

February 2, 2022

Révocation immédiate du Mémorandum Italie-Libye. Appel au gouvernement italien, au HCR et à l'OIM

Le système basé sur le Mémorandum Italie-Libye n'a entraîné aucune amélioration remarquable à la situation libyenne. Au contraire, il a démontré l'impossibilité de garantir un accès effectif à la protection pour les migrants en Libye.

Début octobre, le gouvernement libyen a procédé à des raids et à des arrestations de ressortissants étrangers dans les quartiers de Tripoli. Il s'agissait de personnes [officiellement enregistrées par le HCR](#) et de personnes en situation particulièrement vulnérable, comme les mineurs et les femmes enceintes.

Après leur arrestation, les ressortissants étrangers ont été conduits dans des centres de détention gérés par le Ministère de l'Intérieur libyen, où ils ont été soumis à des mauvais traitements et à la torture. Dans le centre Al Mabani, six personnes ont été tuées et 24 blessées par des tirs¹.

La réaction à ces mesures violentes et discriminatoires a été sans précédent : des milliers de migrants manifestent depuis plus de deux mois devant le bureau du HCR à Tripoli, exigeant qu'ils soient transférés vers un pays sûr et que leur sécurité soit garantie.

La nouvelle est extrêmement importante car pour la première fois, même dans la presse internationale, une nouvelle entité émerge sous le nom de [Refugees in Libya](#), composée d'un comité de migrants qui interagit avec les organisations et les acteurs internationaux en Libye et ailleurs.

Pour l'instant, il ne semble pas y avoir de solutions adéquates en vue² : les bureaux du HCR en Libye, lors d'une réunion avec le Comité, ont déclaré qu'ils " ne peuvent garantir [aux réfugiés et aux migrants] aucune forme de sécurité et de protection lors de leur retour dans les communautés libyennes "³ mais qu'ils travaillent sur la réouverture des vols d'évacuation. Les vols ont en effet repris avec des départs vers le Niger et le Rwanda grâce au mécanisme de transit d'urgence. Toutefois, comme le soulignent le Comité et l'agence des Nations Unies elle-même, le nombre d'évacuations reste effroyablement bas. Bien que le HCR ait admis dans des entretiens récents qu'il n'est pas en mesure d'assurer la protection des demandeurs d'asile en Libye, il a déclaré que des solutions doivent être trouvées pour assurer la protection des ressortissants étrangers dans le pays, par le biais d'un dialogue avec le gouvernement libyen⁴. Dans les conditions actuelles, cependant, une telle stratégie ne peut en aucun cas être considérée comme adéquate : plusieurs branches du

¹ <https://www.euronews.com/2021/10/08/libyan-guards-shoot-six-migrants-dead-at-tripoli-detention-centre>

² Au contraire, le 11 janvier 2022, la police libyenne a violemment expulsé le campement des manifestants, arrêtant et harcelant des centaines de manifestants. Un grand nombre d'entre eux se trouvent maintenant dans le centre de détention d'Ain Zara. Voir : <https://ilmanifesto.it/tripoli-polizia-e-milizie-attaccano-i-rifugiati-centinaia-gli-arresti/> et <https://msf-sa-press.prezly.com/hundreds-of-migrants-detained-after-mass-arrests-in-tripoli>

³ Voir : https://docs.google.com/document/d/1Bh2zh6Jl_y6wsXYkj5xRtVQVEJ2j4fat/edit et <https://twitter.com/RefugeesinLibya>

⁴ <https://ilmanifesto.it/cavaliere-unhcr-in-libia-sempre-piu-difficile-proteggere-i-rifugiati/>

gouvernement sont en effet activement impliquées dans la chaîne d'abus et d'exploitation des migrants, comme l'a bien exprimé le Comité des réfugiés en Libye dans son [manifeste](#).

Le Comité dénonce le manque de sécurité, l'exposition des migrants aux arrestations et détentions arbitraires, aux violences sexuelles, à la torture : des traitements qui ont déjà été définis comme des crimes contre l'humanité par la Mission d'enquête indépendante des Nations unies⁵.

Comme le souligne le rapport de la mission d'enquête et de nombreux autres rapports⁶, les violations ne sont pas épisodiques, mais font partie d'un modèle opérationnel - défini par certains comme un véritable [modèle d'entreprise](#) - composé des moments suivants :

- (i) l'interception en mer par les soi-disant garde-côtes libyens, souvent caractérisée par des manœuvres et des modalités extrêmement risquées ;
- ii) le retour des migrants en Libye et leur détention dans des centres gérés par la Direction de la lutte contre l'immigration clandestine (DCIM) du ministère de l'Intérieur ou leur vente à des groupes criminels ;
- (iii) la soumission des migrants à la torture et aux mauvais traitements à des fins d'extorsion ou de diverses formes d'exploitation et d'"extraction de bénéfices" telles que le travail forcé, la prostitution forcée, la torture et l'enlèvement contre rançon.

Bien que dans la complexité du contexte du pays nord-africain, nous pensons qu'il est nécessaire de dénoncer avec force que la **politique de coopération de l'Italie et de l'UE avec les autorités libyennes** et, en particulier, le **protocole d'accord italo-libyen** et le blocage conséquent des départs **augmentent et structurent ces modèles d'exploitation** des migrants résidant dans le pays.

Le Mémoire d'Italie-Libye définit les activités de coopération entre les deux pays qui sont mises en œuvre avec le soutien politique et économique de la Commission européenne et des autres États membres de l'UE. Cette intervention ne met pas un frein aux violations des droits des personnes migrantes qui sont perpétrées dans le pays, mais crée indirectement les conditions de leur poursuite : la même Mission d'enquête indépendante de l'ONU, après avoir rappelé en quoi ces violences constituent une attaque systématique et généralisée dirigée contre cette population, rappelle que " cette constatation est faite indépendamment de **la responsabilité que peuvent porter des États tiers** et que des enquêtes supplémentaires sont nécessaires pour **établir le rôle de tous ceux qui sont impliqués, directement ou indirectement, dans ces crimes.** "⁷

⁵ <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>

⁶ Voir: UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 20 December 2018 ([LibyaMigrationReport.pdf](#)) Arezo Malakuti (2019), The Political Economy of Migrant Detention in Libya: Understanding the players and the business models ([migrant_detention_libya - final_report.pdf \(europa.eu\)](#)); Implementation of resolution 2491 (2019) Report of the Secretary-General (https://reliefweb.int/sites/reliefweb.int/files/resources/S_2020_275_E_0.pdf)

⁷ P. 17, Report of the Independent Fact-Finding Mission on Libya "The foregoing provides reasonable grounds to believe that acts of murder,36 enslavement,37 torture,38 imprisonment,39 rape,40 persecution41 and other inhumane acts42 committed against migrants form part of a systematic and widespread attack directed at this population, in furtherance of a State policy. As such, these acts may amount to crimes against humanity. This finding is made notwithstanding the responsibility that may be borne by third States and further investigations are required to establish the role of all those

Afin de comprendre pleinement la dynamique structurée par le Mémorandum, il faut lire les deux premiers articles de ce dernier dans leur relation réciproque.

Comme on le sait, avec l'art. 1 du Mémorandum, l'Italie - grâce au soutien économique et politique de la Commission européenne - a fourni aux autorités libyennes la légitimité politique et les moyens nécessaires pour structurer des interventions qui empêchent systématiquement la fuite des ressortissants étrangers de Libye.

Selon le Mémorandum, l'interception des personnes en fuite en mer est suivie par l'utilisation du système de détention, qui prive systématiquement les ressortissants étrangers de leur liberté pour une période indéfinie. Dans le cadre de ce régime de détention, des crimes définis par l'ONU "crimes contre l'humanité" sont perpétrés dans les centres de détention officiels et informels.

Le Mémorandum italo-libyen prévoit ensuite, à l'article 2, d'une part "l'adaptation et le financement des centres d'accueil", d'autre part "le soutien aux organisations internationales présentes et opérant en Libye pour poursuivre les efforts visant également le retour des migrants dans leur pays d'origine, y compris le retour volontaire".

Au fil des années - de 2017 à aujourd'hui⁸ - des organisations internationales ont reçu des financements importants pour intervenir au sein des centres de détention afin d'assurer l'amélioration des conditions de détention ou de faciliter l'évacuation des réfugiés vers les pays de l'UE ou d'autres ressortissants étrangers vers leur pays d'origine.

Malgré cela, l'objectif de garantir des conditions dignes et la sécurité aux migrants n'a pas été atteint, comme le montrent également les interlocutions du Comité des migrants et des réfugiés avec les organisations internationales et comme l'a déclaré le HCR lui-même lors de récentes [interviews](#).

Cependant, à plusieurs reprises, cette activité a également été utilisée par les gouvernements pour justifier les politiques de blocus et de coopération prévues à l'article 1⁹.

En conclusion, à la lumière des développements qui ont eu lieu et de l'expérience acquise au fil du temps, on voit bien que les programmes de rapatriement et d'évacuation gérés par le HCR et l'OIM ne peuvent être considérés comme des mesures suffisantes pour contrebalancer les risques et les dommages résultant du financement italien aux autorités libyennes. Cette approche risque également de compromettre l'indépendance des organisations internationales en leur donnant un rôle subordonné aux politiques de lutte

involved, directly or indirectly, in these crimes".

<https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-48-83-AUV-EN.pdf>

⁸ <https://sciabacaoruka.asgi.it/scheda-attivita-organizzazioni-internazionali-in-libia-fondi-italiani/>

⁹ À cet égard, il est utile de prendre en considération la décision n° 4569/2020 par laquelle le Conseil d'État italien a estimé que les programmes de retour volontaire et d'évacuation gérés par le HCR et l'OIM constituaient une mesure appropriée pour contrebalancer les risques et les dommages résultant du financement italien aux autorités libyennes visant à bloquer la route migratoire en Méditerranée centrale, précisément parce qu'il a été jugé capable d'améliorer substantiellement les conditions de vie des migrants en Libye.

contre l'immigration en Europe et, par conséquent, non neutre par rapport aux problèmes illustrés ci-dessus et à la stabilité de l'ensemble du système conçu par le Mémorandum.

Ces organisations, dans ce système, ne sont pas seulement des acteurs centraux dans la gestion des programmes d'évacuation et les principaux bénéficiaires des financements à l'intérieur des centres de détention, mais, à partir du moment où elles participent aux réunions de la Commission mixte d'application du Mémorandum (art. 3), leur activité devient fonctionnelle pour atteindre les objectifs de l'Accord¹⁰, même si elles ne sont en aucun cas en mesure de garantir les droits fondamentaux des personnes concernées.

Afin de mieux comprendre les limites des mécanismes qui devraient garantir l'accès aux droits des migrants bloqués en Libye, ci-dessous on va exposer les fragilités juridiques et factuelles spécifiques des systèmes d'évacuation et de rapatriement. Ces fragilités révèlent que ces instruments ne peuvent en aucun cas atténuer les effets des politiques de détention et de refoulement et ne sont pas propres à garantir l'accès des ressortissants étrangers à leurs droits fondamentaux, y compris le droit d'asile.

1) Les programmes d'évacuation humanitaire (ETM) et de réinstallation du HCR

Comme on le sait, seulement un très petit nombre de personnes a accès aux programmes d'évacuation¹¹, à la fois en raison du manque de coopération des autorités européennes pour faciliter la réintégration sur leur territoire et en raison de la manière dont elles sélectionnent les personnes qui peuvent être évacuées et relocalisées.

