

The Detention of Asylum Seekers in the Mediterranean Region

Global Detention Project Backgrounder

April 2015

The Global Detention Project (GDP) is a non-profit research centre based in Geneva, Switzerland, that investigates the use of detention in response to global migration. The GDP's aims include: (1) providing researchers, advocates, and journalists with a measurable and regularly updated baseline for analysing the growth and evolution of detention practices and policies; (2) facilitating accountability and transparency in the treatment of detainees; and (3) encouraging scholarship in this field of immigration and refugee studies.

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With the recent tragic surge in the number of deaths at sea of asylum seekers and other migrants attempting to reach Europe, enormous public attention is being focused on the treatment of these people across the Mediterranean. An important migration policy employed throughout the region is detention, including widespread deprivation of liberty of asylum seekers and other vulnerable groups.

This Global Detention Project background paper is intended to highlight some of the vulnerabilities that people seeking international protection face when they are taken into custody in Mediterranean countries and to underscore the way that European Union-driven policies have impacted the migratory phenomenon in the region.

The report focuses on eight key countries in Europe and North Africa. While there are clear differences in treatment from one side of the Mediterranean to the next, looked at collectively, the protection environment across all the countries in the region is bleak. Not surprisingly, the conditions of detention asylum seekers face in North African countries are often horrific and inhumane. However, in Europe, there are also serious shortcomings. In fact, as this backgrounder reports, reception and detention conditions in three of Europe's main asylum receiving countries (Greece, Italy, and Malta) are so inadequate that many of their EU counterparts have been forced to halt returns to these countries under the Dublin III Regulation.

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EUROPE

I. Greece

Greece has been a focus of Europe's efforts to halt irregular migration for several years. With financial and operational assistance provided by the European Union, Greece has confronted migratory pressures by emphasizing interdiction, detention, and removal. A 2013 [Council of Europe Parliamentary Assembly](#) (PACE) report summarized: "Greece has focused on reinforcing its external borders and started a policy which relies too heavily on detention. Despite the Greek authorities' determination to improve the asylum system and detention conditions, which in many instances remain deplorable, much still needs to be done."

The country has implemented a number of controversial practices, including pushbacks and round ups, which have often had tragic results. In early 2014, for instance, an alleged pushback operation near the island of Farmakonisi led to the deaths of 12 refugees (ECRE 2014a). The incident occurred amidst a wave of criticism prompted by allegations of systematic pushbacks of Syrian asylum seekers across the Turkish border. Victims of pushbacks described being slapped and beaten. There were also allegations that the coastguard damaged boats or confiscated motors before leaving the migrants in the middle of the Aegean Sea or the Evros River (Pro Asyl 2013; AI 2013a; GCR and PRO ASYL 2012). Frontex has been present in Greece throughout much of this period as its Joint Operations Poseidon Land and Poseidon Sea have been ongoing (Frontex 2014).

Greece has also stepped up internal enforcement measures. In August 2012, authorities launched operation "Xenios Zeus" aimed at rounding up irregular migrants in Attica, Evros, and Patras. By the end of December 2012, 65,767 people had been apprehended as part of this operation, only 6 percent of whom were found not to have residence permits. Various human rights bodies have condemned these police operations for being based on racial profiling (Kathimerini 2013a).

Immigration detention in Greece has also attracted broad international condemnation, even as the country's detention efforts have received large injections of funding from the European Union. Four UN Special Procedures have raised concerns about the legality and conditions of detention in the country (SRHRM 2013; SRT 2011; SRSC 2006; WGAD 2013). In addition, the [European Court of Human Rights](#) has ruled in a dozen cases that detention conditions in Greece amount to degrading treatment.

In its resolution on Greece, the Council of Europe's Parliamentary Assembly (PACE) highlighted numerous problems with its immigration detention practices, arguing that the country was "failing badly to respect the human rights and dignity of migrants, asylum seekers and refugees." It called on Greece to "review its policies in relation to detention of irregular migrants and asylum seekers, in particular by: refraining from automatic recourse to detention and exploring alternatives to detention ...; significantly reducing periods of detention and distinguishing between asylum seekers and irregular migrants; ensuring that unaccompanied children are never detained and that other children, women and other vulnerable groups are detained only in exceptional circumstances; ensuring that unsuitable detention facilities are closed and conditions of detention are significantly improved as soon as possible; considerably improve their access to

medical care, communication and translation facilities and proper information on their rights” (PACE 2013a).

Despite the widespread international focus on Greece’s detention activities, there are few reliable statistics available concerning the scope of this practice in the country. For instance, there does not appear to be any official list of detention facilities used in the country, including police and border guard stations (the GDP has collected information about a dozen police and border stations used 2012-2013). Likewise, there do not appear to be any statistics on the number of people placed in immigration detention.

Despite this lack of transparency, we know that asylum seekers and others seeking international protection make up a significant part of the immigration detention population. In 2014, 9,450 persons sought international protection in Greece, compared to 8,220 in 2013, and 9,580 in 2012.

Under Presidential Decree 113/2013 an asylum seeker may be detained (1) for determination of his or her identity or origin; (2) if he or she threatens national security or public order, according to the reasoned judgment of the police authority; or (3) detention is considered necessary for the prompt and effective completion of the asylum application (Presidential Decree 114/2010, article 13(2)).

