

# **Migration Beyond the Crisis: Libyan Policy and Practice**

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Migration in Libya rightly evokes a bleak image of deadly sea crossings, dangerous smuggling routes, overcrowded detention centers, and modern-day slavery. Since the 2011 uprising, the country has been considered a flashpoint of the ‘migration crisis’, when hundreds of thousands of migrants evacuated and sought rescue from the ensuing violence. The subsequent security vacuum allowed trafficking and smuggling networks to flourish, and in some cases became entrenched in militia groups and other actors affiliated with the state. The prospect of an ‘unstoppable flow’ of refugees, asylum seekers, and other migrants has since driven extensive European resources into managing migration in Libya and the region at large. Currently, European, and especially Italian, interests largely determine the Libyan government’s migration policies and practices in exchange for material and political support.

Without a doubt, Libya’s migration crisis remains a harrowing reality that can only be addressed with interstate cooperation. However, the existing paradigm on migration management requires an overhaul. The current efforts fixated on combating irregular migration by any means necessary are largely unsuccessful, premised on flawed understandings of migration, and exacerbate human rights violations. Migration through Libya is not a short-term crisis that can be resolved through militarized border controls. The continuation of large-scale migration due to ongoing conflict and climate disasters in migrant-sending countries is inevitable.

This chapter aims to examine migration beyond the crisis in two senses: first, by providing a holistic portrait of migration in Libya; second, by underlining the reorientation of migration management that will realistically only take place if and when the current political crisis is resolved. The ongoing pandering to European interests poses challenges to reshaping such an approach, though it is by no means the sole driver of Libya’s poor migration practices. Libya requires a comprehensive, human rights-based migration policy that addresses its unique development needs.

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This chapter focuses on Libyan government efforts, although there are other stakeholders that have critical roles, such as civil society and migrants themselves.

### A Holistic Snapshot of Contemporary Migration

For the past two decades, international stakeholders have been concerned with Libya as a country of transit and particularly as a launching point to Europe.<sup>1</sup> However, Libya is also an established country of destination, meaning many migrants settle there. Estimates indicate 670,000 migrants—including refugees, asylum seekers, trafficking victims, and labor migrants currently live in Libya and comprise roughly 12% of the country's population.<sup>2</sup> Clandestine movements may not be captured by these statistics. According to 2018 data, 93% of migrants hail from the Africa continent, and 50% hail from North Africa specifically. The majority come from Egypt, Nigeria, Chad, Sudan, and Ghana. There are also migrants from Asian and Middle Eastern countries, such as labor migrants from Bangladesh and refugees from Syria.

Though there are no estimates as to the number of labor migrants in Libya, there is a large, predominantly sub-Saharan African workforce. These workers are primarily concentrated in lower-income jobs that are unappealing to Libyan nationals, such as farming, garbage collection, and construction.<sup>3</sup> Arab, Asian, and a small number of European migrants tend to work in higher-income positions in healthcare, teaching, and engineering. Many contemporary migrants are men who have lived in Libya for six months or longer. Contrary to popular belief, not all migrants consider Europe their final destination. According to a 2017 survey, at least 50% of migrants interviewed intended to stay in Libya.<sup>4</sup>

Around 47,000 refugees and asylum seekers, primarily from Syria and Sudan, are currently registered with the United Nations Refugee Agency (UNHCR).<sup>5</sup> However, many refugees and asylum seekers remain unregistered with the UNHCR, which has permission to operate in Libya but is not formally recognized by the government as Libya is not a signatory of the 1951 Convention Relating to the Status of Refugees. The country also lacks robust asylum laws; refugees and asylum seekers fall only under the immigration law, which criminalizes all irregular migration without exception. Consequently, the estimated 1,800 migrants currently detained in Libya (as of March 2020) include refugees and asylum seekers.<sup>6</sup> Though authorities shuttered three official detention centers in 2019, migrants remain subject to arbitrary and indefinite detention in bleak conditions.<sup>7</sup>

While migrants' experiences vary significantly in Libya, they are highly vulnerable to mistreatment by state and non-state actors alike. The country's tumultuous security situation and weak institutions are compounded by officially sanctioned policies and practices that violate basic human rights. Migrants frequently fall victim to trafficking and forced labor or are held for ransom by armed groups, at times associated with the central

government. They may also be detained without cause in official detention centers, with no access to redress.

### **Migration policies and the beginning of European cooperation under Gaddafi**

Though the 2011 Revolution ushered in a new level of global scrutiny, there is a large degree of continuity in the treatment of migrants in Libya. Migration policy under the Gaddafi regime was frequently used as a diplomatic tool to pander, threaten, and bargain both with countries who sent labor migrants to Libya and with European countries seeking to curb irregular immigration. The consequences for migrants, casualties to the political objective of the moment, were often disastrous.

For example, as part of efforts to lead a Pan-African movement and counter the effects of economic sanctions imposed by Western countries, Gaddafi encouraged African labor migration to Libya in the early 1990s. The regime made visas for African workers easy to obtain and advertised employment opportunities in newspapers throughout the continent. However, there was a discernible shift in Libya's migration policies in the early 2000s, as part of a concentrated effort to normalize relations with the international community, and particularly the West.