Dans le cadre de ces programmes, des nationalités entières, indépendamment des demandes de protection personnelle présentées par les individus, sont exclues de tout contact avec le HCR. Ce sont souvent les gardes de prison qui sélectionnent, même sur la base de la nationalité¹², les candidats à rencontrer le HCR et le transfert vers des pays tiers

¹⁰ Voir, entre autres, que l'OIM et le HCR "ont assuré leur soutien aux autorités libyennes pour l'amélioration des conditions d'accueil dans les centres et leur alignement progressif sur les normes internationales". Pour le communiqué de presse de l'une des réunions, voir <https://www.interno.gov.it/it/stampa-e-comunicazione/comunicati-stampa/comunicati-stampa-raccolta-anni-precedenti/incontro-viminale-comitato-misto-italo-libico-presieduto-dal-ministro-minniti>

¹¹ "Since November 2017, a total of 6,388 refugees and asylum-seekers departed from Libya, either through resettlement (1,747 since 2017) or humanitarian evacuations (4,641 since 2017, including 3,318 to Niger, 808 to Italy, 515 to Rwanda).", UNHCR Factsheet on Libya, May 2021 (<https://reporting.unhcr.org/sites/default/files/Libya%20Factsheet-July%202021.pdf>)

¹² Il semblerait que seuls les membres de certaines nationalités aient accès au programme ETM. "In practice, the Libyan authorities have only recognized that individuals of nine designated nationalities may have a claim for international protection. Accordingly, UNHCR has registered as persons of concern primarily individuals from these nine countries, namely Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen. Outside of the nine nationalities, UNHCR exceptionally registers small numbers of persons from other refugee-producing situations, including for instance Mali, Burkina Faso and NW/NE Nigeria, and, irrespective of nationality, persons with particular claim profiles such as persons of diverse sexual orientations and/or gender identities, survivors of sexual and gender-based violence (SGBV) and survivors and victims of trafficking. UNHCR continues to advocate for the registration of all persons seeking international refugee protection, regardless of nationality, and seeks cooperation from all partners to ensure quality referrals to UNHCR.", UNHCR POSITION ON THE DESIGNATIONS OF LIBYA AS A SAFE THIRD COUNTRY AND AS A PLACE OF SAFETY FOR THE PURPOSE OF DISEMBARKATION FOLLOWING RESCUE AT SEA September 2020, <https://www.refworld.org/pdfid/5f1edee24.pdf>. Voir <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

de transit a lieu sur la base des possibilités futures de réinstallation dans les États membres de l'UE¹³.

En outre, d'un point de vue procédural, il n'existe pas des recours pour contester les décisions d'exclusion des programmes d'évacuation. Souvent, les décisions écrites ne sont pas remises aux personnes, à d'autres occasions, elles manquent de motivation. Il s'agit d'un mécanisme de concession, dans lequel l'accès et la reconnaissance du droit d'asile des réfugiés est confié à des procédures sans garanties substantielles ou de procédure. Bien que ce programme soit donc un instrument humanitaire important, il n'est en aucun cas suffisant à constituer un contrepoids valable aux politiques de blocage.

2) Programmes de retour volontaire de l'OIM

Les ressortissants étrangers, bien que nécessitant une protection, appartenant à des nationalités systématiquement exclues des programmes d'évacuation sont orientés - souvent par les gardes des centres de détention eux-mêmes - vers des programmes de rapatriement volontaire. Il est demandé aux ressortissants étrangers placés en détention d'accepter d'être rapatriés, bien que le Rapporteur spécial sur la torture et autres peines ou traitements cruels et inhumains ait lui-même attiré l'attention sur ces mesures, soulignant que "la détention, lorsqu'elle est fondée uniquement sur le statut de migrant, peut également être utilisée pour forcer les personnes à retirer leur demande d'asile ou à accepter un retour volontaire"¹⁴.

Les programmes de retour sont souvent financés par les États membres de l'UE - dont l'Italie - et par la Commission elle-même, sans que les obligations mutuelles découlant du financement soient convenues avec les organisations internationales, notamment les activités à mettre en œuvre et les précautions à prendre pour éviter le risque de refoulement¹⁵. L'absence de contrôle préalable sur les activités à mener, sans exiger de garanties, sans obligation de transparence et sans évaluation préalable des risques, ont en fait exposé les réfugiés, les femmes victimes de la traite et les mineurs non accompagnés à un rapatriement dans leur pays d'origine où leur sécurité peut être menacée¹⁶.

La situation des femmes nigérianes victimes de la traite internationale est emblématique : elles sont en effet constamment exclues des programmes d'évacuation humanitaire et de réinstallation et orientées vers des projets de rapatriement dit volontaire, avec les conséquences très graves pour leur sécurité qu'entraîne leur retour dans leur pays d'origine. Cet exemple est extrêmement significatif, car les femmes victimes de la traite, si elles pouvaient atteindre un pays de l'UE, seraient considérées comme méritant une protection internationale¹⁷. Face à cette situation, l'adhésion à des programmes dits de retour volontaire semble être le seul outil dont dispose la majorité des migrants pour échapper à la

¹³ <https://www.asgi.it/33638-2/>

¹⁴ Human Rights Council, Report on the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment, A/HRC/37/50, 28 February 2018

¹⁵ <https://sciabacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-ENG-scheda-accessi-OI.docx.pdf>

¹⁶ <https://www.euronews.com/2020/06/20/eritrean-migrants-in-libya-claim-eu-backed-voluntary-returns-programme-isn-t-so-voluntary>

¹⁷ La situation des victimes de la traite des êtres humains est également emblématique des limites qu'elles rencontrent pour donner librement leur consentement en raison de leur situation d'assujettissement.

détention et à l'exploitation, utilisé même dans des situations où le retour dans le pays d'origine représente un risque pour leur sécurité et la protection de leurs droits.

Conclusions

A la lumière de ce qui précède, on peut affirmer que

- Le Mémorandum Italie-Libye facilite, en effet, la structuration de modèles d'exploitation et d'asservissement au sein desquels des violences constitutives de crimes contre l'humanité sont systématiquement perpétrées.
- La capacité effective des organisations internationales à protéger les migrants et les demandeurs d'asile dans cette situation est extrêmement limitée et dépend des choix des autorités libyennes.
- L'action des organisations internationales n'est pas une mesure suffisante pour garantir l'accès effectif aux droits et à la protection internationale de manière généralisée pour les migrants et les demandeurs d'asile bloqués en Libye, tant en raison des moyens limités que de la structure même des programmes, caractérisée par l'absence de garanties procédurales pour les personnes exclues de l'accès aux programmes et par les mesures d'évacuation et de relocalisation.
- L'adhésion aux programmes de retour volontaire est le seul moyen pour la plupart des migrants d'échapper à la violence à laquelle ils sont confrontés en Libye, mais il s'agit d'une stratégie largement insuffisante compte tenu du risque que, s'ils retournent dans leur pays d'origine, ils soient à nouveau soumis aux mêmes persécutions que celles qu'ils ont fuies.

Nous appelons donc

- le gouvernement italien à révoquer immédiatement le Mémorandum, seule option viable face à l'impossibilité structurelle d'apporter des améliorations significatives aux conditions de vie des migrants et des réfugiés en Libye et de leur garantir un accès adéquat à la protection, comme le démontre l'évolution de la situation en Libye.
- l'HCR et l'OIM, conformément à leur mandat de protection des ressortissants étrangers présents en Libye, à exprimer leur adhésion à la demande de révocation du Mémorandum, afin d'éviter toute risque de lien entre les graves violations des droits de l'homme découlant du Mémorandum et leurs propres initiatives.

Signataires

À partir d'aujourd'hui le 2 février 2022, il est possible de signer le document en remplissant le formulaire Google.

Pour les associations: <https://forms.gle/1qmmBW5o8Ya64HvNA>

Pour des individus: <https://forms.gle/E4q3eZ82k8cVTS8VA>

Associations Association

1. Associazione per gli Studi Giuridici sull'Immigrazione
2. Un Ponte Per (UPP)
3. ActionAid Italia
4. Intersos
5. European Center for Constitutional and Human Rights (ECCHR)
6. Emergency Ong Onlus
7. Associazione Nazionale Giuristi Democratici
8. Fondazione Migrantes
9. Centre for Peace Studies
10. The Libyan center for freedom of the press
11. World Organisation Against Torture (OMCT)
12. Cairo Institute for Human Rights Studies (CIHRS)
13. Watch The Med - Alarm Phone
14. Alarm Phone Sahara
15. Avocats sans Frontières Tunisie
16. Forum Tunisien pour les Droits Economiques et Sociaux
17. Migreurop
18. StateWatch
19. Libyan Crimes Watch
20. الإنسان لحقوق المستقلة المنظمة
21. Adal For All - للجميع عدالة
22. العنصري التمييز لمناهضة الأمان منظمة
23. الإنسان لحقوق مدافع مركز - Defender Center for Human Rights
24. للاعلام اصوات شبكة
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26. مؤسسة بلادي لحقوق الإنسان
27. J wc
28. A Buon Diritto Onlus APS
29. Border Violence Monitoring Network
30. Mediterranea Saving Humans
31. Progetto Melting Pot Europa
32. Medici del Mondo Italia
33. UIL - Unione Italiana del Lavoro
34. Trama di Terre APS Onlus
35. CNCA
36. Are You Syrious
37. Mosaico azioni per i rifugiati
38. RESQ - PEOPLE SAVING PEOPLE
39. Campagna LasciateCIEntrare
40. Legal Team Italia
41. Josoor
42. NoName Kitchen
43. Baobab Experience
44. Mani Rosse Antirazziste
45. Le Veglie contro le Morti in Mare
46. Associazione Naga - Organizzazione di volontariato per l'Assistenza Socio - Sanitaria e per i Diritti di Cittadini Stranieri, Rom e Sinti
47. Carovane Migranti

48. Red Solidaria de Acogida Madrid
49. Solidaunia-La Daunia Per Il Mondo Odv
50. Cestim centro studi immigrazione
51. Associazione Don Vincenzo Matrangelo
52. Dipende da Noi
53. Comitato Antirazzista "5 Luglio" Fermo
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55. Origens ETS
56. Mesagne Bene Comune
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58. AMIS ONLUS - Associazione Mediatori Interculturali Salento
59. Comitato per la Pace - Bari
60. APS Giraffa onlus
61. Centro studi Alfredo Reichlin
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63. Squola senza confini - Penny Wirton Bari - OdV
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66. Gris Marche
67. Senza confini odv
68. Associazione Rumori Sinistri ODV
69. Associazione No Border APS
70. Associazione Arci Todo Cambia APS
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76. Asinichevolano Aps
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78. Auser Montesilvano APS
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80. Associazione "Leggere per..."
81. Comitato Fermiamo la guerra Firenze
82. Casa Simonetta
83. Donne in Nero, Napoli
84. Refugees Welcome Genova
85. Rete Antirazzista Catanese
86. Arci servizio civile Vicenza
87. Biblioteca delle Donne Bruzie
88. Oltre il Ponte APS ETS
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91. Organizzazione di Volontariato Casa di Amadou
92. ASSOCIAZIONE ESODO
93. Lungo la Rotta Balcanica - Along the Balkan Route
94. Tavolo Comunità Accoglienti- Venezia
95. Digiuno di Giustizia in Solidarietà con i Migranti- Bari

Signataires individuels

1. Cassarino Jean-Pierre
2. Roberto Giancarlo Di Cagno
3. Isa Zizza
4. Stefano Pasta
5. Ruggiero Francavilla
6. Maria Matarazzo
7. Agostino Cinquepalmi
8. Marzia Pontone
9. Ibrahim Muhammad Mukhtar Esq.
10. Avvocato Gianluca Vitale
11. Fumagalli Amalia
12. Salah El-Marghani
13. Paolini Monica
14. Bongrazio Maria Grazia
15. Cirillo Vanessa
16. Decina Silvia
17. Achelaritei Dorina
18. Bertoli Fabrizio
19. Tondo Giorgio
20. Contegiacomo Caterina
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76. Antonino Stinà
77. Eriselda Shkopi

الإلغاء الفوري لمذكرة التفاهم الإيطالية - الليبية
نداء إلى الحكومة وإلى المفوضية السامية للأمم المتحدة لشؤون اللاجئين
وإلى المنظمة الدولية للهجرة

لم يؤد النظام الذي تأسس بناء على مذكرة التفاهم الإيطالية - الليبية إلى أي تحسينات ملموسة في الأوضاع الليبية. بل على العكس من ذلك، أظهر بجلاء استحالة تأمين حصول المهاجرين في ليبيا بفعالية على أي نوع من أنواع الحماية.

