

AN ANALYSIS OF THE HUMAN RIGHTS SITUATION OF THE MIGRANTS AND THE REFUGEES IN LIBYA

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INTRODUCTION

Libya is a northern african country and is bordered by the mediterranean sea. Its neighbouring countries are Egypt, Sudan, Chad, Niger, Algeria, Tunisia.it covers an area of almost 1.8 million sq. kilometers.^[1] It is very vital to understand these geographical factors in order to understand the political and the humanitarian atmosphere of Libya. When we look at the border of Libya, it is known to be the largest of the continent with the mediterranean sea and an immense land border sharing with the poorest countries of the world.^[2]

This blog aims to analyse the human rights situation of the migrants and the refugees in Libya by reviewing the political situation between 2011 and 2017. It also tries to explain the role of the Libyan government authority and other organizations.

POLITICAL BACKGROUND (From 2011)

In the year 2011, when there was a fall of 40 years of rule by the Mu'ammarr Qhadafi in Libya^[3], different powers started emerging in order to govern the country and so for a year from 2011, the national transitional council (NTC) was in power and governing the country^[4]. NTC was decisive in restoring the functional state institutions such as the judicial system, national security system and the basic services that are made available to the citizens of the country. It had made an effort to reform the laws which resulted in the declaration of the rights and freedom to the citizens of the country (Article 7-16), form of state governance at the time of the transitional stage (Article 17-30), as well as the judiciary(Article 31-33)^[5]. It also proposed the appointment of the ' Executive Officer' or the 'Interim Government' (Article 24), the establishment of the 'Account Department' which would be undertaking the role of controlling the financial aspect of the country such as revenue, expenses, all the movable and immovable property belonging to the state (Article 28)^[6]. There were many other laws that were being formulated and after which within the

period of 180 days the election was to be held. Many experts state the reason for the laws not being implemented as after the fall of Gaddafi's reign, the financial condition of Libya was lethargic.^[12] In the year 2012, the very first free election in Libya took place and NTC lost the election and was replaced by the General National Congress (GNC) even though it was known to be the temporary transitional Government, it took the role and the primary role of the GNC was to strengthen the country within 18 months which it had failed to do so and so it had to announce for the net election which was held in 2014. In that election, the house of the representatives had taken over the role and control. Later the representatives who were not part of the House of Representatives joined together and formed a new party known as 'new GNC' which was held unconstitutional by the highest court of Libya.^[18]

In the present times, it is seen that House of Representatives has a powerful position for whatever the political situation of Libya. It is very evident that there is a strong link between politics and the military and it becomes very difficult to separate the two as every political party is known to have independent military support. House of Representatives is supported by the Libyan Dawn Coalition while GNC is supported by the Libyan National Army. These military forces often resolve the issues between the political parties and are the main actors of the second civil war.^[19]

In December 2015 the political parties that were rivals had signed an Libyan Political Agreement with the help of international assistance where the government of the national accord is to exercise the executive power^[10] and House of Representatives is to have the legislative authority^[11] which is to be supported by the state council as the highest consultative assembly.^[12]

The agreement had formulated the political, security, economic and the service related priorities.^[13] In the resolution 2259 of 2015, the U N Security Council had supported the Libyan Agreement.^[14] The external political support who had pushed for diplomacy and supported the signature of agreement are divided on the basis of the priorities of the objectives of the libyan parties. So, some of the western countries such as the USA, support the government of the national accord and their primary objective is to fight against the islamic states and to control the entry of the migrants and refugees. The opposition group is led by the Egypt, the United Arab Emirates and Russia and their main objective is to unite the national army as they being more concerned about the influential

Islamist militias controlling the Tripoli.^[15]

Even after the signing of the Agreement there is still a certain amount of uncertainty with the implementation of it and Libya is still seen to have issues in regards to security, political dysfunctionality and the economic disparity.^[16]

MIGRANTS AND REFUGEES IN LIBYA

After the fall of Gaddafi's 40 years of reign, it had created an unstable political atmosphere in Libya. There was an uproar of armed conflicts, criminal activities such as smuggling and human trafficking. There was an initiation of the proliferation and control which was exercised by the armed forces over the majority of Libya.

There was initiation of armed aggression in the year 2014, it had caused Libya to observe security governance and the humanitarian crisis which was characterized by the ongoing violence, disintegration of the governmental institutions and the crumbling of the rule of law^[17]. Even though the Government of National Accord (GNA) being internationally recognised, it had failed to control the nation and to make the armed forces and people or organizations responsible and accountable for abusing refugees and migrants. As per UNHCR, 2018 it was observed that around 53,285 refugees and asylum seekers had registered^[18].