This process began with a number of agreements with Italy, the European neighbor most concerned with recent spikes in sea arrivals from Libya. Cooperation agreements to combat organized crime and migration included training and financial support to monitor land and sea borders, as well as joint patrolling by Italian and Libyan authorities.<sup>8</sup> Italy also financed the construction of three detention centers for irregular migrants in Gharyan, Kufra, and Sebha between 2003 and 2005.<sup>9,10</sup> In violation of the principle of non-refoulement, which forbids states from transferring asylum seekers to countries where they are likely to face harm, migrants were also transferred from Italy to Libya, and pushed back to Libya while still at sea. The 2008 "Friendship Pact" cemented cooperation and effectively linked Italian economic investments to Libya's commitments to combat irregular migration.<sup>11</sup> With Italy acting as an advocate for the regime, EU-Libya agreements subsequently provided millions to support management of Libya's borders.

In turn, Libya not only restricted migration from African countries, but also launched a violently anti-African migrant agenda that included mass deportations of regular and irregular workers alike. According to some observers, the cooperation also spurred state-sanctioned violence against African migrants to 'prove' Libya's commitment to European partners.<sup>12</sup> The forced return of asylum seekers to Libya, the miserable conditions in detention centers, and widespread violence against sub-Saharan African migrants were widely criticized by human rights organizations at the time.

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Seven months before the uprising, Gaddafi attempted to secure a five billion euro-a-year commitment from Europe to combat irregular migration, infamously threatening his counterparts in Rome:

Tomorrow Europe might no longer be European, and even black, as there are millions who want to come in,” Gaddafi said. “What will be the reaction of the white and Christian Europeans faced with this influx of starving and ignorant Africans ... we don’t know if Europe will remain an advanced and united continent or if it will be destroyed, as happened with the barbarian invasions.<sup>13</sup>

### Contemporary EU-LIBYA Cooperation

Gaddafi doubled down on this threat in attempt to end NATO intervention in the 2011 uprising: “Now listen, you people of NATO. You’re bombing a wall which stood in the way of African migration to Europe and in the way of al-Qaeda terrorists. This wall was Libya. You’re breaking it.”<sup>14</sup>

The triggering of the migration crisis in popular memory often begins at this point, with the international intervention and subsequent security vacuum cited as the proximate cause.<sup>15</sup> But while the number of migrants departing from Libya to European shores significantly increased in 2011, the overall *migration situation* is largely a maintenance of the status quo rather than a byproduct of the revolution. Migrants at sea continue to be returned to Libya despite the country not being a safe space. Often, they are intercepted by the Libyan coastguard, who continues to receive funding from the EU.<sup>16</sup> Almost 40,000 people have been intercepted and returned to Libya since a Memorandum of Understanding was signed with Italy in 2017.<sup>17</sup> Detention centers also continue to operate in atrocious conditions, often serving as hubs for trafficking and forced labor. Though some European officials have called for their closure, cooperation agreements—wherein migrants are knowingly returned to Libya to be held in these centers—nonetheless persist without any improvement to their management. Since 2014, the EU has spent 338 million dollars on migration projects in Libya, including 92 million euros to manage both land, sea, and borders.<sup>18</sup>

Consequently, Libya is often referred to as Europe’s “policeman” of the Mediterranean — an enforcer of European interests. Across the continent, Europe externalizes border management and ties development aid to migration management. Alongside other African countries, Libya is party to both bilateral and regional cooperation agreements whose primary intent is to prevent irregular migrants from reaching Europe. Libyan incentives to defer to European migration interests are multifold but include securing financing for its security apparatus<sup>19</sup> and its own lack of capacity to manage migration.<sup>20</sup> The 2019 invasion of Tripoli by the “Libyan Arab Army Forces (LAAF),” rival forces from Libya’s eastern region, introduced a new dimension to the weaponization of

migration and migration as diplomacy. The internationally recognized Government of National Accord (GNA) in Tripoli warned of the potential consequences for Europe in an effort to strengthen political support. Speaking to an Italian newspaper in April 2019, Prime Minister Fayez al-Sarraj emphasized the potential for the mass displacement of migrants and nationals, on equal footing with the threat of terrorism:

There are not only the 800,000 migrants potentially ready to leave, there would be Libyans fleeing this war, and in the south of Libya the terrorists of the Islamic State that the Tripoli government with the support of the city of Misrata had expelled from the town of Sirte three years ago.<sup>21</sup>

Libya's approach to migration is not wholly determined by European interests. The GNA espouses its own negative attitudes towards irregular migration, and similar to populist-leaning elements in European governments, scapegoats migrants for social issues, economic malaise and terrorism. In September 2019, Sarraj told the UN General Assembly that Libyans "are victims of this migration and the cause."<sup>22</sup> Such sophistry obscures the tragedy that occurred only two months prior, when 53 migrants were killed by an LAAF airstrike on the Tajoura detention center.<sup>23</sup>

Furthermore, Libya lacks the institutional strength to enforce a unified migration policy. Detention centers that are nominally administered by the GNA's Directorate for Combating Illegal Migration (DCIM) are largely operated by militias with their own vested interests. According to the UNHCR, there are also credible allegations of Libyan authorities profiteering from trafficking and detention.<sup>24</sup>

## A New Way Forward

Libya's ability to develop a robust, rights-based migration policy is thus constrained by the same conditions that have prevented the state itself from consolidating. The country not only has weak administrative capabilities but also is now effectively a failed state splintered in two, embroiled in a civil war. Why, given the entrenched political crisis, should migration be considered a priority?

