AFRICAN TRANSIT MIGRATION THROUGH LIBYA TO EUROPE: THE HUMAN COST
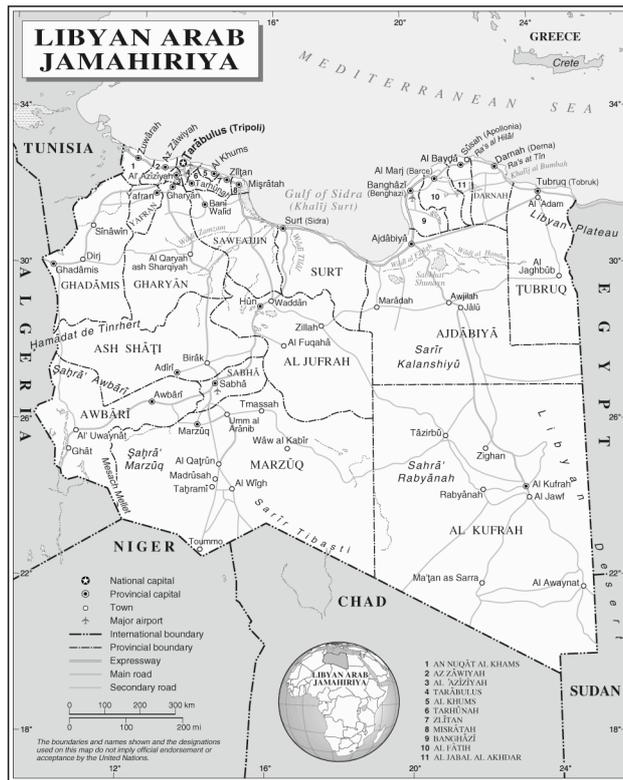
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AFRICAN TRANSIT MIGRATION THROUGH LIBYA TO EUROPE: THE HUMAN COST

Cover painting by the Sudanese artist: *Nezar Mosa Noreen*

EXECUTIVE SUMMARY

Aims of the report

This report seeks to shed light on the experiences of refugees, asylum-seekers and migrants temporarily residing in and passing through Libya en route to the EU.

The report examines the experiences of refugees, asylum-seekers and migrants in Libya. It also analyzes the notion of protection for refugees and asylum-seekers in Libya both from a legal perspective and as understood by refugees and asylum-seekers themselves.

It further tracks the journeys of refugees, asylum-seekers and migrants, originating from Egypt, Sudan and the Horn of Africa, from their countries of origin to the ultimate destination of the EU.

Finally, it outlines and analyzes the cooperation between the EU and Libya on migration issues.

Research findings

In recent years, Libya has increasingly come to serve as a key transit country, particularly for North and sub-Saharan Africans heading for Europe. In Libya, refugees and asylum-seekers are not afforded adequate protection due to unclear policies regulating their stay in the country and to a lack of recognition of the specific legal status of refugees. The experiences of refugees and migrants alike are characterized by a lack of state protection regardless of their legal status in the country. They risk detention and, once detained, ill-treatment. Sub-Saharan Africans face the additional difficulty of racism from state officials as well as from Libyan society at large.

The route through Libya to Italy is characterized by mixed migratory flows, whereby refugees and migrants use the same routes and methods to arrive at their intended destination. Both refugees and migrants find themselves in a highly vulnerable situation, at the mercy of smugglers who facilitate their transport through the desert to Libya, within Libya and across the Mediterranean Sea. Their irregular situation exposes them to great risks as they are forced to travel along difficult routes using dangerous means of transport. In many cases, these journeys end in disaster, with the deaths of family members, friends and fellow travelers.

Once in the EU, refugees and asylum-seekers are still not ensured adequate levels of protection and risk indirect *refoulement*, whereby Italy deports people to Libya, who are then returned from Libya to their country of origin in what amounts to a *refoulement*.

An analysis of the existing cooperation between the EU and Libya and of the EU's vision of dealing with Libya's increasing use as a stepping stone to Europe raise the fear that this cooperation is guided primarily by a desire to prevent the flow of people into the EU, regardless of their protection needs. EU-Libya cooperation on combating irregular migration is still in its early stages but evidence so far suggests that a security approach of border control and surveillance is being adopted, while only

superficial attention is being paid to ensuring human rights protection to refugees and migrants alike.

The detailed testimonies contained in this study inform the ongoing negotiations and developments in defining the nature and extent of cooperation between the EU and Libya on irregular migration, with the desired outcome of human rights principles guiding future cooperation.

