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Legal framework. Italian and Libyan responsibilities for the violation of articles 2 and 6 of the CEDAW

1. Blocking and enslavement

On 3 December 2021, two Nigerian women victims of trafficking for the purpose of sexual exploitation filed a complaint against Italy and Libya to the United Nations Committee on the Elimination of Discrimination Against Women with the support of ASGI lawyers Giulia Crescini, Cristina Laura Cecchini and Luce Bonzano as well as NULAI - Network of University Legal Aid Institutions.

The two women claim that the countries have violated Articles 2 and 6 of the Convention for the Elimination of Discrimination against Women - the right to non-discrimination and protection from exploitation of prostitution - and that they have subjected them to a form of 'disguised' expulsion, exposing them to further risks deriving from returning to their country of origin, including being trafficked again.

This paper analyses how the general blocking of migrants in Libya, politically and financially supported by Italy, allows the creation of a business model based on the exploitation of migrants in Libya. The violations that can be ascribed to Italy and Libya derive from this system, in which the applicants found themselves.

1.1 Blocking departures and structuring an economic system based on detention and exploitation

Since 2017, Italy has played a key role in building a system of border externalization aimed at achieving a **general blocking of migrants in Libya**, preventing their departure and structuring interceptions at sea of fleeing foreign nationals. To this end, the Italian authorities **have supported the Libyan authorities by guiding their action and work also through the direct use of Italian and EU funds**.

Over the past few years, a multi-level strategy has been put in place. It involves the interception of migrants, their transfer to Libya, their subsequent detention and, finally, their removal from Libya through repatriation or evacuation to third countries.

According to the Italy-Libya Memorandum, Italy is committed to providing technical support to the Libyan authorities in charge of countering illegal immigration, namely the Libyan Coast Guard and



Port Security (LCGPS), the General Administration for Coastal Security (GACS) and the Department for Combating Illegal Immigration (DCIM). The Italian government underlined that the drastic drop in arrivals is the result of a well-structured intervention strategy implemented in the Mediterranean and based on logistical support offered to the Libyan authorities.

The European Commission confirmed that, thanks to cooperation with the Libyan authorities, arrivals on European shores dropped by 90%. In this way the Commission drew a causal link between the detention of migrants and the reduction of landings on EU shores. **This confirms the direct link between Italy's actions and the detention of migrants who are pulled back to Libya.**

All forms of abuse perpetrated in Libya aims to profit from migrants. To achieve this goal, institutional and unofficial actors have created a chain of exploitation: the detention system structured by the Libyan authorities, militias, trafficking networks and other criminal organisations constitutes a **business model aimed at maximising profits**. In both official and unofficial centres, detention is the initial phase of the exploitation of individuals who are kidnapped for ransom, forced labour, sexual slavery or bought and sold in modern slave markets.

In addition to the official DCIM detention centres, there are unofficial centres run by armed groups or militias that, in most cases, extend their influence to centres that are only nominally under the control of DCIM. Furthermore, there is a plethora of ghettos, facilities and “connection houses” directly managed by traffickers. In both official and unofficial centres, detention conditions are substandard, inhuman, degrading and there is evidence of abuse and torture.

The United Nations Fact-finding Mission in Libya notes that there are both structural connections between trafficking networks, Libyan coastal authorities and the DCIM, as well as collusion and financial networks that are activated from the moment migrants are intercepted at sea, detained in official detention centres and sold or exploited¹.

The Italy-Libya Memorandum structures cooperation activities between the two countries that are implemented with the political and economic support of the European Commission and other EU Member States. This intervention is not preventing the violations of migrants' rights that are perpetrated in the country, but rather indirectly is creating the conditions for them to continue: the UN Independent Fact-Finding Mission to Libya, after recalling how such violence and abuses amount to crimes against humanity and are part of 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."**

¹ <https://reliefweb.int/report/libya/report-independent-fact-finding-mission-libya-ahrc4883-enar>



1.2. Consequences of the externalisation process for trafficked women and their access to a form of protection

The blocking of migrants in Libya and the consequent development of economic assets linked to the detention and exploitation have serious repercussions for trafficked women and their access to protection: (i) competition between different criminal networks exposes women to multiple violence and exploitation; (ii) subjection to forced prostitution in places of detention; (iii) greater difficulty in leaving Libya and the practice of pullbacks increases the risk of ending up in places of detention.

Trafficked women are systematically forced into the system of exploitation and enslavement following the arrest by the Libyan authorities, both within the country –e.g. as a result of raids in connection houses or street arrests by patrols – and at sea – following the interceptions of boats by the Libyan Coast Guard (LCG) or the General Administration for Coastal Security (GACS).

After the Libyan authorities detect the irregularity of the women (which applies to all foreign nationals in Libya), they are taken to detention centres. In both official and unofficial centres, forms of buying and selling for the purpose of exploitation have been recorded, which, in the case of women, take the form of enslavement for the purpose of forced prostitution - also within the detention centres themselves - managed by members of the DCIM (department under the Libyan Ministry of the Interior).