As migrant advocates and researchers emphasize, migration is not a phenomenon that states can ever totally control; it is not a valve that can be turned on and off at will. Migration will continue to and through Libya irrespective of policy for a number of reasons, including Libya's own labor market needs. Libya relies on migrant workers to fill demand in a number of critical sectors, including construction, agriculture, and health-care.<sup>25</sup> Even today, amid ongoing warfare and a debilitated economy, migrant workers from both Africa and Asia continue to be recruited to fill manpower and skills gaps. Libya's low-population growth will further drive demand, particularly if the country works towards diversifying its economy.<sup>26</sup>

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Ongoing conflict and climate displacement in neighboring countries will also continue to drive migration to Libya. Violence and civil strife are key drivers of forced migration within the continent.<sup>27</sup> Additionally, the International Organization for Migration (IOM) has warned that drought, flooding, and extreme temperatures will adversely affect food security and force people to move.<sup>28</sup>

Libya's migration policy needs to be crafted with these realities in mind in order to effectively serve the country's interests. A rights-based migration policy that focuses on facilitating safe and regular migration, rather than firefighting irregular migration, is also critical to achieving these interests. Migration observers have long recognized the interdependence between migration, development, and human rights; as delegates of the 2008 Global Forum on Migration and Development noted, "it is reasonable to assume that migrants are best able to contribute to development in both the countries of origin and destination, when they are protected and empowered socially, economically and in terms of their basic human rights, regardless of their migration status."<sup>29</sup>

What does a rights-based approach to migration mean in practice? It means that migration policies are grounded in international human rights law. Given that power is currently fragmented across militias and warring sides, the prospect of developing a rights-based migration policy no doubt seems naive. As the operative phrase in the title *Migration Beyond the Crisis* suggests, a paradigm shift is unlikely to take place under Libya's current political turmoil. However, Libya does have a foundation to begin with, as it is one of only 55 countries that have ratified the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (ICMW). The ICMW is a core UN treaty which guarantees the human rights of migrants and establishes certain rights specific to their context.<sup>30</sup> None of the EU states and few other destination countries have ratified the treaty.<sup>31</sup> Though Libya's laws and practices are yet to satisfy its obligations, the convention nonetheless provides Libya a framework in which to ground future reforms.

It is still critical to reframe the narrative on migration now, as existing beliefs are cemented into future practice. Additionally, there are some critical reforms that can be implemented more immediately to safeguard migrants' rights. For example, Libya can decriminalize irregular migration by amending Law No. 6 (1987), Law No. 2 (2004), and Law No. 19 (2010). The 2010 law should also be reformed to prohibit indefinite detention, forced labor, and deportation of irregular workers. The law is not only a contravention of the ICMW (and other core treaties ratified by Libya), but also overburdens the country's own institutions.

More forward-looking recommendations include ratifying the 1951 Convention Relating to the Status of Refugees and developing robust asylum legislation. Though the right to asylum was included in Article 10 of Libya's 2011 Interim Constitutional Declaration, no implementing regulations were ever established. Currently, asylum-seekers are

treated the same as irregular migrants, and therefore subject to indefinite detention and deportation.

These recommendations overlap with those proposed by expert stakeholders whose main objective is to combat irregular migration. Centering human rights in migration policies is not contradictory to this aim, as access to safe and regular migration pathways reduces the need to migrate irregularly. This principle is well-accepted by migrant researchers and advocates, but less so by governments, who are often preoccupied with the optics of migration.

In addition to overhauling its own practices, Libya should take a leading role in promoting rights-based migration policy at the regional and international level. Unlike many regional counterparts that have been co-opted into the European-led agenda against irregular migration, Libya has the resources to not only push back but to drive a global movement. Libya should have a more determinative voice in the several regional cooperation agreements it is party to and should play a leading role in regional and international processes, including the Global Forum on Migration and Development. As a key country of concern for the EU, Libya can use migration as a bargaining chip to promote a rights-based migration management policy, rather than sacrificing these rights in pursuit of other policy objectives.

Any successful migration policy requires interstate cooperation, but this cooperation needs to be rooted in human rights and international law. While there will indeed be some positive external outcomes from the various European-Libyan cooperation agreements, the underlying motive must be resolutely centered on the need to support migrant rights and to safeguard migrants themselves.

## Notes

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