في مطلع شهر أكتوبر/تشرين الأول نفذت الحكومة الليبية حملة تمشيط واعتقالات واسعة بحق مواطنين أجانب في العديد من أحياء العاصمة طرابلس. وشمل ذلك أشخاص تم تسجيلهم من قبل المفوضية السامية للأمم المتحدة لشؤون اللاجئين وكذلك أشخاص يمرون بأوضاع هشة وخطرة، مثل القُصّر والنساء الحوامل. وبعد إلقاء القبض عليهم، نُقل الرعايا الأجانب إلى مراكز الاحتجاز التابعة لوزارة الداخلية الليبية، حيث تعرضوا هناك لسوء المعاملة والتعذيب. وفي مركز "المباني" قُتل ستة أشخاص وجُرح 24 آخرون بعيارات نارية¹.

لكن رد الفعل على هذه الممارسات العنيفة والتمييزية كان لافتاً²: فمنذ ما يقارب الشهرين احتشد آلاف المهاجرين احتجاجاً أمام مكتب مفوضية اللاجئين (UNHCR) في طرابلس مطالبين بنقلهم إلى بلد آمن مع ضمان سلامتهم. هذا الخبر له أهمية قصوى لأنه يمثل سابقة التفتت إليها حتى الصحافة العالمية وهي ظهور كيان جديد تحت اسم رابطة اللاجئين في ليبيا (*Refugees in Libya*) يتشكل من مجموعة من المهاجرين الذين يتواصلون ويتفاعلون مع المنظمات الدولية ومع الجهات العاملة الموجودة داخل ليبيا وخارجها.

رغم ذلك، على ما يبدو لا توجد في الوقت الراهن أي حلول ملائمة: فخلال اجتماع لها مع الرابطة، أعلنت مكاتب مفوضية اللاجئين (UNHCR) في ليبيا، أنها "لا تستطيع ضمان توفير أي شكل من أشكال السلامة والحماية [لللاجئين والمهاجرين] عند عودتهم إلى المجتمعات الليبية"³ ولكن فقط العمل على إعادة فتح رحلات الإجلاء. وهو ما تم بالفعل، إذ استؤنفت الرحلات الجوية فعلياً إلى النيجر وروندا من خلال آلية العبور في حالات الطوارئ (Emergency Transit Mechanism). لكن رابطة اللاجئين أشارت إلى أن عدد عمليات الإجلاء ما يزال محدوداً للغاية، وهو الأمر الذي أكدته المفوضية الأممية (UNHCR). ورغم أن المفوضية اعترفت في مقابلات أجريت مؤخراً بأنها لا تستطيع ضمان الحماية لطالبي اللجوء في ليبيا، إلا أنها ذكرت في الوقت نفسه أنه بُغية إيجاد حلول لضمان حماية المواطنين الأجانب داخل البلاد، لا مناص من استمرار التواصل والحوار مع الحكومة الليبية⁴. لكن مثل هذه الاستراتيجية، في ظل الظروف الراهنة، لا يمكن اعتبارها كافية أو مناسبة بأي شكل من الأشكال: فالعديد من أفرع الحكومة بمستوياتها

¹<https://www.editorialedomani.it/politica/mondo/il-governo-libico-guida-i-massacri-nei-centri-di-detenzione-di-tripoli-lpr6z8zn>

² تجدر الإشارة إلى أن الشرطة الليبية قد أقدمت في تاريخ 11 يناير/كانون الثاني 2022 على فض هذا التجمع الاحتجاجي بالقوة، كما قامت بملاحقة وإلقاء القبض على مئات المتظاهرين، والذين يتواجد أكثرهم الآن في مركز احتجاز "عين زارة".

انظر الرابط: <https://ilmanifesto.it/tripoli-polizia-e-milizie-attaccano-i-rifugiati-centinaia-gli-arresti/>

وكذلك: <https://msf-sa-press.prezly.com/hundreds-of-migrants-detained-after-mass-arrests-in-tripoli>

³ انظر محضر الاجتماع هنا: https://docs.google.com/document/d/1Bh2zh6Jl_y6wsXYkj5xRtVQVEJ2i4fat/edit

والتحديثات هنا <https://twitter.com/RefugeesinLibya>

⁴<https://ilmanifesto.it/cavaliere-unhcr-in-libia-sempre-piu-difficile-proteggere-i-rifugiati>

المختلفة تتورط بالمشاركة المباشرة في هذه السلسلة من الإساءات والاستغلال للمهاجرين، كما تشير إلى ذلك رابطة اللاجئين في ليبيا في بيانها التأسيسي.

تندد الرابطة بانعدام الأمن، وتعرض المهاجرين للتوقيف والاحتجاز التعسفي، والعنف الجنسي، والتعذيب: وهي الممارسات التي اعتبرتها بعثة تقصي الحقائق المستقلة للأمم المتحدة جرائم ضد الإنسانية⁵.

وكما يتضح من تقرير بعثة تقصي الحقائق وغيرها من التقارير الأخرى⁶، فإن مثل هذه الانتهاكات ليست عرضية، بل تندرج ضمن نموذج يتم العمل على أساسه – ويُعرفه البعض باعتباره نموذج للعمل التجاري بكل ما تحمله الكلمة من معانٍ – يتألف من المراحل التالية:

- 1) عملية اعتراض المهاجرين في البحر من قبل ما تسمى بقوات خفر السواحل الليبية، والتي تتبع في أعمالها المناورات والأساليب المحفوفة بالكثير من المخاطر.
- 2) اقتياد المهاجرين وإعادتهم إلى ليبيا واحتجازهم في مراكز تُديرها مديرية مكافحة الهجرة غير الشرعية بوزارة الداخلية (DCIM) أو بيعهم إلى جماعات إجرامية.
- 3) تعريض المهاجرين للتعذيب وسوء المعاملة بغرض ابتزازهم ماليًا أو استغلالهم بقصد "جني الأرباح" في أشكال مختلفة مثل السخرة، البغاء القسري، التعذيب والاختطاف للحصول على فدية.

وعلى الرغم من التعقيد الذي تشهده الساحة الليبية، فإننا نعتقد أنه من الضروري التأكيد بشدة بأن سياسة التعاون التي تنتهجها إيطاليا والاتحاد الأوروبي مع السلطات الليبية، ولا سيما مذكرة التفاهم الإيطالية الليبية وما ترتب عليها من عرقلة لحركة المغادرة، قد فاقمت أوضاع المهاجرين المقيمين في هذا البلد عبر زيادتها وهيكلتها للعديد من نماذج الاستغلال التي بات المهاجرون عُرضة لها في ليبيا.

وتحدد مذكرة التفاهم الإيطالية الليبية أنشطة التعاون بين البلدين والتي يتم تنفيذها بفضل الدعم السياسي والاقتصادي من المفوضية الأوروبية والدول الأعضاء الأخرى في الاتحاد الأوروبي. ولا يضع هذا التدخل حداً لانتهاكات حقوق المهاجرين التي تُرتكب في ليبيا، بل على العكس يُهيئ وإن بشكل غير مباشر الظروف لاستمرارها: فحتى بعثة الأمم المتحدة لتقصي الحقائق نفسها، بعد أن أشارت إلى أن هذا العنف يشكل هجوماً منهجياً وواسع النطاق موجهاً ضد هؤلاء الرعايا، تُدكّر بأنه "وقد تم التوصل إلى هذا الاستنتاج على الرغم من المسؤولية التي قد تحملها دول أخرى، وهو ما يتعين إجراء مزيد من التحقيقات لتحديد دور جميع المتورطين، بشكل مباشر أو غير مباشر، في هذه الجرائم"⁷.

⁵ <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>

⁶ يمكن الرجوع إلى تقرير بعثة الأمم المتحدة للدعم في ليبيا (UNSMIL) والذي حمل عنوان: "اليأس والخطورة: تقرير حول أوضاع حقوق الإنسان للمهاجرين واللاجئين في ليبيا" (Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya

والصادر بتاريخ 18 ديسمبر 2018 والمتوفر على هذا الرابط LibyaMigrationReport.pdf (ohchr.org) وكذلك انظر Arezo Malakuti (2019). The Political Economy of Migrant Detention in Libya: Understanding the players and the business models, at 34.

المتوفر هنا: migrant_detention_libya_-_final_report.pdf (europa.eu); وكذلك: Implementation of resolution 2491 (2019) Report of the Secretary-General المتوفر هنا: https://reliefweb.int/sites/reliefweb.int/files/resources/S_2020_275_E_0.pdf.

⁷ pag. 17 Report of the Independent Fact-Finding Mission on Libya "The foregoing provides reasonable grounds to believe that acts of murder,36 enslavement,37 torture,38 imprisonment,39 rape,40

لفهم الديناميكيات التي تُوَظِر لها مذكرة التفاهم بشكل كامل، ينبغي التمعن في قراءة المادتين الأولى والثانية منها مع الأخذ في الاعتبار لعلاقتها المتبادلة.

فكما هو معروف، في المادة الأولى من مذكرة التفاهم، قامت إيطاليا - بفضل الدعم الاقتصادي والسياسي للمفوضية الأوروبية - بتزويد السلطات الليبية بالشرعية السياسية والأدوات والوسائل الضرورية لمعاونتها في تنفيذ وتنظيم التدابير والإجراءات التي من شأنها التمكن بشكل ممنهج من عرقلة هروب المواطنين الأجانب ومغادرتهم للسواحل الليبية.

تأتي مذكرة التفاهم في إشارتها إلى ما يُعقَّب اعتراض الأشخاص الفارين في البحر لُتحيل إلى نظام الاحتجاز الذي يحرم المواطنين الأجانب بشكل منهجي من حريتهم إلى أجل غير مُسمى. في ظل نظام الاحتجاز هذا، سواء في مراكز الاحتجاز الرسمية منها أو غير الرسمية، تُرتكب الجرائم التي تُعرِّفها الأمم المتحدة باعتبارها جرائم ضد الإنسانية. ثم تنص مذكرة التفاهم الإيطالية الليبية، في مادتها الثانية، من ناحية على "تجهيز وتمويل مراكز الاستقبال/الإيواء"، ومن ناحية أخرى على "دعم المنظمات الدولية العاملة في ليبيا لمواصلة الجهود الرامية أيضا إلى إعادة المهاجرين إلى بلدانهم، بما في ذلك عودتهم الطوعية".

على مر السنوات الماضية - منذ عام 2017 وحتى الآن - تلقت المنظمات الدولية تمويلا كبيرا⁸ للعمل داخل مراكز الاحتجاز من أجل ضمان تحسين ظروف الاحتجاز أو تسهيل إجلاء اللاجئين إلى دول الاتحاد الأوروبي أو إعادة غيرهم من المواطنين الأجانب إلى بلدانهم الأصلية.

وعلى الرغم من ذلك، فإن الغاية المستهدفة ألا وهي ضمان أمن المهاجرين وتوفير الظروف الكريمة لهم لم تتحقق أبدا، كما ظهر بجلاء أيضا بفضل الحوار الذي أجرته رابطة المهاجرين واللاجئين في ليبيا مع المنظمات الدولية وكما ذكرت المفوضية (UNHCR) نفسها في بعض [المقابلات التي أجريت مؤخرا](#).