Although the decree provides that an asylum seeker is not to be held in detention solely for entering the country without authorisation, there are numerous reports indicating that asylum seekers are systematically detained upon entry. Responding to these reports, the UN Committee against Torture has urged Greece to “ensure that administrative detention on the grounds of irregular entry is not applied to asylum seekers. In particular, detention of asylum seekers should be used only in exceptional circumstances or as a measure of last resort, on grounds specifically prescribed by law, and then only for the shortest possible time. To this end, alternatives to detention should be duly examined and exhausted, especially with regard to vulnerable groups” (CAT 2012).

Since June 2013, when Greece’s Asylum Service started operating, some asylum procedures have reportedly become more efficient. Nevertheless, rights watchdogs have contended that Greece’s asylum system is largely dysfunctional because it provides limited access to asylum procedures, there is a huge backlog in processing claims, the country has one of the lowest protection rates in the EU, and reception conditions are severely inadequate (HRW 2013).

These deficiencies in the asylum procedure prompted the European Court, in its landmark judgment in the *M.S.S. v. Belgium and Greece*, to find Greece not a “safe country” for asylum seekers. By transferring the applicant to Greece on the basis of the [Dublin II Regulation](#), Belgium was found to have violated its *non-refoulement* obligations. The *M.S.S.* case was followed by the *N.S. and M.E* before the [Court of Justice of European Union](#), which also dealt with transfers to Greece. According to that ruling, member states shall verify conditions in the receiving state before carrying out a Dublin transfer.

After those landmark cases, most Schengen states suspended Dublin transfers to Greece. During the period January–September 2012, Greece transferred more people out of the country (144) than it received (38) under the Dublin system (AITIMA 2012). Still, many countries have not adopted specific policies prohibiting transfers, instead proceeding on a case-by-case basis (Forum Réfugiés-Cosi et al 2013). Moreover, Italy has circumvented the effects of the European rulings by sending migrants to Greece pursuant to a bilateral readmission agreement between

the countries. These practices were challenged in the case *Sharifi v. Italy and Greece*, which ruled in October 2014 that, *inter alia*, the automatic return to Greece by Italy amounted to collective and indiscriminate expulsion. Based on testimonies heard in this case, it appears that returnees from Italy were frequently detained in a facility in Greece's Igoumenitsa port.

Asylum seekers who are transferred to Greece from other EU countries under the Dublin Regulation are detained for the time necessary to process and verify fingerprints. Previously, detention of Dublin returnees generally lasted four days. However since most EU countries suspended transfers in the wake of the European rulings, detention periods reportedly dropped to a few hours, though they are expected to increase if the transfers pick up again (AITIMA 2012). Asylum advocates have claimed that this procedure is unlawful because it cannot be justified on any of the grounds for detention provided in Presidential Decree 114/2010. Moreover, authorities do not issue detention orders in such cases, apparently because police consider such persons as under surveillance and not in detention (AITIMA 2012).

II. Italy

While the numbers of deaths in or near Italian waters has been unprecedented in recent weeks and months, Italy has been experiencing a surge in boat arrivals from North Africa since 2011, when the "Arab Spring" revolutions erupted. In 2009, Italy received some 9,600 boat arrivals; in 2010, 4,350. By the end of 2011, however, the annual number of boat arrivals had skyrocketed to nearly 56,000 (UNHCR 2012).

The number of people requesting asylum in the country has similarly surged. In 2014, 11 percent of all the asylum applications in the EU were submitted in Italy. 63,660 people applied for asylum in Italy that year, compared to 25,720 in 2013, and 17,350 in 2012 (UNHCR 2015).

As has been well documented, Italy's response to these migratory pressures has evolved considerably in recent years and has often involved controversial deal-making with Libya and other countries of North Africa, which have had important repercussions on the treatment of asylum seekers.

Additionally, although Italy recently passed a decree boosting the country's reception capacity, a recent report by the Italian Council for Refugees indicates the continuing challenges asylum seekers face in seeking protection in the country, leaving them vulnerable to severely inadequate living conditions and homelessness (CIR 2015). Because of these protection gaps, many EU countries have stopped returning asylum seekers to Italy under the Dublin III Regulation. Most recently, a Belgian administrative court, in two separate rulings in April 2015, suspended the return to Italy of Iraqi and Congolese nationals because it determined that they could face inhuman and degrading treatment in the country (ECRE 2015b).

Italy has supported Libya's immigration control efforts through verbal agreements and the provision of "a program of technical assistance to the Libyan Authorities," including in "a) Professional training; b) Assistance for the repatriation of illegal migrants to Third countries; c) Supply of goods and services; d) Setting up of reception centres for illegal migrants; e) Operational and investigative cooperation" (Government of Italy 2007, p. 16).

In February 2012, in its first judgment on interception-at-sea in *Hirsi Jamaa and Others v. Italy*, the European Court of Human Rights ruled that acts performed by a member State or producing

effects outside its territory could constitute an exercise of jurisdiction by this State. It condemned Italy for exposing migrants and asylum seekers to ill treatment in Libya and being repatriated to Somalia and Eritrea and observed that “Italy cannot evade its own responsibility by relying on its obligations arising out of bilateral agreements with Libya” (ECHR 2012).