VIOLATIONS AND ABUSES OF THE MIGRANTS AND REFUGEES RIGHTS

1. Abuses by the smugglers and traffickers-

Migrants and the refugees that enter the borders of Libya have to go through a long and risky journey through the desert. One Senegalese migrant in his twenties had migrated to Libya in search of a good life and job had stated that his experience while going there and living there was very bad and got worse and had only seen violence, detention and exploitation.^[19]

In an interview by the UNSMIL^[20], the migrants and the refugees had stressed on the fact that there was killings, extreme violence, torture, rape and the forced labour by the smugglers or the traffickers. It was said that they were held captive in order to extort money from the family of those who had been held by them. Even after these incidents that have been occurring in large amounts, being recorded the Libyan authorities have failed to

take control of the situation or even recognise it.^[21] It is seen that there is a law that criminalizes illegal migration but it fails to enact a law for protecting the migrants from all the abuses that they have to go through due to smugglers and the traffickers.^[22]

2. Inhuman Conditions, Starvation, Abuse and Exploitation-

The smugglers and the traffickers hold the migrants until they have been given money by their families in an unhygienic and overcrowded place with lack of access to water, washing facilities and latrines^[23]. The migrants and refugees left with no other alternative but to relieve themselves in the buckets or outside somewhere.^[24] This could lead the migrants to have skin problems, respiratory problems and gastro-digestive ailments.

Majority of the migrants and the refugees have faced extreme violence by way of beating with different objects, suspension from bars, pouring petrol, boiling water, electric shocks, stabbing, pulling nails, application of heated metals to flesh and much more.^[25]

3. Dangerous sea crossing and rescues-

After being through so much abuse by the smugglers and the traffickers, the further journey of the migrants seems to be worse as they are shoved into the wooden boats that are not appropriate for travelling or into the rubber dinghies without lifejackets, and at times without a compass, escorts or the satellite communication.

In August 2017, it was declared by Libya for the extension of its search and rescue zone to 94 nautical miles off its coast and it was seen that LCG had taken a lot of efforts to rescue the migrants and it by taking charge of the rescue operations.^[26] However, once the migrants and the refugees had arrived in Libya, they had failed to recognise and appreciate how much pain they had to suffer. Some of the migrants and the refugees that had reached Tripoli in 2017 had mentioned that primarily they were taken to some outdoor area and were made to sleep on the gravel for one night. The male migrants and the refugees were strip searched and all their personal belongings were seized by the armed forces. The next day they were taken to the Tarik a-Souq DCIM.^[27]

4. Violation in Migration-Related Detention-

The Ministry of Interior had instituted the Department of Combating Illegal Migration (DCIM) in the year 2012 in order to manage immigration detention centres and it was officially known as the “sheltering centres”.^[28] Most of the detention centres were under the

control of the armed forces where they had the power to order and established their own regime to control such detention centres even though it came under the authority of the Ministry of Interior.

In the year 2017, when the Brigadier-general Mohamed Bishir had taken the office, he had decreased the autonomy of the armed forces to take control of the detention centres and so, in general, had decreased the amount of the functional detention centres. He had also mandated for the centres to treat the detainees humanely and had ordered for the shutdown of the centres that violated the Human Rights. However, it is evident that the implementation had no effect on the armed forces and they continued to do what they had been previously doing.^[29]

5. Violation and Abuses outside the Context of Detention-

It is seen that the migrants and the refugees that are not in detention are being exploited and abused by the criminal gangs or the private Libyan citizens or the armed forces and they do not have any protection from the police or any redressal mechanism.^[30]

6. Assault and Theft in the Streets

Due to the absence of the legal structure, the refugees and the migrants suffer it so occurs due to lack of governmental support and the redressal mechanism. Many of the migrants and the refugees had limited their movement in order to reduce the risk of theft and assault. One of the migrants had said to UNSMIL in an interview^[31] that armed men from the forces would often barge into their houses and take away their belongings. It was observed that the robbing by the armed forces would take place very often.

Above mentioned are very few of the violations that have taken place and still continue to take place. Some of the other violations include rape, forced prostitution and other sexual violation, arbitrary and indefinite detention, torture and ill-treatment, forced labour, unpaid wages, arbitrary arrest and detention, lack of accountability for violence against women^[32] and much more.

CONCLUSION

After the fall of Gaddafi's reign, there was supposed to be a change in the legal structure and the institutional structure of Libya and there were many attempts made to change those systems and lead it more towards the democratic regime however due to many political forces and the armed forces it is still battling the political instability. The two leading political parties did sign an agreement in order to establish a democratic regime

but they failed to do so. As a result of so much instability, lack of redressal mechanism, proper authoritative government, law in place, it is seen that the political armed forces are taking the advantage of the situation to benefit themselves and exploiting, and abusing the migrants and the refugees who have moved to Libya in order to have a better life. There have been records of the human rights violations of migrants and refugees on a daily basis. With the government failing to take charge or even recognizing the situation that exists. As a result of the governments failing, the international organization are trying to intervene and take care of the situation, where UN in its report had recommended certain amendments and reporting the activities to hold the government responsible, EU trying to help by providing financial aid and support to stop the flow of the migrants in Libya and to stop their human rights abuse.

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