غير أن مثل هذا النشاط قد تم استغلاله في أكثر من مناسبة من قِبل الحكومات لتبرير سياسات منع المهاجرين وكذلك التأكيد على التعاون المنصوص عليها في المادة الأولى من مذكرة التفاهم.⁹

persecution⁴¹ and other inhumane acts⁴² committed against migrants form part of a systematic and widespread attack directed at this population, in furtherance of a State policy. As such, these acts may amount to crimes against humanity. This finding is made notwithstanding the responsibility that may be borne by third States and further investigations are required to establish the role of all those involved, directly or indirectly, in these crimes".

ص. 17 من تقرير البعثة المستقلة لتقصي الحقائق بشأن ليبيا "يقدم ما سبق أسبابا معقولة للاعتقاد بأن أعمال القتل والإسترقاق والتعذيب والسجن والاعتصاب والاضطهاد وغيرها من الأعمال اللاإنسانية المرتكبة ضد المهاجرين تشكل جزءا من هجوم منهجي وواسع النطاق موجه ضد هؤلاء الرعايا، لتعزيز سياسة الدولة. وعلى هذا النحو، فقد ترقى هذه الأعمال لتشكّل جرائم ضد الإنسانية. وقد تم التوصل إلى هذا الاستنتاج على الرغم من المسؤولية التي قد تتحملها دول أخرى، ويتعين إجراء مزيد من التحقيقات لتحديد دور جميع المتورطين، بشكل مباشر أو غير مباشر، في هذه الجرائم".

<https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-48-83-AUV-EN.pdf>

<https://sciabacaoruka.asgi.it/scheda-attivita-organizzazioni-internazionali-in-libia-fondi-italiani>⁸

⁹ وفي هذا الصدد، من المفيد الإشارة إلى القرار رقم 2020/4569 الصادر عن مجلس الدولة والذي اعتبر برامج إعادة الطوعية والإجلاء التي تديرها المفوضية السامية لشؤون اللاجئين والمنظمة الدولية للهجرة تدبيرا مناسبيا لموازنة المخاطر والأضرار الناجمة عن التمويل الإيطالي للسلطات الليبية بهدف عرقلة طريق الهجرة في وسط البحر الأبيض المتوسط، وذلك على وجه التحديد لأنها تعتبر قادرة على تحسين الظروف المعيشية للمهاجرين في ليبيا بشكل كبير.

وفي الختام، نظرًا للتطورات التي حدثت والخبرة التي تراكمت بمرور الوقت، لا يمكن اعتبار أن برامج الإعادة إلى الوطن والإجلاء التي تديرها مفوضية اللاجئين والمنظمة الدولية للهجرة هي تدابير مناسبة للتخفيف من المخاطر والأضرار الناجمة عن التمويل الإيطالي للسلطات الليبية. كما أن هذا النهج يهدد كذلك بتقويض استقلالية المنظمات الدولية من خلال إسنادها دورًا ثانويًا تابعًا يأتي في المقام التالي لسياسات مكافحة الهجرة إلى أوروبا، وبالتالي، ينزع عنها حيادها فيما يتعلق بالإشكاليات التي تمت الإشارة إليها فيما سبق وهو ما يقوض البنية والنظام برمته الذي وضعت معالمه مذكرة التفاهم.

تجدر الإشارة إلى أن هذه المنظمات الدولية، وفق هذا النظام، لا تلعب فقط دورًا مركزيًا في إدارة برامج الإجلاء كما تُعد داخل مراكز الاحتجاز من أهم المستفيدين الرئيسيين من المصادر التمويلية فحسب، بل إنها بمشاركتها في اجتماعات اللجنة المشتركة المعنية بتنفيذ مذكرة التفاهم (المادة 3)، فإن نشاطها يصبح أصيلاً ولا غنى عنه لتحقيق أهداف الاتفاق¹⁰، رغم فشلها على جميع الأصعدة في ضمان الحقوق الأساسية للأشخاص المعنيين.

لفهم أفضل لحدود هذه الآليات التي يفترض بها أن تضمن حصول المهاجرين العالقين في ليبيا على حقوقهم، نوضح أدناه نقاط الضعف سواء من الناحية القانونية وكذلك من الناحية التطبيقية على أرض الواقع لنظامي الإجلاء من جهة والإعادة إلى الوطن من جهة أخرى. وهو ما يؤكد بوضوح لا لبس فيه أن مثل هذه الأدوات لا يمكن لها بأي حال من الأحوال أن تخفف من سياسات المنع والإعادة القسرية كما أنها ليست كافية لضمان حصول المواطنين الأجانب على حقوقهم الأساسية، بما في ذلك الحق في اللجوء.

1) برامج الإجلاء الإنساني (ETM) وإعادة التوطين التابعة للمفوضية السامية لشؤون اللاجئين

كما هو معروف، لا يستطيع الاستفادة من برامج الإجلاء سوى عددٍ قليلٍ جدًا من المهاجرين¹¹، ويرجع ذلك إلى عدم تعاون السلطات الأوروبية في تسهيل إعادة التوطين في أراضيها، وكذلك إلى أساليب اختيار الأشخاص الذين يمكن إجلاؤهم ونقلهم إلى بلدان أخرى لتوطينهم.

وفي إطار هذه البرامج، بغض النظر عن طلبات الحماية الشخصية التي يتقدم بها الأفراد، يتم استبعاد جنسيات بأكملها من أي اتصال مع مفوضية اللاجئين (UNHCR). وغالبا ما يتولى حُرّاس السجن القيام بعملية الاختيار – والتي تتم على أساس الجنسية أيضا¹² -

¹⁰ من بين أمور أخرى، تجدر الإشارة إلى أن المنظمة الدولية للهجرة والمفوضية السامية لشؤون اللاجئين "أكدتا على دعمهما للسلطات الليبية لتحسين ظروف الاستقبال والإيواء في المراكز ومواءمتها التدريجية مع المعايير الدولية".
للإطلاع على البيان الصحفي لأحد الاجتماعات ذات الصلة انظر

<https://www.interno.gov.it/it/stampa-e-comunicazione/comunicati-stampa/comunicati-stampa-raccolta-anni-precedenti/incontro-viminale-comitato-misto-italo-libico-presieduto-dal-ministro-minniti>

¹¹ منذ تشرين الثاني/نوفمبر 2017، غادر ليبيا ما مجموعه 6388 لاجئًا وطالب لجوء، إما عن طريق إعادة التوطين (1747 منذ عام 2017) أو عمليات الإجلاء الإنسانية (4641 منذ عام 2017، بما في ذلك 3318 إلى النيجر، و 808 إلى إيطاليا، و 515 إلى رواندا).
صحيفة وقائع صادرة عن المفوضية السامية للأمم المتحدة لشؤون اللاجئين بشأن ليبيا، مايو 2021، متوفرة على

<https://reporting.unhcr.org/sites/default/files/Libya%20Factsheet-July%202021.pdf>

¹² ويبدو أن المواطنين من جنسيات بعينها هم وحدهم الذين يتمكنون من الاستفادة من برنامج ETM.

انظر: <https://www.amnesty.org/en/documents/mde19/7561/2017/en>

وكذلك: <https://www.refworld.org/pdfid/5f1edee24.pdf>

لانتقاء المرشحين للالتقاء بالمفوضية، والانتقال إلى بلدان عبور أخرى مع إمكانية إعادة توطينهم في المستقبل في البلدان الأعضاء في الاتحاد الأوروبي¹³.

وعلاوة على ذلك، من وجهة نظر إجرائية، لا توجد أي سبل قانونية للطعن في القرارات المتعلقة بالاستبعاد من برامج الإجراء. في كثير من الأحيان لا يتم تسليم نسخة مكتوبة من القرارات إلى المهاجرين، وفي حالات أخرى لا تتوفر هذه القرارات على ذكر أي أسباب موضوعية. إننا نإزاء آلية ذات طابع تساهلي، يتسم فيها التقديم والحصول على حق اللجوء باعتماد مجموعة من الإجراءات التي لا تتوفر على الحد الأدنى من أي ضمانات موضوعية وإجرائية. ورغم أن هذا البرنامج يمثل بلا شك أداة مهمة للتدخل الإنساني، إلا أنه لا يُقدم بأي حال من الأحوال نموذجًا صالحًا يقف في مواجهة سياسات منع المهاجرين.

2) برامج المنظمة الدولية للهجرة (OIM) للإعادة الطوعية

على الرغم من حاجتهم الماسة للحماية، إلا أن الرعايا الأجانب الذين ينتمون إلى الجنسيات التي يُستبعد مواطنيها بشكل منهجي من برامج الإجراء يتم توجيههم - غالبًا من قبل حُرّاس مراكز الاحتجاز أنفسهم - إلى برامج الإعادة الطوعية إلى أوطانهم. وهكذا يُطلب من الرعايا الأجانب المحتجزين أن يُعربوا عن رضاهم وتأييدهم لإعادتهم إلى أوطانهم، رغم أن المُقرر الخاص المعني بالتعذيب وغيره من ضروب المعاملة أو العقوبة القاسية وغير الإنسانية قد لفت الانتباه إلى هذه التدابير في إشارته إلى أن الاحتجاز وخاصة عندما يستند فقط وحصريًا إلى وضع المهاجر وحالته، قد يتم استغلاله كسلاح لإجباره على سحب طلب اللجوء أو قبوله بالعودة الطوعية إلى وطنه¹⁴.

غالبًا ما تقوم الدول الأعضاء في الاتحاد الأوروبي - بما فيها إيطاليا - والمفوضية الأوروبية نفسها بتمويل برامج إعادة المهاجرين إلى أوطانهم، دون الاتفاق الواضح مع المنظمات الدولية على الالتزامات المتبادلة التي تنبثق عن هذا التمويل، بما في ذلك الأنشطة التي ينبغي تنفيذها والاحتياطات التي يتعين اتخاذها لتجنب خطر الإعادة القسرية¹⁵. إن غياب الرقابة المسبقة على الأنشطة التي يتعين القيام بها، دون المطالبة بتوفر أي ضمانات، ودون أي إلزام بالشفافية، ودون التحقق المسبق من المخاطر، كل هذا كان من شأنه أن عَرَّضَ الكثير من اللاجئين، والنساء ضحايا الاتجار بالبشر، والقصر غير المصحوبين إلى إعادتهم إلى بلدانهم التي فروا منها والتي يمكن أن تتعرض فيها حياتهم للخطر¹⁶.

إن الوضع الذي تجد النساء النيجيريات ضحايا شبكات الاتجار في البشر أنفسهن فيه يقدم لنا دلالة رمزية: فكما يشهد الواقع يتم استبعاد هؤلاء النساء باستمرار من الاستفادة من برامج الإجراء الإنساني (ETM) وإعادة التوطين وعلى العكس من ذلك يتم توجيههن نحو برامج الإعادة "الطوعية" إلى الوطن¹⁷، مع ما يحمله ذلك من عواقب وخيمة على سلامتهن وحياتهن. وهذا المثال في غاية

¹³ [/https://www.asgi.it/33638-2](https://www.asgi.it/33638-2)

¹⁴ مجلس حقوق الإنسان، تقرير عن المقرر الخاص المعني بالتعذيب وغيره من ضروب المعاملة أو العقوبة القاسية أو اللاإنسانية أو المهينة صادر تحت الرقم التسلسلي A/HRC/37/50 بتاريخ 2018/02/28

¹⁵ [https://sciabacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-scheda-accessi-OI-](https://sciabacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-scheda-accessi-OI-finale.docx.pdf)

[https://it.euronews.com/2020/06/26/per-i-migranti-eritrei-in-libia-il-programma-di-rimpatrio-](https://it.euronews.com/2020/06/26/per-i-migranti-eritrei-in-libia-il-programma-di-rimpatrio-volontario-ue-non-e-poi-cosi-vol)

[volontario-ue-non-e-poi-cosi-vol](https://it.euronews.com/2020/06/26/per-i-migranti-eritrei-in-libia-il-programma-di-rimpatrio-volontario-ue-non-e-poi-cosi-vol)

¹⁷ كما أن حالة النساء ضحايا شبكات الاتجار في البشر لها دلالتها كذلك بسبب العوائق التي تحول بينهن وبين التعبير عن موافقتهن ورضاهن بحرية، بالنظر إلى حالة الخضوع والتعبية التي يتعرضن لها.