Despite the ruling, in April 2012, Italy signed an agreement with Libya covering training programmes, the detention of migrants, and voluntary return. The agreement reportedly lacked any concrete measures to uphold international human rights and refugee law standards. A year after the agreement was signed, representatives of the Italian Ministry of Interior conducted a needs assessment in several “holding centres.”

In May 2009, Libya and Italy launched joint naval patrols in Libyan territorial waters for an initial period of three years. At the time of the patrols, observers pointed to controversial pushbacks efforts (*respingimento*)—forcibly redirecting boats at sea en route to Italy back to Libya—arguing that they were exasperating a humanitarian crisis in the Mediterranean (UN News Service 2009). Italy defended the pushbacks, claiming that when the identities of migrants were clear and transportation was readily available, there was no need to impose administrative detention (Government of Italy 2007). Some observers claimed that the joint naval patrols were deterring migrants and asylum seekers from attempting to reach Sicily and Sardinia (HRW 2009).

In October 2013, responding to steep increases in sea crossings and ship wreckages off the island of Lampedusa, the Italian government established Operation Mare Nostrum, a €9-million-a-month sea rescue mission. According to government estimates, during the one-year operation, the Italian Navy rescued 150,810 migrants and prosecuted 330 smugglers. Despite the operation there were still some 3,000 deaths at sea while it was in place (The Guardian 2014).

In October 2014, Italy announced that it was ending the Mare Nostrum rescue mission, which many observers at the time accurately foresaw would lead to more deaths at sea. It was replaced with a an operation called Triton, a border surveillance program operating close to the Italian coast that is coordinated by the EU’s border agency Frontex. Responding to the change, a representative of the Council of Europe said: “We know that [under Triton] there will be gaps and a vacuum in the territorial waters off Libya, for instance, and that is where the main accidents occur.” And a Frontex official acknowledged: ‘Of course, we will also do search and rescue actions,’ but if you don’t have enough capacity will you be there in time? I would expect many more sea deaths the moment that Mare Nostrum is withdrawn” (The Guardian 2014).

The EU and Italy have both supported the refurbishing of Libyan detention centres and funded the provision of aid in these facilities by international and Libyan nongovernmental organizations (HRW 2014, EC 2014, AI 2013). According to a 2014 HRW report, “The EU and Italy have committed at least €12 million over the next four years to the centres” (HRW 2014).

Italy’s detention practices on its territory have also been the subject of criticism and involved cooperation with a host of international organizations and other non-state actors.

Italy operates several types of secure detention facilities, *Centri di Accoglienza* (CDA, or “Welcome Centre”); *Centri di Identificazione ed Espulsione* (CIE, or “Identification and Expulsion Centres”); and transit zone facilities located at various ports of entry. As of autumn 2014, only five CIEs continued to function as detention centres (those in Bari, Caltanissetta, Roma, Torino, and Trapani), with a total detention capacity of 790 (CIR 2015).

Italy also operates a network of non-secure reception centres for asylum seekers called *Centri di Accoglienza per Richiedenti Asilo* (CARA, or “Asylum Seekers Reception Centre). Four of these asylum reception centres have sections that are used as secure detention centres. According to the Interior Ministry’s webpage, these are located in Bari Palese, Area aeroportuale (744 places); Brindisi, Restinco (128 places); Crotone, località Sant’Anna (875 places); and Foggia, Borgo Mezzanone (856 places) (Ministry of Interior website).

Italy maintains better statistics on detention than its neighbour Greece. For instance, we know that in 2011, the country detained 7,735 people in its main detention centres, CIEs. In 2013, 6,016 migrants were detained in CIEs, of whom supposedly 150 were asylum seekers (CIR 2015).

In contrast to both Malta and Greece, Italy does not systematically detain people seeking international protection. However, asylum seekers can be placed in detention under certain conditions. If a non-citizen applies for international protection while already in detention following an expulsion order, he/she remains in the detention facility, as the legislation does not provide for the possibility to be moved from a CIE to an Asylum Seekers Reception Centre. However, the person’s application is supposed to be given priority and the maximum length of detention is 30 days (articles 21 and 28 of the Legislative Decree 25/2008; European Parliament 2012).

Italy has worked with numerous international organizations and non-governmental charities to assist in the treatment of asylum seekers and others who are in custody for status-related reasons. For instance, in 2006 a broad group of stakeholders, including the Italian Interior Ministry, launched a multi-agency program to address mixed migration flows arriving on the island of Lampedusa, called the Praesidium Project (Strengthening Reception Capacity to Handle Migrants Reaching the Island of Lampedusa, or *Potenziamento dell’accoglienza rispetto ai flussi migratori che interessano l’isola di Lampedusa*) (ICMC 2012).

Funded jointly by the Italian government and the EU, the project brings together the Italian government, UNHCR, IOM, the Italian Red Cross, and Save the Children Italy. UNHCR has helped identify asylum applicants and aided the processing of claims; IOM has provided information to immigrants about Italian legislation on migration matters and assisted immigrants who have opted to voluntarily return to their countries of origin; the Red Cross has provided general humanitarian assistance to detainees; and Save the Children Italy has worked with unaccompanied minors (CPT 2007a, p. 10; ICMC 2012; UNHCR 2010).