In this context, trafficked women do not have access to any form of protection in Libya. On the contrary, according to the 2002 UNHCR guidelines on international protection and gender-related persecution, women can be considered, in specific contexts and situations, as a "particular social group" for the purpose of refugee status recognition. In 2006, UNHCR issued further guidelines on the recognition of refugee status for victims of trafficking and persons at risk of being trafficked, identifying the characteristics of the trafficking experience as relevant to the recognition of international protection².

In this regard, we need to briefly analyse the UNHCR's work in Libya.

According to data and relevant information on mechanisms implemented, it emerges that in Libya trafficked women are systematically excluded from the possibility of registering their asylum application and from the forms of protection implemented by the Agency. They are marginally recognised outside the EU and tend to be excluded from access to the Libyan Humanitarian Evacuation Programme (ETM) and resettlement programmes³. In this perspective, in order to escape the terrible conditions living in the country and, at least temporarily, from being subjected to exploitation, the only possibility offered is the return to Nigeria through the International

² For more details see Trafficking and exploitation of Nigerian women: the impact of outsourcing policies on the right to protection <https://sciabacaoruka.asgi.it/en/focus-nigeria/>

³ The "Emergency Transit Mechanism" program and the resettlement from Niger. Legal analysis, current and future concerns: <https://www.asgi.it/wp-content/uploads/2019/07/ASGI-Resettlement-ETM-ENGLISH.pdf>



Organisation for Migration. Formally, the programme provides for close cooperation with UNHCR, in order to assess the risks of such return and structure referral measures aimed at protecting refugees. However, there is no data showing that such mechanisms are actually implemented for trafficking victims who, on the contrary, are systematically returned to their country of origin (Nigeria records the highest number of returns⁴).

1.3 Libya and Italy's violations of the Convention

Libya

Libya failed to meet its obligations under CEDAW since it did not effectively protect the applicant against trafficking and exploitation within its territory. Indeed, trafficking in persons for labour and sexual exploitation are widespread in Libya and tolerated by the Libyan authorities, who are aware of the phenomenon but do not take any action to punish state and non-state perpetrators. The applicant was sold to Libyan smugglers on her arrival and then subjected to exploitation, and – even when she managed to escape – she was imprisoned by the Libyan authorities and sold by detention centre staff. This conduct amounts to a blatant violation of Article 6 CEDAW, committed by a state official acting in an official capacity (Articles 4 and 5 ARSIWA (ILC's Articles on the Responsibility of States for Internationally Wrongful Acts). Reliable international sources report that the exploitation pattern is systemic even in institutions and it also involves state authorities. Furthermore, according to CEDAW Recommendation No. 38, States Parties are under obligation to identify victims of trafficking and exploitation, to guarantee them special assistance and protection, including from re-victimization, as well as access to justice and effective remedies.

Libya has violated these obligations as follows.

- 1) Libyan authorities failed to identify the applicant as a victim of trafficking and exploitation inside the detention centre.
- 2) Libya failed to ensure any form of protection to the applicant.
- 3) Libya failed to guarantee access to justice or effective remedies to punish the perpetrators.

Indeed, the absence of any form of protection for the victims, combined with the provision that criminalizes any sexual intercourse out of wedlock and prostitution, generates widespread vulnerability and fear, which further exposes victims to exploitation.

⁴ See <https://sciabacaoruka.asgi.it/en/focus-nigeria/>



Italy

As for Italy, the applicant claims that it is responsible for the violation of Articles 2 and 6 of CEDAW as it provided an essential causal contribution to the violations of the applicant's rights through its externalization policies. Italy assisted Libya in the violation within the meaning of Article 16 ARSIWA by giving essential financial, material and technical support to Libyan authorities in search and rescue operations and more generally in migration management.

Furthermore, Italian migration policy has resulted in a de facto closure of Italian borders to migrants from Libya and it has led to their confinement on Libyan soil, where they are more exposed to all forms of exploitation. According to CEDAW General Recommendation No. 38, measures such as *“increased border control, refusal of entry, pushbacks, expulsion or detention limit the movement of women and girls fleeing from crises and conflict zones [...] heightens their vulnerability to all forms of exploitation, particularly at points of transit, not least due to an increased need to use the services of human smugglers or other types of underground or criminal networks in order to move, both internally as well as internationally to evade border controls”* (§24). The applicants themselves were confined in Libya, where they were repeatedly sold and consistently exploited and yet could not escape because of the migration policy agreed between Italy and Libya, which makes it almost impossible to leave Libya for Italy. Even when they attempted the sea crossing, they were brought back to Libya and imprisoned in the detention centres. In Libya, the two women were exposed to a system of exploitation and enslavement that thrived precisely because the exit route from Libya was closed.