الأهمية، إذا أخذنا في الاعتبار أن هؤلاء النساء ضحايا الاتجار بالبشر، إذا تمكّن من الوصول إلى أي بلد من بلدان الاتحاد الأوروبي سيُعتبرن مُستحقات للحماية الدولية. في مواجهة هذا الوضع، فإن الانضمام إلى برامج الإعادة "الطوعية" إلى الوطن يبدو وكأنه الطريق الوحيد المتاح للسواد الأعظم من المهاجرين للانعتاق من الاحتجاز والاستغلال، والذي يتم اعتماده حتى في تلك الحالات التي تُشكل فيها العودة إلى الوطن خطرًا على سلامتهم وعلى حماية حقوقهم.

الملاحظات الختامية

في ضوء ما سبق، يمكن التأكيد على النقاط التالية:

- بالنظر إلى ما ترتب عليها من أفعال، فإن مذكرة التفاهم الإيطالية - الليبية تقوم بتسهيل هيكله وتأطير نماذج الاستغلال والاستعباد التي يرتكب في إطارها عنف وانتهاكات بطريقة منهجية تجعلنا إزاء جرائم ضد الإنسانية.
- إن القدرة الفعلية للمنظمات الدولية على حماية المهاجرين وطالبي اللجوء في ظل هذه الأوضاع تُعد محدودة للغاية وتابعة للخيارات التي تعتمدها السلطات الليبية.
- بأي حال من الأحوال، لا يمثل عمل المنظمات الدولية أداة مناسبة لضمان حصول المهاجرين وطالبي اللجوء العالقين في ليبيا على حقوقهم وعلى الحماية الدولية بطريقة واسعة ومعقدة، وهو الأمر الذي لا يرجع وحسب إلى محدودية الإمكانيات، بل لبنية وهيكلية البرامج ذاتها، والتي تتسم بغياب أي ضمانات إجرائية للأشخاص الذين يتم استبعادهم من الاستفادة من برامج الإجراء وإعادة التوطين وغيرها من التدابير ذات الصلة.
- لا يجد معظم المهاجرين حلاً أمامهم إلا قبول ما يسمى ببرامج الإعادة "الطوعية" إلى الوطن وذلك للانعتاق من العنف الذي يتعرضون له في ليبيا، على الرغم من أن هذه الاستراتيجية غير كافية إلى حد كبير فيما يتعلق بخطر تعرضهم مرة أخرى، بمجرد عودتهم إلى بلدانهم إلى نفس الاضطهادات التي فزوا منها.

وعليه فإننا نطالب:

- الحكومة الإيطالية بالإلغاء الفوري لمذكرة التفاهم، باعتبار ذلك هو الخيار الوحيد القابل للتطبيق في مواجهة الاستحالة الهيكلية لإدخال تحسينات جذرية على الظروف المعيشية للمهاجرين واللاجئين في ليبيا وكذلك استحالة ضمان إمكانية حصولهم على الحماية، كما يتضح ذلك من تطورات الوضع الليبي.
- مفوضية الأمم المتحدة السامية لشؤون اللاجئين والمنظمة الدولية للهجرة بالإعراب عن تأييدهما لهذا النداء ومطالبتهما بإلغاء مذكرة التفاهم - امتثالاً للتفويض الذي لديهما والذي يقضي بحماية المواطنين الأجانب الموجودين في ليبيا - وذلك لتجنب وتفادي أي احتمال للربط بين المبادرات الخاصة بهما من جهة وبين الانتهاكات الجسيمة لحقوق الإنسان المنبثقة عن مذكرة التفاهم من جهة أخرى.

**Appeal to the Italian Government, to UNHCR and IOM
for the immediate withdrawal of the Italy-Libya Memorandum
February 2, 2022**

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4. Intersos
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7. Associazione Nazionale Giuristi Democratici
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9. Centre for Peace Studies
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14. Alarm Phone Sahara
15. Avocats sans Frontières Tunisie
16. Forum Tunisien pour les Droits Economiques et Sociaux
17. Migreurop
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19. Libyan Crimes Watch
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23. الإنسان لحقوق مدافع مركز - Defender Center for Human Rights
24. للاعلام اصوات شبكة
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40. Legal Team Italia

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42. NoName Kitchen
43. Baobab Experience
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45. Le Veglie contro le Morti in Mare
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47. Carovane Migranti
48. Red Solidaria de Acogida Madrid
49. Solidaunia-La Daunia Per Il Mondo Odv
50. Cestim centro studi immigrazione
51. Associazione Don Vincenzo Matrangelo
52. Dipende da Noi
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54. Casa del Popolo FERMO
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57. Gruppo Educhiamoci alla Pace ODV BARI
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61. Centro studi Alfredo Reichlin
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64. Convochiamoci per Bari
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67. Senza confini odv
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94. Tavolo Comunità Accoglienti- Venezia
95. Digiuno di Giustizia in Solidarietà con i Migranti- Bari
96. C.I.S.M. Spinea ODV (Coordinamento Immigrati del Sud del Mondo)

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3. Isa Zizza
4. Stefano Pasta
5. Ruggiero Francavilla
6. Maria Matarazzo
7. Agostino Cinquepalmi
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9. Ibrahim Muhammad Mukhtar Esq.
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2 febbraio 2022

Revocare immediatamente il Memorandum Italia – Libia Appello al Governo e a UNHCR e OIM

Il sistema basato sul Memorandum Italia-Libia non ha apportato significativi miglioramenti nella situazione libica. Al contrario, ha dimostrato l'impossibilità di garantire un efficace accesso alla protezione delle persone migranti in Libia

All'inizio di ottobre il governo libico ha eseguito rastrellamenti e arresti a tappeto di cittadini stranieri nei quartieri di Tripoli. Tra loro persone ufficialmente [registrate da UNHCR](#) e persone in situazioni di particolare vulnerabilità, quali minori e donne incinte.

Dopo l'arresto, i cittadini stranieri sono stati portati nei centri di detenzione del Ministero dell'Interno libico, dove hanno subito maltrattamenti e torture. Nel centro di Al Mabani sei persone sono state uccise e ventiquattro sono state ferite da colpi di armi da fuoco¹.

La reazione a queste misure violente e discriminatorie è stata inedita: **migliaia di persone migranti da quasi due mesi protestano di fronte all'ufficio di UNHCR a Tripoli chiedendo il trasferimento in un paese sicuro e che sia garantita la loro sicurezza.**

La notizia è di estrema importanza poiché per la prima volta emerge, anche nella stampa internazionale, un nuovo soggetto che si riconosce nel nome [Refugees in Libya](#) costituito da un comitato di persone migranti che interagisce con le organizzazioni internazionali e con gli attori presenti in Libia e altrove.

Al momento, tuttavia, sembra che non si prospettino soluzioni adeguate²: gli uffici di UNHCR Libia, nel corso di un incontro con il Comitato, hanno dichiarato di “*non poter assicurare [ai rifugiati e migranti] nessun tipo di sicurezza e protezione al loro ritorno nelle comunità libiche*”³ ma di adoperarsi per la riapertura dei voli di evacuazione. I voli sono effettivamente ripresi con le partenze verso il Niger e il Ruanda attraverso l'Emergency Transit Mechanism. Come sottolineato dal Comitato e dalla stessa Agenzia ONU, il numero delle evacuazioni rimane tuttavia terribilmente basso. Sebbene in recenti interviste UNHCR abbia ammesso di non riuscire a garantire protezione alle persone richiedenti asilo in Libia, al medesimo tempo ha dichiarato che occorre trovare soluzioni per garantire la protezione dei cittadini stranieri all'interno del Paese, attraverso l'interlocuzione con il governo libico⁴. Nelle attuali condizioni, tuttavia, tale strategia non può considerarsi in alcun modo adeguata: diverse diramazioni del governo sono infatti attivamente coinvolte nella catena di abusi e sfruttamento delle persone migranti, come ben espresso dal Comitato *Refugees in Libya* nel loro [manifesto](#).

¹<https://www.editorialedomani.it/politica/mondo/il-governo-libico-guida-i-massacri-nei-centri-di-detenzione-di-tripoli-lpr6z8zn>

² Al contrario, l'11 gennaio 2022 la polizia libica ha violentemente sgomberato il presidio di protesta, arrestando e perseguendo centinaia di manifestanti. Molti di loro ora si trovano nel centro di detenzione di Ain Zara. Si veda: <https://ilmanifesto.it/tripoli-polizia-e-milizie-attaccano-i-rifugiati-centinaia-gli-arresti/> e <https://msf-sa-press.prezly.com/hundreds-of-migrants-detained-after-mass-arrests-in-tripoli>

³ Si veda la trascrizione dell'incontro qui: https://docs.google.com/document/d/1Bh2zh6Jl_y6wsXYkj5xRtVQVEJ2j4fat/edit e gli aggiornamenti qui <https://twitter.com/RefugeesinLibya>

⁴<https://ilmanifesto.it/cavalieri-unhcr-in-libia-sempre-piu-difficile-proteggere-i-rifugiati/>

Il Comitato denuncia l'assenza di sicurezza, l'esposizione delle persone migranti ad arresti e detenzioni arbitrarie, le violenze sessuali, le torture: trattamenti che sono già stati **definiti come crimini contro l'umanità dalla Missione d'inchiesta indipendente delle Nazioni Unite**⁵.

Come evidenziato nel rapporto della Missione di inchiesta e da numerosi altri rapporti⁶, le violazioni non sono episodiche, ma si collocano all'interno di un modello operativo - da alcuni definito come un vero e proprio [modello di business](#) - costituito dai seguenti momenti:

- i) l'intercettazione in mare da parte della cd. Guardia costiera libica, spesso caratterizzata da manovre e modalità estremamente rischiose;
- ii) la riconduzione in Libia delle persone migranti e la detenzione nei centri gestiti dal Directorate for Combating Illegal Migration (DCIM) del Ministero dell'Interno o la vendita a gruppi criminali;
- iii) la sottoposizione a torture e maltrattamenti finalizzata all'estorsione di denaro o a diverse modalità di sfruttamento ed "estrazione di profitto" quali il lavoro forzato, la prostituzione coatta, la tortura ed il rapimento ai fini del riscatto.

Seppur nella complessità del contesto del Paese nord africano, riteniamo che sia necessario denunciare con forza che la **politica di cooperazione dell'Italia e dell'UE con le autorità libiche** e, in particolare, il **Memorandum di intesa italo-libico** e il conseguente blocco delle partenze stanno incrementando e strutturando questi **modelli di sfruttamento** delle persone migranti residenti nel Paese.

Il Memorandum Italia - Libia definisce le attività di cooperazione tra i due paesi che sono implementate grazie al sostegno politico ed economico della Commissione europea e degli altri Stati membri dell'UE. Tale intervento non sta ponendo un argine alle violazioni dei diritti delle persone migranti che sono perpetrate nel Paese, ma anzi indirettamente crea le condizioni per la loro continuazione: la stessa Missione di inchiesta delle Nazioni Unite, dopo aver richiamato come tali violenze costituiscano un attacco sistematico e diffuso diretto a questa popolazione, ricorda che *"questa constatazione è fatta a prescindere dalla responsabilità che può essere sostenuta da Stati terzi e sono necessarie ulteriori indagini per stabilire il ruolo di tutti coloro che sono coinvolti, direttamente o indirettamente, in questi crimini."*⁷

⁵ <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>

⁶ Si vedano, fra gli altri, UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 20 December 2018, at 6, disponibile qui: [LibyaMigrationReport.pdf \(ohchr.org\)](#); Arezo Malakuti (2019). The Political Economy of Migrant Detention in Libya: Understanding the players and the business models, at 34. Disponibile qui: [migrant detention libya - final report.pdf \(europa.eu\)](#); Implementation of resolution 2491 (2019) Report of the Secretary-General, disponibile qui: https://reliefweb.int/sites/reliefweb.int/files/resources/S_2020_275_E_0.pdf.