Since 2013, the Human Rights Commission of the Senate has also reportedly become involved in Praesidium, apparently with the aim of assessing—along with the other stakeholders in the project, including UNHCR—the outsourcing of services at detention centres. Private entities manage the CIEs, the conditions of which are generally considered to be poor and inadequate (CIR 2015).

III. Malta

Along with Italy, Malta has arguably been one of the EU countries most impacted by the surge in boat crossings from North Africa. While the actual numbers of residing non-citizens and asylum seekers are low, they are quite high vis-à-vis Malta's population of 400,000. Thus, in 2012, Malta had the highest proportion of asylum claims in the EU (4.9 applicants per 1,000 inhabitants), followed by Sweden (4.7 applicants per 1,000 inhabitants). Also, with 20 residing refugees per 1,000 inhabitants, Malta ranks eighth in the world and has the highest rate among European countries. In 2014, 1,280 people applied for asylum in Malta, compared to 2,200 in 2013, and 2,060 in 2012 (UNHCR 2015).

Increasing numbers of irregular maritime arrivals have prompted the government to declare that undocumented immigration has reached an "emergency scale" and that there is a "national crisis" with respect to administrative detention. When Maltese officials refer to this "crisis," they argue that Malta represents an exceptional case due to its small size, high population density, and extensive maritime borders (Mainwaring 2012). This situation recently prompted Malta to oppose a draft Regulation on Sea Operations, which establishes that a country hosting an EU Frontex operation must be the disembarkation location for migrants rescued during the mission. The European Parliament's refusal in December 2013 to amend the draft regulation prompted one observer in Malta to argue that it was "another blow to the island's attempts to put political and diplomatic pressure on the EU to obtain more concrete help to control migration" (Camilleri 2013).

Malta applies a form of mandatory detention which, although apparently unique among EU countries, has some similarities to the policy pursued by Australia. Non-nationals without the right to enter, transit, or reside in the country can be subject to a removal order, which once issued automatically triggers detention.

Maltese authorities have argued that immigration detention is a "powerful deterrent" and alluded to their immigration control measures as a form of punishment. Said the Minister of Foreign Affairs in 2009, "The message needs to ... be received by everyone that entering Malta illegally will not go unpunished." Another government official explained that detention serves to persuade migrants "that they have to go back home. ... It's good that they contact their relatives and say, listen, don't come to Malta because it's terrible here" (Mainwaring 2012).

The *Refugees Act* does not provide specific detention grounds for asylum seekers. Yet, detention of this category of persons is implicitly permitted under the *Reception Regulations* (Regulations 11(2) and 12(6)) and they can be detained under the same grounds as other categories of non-citizens (Warnier de Wailly 2011).

Asylum seekers who have been detained for more than 12 months are moved to non-secure reception centres that fall under the responsibility of the Ministry of Social Affairs and the Family.

Since early 2000s, the vast majority of people seeking international protection in Malta have arrived by boat, having travelled in an undocumented way from Libya. Most are brought ashore after they are rescued from vessels in distress. Upon arrival they are in most cases issued with a return decision and placed in detention. Application for international protection does not trigger a release from detention. As the majority of asylum seekers reach Malta after travelling irregularly by boat from Libya, most are detained (Aditus and JRS Malta 2015).

In 2011, out of a total of 1,886 asylum seekers, 85 percent applied for asylum after they had

been apprehended and placed in detention. Of these, 98 percent (1,579 people) were “boat-arrivals.” As of February 2015, Malta used two facilities for detaining asylum seekers and migrants awaiting removal (Safi B Block and Lyster Barracks). At the end of 2013, these facilities confined around 500 migrants, with more than 1,900 non-citizens passing through detention during 2013 (Aditus and JRS Malta 2015).

In January 2015, a German Administrative Court suspended a transfer to Malta under the Dublin III Regulation because of shortcomings in reception and detention conditions and procedures. It noted that asylum seekers in Malta risk being subjected to inadequate detention conditions for a prolonged period and without access to an effective remedy. The court concluded that it could not be sure that asylum seekers in Malta would be treated in line with the EU Charter of Fundamental Rights, the 1951 Geneva Refugee Convention, or the European Convention on Human Rights (ECRE 2015).

IV. Spain

Although the current Mediterranean migration crisis has not impacted Spain as much as some of its European counterparts, its policies have had an important impact on the evolution of the migration phenomenon throughout the region. Additionally, as it suffers one of the worst financial crises in its history, Spain has experienced hardening public attitudes towards migrants, a trend highlighted by the UN Special Rapporteur on Racism (OHCHR 2013).

A surge of unauthorized immigration into Spain at the start of 2000 led Spanish and European authorities to reinforce border security, including by constructing fences in the enclaves of Melilla and Ceuta to prevent African migrants from accessing these Spanish territory on the coast of Morocco and increasing operations with Frontex. The Spanish government has also assisted African countries to improve interdiction of migrants. Most notably, Spain funded the creation of a detention centre in Mauritania that has been used to confine third-country nationals interdicted on the high seas en route to the Canary Islands (AI 2008, p. 24).

