human rights and prohibit political extradition of refugees.
- 2** • Libyan authorities must be aware that the status of refugees and asylum seekers is legally different from that of irregular migrants and other populations. While protection applies to both groups, it is not permissible to arrest and prosecute refugees and asylum seekers and to enforce regulations to restrain their freedom of movement in the country. Cardholders registered in asylum applications are granted this too, given their inability to return to their State of origin. Thus, they should be entitled to enjoy public services and have the right to work, enabling them to provide the basics of life for themselves and their families until they obtain asylum in a safe country.
- 3** • Libyan authorities in the East and West must be aware that issuing entrance clearance stamps for foreigners must allow them to move freely on all Libyan territory. This process must be coordinated and agreed on between the two fronts. Therefore, the arrests of Syrians, who have valid clearances must stop immediately, and those who were arrested must be released because they entered the country with official legal papers.
- 4** • More efforts should be put into facilitating cooperation with the United Nations High Commissioner for Refugees (UNHCR) so that it can carry out the examination and evaluation of asylum applications. The Government should also ensure the confidentiality of the information gathered by the UNHCR.



## **ii. *Living conditions in detention facilities***

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- 5** • Libyan authorities must ensure that no migrants are arbitrarily detained. Deprivation of liberty must be only applied as an exceptional measure of last resort and never with a punitive purpose. In exceptional cases when detention is justified, migrants must be placed in appropriate shelters where they should be treated humanely and with complete respect for their human dignity, while the specificities of each case should be taken into consideration. The Libyan Government and the DCIM management must pay attention to the protection of vulnerable groups such as children, women, elderly people, people with special needs and the sick, and specifically orient their attention to victims of psychological trauma. This could be achieved by effectively separating children, minors, and women from men in the shelters to ensure protection from sexual assault and gender-based violence, and by providing the necessary rehabilitation means as well as acceptable living conditions according to recommended common international standards.



## **iii. *Legal recourse for detained migrants and asylum seekers***

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- 6** • The Government must enable migrants, refugees and asylum seekers in detention centres to challenge their detention before the judiciary in a transparent, impartial, and independent manner as stipulated in the Libyan Constitutional Declaration, which states in Article 7 that “Human rights and basic freedoms shall be respected by the State. The State shall commit itself to joining international and regional declarations and charters which protect such rights and freedoms. The State shall endeavour to promulgate new charters which shall honour the human being as God's creation on Earth”. And in Article 10 that “The State shall guarantee the right of asylum by virtue of the law. The extradition of political refugees shall be prohibited”. Therefore, recourse to the Libyan judiciary shall be available at any time to victims, in person or through their representatives.

#### **iv. *Effective monitoring of detention facilities***

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- 7** • Effective monitoring policies and mechanisms must be established immediately in all detention centres for migrants. This will not only allow for the documentation of gaps, needs and violations but also reinforce transparency and governance within the DCIM management and the Libyan Ministry of Interior.
- 8** • The expenditures of the DCIM must be monitored and evaluated transparently, whether those funds are allocated directly by the Government or granted by some member States of the European Union for the purpose of improving services in detention facilities. Documenting the number of migrants in a unified monitoring system will enhance the protection of migrants from human trafficking, enforced disappearance, and unlawful killings committed in detention and during the interceptions. The lack of such monitoring mechanisms and its correlation with DCIM corruption was highlighted by the Libyan Audit Bureau, which had reviewed the expenses of the DCIM. The [Audit Bureau's report](#) reads: "DCIM did not commit to Article 10 of Decree No. 1949 of 2019 regarding the organisational structure of the DCIM and its jurisdiction in managing and coordinating operations and control, which includes follow-up to the daily presence of illegal migrants in rehabilitation centres, collecting information and investigating human trafficking and organised crime, and preparing a database in this regard... and further prepare periodic reports on the management's work".
- 9** • The Libyan authorities should support and facilitate access for local and international organisations working on migration issues to Libya and more specifically to detention facilities in Libya in order to provide medical services and technical assistance, to monitor the humanitarian situation, and to help reduce the suffering of vulnerable groups.

#### **v. *Border management and migration flow***

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- 10** • Libyan Coast Guards must receive extensive training on the protection of migrants under Human Rights law. Their mission at sea and the treatment of captured migrants needs to be in accordance with international principles for the protection of migrants, including the prohibition of refoulement and other forms of enforced repatriation. Coast Guards must be aware that targeting boats in the Mediterranean resulting in the death of migrants is unlawful killing under international law and under sharia Islamic law. It is the responsibility of the Libyan state to inform its agents working at sea about the legal responsibility resulting from such crimes. The Libyan Government is also obliged to stop the delivery of intercepted migrants including asylum seekers and refugees to DCIM detention facilities where they are ill-treated. This vicious cycle feeds impunity in Libya and will continue to allow the involvement of state actors in human trafficking.

- 11 • The Libyan Government must consider implementing better policies for the search and finding of dead migrants on Libyan shores. Families of migrants have the right to know about the loss of their beloved ones, who went missing in Libya, including those who died at sea. Currently, the gathering and treatment of migrants' dead bodies in Libya is attributed to volunteers from the Libyan Red Crescent except for specific locations or cases where criminal investigation staff is deployed.
- 12 • Whenever dead migrants are identified, it is the duty of the state to inform embassies and families of their death. When dead bodies are not identified, it is essential to gather information about them and to collect DNA samples before burial to ensure the continuity of the identification process. Moreover, the Libyan Government's entities mandated to identify and investigate these deaths must cooperate, investigate, and provide the needed assistance and technical support to find the missing migrants and inform their families.
- 13 • Forced mass expulsions through the desert must be stopped immediately as they lead to the death of hundreds of migrants, refugees, and asylum seekers each year in Libya. LAAF forces must be aware of the consequences of such expulsions and that they amount to enforced disappearances when migrants are lost in the desert or are believed to having been captured by armed groups. They may also amount to unlawful killings when migrants are forced back through the desert to starve and die. Libyan authorities must recognise that the expulsion of migrants is a crime under international and under Sharia law. They also must take the necessary steps to establish a domestic law that would criminalise such actions as well as penalise those responsible.
- 14 • The LAAF and the Eastern government should investigate reported locations, where migrants are being held as the LAAF is currently controlling the migration routes in the Southeast. Therefore, they must be aware that several human trafficking hubs have been, reportedly, operating for years in Tazerbou and Al-Kufra. Additionally, they must enforce and implement proper mechanisms to end the use of secret farms and warehouses, where migrants are tortured in return for ransoms or forced labour or for other reasons.

## vi. Investigating cases of abuses against migrants



- 15 • Opening investigations into serious abuses, the most severe and widespread of which is the alleged involvement of guards and workers within DCIM in human trafficking and smuggling, enslavement, and enforced labour inside and outside places of detention. This should take place alongside the opening of urgent investigations into allegations of torture and unlawful and extrajudicial killings in and outside detention facilities.



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