⁷ pag. 17 Report of the Independent Fact-Finding Mission on Libya "The foregoing provides reasonable grounds to believe that acts of murder,36 enslavement,37 torture,38 imprisonment,39 rape,40 persecution41 and other inhumane acts42 committed against migrants form part of a systematic and widespread attack directed at this population, in furtherance of a State policy. As such, these acts may amount to crimes against humanity. This finding is made notwithstanding the responsibility that may be borne by third States and further investigations are required to establish the role of all those involved, directly or indirectly, in these crimes".
<https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-48-83-AUV-EN.pdf>

Per ben comprendere le dinamiche strutturate dal Memorandum, occorre leggere i primi due articoli dello stesso nella loro relazione reciproca.

Come noto, con l'art. 1 del Memorandum, l'Italia - grazie al sostegno economico e politico della Commissione Europea - ha fornito alle autorità libiche la legittimazione politica e la strumentazione necessaria per strutturare interventi che impediscono in maniera sistematica la fuga dei cittadini stranieri dalla Libia.

Il Memorandum fa seguire all'intercettazione in mare delle persone in fuga il ricorso al sistema detentivo che priva sistematicamente i cittadini stranieri della loro libertà a tempo indeterminato. Nell'ambito di questo regime detentivo si consumano, sia nei centri di detenzione informali, sia nei centri di detenzione ufficiali, i crimini definiti dall'ONU contro l'umanità.

Il Memorandum italo-libico, prevede poi, all'articolo 2, da un lato "*l'adeguamento e il finanziamento dei centri di accoglienza*", dall'altro il "*sostegno alle organizzazioni internazionali presenti e che operano in Libia a perseguire gli sforzi mirati anche al rientro dei migranti nei paesi di origine, compreso il rientro volontario*".

Nel corso degli anni - dal 2017 ad oggi - le organizzazioni internazionali hanno ricevuto ingenti finanziamenti⁸ per operare all'interno dei centri di detenzione al fine di garantire un miglioramento delle condizioni di detenzione o per favorire l'evacuazione di rifugiati verso i paesi UE o degli altri cittadini stranieri verso i loro paesi di origine.

Nonostante questo, l'obiettivo di garantire condizioni dignitose e sicurezza alle persone migranti non è stato raggiunto, come emerso con evidenza anche grazie all'interlocuzione del Comitato di migranti e rifugiati con le organizzazioni internazionali e come affermato dalla stessa UNHCR in recenti [interviste](#).

In diverse occasioni, tuttavia, tale attività è stata inoltre strumentalizzata dai governi per giustificare le politiche di blocco e di cooperazione previste all'art. 1⁹.

In conclusione, non può ritenersi, a fronte delle evoluzioni intervenute e dell'esperienza maturata nel corso del tempo, che i programmi di rimpatrio ed evacuazione gestiti da UNHCR e OIM siano misura sufficiente a controbilanciare i rischi ed i danni derivanti dai finanziamenti italiani alle autorità libiche. Questa impostazione inoltre mette a rischio l'autonomia e l'indipendenza delle Organizzazioni internazionali attribuendogli un ruolo di fatto subalterno alle politiche di contrasto all'immigrazione verso l'Europa e, dunque, non neutro rispetto alle problematiche sin qui illustrate e alla tenuta dell'intero sistema disegnato dal Memorandum.

Tali organizzazioni, in questo sistema, non sono solo soggetti centrali nella gestione dei programmi di evacuazione e i principali fruitori dei finanziamenti all'interno dei centri di detenzione, ma, dal momento in cui partecipano alle riunioni del Comitato congiunto sull'esecuzione del Memorandum (art. 3), la loro attività diviene oggettivamente funzionale al

⁸<https://sciabacaoruka.asgi.it/scheda-attivita-organizzazioni-internazionali-in-libia-fondi-italiani/>

⁹ E' utile a tal proposito tenere in considerazione la decisione n. 4569/2020 con cui il Consiglio di Stato ha ritenuto i programmi di rimpatrio volontario ed evacuazione gestiti da UNHCR e OIM misura idonea a controbilanciare i rischi ed i danni derivanti dai finanziamenti italiani alle autorità libiche finalizzati al blocco della rotta migratoria nel Mediterraneo centrale, proprio poiché ritenuti in grado di migliorare in maniera sostanziale le condizioni di vita dei migranti in Libia.

raggiungimento degli obiettivi dell'Accordo¹⁰, pur non riuscendo in alcun modo a garantire i diritti fondamentali delle persone che ne sono coinvolte.

Per meglio comprendere i limiti dei meccanismi che dovrebbero garantire l'accesso ai diritti alle persone migranti bloccate in Libia, di seguito si illustrano le specifiche fragilità giuridiche e fattuali dei sistemi di evacuazione e rimpatrio. Tali fragilità palesano come questi strumenti non possono in alcun modo mitigare le politiche di blocco e respingimento e non sono adeguati ad assicurare l'accesso dei cittadini stranieri ai loro diritti fondamentali, tra i quali il diritto all'asilo.

1) I programmi di evacuazione umanitaria (ETM) e resettlement di UNHCR

Come noto, solo un numero estremamente esiguo di persone ha accesso ai programmi di evacuazione¹¹, sia per la scarsa collaborazione delle autorità europee nel facilitare il reinserimento sul loro territorio, sia per le modalità di selezione di quanti possono essere evacuati e ricollocati.

Nell'ambito di questi programmi, intere nazionalità, a prescindere dalle istanze di protezione personali portate dai singoli, sono escluse da qualsiasi contatto con UNHCR. Spesso sono le guardie carcerarie che selezionano, anche in base alla nazionalità¹², i candidati a incontrare UNHCR e il trasferimento nei paesi terzi di transito avviene sulla base di possibilità future di un loro reinsediamento nei paesi membri dell'Unione Europea¹³.

Da un punto di vista procedurale, inoltre, non esistono rimedi per impugnare le decisioni relative all'esclusione dai programmi di evacuazione. Spesso non vengono consegnate alle persone le decisioni scritte, in altre occasioni queste sono carenti di motivazione. Si tratta di un meccanismo a carattere concessorio, in cui l'accesso e il riconoscimento del diritto di asilo del rifugiato è affidato a procedure con prive di garanzie sostanziali e procedurali. Sebbene

¹⁰ Tra gli altri si veda che OIM ed UNHCR "hanno assicurato il proprio supporto alle Autorità libiche per il miglioramento delle condizioni di accoglienza dei centri ed il loro progressivo allineamento agli standard internazionali. Per il comunicato stampa di una delle riunioni si veda <https://www.interno.gov.it/it/stampa-e-comunicazione/comunicati-stampa/comunicati-stampa-raccolta-anni-precedenti/incontro-viminale-comitato-misto-italo-libico-presieduto-dal-ministro-minniti>

¹¹ "Since November 2017, a total of 6,388 refugees and asylum-seekers departed from Libya, either through resettlement (1,747 since 2017) or humanitarian evacuations (4,641 since 2017, including 3,318 to Niger, 808 to Italy, 515 to Rwanda).", UNHCR Factsheet on Libya, May 2021, consultabile su <https://reporting.unhcr.org/sites/default/files/Libya%20Factsheet-July%202021.pdf>

¹² Sembra infatti che solo gli appartenenti a determinate nazionalità abbiano accesso al programma ETM. "In practice, the Libyan authorities have only recognized that individuals of nine designated nationalities may have a claim for international protection. Accordingly, UNHCR has registered as persons of concern primarily individuals from these nine countries, namely Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen. Outside of the nine nationalities, UNHCR exceptionally registers small numbers of persons from other refugee-producing situations, including for instance Mali, Burkina Faso and NW/NE Nigeria, and, irrespective of nationality, persons with particular claim profiles such as persons of diverse sexual orientations and/or gender identities, survivors of sexual and gender-based violence (SGBV) and survivors and victims of trafficking. UNHCR continues to advocate for the registration of all persons seeking international refugee protection, regardless of nationality, and seeks cooperation from all partners to ensure quality referrals to UNHCR.", UNHCR POSITION ON THE DESIGNATIONS OF LIBYA AS A SAFE THIRD COUNTRY AND AS A PLACE OF SAFETY FOR THE PURPOSE OF DISEMBARKATION FOLLOWING RESCUE AT SEA September 2020, <https://www.refworld.org/pdfid/5f1edee24.pdf>. Si veda anche: <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

¹³ <https://www.asgi.it/33638-2/>

tale programma rappresenti quindi un importante strumento umanitario, non è in alcun modo adeguato a costituire un valido contrappeso delle politiche di blocco.

2) I programmi di rimpatrio volontario dell'OIM

Cittadini stranieri, sebbene bisognosi di protezione, appartenenti alle nazionalità sistematicamente escluse dai programmi di evacuazione sono indirizzati - spesso dalle stesse guardie dei centri di detenzione - verso i programmi di rimpatrio volontario. E' richiesto di esprimere la propria adesione al rimpatrio a cittadini stranieri che si trovano in detenzione nonostante lo stesso Relatore speciale per la Tortura e gli altri trattamenti o punizioni crudeli e disumani ha richiamato l'attenzione su tali misure puntualizzando come *la detenzione quando basata esclusivamente sulla condizione di migrante, può essere utilizzata anche per forzare a ritirare la richiesta di asilo o accettare il rimpatrio volontario*¹⁴.

Spesso i programmi di rimpatrio sono finanziati dagli Stati membri dell'UE - tra cui l'Italia - e dalla stessa Commissione, senza che vengano concordati con le organizzazioni internazionali gli obblighi reciproci derivanti dal finanziamento, tra cui le attività da attuare e le precauzioni da adottare per scongiurare il rischio di refoulement¹⁵. La mancanza di controllo preventivo sulle attività da svolgere, senza richiesta di alcuna garanzia, senza obblighi di trasparenza e senza previa verifica dei rischi hanno in effetti esposto rifugiati, donne vittime di tratta, minori non accompagnati a rimpatri nei loro Paesi di origine dove la loro incolumità può essere messa in pericolo¹⁶.

La situazione delle donne nigeriane vittime della tratta internazionale è emblematica: queste sono infatti escluse in maniera costante dai programmi di ETM e resettlement e indirizzate verso i progetti di rimpatrio cd. volontario¹⁷, con le gravissime conseguenze sulla loro sicurezza che derivano dal rientro nel paese di origine. Tale esempio è estremamente significativo, poiché le donne vittime di tratta, se potessero raggiungere un Paese dell'Unione Europea sarebbero considerate meritevoli di protezione internazionale. A fronte di tale situazione, l'adesione ai programmi di rimpatrio cd. volontario sembra essere l'unico strumento a disposizione della maggioranza delle persone migranti per sottrarsi alla detenzione e allo sfruttamento, impiegato anche nelle situazioni in cui il rientro nel paese di origine rappresenta un rischio per la loro incolumità e la tutela dei loro diritti.

Conclusioni

Alla luce di quanto sopra si può affermare che

- Il Memorandum Italia - Libia sta, nei fatti, agevolando la strutturazione di modelli di sfruttamento e riduzione in schiavitù all'interno dei quali sono perpetrate in maniera sistematica violenze tali da costituire crimini contro l'umanità.