These detention and interdiction efforts have played an important role in shifting migratory routes elsewhere in the region. Thus, for instance, according to observers, it was not until 2008, after **Spain** and **Italy** had effectively blocked routes into their countries, that “Greece became the main gate of entry into the European Union” (PACE 2013).

The expansion of Spain’s migrant detention infrastructure appears to have largely paralleled growth in immigration to the country. In a 2011 study of Spain’s detention practices completed for the Global Detention Project, the Madrid-based group **Pueblos Unidos** reported: “The majority of the centres are recent, coinciding with the economic growth and large migration flows to Spain during the period 1990-2005” (Pueblos Unidos 2011).

However, the group reported that although many of the facilities are relatively new, the buildings they are housed in are not. In fact, most of the detention centres are located in former penitentiaries or military barracks (Migreurop Spain 2011; Jarrín Morán et al. 2012). According to Pueblos Unidos, among the “most significant results” of its investigation was “the lack of official information about each of the country’s detention centres. In cases where official information does exist, it is not easily accessible” by the public (Pueblos Unidos 2011).

Persons in asylum proceedings are generally not detained in Spain. However, those who apply for asylum after being placed in detention remain detained pending the decision on admission into the asylum procedure (CEAR/FR). In 2011, 10 per cent of requests for asylum (261) were made within detention centres (CEAR 2012). Requests for asylum issued in immigration detention can be declared inadmissible within four days of being formulated, resulting in continued detention if they are rejected. NGOs have described this tight deadline as a serious obstacle to providing international protection (CEAR 2012). The deadline can be extended for up to 10 days at UNHCR's request (Asylum Law Articles 21 and 25.2 and CEAR/FR). When the asylum claim is declared admissible, it is then processed under a three-month accelerated procedure (EDAL).

In 2014, 5,900 persons sought international protection in Spain, compared to 4,510 in 2013, and 2,580 in 2012 (UNHCR 2015).

While Spain does not collect data on the number of asylum seekers in detention it does provide information about the number of detained asylum seekers channelled through accelerated procedures: 306 in 2013 (out of 9,020 immigration detainees), 160 in 2012 (out of 11,325 immigration detainees), and 261 in 2011 (out of 13,241 immigration detainees) (Spanish National Contact Point to the European Migration Network (EMN) 2014).

In 2014 Spain came under criticism for summary removals of non-citizens in Ceuta and Melilla. In December 2014 the Spanish Parliament passed legislation that would allow summary pushbacks to Morocco in Spanish enclaves (ECRE 2014b). The law has been the subject of intense criticism from Spanish lawyers and academics. Migrants attempting to cross into Spain are often victims of police brutality on both sides of the border (Álvarez, Rafael J. and Sanmartín Olga R. 2015).

Following his January 2015 visit, the Council of Europe's Commissioner for Human Rights called on the Spanish government to stop pushbacks to Morocco and reconsider legislative amendments legalizing this practice (ECRE 2015).

NORTH AFRICA

I. Libya

With Libya experiencing large-scale internal displacement as the country becomes increasingly engulfed in civil war, migrants, asylum seekers, and refugees are finding themselves systematically exposed to arbitrary and indefinite detention in conditions described as “abysmal” and “unacceptable” by UN and civil society observers. People from Sub-Saharan countries are most at risk of detention and ill treatment as anti-black racism, endemic in Libya, has been exacerbated by the crisis (Seymour 2011, AI 2012, Aljazeera 2014).

In the past, Italy’s and the European Union’s arrangements with Colonel Muammar Gaddafi, including multi-million-Euro “migration management” projects, led to mass expulsions and an increase in detention (EC 2013, DRC 2014). Observers argued that these EU externalisation efforts helped spur the creation of “one of the most damaging detention systems in the world” (van Aelst 2011).

However, EU countries have continued to negotiate deals providing tens of millions of Euros to Libya to process asylum seekers and irregular migrants expelled from or intercepted en route to Europe (HRW 2014, AI 2013, Malmström 2014). The deepening chaos in the country—coupled with the on-going conflicts in the Middle East—has generated a surge in irregular migration from Libya across the Mediterranean. The Libyan coast has become a gateway for mixed migratory flows from Eritrea, Ethiopia, Somalia, Sudan, and Syria.

Human rights groups and international organizations have long criticized the country for its deplorable detention conditions, widespread corruption, flourishing migrant smuggling rings, and more recently the failure to take control of detention centres run by militias. Conditions have worsened as a result of fighting across the country and the breakdown in public services.

According to UNHCR, 15 immigration detention centres run by the Department for Combating Illegal Migration (DCIM) were in use as of April 2015 (UNHCR 2015a). The refugee agency has reported that it knows of 2,663 migrants or asylum seekers (including women and children) detained in eight detention facilities, representing a twofold increase since March. Detainees are mostly Somalis, Eritreans, Ethiopians, and Sudanese. Other sources report that Bangladeshis, Egyptians, and migrants from West African nations—Niger, Chad, Nigeria, Gambia, and Senegal—are also frequently detained (Murray 2015). Conditions at these facilities are bleak, with overcrowding on the rise and poor hygiene and sanitation and rising temperatures. UNHCR reports that usually they are able to obtain the release of refugees and asylum-seekers registered with its office within a few days but other detainees can spend up to a year in detention (UNHCR 2015a).