¹⁴Human Rights Council, Report on the Special Rapporteur on Torture and other Cruel, Inhuman, Degrading Treatment or Punishment, A/HRC/37/50, 28 February 2018

¹⁵ <https://sciabacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-scheda-accessi-OI-finale.docx.pdf>

¹⁶ <https://it.euronews.com/2020/06/26/per-i-migranti-eritrei-in-libia-il-programma-di-rimpatrio-volontario-ue-non-e-poi-cosi-vol>

¹⁷ La situazione delle vittime di tratta è emblematica anche per i limiti che queste hanno a prestare liberamente il consenso, data la situazione di soggezione in cui si trovano.

- L'effettiva capacità delle organizzazioni internazionali di tutelare le persone migranti e richiedenti asilo in tale situazione è estremamente limitata e dipendente dalle scelte delle autorità libiche.
- L'azione delle organizzazioni internazionali non rappresenta uno strumento sufficiente a garantire l'effettivo accesso ai diritti e alla protezione internazionale in maniera ampia e generalizzata per le persone migranti e richiedenti asilo bloccate in Libia, sia per la limitatezza dei mezzi, sia per la struttura stessa dei programmi, caratterizzata dall'assenza di garanzie procedurali per le persone che vengono escluse dall'accesso ai programmi e da misure di evacuazione e ricollocamento.
- L'adesione a programmi di rimpatrio cd. volontario rappresenta l'unico strumento a disposizione della maggior parte delle persone migranti per sottrarsi alla violenza che si trovano a subire in Libia, pur essendo una strategia ampiamente inadeguata rispetto al rischio che le stesse vengano sottoposte nuovamente, in caso di rientro nel Paese di origine, alle stesse persecuzioni da cui sono fuggite.

Chiediamo quindi

- al governo italiano di revocare immediatamente il Memorandum, come unica scelta praticabile a fronte dell'impossibilità strutturale di apportare miglioramenti significativi alle condizioni di vita di migranti e rifugiati in Libia e di garantire loro un adeguato accesso alla protezione, così come dimostrato dall'evoluzione della situazione libica.
- a Unhcr e OIM, in ottemperanza a loro mandato di tutela dei cittadini stranieri presenti in Libia, di aderire alla richiesta di revoca del memorandum, sì da evitare qualsiasi rischio di connessione tra le gravi violazioni dei diritti umani che derivano dal Memorandum e le proprie iniziative.

Firmatari

Da oggi 2 febbraio 2022, è possibile firmare il documento compilando il modulo di Google.

For associations: <https://forms.gle/1qmmBW5o8Ya64HvNA>

For individuals: <https://forms.gle/E4q3eZ82k8cVTS8VA>

Associazioni e organizzazioni

1. Associazione per gli Studi Giuridici sull'Immigrazione
2. Un Ponte Per (UPP)
3. ActionAid Italia
4. Intersos
5. European Center for Constitutional and Human Rights (ECCHR)
6. Emergency Ong Onlus
7. Associazione Nazionale Giuristi Democratici
8. Fondazione Migrantes
9. Centre for Peace Studies

10. The Libyan center for freedom of the press
11. World Organisation Against Torture (OMCT)
12. Cairo Institute for Human Rights Studies (CIHRS)
13. Watch The Med - Alarm Phone
14. Alarm Phone Sahara
15. Avocats sans Frontières Tunisie
16. Forum Tunisien pour les Droits Economiques et Sociaux
17. Migreurop
18. StateWatch
19. Libyan Crimes Watch
20. الإنسان لحقوق المستقلة المنظمة
21. Adal For All - للجميع عدالة
22. العنصري التمييز لمناهضة الأمان منظمة
23. الإنسان لحقوق مدافع مركز - Defender Center for Human Rights
24. للإعلام اصوات شبكة
25. المستقل للإعلام الليبية المنظمة
26. مؤسسة بلادي لحقوق الإنسان
27. J wc
28. A Buon Diritto Onlus APS
29. Border Violence Monitoring Network
30. Mediterranea Saving Humans
31. Progetto Melting Pot Europa
32. Medici del Mondo Italia
33. UIL - Unione Italiana del Lavoro
34. Caritas
35. Trama di Terre APS Onlus
36. CNCA
37. Are You Syrious
38. Mosaico azioni per i rifugiati
39. RESQ - PEOPLE SAVING PEOPLE
40. Campagna LasciateCIEntrare
41. Legal Team Italia
42. Josoor
43. NoName Kitchen
44. Baobab Experience
45. Mani Rosse Antirazziste
46. Le Veglie contro le Morti in Mare
47. Associazione Naga - Organizzazione di volontariato per l'Assistenza Socio -
Sanitaria e per i Diritti di Cittadini Stranieri, Rom e Sinti
48. Carovane Migranti
49. Red Solidaria de Acogida Madrid
50. Solidaunia-La Daunia Per Il Mondo Odv
51. Cestim centro studi immigrazione
52. Associazione Don Vincenzo Matrangolo
53. Dipende da Noi
54. Comitato Antirazzista "5 Luglio" Fermo
55. Casa del Popolo FERMO
56. Origens ETS

57. Mesagne Bene Comune
58. Gruppo Educhiamoci alla Pace ODV BARI
59. AMIS ONLUS - Associazione Mediatori Interculturali Salento
60. Comitato per la Pace - Bari
61. APS Giraffa onlus
62. Centro studi Alfredo Reichlin
63. GRUPPO LAVORO RIFUGIATI ONLUS
64. Squola senza confini - Penny Wirton Bari - OdV
65. Convochiamoci per Bari
66. Libera (Puglia)
67. Gris Marche
68. Senza confini odv
69. Associazione Rumori Sinistri ODV
70. Associazione No Border APS
71. Associazione Arci Todo Cambia APS
72. Associazione Periplo ODV
73. Cidas Cooperativa sociale
74. Acli Milano Monza e Brianza aps
75. Associazione Deposito Dei Segni Onlus
76. ANPI Chioggia
77. Asinichevolano Aps
78. Mare Memória Viva
79. Auser Montesilvano APS
80. Associazione di volontariato Ohana
81. Associazione "Leggere per..."
82. Comitato Fermiamo la guerra Firenze
83. Casa Simonetta
84. Donne in Nero, Napoli
85. Refugees Welcome Genova
86. Rete Antirazzista Catanese
87. Arci servizio civile Vicenza
88. Biblioteca delle Donne Bruzie
89. Oltre il Ponte APS ETS
90. Associazione Culturale Ricreativa A. Gramsci (ACRAG)
91. FONDAZIONE CAV. GUIDO GINI ONLUS
92. Organizzazione di Volontariato Casa di Amadou
93. ASSOCIAZIONE ESODO
94. Lungo la Rotta Balcanica - Along the Balkan Route
95. Tavolo Comunità Accoglienti- Venezia
96. Digiuno di Giustizia in Solidarietà con i Migranti- Bari
97. C.I.S.M. Spinea ODV (Coordinamento Immigrati del Sud del Mondo)

Adesioni individuali

1. Cassarino Jean-Pierre
2. Roberto Giancarlo Di Cagno
3. Isa Zizza
4. Stefano Pasta
5. Ruggiero Francavilla

6. Maria Matarazzo
7. Agostino Cinquepalmi
8. Marzia Pontone
9. Ibrahim Muhammad Mukhtar Esq.
10. Avvocato Gianluca Vitale
11. Fumagalli Amalia
12. Salah El-Marghani
13. Paolini Monica
14. Bongrazio Maria Grazia
15. Cirillo Vanessa
16. Decina Silvia
17. Achelaritei Dorina
18. Bertoli Fabrizio
19. Tondo Giorgio
20. Contegiacomo Caterina
21. Ianniello Caterina
22. Santovito Pietro
23. Giampaolletti Marcello
24. Mattone Fantini Riccardo
25. Roberto Pollo
26. Serena Sardi
27. Rodelli Caterina
28. Patrizia Iansa
29. Lidia Parma
30. Iuorio Aurora
31. Marco Giunti
32. Tonini Alberto
33. John Mpaliza
34. Moroni Sheyla
35. Petrolati Emanuela
36. Erminia Romano
37. Giorgia Palombi
38. Cinthia Grossi
39. Sonia Inzoli
40. Rafanelli Paola
41. Rosita Russo
42. Susanna Poole
43. Neri Cristina
44. Kola Ermira
45. Simonato Micol
46. Zanella Mauro Carlo
47. Luca Trivellone
48. Di Bonaventura Emanuele
49. Valeria Rigotti
50. Molteni Olivia
51. Emanuela Tagliabue
52. Pietropoli Antonella
53. Peruffo Beatrice

54. Dal Lago Giuseppina
55. Marlène Micheloni
56. Ginevra Battistini
57. Rebeggiani Silvia
58. Valentina Dovigo
59. Greta Orsenigo
60. Privitera Manuela
61. Suriano Gabriele
62. Picotti Stefano
63. Cazzavillan Anna
64. Adami Valentina
65. Lucia Tomba
66. Ortolan Giuliana
67. Noemi Filosi
68. Consoli Corrado
69. Andrea Corso
70. Consolaro Paolo
71. Volonté Cecilia
72. Marrone Irene
73. Johanès Si Mohand
74. Ruggle, Karolina
75. Virtù Caterina
76. Antonino Stinà
77. Eriselda Shkopi

February 2, 2022

Appeal to the Italian Government, to UNHCR and IOM for the immediate withdrawal of the Italy-Libya Memorandum

The system based on the Italy-Libya Memorandum has not led to any significant improvements in the Libyan situation. On the contrary, it demonstrated the impossibility of guaranteeing effective access to protection for migrants stranded in Libya.

In early October, the Libyan government carried out raids and random mass in Tripoli neighbourhoods. Many foreign nationals were arrested including people [officially registered by UNHCR](#) and those in particularly vulnerable situations, such as minors and pregnant women.

The foreign nationals were later imprisoned in detention centres run by the Libyan Ministry of the Interior where they were subjected to ill-treatment and torture. In the Al Mabani centre, six people were killed and 24 injured by gunfire¹.

The reaction to such violent and discriminatory measures was unprecedented: thousands of migrants have been protesting for almost two months in front of the UNHCR office in Tripoli, demanding to be transferred to a safe country and their safety to be guaranteed. For the first time, even in the international press, a new entity emerges under the name [Refugees in Libya](#), formed by a committee of migrants interacting with international organisations and actors in Libya and elsewhere.

At the moment, however, no adequate solution exists²: the UNHCR office in Libya, during a meeting with the Committee, stated that they "can not assure [migrants and refugees] of any safety and protection upon your return to Libyan society," but that they are working towards the reopening of evacuation flights³. Flights have indeed resumed with departures to Niger and Rwanda through the Emergency Transit Mechanism. As the Committee and the UN agency itself point out, however, the number of evacuations remains appallingly low. Although UNHCR admitted in recent interviews that it is unable to provide protection to asylum seekers in Libya, it stated that solutions must be found to ensure the protection of foreign nationals within the country, through dialogue with the Libyan government⁴. Under the current conditions, however, such a strategy cannot be considered in any way adequate. Several branches of the government are in fact actively involved in the chain of abuse and exploitation of migrants, as the Refugees in Libya Committee well expressed in their [manifesto](#).

¹ <https://www.euronews.com/2021/10/08/libyan-guards-shoot-six-migrants-dead-at-tripoli-detention-centre>

² On the contrary, on 11 January 2022, the Libyan police violently evicted the protest camp, arresting and harassing hundreds of demonstrators. Many of them are now in the Ain Zara detention centre.

See: <https://ilmanifesto.it/tripoli-polizia-e-milizie-attaccano-i-rifugiati-centinaia-gli-arresti/> and <https://msf-sa-press.prezly.com/hundreds-of-migrants-detained-after-mass-arrests-in-tripoli>

³ https://docs.google.com/document/d/1Bh2zh6Jl_y6wsXYkj5xRtVQVEJ2i4fat/edit

⁴ <https://ilmanifesto.it/cavalieri-unhcr-in-libia-sempre-piu-difficile-protteggere-i-rifugiati/>

The Committee denounces the lack of security, the exposure of migrants to arbitrary arrest and detention, sexual violence, torture: treatments that have already been defined as crimes against humanity by the UN Independent Fact-Finding Mission (FFM)⁵.