In April/May 2013 an estimated 1,700 asylum-seekers were held in detention (AI 2013). UNHCR provided assistance to persons of concern in detention and advocated for alternatives to incarceration until early 2014, but it suspended activities for a time due to the upsurge of conflict in main urban areas (UNHCR 2014).

Libya has not ratified the 1951 Refugee Convention or the 1967 protocol, and it has failed to adopt asylum legislation. It is party to the 1969 Convention governing the Specific Aspects of Refugee Problems in Africa, and has endorsed the 1965 Protocol for the Treatment of Palestinians in Arab States. Until the armed conflict in 2011, the country’s 1969 Constitution,

adopted by Muammar Gaddafi's Revolutionary Command Council, prohibited the extradition of "political refugees" (Article 11). A Constitutional Declaration adopted on 3 August 2011 by the Interim National Transitional Council also prohibits the extradition of political refugees and further guarantees the right of asylum (Article 10).

Approximately 37,000 refugees and asylum seekers are registered with UNHCR in Libya as of early 2015; 18,710 are Syrian nationals and 18,274 refugees and asylum-seekers come from over 30 other countries (Libya HTC 2014, UNHCR 2015). There is no official Memorandum of Understanding between UNHCR and Libya. UNHCR has been tolerated and allowed to conduct Refugee Status Determinations (RSDs) in Libya since 1991 under an informal mandate that allows it to issue asylum seekers with letters of attestation, which are not always recognised by Libyan authorities. In July 2008, an agreement was signed between UNHCR, the International Organization for Peace, Care and Relief IOPCR, the International Centre for Migration Policy Development (ICMPD), and the Italian Council for Refugees to protect the rights of asylum seekers and refugees in Libya, particularly those held in detention (UNHCR website, USCRI 2008). Through this agreement, more than 630 refugees and asylum-seekers have been released.

Through a UNHCR partnership with the International Medical Council in 2014, 48 monitoring visits were conducted in various immigration detention centres as of August 2014 to provide non-food items and health services to detainees (Libya HTC 2014).

In its submission to the Human Rights Council's Universal Periodic Review in 2014, Human Rights Watch reported that the authorities did not allow UNHCR to register asylum seekers in detention. These included Eritreans and Somalis, whom Libya does not deport to their home countries, but who often spend long periods in detention until they can pay their way out or until their embassies secure their release. Other would-be asylum seekers are deported, similar to undocumented migrants (HRW 2014b).

Although Libya had ratified seven of the nine core international human rights treaties prior to 2011, it had a very poor reporting record on implementation and on cooperation with human rights investigation mechanisms. As a result, reports by international NGOs and international organisations are the main sources of information on the situation of immigration detainees. However, in late 2014, many of these organisations—including ICRC, UNHCR, and the IOM—suspended most their operations in the country because of the deteriorating situation.

Before it suspended activities in mid-2014, UNHCR provided assistance to over 5,400 persons in immigration detention centres in Libya, including distribution of mattresses, clothes, hygiene kits and other core relief items. It also supported a partner agency to provide medical care to detainees. UNHCR regularly visited nearly 20 immigration detention centres managed by the Department for Combating Illegal Migration (DCIM) and monitored the conditions of refugees and asylum seekers detained in Libya (UNHCR 2014b). In 2013, UNHCR visited approximately 24 then-operational centres across Libya (under the DCIM or otherwise), and conducted follow-up visits to assess and monitor the welfare of detainees, conditions of the detention facilities, provide non-food items, identify vulnerable cases and protection issues and to attempt to address them (UNHCR/DRC 2013).

II. Tunisia

Long a country of emigration, Tunisia has in recent years become an important destination and transit country for migrants and asylum seekers, particularly in the wake of the Libyan uprising in 2011 and the ensuing armed conflict there. Although it is a signatory to the 1951 Refugee Convention and adopted a new Constitution guaranteeing political asylum in January 2014, Tunisia remains without an asylum system as the country awaits adoption of a law on asylum and protection. UNHCR has an on-going “technical dialogue” with the Tunisian government aimed at establishing national regulations regarding asylum and refugee law (CE/HRU 2014).

This protection vacuum became the focus of criticism from Tunisian and European civil society groups when the European Union (EU) concluded a “Mobility Partnership” with Tunisia in March 2014, paving the way for the establishment of a readmission agreement. Such an agreement could lead to sharp increases in the number of detained non-citizens in the country as the EU begins returning both Tunisians and third-country foreign nationals who transited Tunisia before arriving in Europe. (Similar concerns have been raised in other countries with which the EU has concluded readmission agreements, including [Ukraine](#) and [Turkey](#).)

As of early 2015, the Mobility Partnership has yet to be implemented. However, EU members (particularly Italy) are reportedly making bilateral inroads with Tunisia and Egypt to boost their involvement in search and rescue operations. According to Italian researchers, people on boats leaving Libya and intercepted by the Tunisian Garde Nationale are to be disembarked in Tunisia and their cases processed there in what has been described as an “EU pre-frontier space” (Garelli, Sossi, and Tazzioli 2015).

According to the same source, hundreds of people who are detained every month at the Al Wardia detention centre in Tunis have no access to legal assistance and confront severe official corruption in the facility. Sub-Saharan migrants in detention are now held with newly arrived Syrian refugees who have often transited through Turkey or Lebanon and Egypt, as well as recognized refugees, including some who previously were at the officially shuttered Choucha refugee camp.

The only way out of detention is for detainees to pay for return to their own country, or deportation to Algeria. Ex-detainees interviewed by the Italian researchers claimed that neither IOM nor UNHCR seemed to answer their calls for assistance. Deportations reportedly take place every week, at night or early in the morning and there are reports of migrants getting lost in the desert and dying there. There is another detention facility for women and children next to Al Wardia and four other immigration detention facilities in the country, including in Alaouina, Tunis.

The Libyan crisis triggered a massive mixed migration movement to Tunisia. About one million people, including 200,000 non-Libyan foreigners, entered Tunisia from Libya during a six-month period in 2011. Most of these people were able to voluntarily return to their country of origin while about 4,700 persons requested UNHCR’s protection and assistance in Tunisia. It was the first time in 50 years that Tunisia hosted refugees (Harzalli 2013).

In June 2013, UNHCR shuttered the last remaining refugee camp in Tunisia, the Choucha transit camp, which was located on an arid strip of land between the town of Ben Guerdane and the border with Libya. Some 400 people who had received refugee status remained in the camp at the time of closure, which prompted the government to announce it would supply them with residence permits. Six months later, however, the refugees were still waiting to receive the permits, leaving them without access to basic services and vulnerable to arrest.

In addition to the recognized refugees, there remained several hundred rejected asylum seekers after the closure of the Choucha camp, who were in a very vulnerable situation. Many of these people have attempted to cross the Mediterranean to Europe, before being apprehended by the Tunisian navy and placed in detention in Ben Guerdane (Romdhane 2013).

The situation of sub-Saharan refugees in Tunisia is particularly acute. According to Human Rights Watch, upon arrival in Tunisia, these refugees do not receive proper care. They also face endemic “anti-black racism” (Harzalli 2013).

IV. Egypt

Against a backdrop of harsh civil society crackdowns in Egypt, on-going political turmoil in the Middle East, and severe poverty and repression in nearby African countries like Eritrea, refugees, asylum seekers, and unauthorized migrants in Egypt remain subject to numerous abuses and face enormous challenges regarding their futures.

Egypt has long been a destination and transit country for large numbers of asylum seekers and irregular migrants, including Sudanese, Iraqis, Ethiopians, Somalis, and Eritreans, as well as more recently people fleeing violence in Syria and Gaza. Since early 2013, the Egyptian police have reportedly detained several thousand people fleeing Syria (Kingsley 2014).

In 2014, Egyptian soldiers on several occasions reportedly fired on smuggling vessels heading for Europe that were packed with Palestinians fleeing Gaza after the Israeli bombing during the conflict with Hamas (Rollins 2014; Beaumont and Kingsley 2014). To accommodate those detained during these operations, authorities in Alexandria reportedly used a youth centre in Alexandria (Rollins 2014), bolstering a large network of police stations in the region that have been used for migrant detention operations.

Migrants and asylum seekers in Egypt are particularly vulnerable to detention as part of criminal processes. According to information received by the Global Detention Project, persons apprehended in the country without proper documentation are often charged with criminal violations stemming from their alleged irregular status and then incarcerated in prison facilities, which are notorious for being overcrowded and lacking basic detention conditions.

Compounding matters, Egyptian authorities have prevented rights bodies from accessing detainees. UNHCR Cairo has requested access to a number of persons in detention, including potentially stateless persons, without success (Pierrot 2013).

Egypt is party to the 1951 UN Refugee Convention and its Protocol, with reservations in relation to personal status, rationing, public relief and education, labour legislation, and social security. It is also a signatory to the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa. Additionally, Article 91 of the 2014 Constitution provides that political asylum must be available to anyone who has been persecuted for defending human rights, peace, or justice.

Despite these provisions, national determination procedures have not yet been developed for the recognition of refugees. In addition, Egyptian law does not provide protection for stateless persons, and Egypt is not a party to either of the statelessness conventions (ERT 2010).

While asylum seekers and stateless persons have the right to legal representation, the lack of access to asylum procedures frequently leaves them subject to criminal and administrative detention based on charges of illegal entry and residence in Egypt.

UNHCR's Cairo office has the authority to make Refugee Status Determinations (RSDs) based on a 1954 Memorandum of Understanding (MOU) with Egyptian authorities (UNHCR 2014c). In 2011, UNHCR reportedly began conducting RSD interviews at the border points of Sallum for persons entering Egypt from Libya and wishing to claim asylum.

Rejected asylum applicants must appeal the decision within one month. Rejected or late appeals result in cases being closed and a loss of UNHCR protection. Those definitely rejected by UNHCR remain in detention until they voluntarily repatriate or the Egyptian government forcibly deports them.

According to UNHCR the detention of those moving irregularly, including asylum-seekers, has increased in recent years. The refugee agency reported in 2013: "After intensive multilateral efforts, more than 170 Syrian and Palestinian refugees were released in December from detention centres in Alexandria, Beheira and Port Said governorates" (UNHCR 2013c).

Observers have also repeatedly expressed concern about the detention of minors. In 2011, the UN Committee on the Rights of the Child recommended that Egypt should not detain asylum-seeking children and should ensure unimpeded access to any detained asylum-seeking child by UNHCR (CRC 2011).