As highlighted in the latest FFM report and in many other briefs ⁶, the violations are not episodic but are rather part of an operational model - defined also as a [business model](#) - consisting of the following moments:

- (i) the interception at sea by the so-called Libyan Coast Guard, often characterised by extremely risky procedures;
- ii) Migrants' systematic return right after disembarkation to Libyan detention centres managed by the Directorate for Combating Illegal Migration (DCIM) of the Ministry of the Interior and eventually their sale to criminal groups;
- (iii) migrants' exposure to torture and ill-treatment for the purpose of extortion or various forms of exploitation and 'profit extraction' such as forced labour, forced prostitution and kidnapping for ransom.

Even considering the complexity of the North African country, it is necessary to strongly denounce that Italian and European cooperation with Libyan authorities - and in particular the Italy-Libya Memorandum of Understanding (MoU) that caused the block of the departures - are increasing and helping to build these models of exploitation of migrants residing in the country.

With EU financial and political support, the Italy-Libya MoU defines the cooperation between the two countries. At the same time the MoU is not in any way preventing migrants' rights violations perpetrated in the country, but rather indirectly creates the conditions for their continuation. The UN FFM, after recalling how such violence constitutes a systematic and widespread attack directed at this population, recalls that "This finding is made notwithstanding the responsibility that may be borne by third States and further investigations are required to establish the role of all those involved, directly or indirectly, in these crimes."⁷

In order to fully understand the dynamics structured by the Memorandum, it is necessary to read the first two articles of the said Memorandum in their reciprocal correlation.

Following art. 1 of the MoU Italy - thanks to the economic and political support of the European Commission - has provided the Libyan authorities with the political legitimacy and the necessary tools to systematically prevent the escape of foreign nationals from Libya.

Under the MoU interception at sea is followed by the systematic detention of foreign nationals for an indefinite period of time. In this detention regime, crimes defined by the UN as crimes against humanity are committed in both informal and official detention centres.

⁵ <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>

⁶ UNSMIL, Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya, 20 December 2018, available here: [LibyaMigrationReport.pdf \(ohchr.org\)](#); Arezo Malakuti (2019). The Political Economy of Migrant Detention in Libya: Understanding the players and the business models, at 34. available here: [migrant_detention_libya - final_report.pdf \(europa.eu\)](#); Implementation of resolution 2491 (2019) Report of the Secretary-General, available here: https://reliefweb.int/sites/reliefweb.int/files/resources/S_2020_275_E_0.pdf.

⁷ <https://reliefweb.int/sites/reliefweb.int/files/resources/A-HRC-48-83-AUV-EN.pdf>

Article 2 of MoU also envisages, on the one hand the “adaptation and financing of reception centres” and, on the other hand, the “support for international organisations present and operating in Libya to pursue efforts aimed at the return of migrants to their countries of origin, including voluntary return”.

Since 2017, international organisations have been receiving substantial funding⁸ in order to improve living conditions in detention centres or to facilitate the evacuation of refugees to EU countries or other foreign nationals to their countries of origin.

Nevertheless, as confirmed during the dialogue between the Refugees in Libya Committee and international organisations and stated by UNHCR in recent [interviews](#), detention conditions remain harsh and it has proved impossible to guarantee the safety of migrants in the country.

On several occasions, however, international organizations’ engagement in the country has been used by governments to justify the blockade and cooperation policies set out in Art. 1⁹.

In summary, taking into account the experience gained over time, repatriation and evacuation programmes managed by UNHCR and IOM cannot be considered as a sufficient measure to counterbalance the risks and damages resulting from Italian funding to the Libyan authorities. This approach also risks compromising the independence of the international organisations by giving them a subordinate role to the policies of counteracting immigration to Europe. Therefore, not neutral with respect to the problems illustrated above and to the stability of the entire system designed by the Memorandum.

In the system supported by the MoU, these organisations are not only central actors in the management of the evacuation programmes and the main beneficiaries of the funding for projects developed in the detention centres. Since they participate in the meetings of the Joint Committee on the execution of the Memorandum (art. 3), their activity is functional to the achievement of its objectives¹⁰ even though they cannot guarantee in any way the fundamental rights of the people involved.

In order to better understand the criticality of the mechanisms that should guarantee access to rights to migrants stranded in Libya, the specific legal and factual fragilities of the evacuation and repatriation systems are outlined below. These fragilities reveal how these instruments

⁸ <https://sciacacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-ENG-scheda-accessi-OI.docx.pdf>

⁹ In this regard, it is useful to take into consideration decision no. 4569/2020 whereby the Italian Council of State deemed voluntary return and evacuation programmes managed by UNHCR and IOM to be an appropriate measure to counterbalance the risks and damages resulting from Italian funding to Libyan authorities aimed at blocking the migration route in the central Mediterranean, precisely because they were deemed capable of substantially improving the living conditions of migrants in Libya.

¹⁰ Among others, IOM and UNHCR “assured their support to the Libyan authorities for the improvement of reception conditions in the centres and their progressive alignment with international standards. For the press release of one of the meetings see <https://www.interno.gov.it/it/stampa-e-comunicazione/comunicati-stampa/comunicati-stampa-raccolta-anni-precedenti/incontro-viminale-comitato-misto-italo-libico-presieduto-dal-ministro-minniti>

cannot in any way mitigate the policies of detention and refoulement and are not adequate to ensure foreign nationals' access to their fundamental rights, including the right to asylum.

1) UNHCR's humanitarian evacuation (Emergency Transit Mechanism) and resettlement programmes

As well known, only a very small number of people have access to evacuation programmes¹¹, both for the lack of cooperation of the European authorities in facilitating reintegration on their territory and for the way in which those who can be evacuated and relocated are selected.

Under these programmes entire nationalities, regardless of the personal protection claims made by individuals, are excluded from any contact with UNHCR. Often prison guards are the ones in charge of selecting - also on the basis of nationality¹² - who is to meet UNHCR staff. Moreover the transfer of asylum seekers or refugees to third countries of transit takes place on the basis of future possibilities of their resettlement in EU member states¹³.

In addition there are no effective remedies to challenge decisions on exclusion from evacuation programmes. Refugees are often not given any written refusal or the decision lack proper motivation. This is a concessionary mechanism, in which access to and recognition of refugee asylum rights is entrusted to procedures with no substantive or procedural guarantees. Although this programme is therefore an important humanitarian instrument, it is in no way adequate to constitute a valid counterbalance to blocking policies.

2) IOM voluntary return programmes

Foreign nationals, although in need of protection, belonging to nationalities systematically excluded from evacuation programmes are directed - often by detention centre guards themselves - to voluntary repatriation programmes. The ones in detention are asked to agree to repatriation, although the Special Rapporteur on Torture and other Cruel and Inhuman Treatment or Punishment himself has called attention to such procedure by pointing out that detention based solely on migration-status can also be used to force people to withdraw their asylum claims or accept voluntary return¹⁴.

¹¹ "Since November 2017, a total of 6,388 refugees and asylum-seekers departed from Libya, either through resettlement (1,747 since 2017) or humanitarian evacuations (4,641 since 2017, including 3,318 to Niger, 808 to Italy, 515 to Rwanda).", UNHCR Factsheet on Libya, May 2021, consultabile su <https://reporting.unhcr.org/sites/default/files/Libya%20Factsheet-July%202021.pdf>

¹² It would appear that only members of certain nationalities have access to the ETM programme. "In practice, the Libyan authorities have only recognized that individuals of nine designated nationalities may have a claim for international protection. Accordingly, UNHCR has registered as persons of concern primarily individuals from these nine countries, namely Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen. Outside of the nine nationalities, UNHCR exceptionally registers small numbers of persons from other refugee-producing situations, including for instance Mali, Burkina Faso and NW/NE Nigeria, and, irrespective of nationality, persons with particular claim profiles such as persons of diverse sexual orientations and/or gender identities, survivors of sexual and gender-based violence (SGBV) and survivors and victims of trafficking. UNHCR continues to advocate for the registration of all persons seeking international refugee protection, regardless of nationality, and seeks cooperation from all partners to ensure quality referrals to UNHCR.", UNHCR POSITION ON THE DESIGNATIONS OF LIBYA AS A SAFE THIRD COUNTRY AND AS A PLACE OF SAFETY FOR THE PURPOSE OF DISEMBARKATION FOLLOWING RESCUE AT SEA September 2020, <https://www.refworld.org/pdfid/5f1edee24.pdf> See also: <https://www.amnesty.org/en/documents/mde19/7561/2017/en/>

¹³ <https://www.asqi.it/33638-2/>

¹⁴ https://www.asqi.it/wp-content/uploads/2020/02/2018_2_26_Special_Rapporteur_Report_A_HRC_37_50_EN.pdf

Return programmes are often financed by EU Member States - including Italy - and by the Commission itself, without any agreement with international organisations on the mutual obligations arising from the funding, including the activities to be implemented and the precautions to be taken to avoid the risk of refoulement¹⁵. The lack of prior control over the activities to be carried out, without requiring any guarantees, without transparency obligations and without prior risk assessment, have in fact exposed refugees, women victims of trafficking and unaccompanied minors to repatriation to their countries of origin where their safety may be at risk¹⁶.

The situation of Nigerian women victims of international trafficking is emblematic. They are in fact constantly excluded from ETM and resettlement programmes and directed towards so-called voluntary repatriation projects, with the very serious consequences on their safety resulting from their return to their country of origin. This example is extremely significant since trafficked women, if they could once reached an EU country, would be considered worthy of international protection. Faced with this situation, adherence to so-called voluntary return programmes seems to be the only tool available to the majority of migrants to escape detention and exploitation. Used even in situations where returning to the country of origin represents a risk to their own safety and the protection of their rights.

Conclusions

In light of the analysis illustrated above, it can be stated that

- The Italy-Libya MoU is *de facto* facilitating the structuring of models of exploitation and enslavement within which violence that constitutes crimes against humanity is systematically perpetrated.
- The effective capacity of international organisations to protect migrants and asylum seekers in this situation is extremely limited and dependent on the choices of the Libyan authorities.
- The action of international organisations cannot be considered a sufficient measure to guarantee effective access to rights and international protection in a broad and generalised manner for migrants and asylum seekers stranded in Libya, both because of the limited means and because of the very structure of the programmes, characterised by the absence of procedural guarantees for people who are excluded from access to the programmes and by evacuation and relocation measures.
- Adherence to the so-called voluntary return programmes is the only available means to most migrants for escaping the violence faced in Libya, although it is a largely inadequate strategy in view of the risk that they will be subjected again if they return to their country of origin to the same persecution from which they fled.

We therefore call on

¹⁵ <https://sciabacaoruka.asgi.it/wp-content/uploads/2020/01/Microsoft-Word-ENG-scheda-accessi-OI.docx.pdf>

¹⁶ <https://www.euronews.com/2020/06/20/eritrean-migrants-in-libya-claim-eu-backed-voluntary-returns-programme-isn-t-so-voluntary>

- the Italian government to immediately revoke the Memorandum of Understanding, as the only viable option in the face of the structural impossibility of bringing about significant improvements in the living conditions of migrants and refugees in Libya and of guaranteeing them adequate access to protection, as demonstrated by the evolution of the situation in Libya.
- UNHCR and IOM, in accordance with their mandate to protect foreign nationals present in Libya, to express their adherence to the request for the revocation of the MoU, so as to avoid any risk of connection between the serious human rights violations stemming from the Memorandum and their own initiatives.

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for the immediate withdrawal of the Italy-Libya Memorandum
February 2, 2022**

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