Egypt initially applied an open-door policy regarding people fleeing the conflict in Syria. However, since the ouster of former President Morsi in 2013, the country has adopted increasingly stricter policies, including new entry requirements for Syrian nationals. There were nearly 135,000 Syrian refugees registered with UNHCR as of April 2015.

There have been numerous reports about detained Syrians. Approximately 1,500 refugees from Syria, including at least 400 Palestinian refugees and 250 children, were detained during the second half of 2013, according to Human Rights Watch. Up to 1,200 of these detainees were sent to Turkey, Lebanon, or Syria, where they could face arrest and torture. The government denied that Syrian refugees were forced to leave and stated that "No Syrian refugee is made to depart from Egypt unless they have been proven to have entered the country through illegal immigration, an action contrary to Egyptian law" (AFP 2013).

More recently, the Center for Refugee Solidarity reported in early 2015 that several dozen Syrians and Palestinians had been in detention for several months at Karmouz police station in Alexandria. In February, many of the detainees went on hunger strike to protest their situation. Although the Public Prosecutor ordered their release a few days after their arrival in November 2014, Egypt's Homeland Security issued orders for their deportation and that they be remained in detention without charge (CRS 2015).

The worsening conditions in Egypt have spurred many Syrians to attempt to flee the country. According to one report from 2013, "More than 1,500 Syrian and Palestinian refugees from Syria have been arrested in Egypt [between August and December 2013] for trying to leave illegally by sea. The attempted exodus underscores how unwelcoming Egypt has become to Syrians since the military ousted former President Mohamed Morsi" (Chick 2013).

IV. Morocco

Morocco has worked closely with its European counterparts to block asylum seekers and undocumented migrants from transiting the country en route to Europe. These efforts have stirred criticism of the EU for abetting abusive Moroccan immigration practices. A 2010 study concluded that EU cooperation with Morocco on immigration policy “runs the risk of contributing directly to the implementation of migration policies that are contrary to the basic rights of migrants and refugees” (EMHRN 2010).

More recently, in February 2015, the EU and Morocco restarted negotiations on a readmission agreement that would enable European countries to deport third-country nationals to Morocco. Shortly after the negotiations began, Moroccan authorities launched raids that led to the arrests of some 1,200 people, including unauthorized migrants and asylum seekers.

The arrests put an abrupt end to an exceptional regularization process intended for all undocumented persons in the country that had been launched in 2014 and were widely denounced by Moroccan and international NGOs. As of mid-February, 450 people remained in detention in various locations across Morocco.

The regularization effort initially began in 2013 when an Ad Hoc Committee, which included UNHCR, began reviewing cases with a view to regularizing the situation of people of concern to UNHCR, in accordance with international legal standards (UNHCR 2014d). When the regularization program was officially launched in 2014, Moroccan authorities maintained that it was aimed at formally recognizing the refugee status granted by the UNHCR to some 850 refugees (Engolo 2013). According to observers, a negative consequence of this campaign was that UNHCR, at the request of the government, reportedly stopped processing new asylum claims after September 2013, pending the creation of the Foreign Affairs and Cooperation Ministry’s joint processing structure with UNHCR (Chaudier 2013).

Nearly 60 percent of applications for regularization were granted (some 17,000 cases), including close to 20 percent of Syrian cases. The inclusion of Syrians in the regularization program is striking given that these cases could likely have been dealt with separately in line with the Refugee Convention and its 1967 Protocol ratified by Morocco. However, while Morocco has ratified the relevant conventions—including the 1969 OAU Convention on the rights of refugees—it lacks a legislative and institutional framework in relation to asylum and refugee protection. Although the government has announced that it is developing a national asylum system, as of April 2015, it remains without a national asylum system consistent with international standards and UNHCR has been forced to continue its efforts to register new asylum seekers and intervene in cases of arrest and detention (UNHCR 2015b).

Law No. 2-57-1256 of 29 August 1957 outlines procedures for implementation of the Refugee Convention, providing legislation enabling refugees recognised by the UNHCR to legalise their residency in Morocco (EMHRN 2010). The *Bureau des réfugiés et apatrides* (BRA) was established to process asylum seekers and recognise refugees registered with UNHCR, but their operations were suspended in 2004, halting implementation of the refugee law.

Before 2004, UNHCR-registered refugees received residence permits. Since 2004, refugees holding a UNHCR certificate have generally been permitted to remain in the country, but they are not granted residency permits, leaving them vulnerable to irregular status and a lack of access to most rights, including access to the labour market (EMHRN).

UNHCR retains sole responsibility for refugee status determination (RSD) based on a 2007 agreement (UNHCR 2010). The 2003 Migration Act provides some rights to asylum seekers, including in relation to residency (Art. 17), requesting asylum at the border when entry is denied (Art. 38), and protection against expulsion and administrative removal (Art. 29). Observers have noted, however, that these procedures are not generally practiced (EMHRN 2010).

UNHCR reports that it is granted only limited and ad hoc access to Morocco's entry and exit points, including border areas and airports. This acts as a significant constraint on the organization's activities and also limits the access that asylum seekers have to the organization and the services that it provides (UNHCR 2010).

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