Key recommendations

- To develop national asylum legislation in Libya, in full compliance with international human rights standards
- To ensure that UNHCR Tripoli is able to carry out its full mandate in assuring refugee protection
- To bring to a halt deportations from Italy to Libya and from Libya to countries of origin until such time as a full screening process for asylum-seekers is put into place both in Italy and in Libya to ensure that *refoulements* do not take place.
- To tackle the root causes causing people to migrate from their countries of origin or from the countries of asylum or transit.

INTRODUCTION AND BACKGROUND TO THE RESEARCH

As this paper was in its final stages, the deaths of another 11 'boat people' in the Mediterranean Sea hit the press. Among the dead, on this occasion, was a six-month-old baby (Reuters, 11 September 2005). They suffered the fate of many others who have attempted to cross the Mediterranean in ramshackle boats from Libya to Italy. The United Nations High Commissioner for Refugees (UNHCR) believes that the situation has now "*reached the proportions of a major humanitarian crisis*" (UNHCR, 2005a).

No one knows exactly how many people perish at sea but most deaths probably go unreported and the bodies of the deceased remain unidentified. Even less is known about those who lose their lives during the desert crossing from sub-Saharan Africa to Libya. Both at sea and in the desert, the casualties are men, women and even children. The passage to Europe via Libya – typically composed of the desert crossing, travel within Libya, and the boat trip across the Mediterranean Sea – is a treacherous journey. Most refugees, asylum-seekers and migrants alike are left at the mercy of smugglers at each leg of their difficult journey.

Foreigners, the majority with an irregular or ambiguous legal status, represent a significant proportion of the population in Libya. Many either plan to or end up spending time living and trying to find work there. While for some this proves to be a profitable period, for many others it is wrought with problems encountered both from ordinary Libyan citizens and from the state apparatus. In particular, the lack of distinction between refugees and migrants in Libya means that the vast majority of refugees and asylum-seekers are not afforded adequate protection by the Libyan authorities. The irregular status of many, both while en route to the European Union (EU) and when based in Libya, leads to a heightened sense of vulnerability.

This research aims to shed light on the experiences of refugees, asylum-seekers and migrants temporarily residing in and passing through Libya en route to the EU. In particular, it tracks the journeys of refugees, asylum-seekers and migrants from Egypt, Sudan and the Horn of Africa from their countries of origin to the ultimate destination of the EU. While focusing on the experiences of life in Libya and on the hardships of the journey to the EU, it also seeks to address the underlying factors leading to this irregular flow. It is hoped that this study will inform the ongoing negotiations and developments in defining the nature and extent of cooperation between the EU and Libya on irregular migration, with the desired outcome of human rights principles guiding future cooperation.

Over 2004 Libya's transformation from a destination country to a transit country received increasing visibility as it gained recognition as a key point of entry to Europe by sea. It also became apparent that refugees and migrants in Libya faced serious difficulties. At the same time, due to its growing importance as a stepping stone to Europe, the EU and Libya began moves towards cooperation, specifically on migration issues, despite a stated lack of formal relations between the two parties.[1]

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[1] Libya is not yet party to the Euro-Mediterranean Partnership (otherwise known as the Barcelona Process), which regulates relations between the EU and southern Mediterranean countries.

In this context, there was a clear lack of detailed information about the transformation of Libya from a destination to a transit country. Who are the refugees and migrants in Libya? Are they predominantly migrants or are there refugees among them? What is the nature of the routes which they are taking to Europe? What is the everyday reality for refugees and migrants living in Libya? Were the stories of detention and ill-treatment which were filtering out from potential asylum-seekers widespread? How does the lack of distinction between refugees and migrants in Libyan law affect the ability to seek asylum and gain protection from the Libyan authorities and/or UNHCR? How are refugees and migrants received within Libyan society?

Existing research on Libya remains limited, in part due to the closed nature of the country restricting the ability to conduct field work, and in part to marginal international interest. This lack of interest began to change around the turn of the 21st century when Libya embarked upon the ongoing process of reintegration into the international community after years of isolation. The accompanying opening up of the country generated attention in certain areas, notably the economic sphere where the prospect of new financial markets attracted many international investors. In turn, the political situation has received attention in as much as it impacts on the ability to conduct business effectively and efficiently. Yet the same consideration is not matched in the human rights situation, be that relating to the affairs of Libyan citizens or to those of the foreign population.

It is, however, important to mention the work of several French academics, notably Olivier Pliez (2002, 2004), who has examined the history of migration to Libya, with a particular interest in the impact on space after the influx of sub-Saharan Africans. Delphine Perrin (2004) made the first attempt to analyze the legal status of the foreign population, while Emmanuel Gregoire (2004) conducted a study on the migration of West Africans to Libya. During the course of this study, a lengthy document was issued by the European Commission detailing the findings of their visit to Libya in late 2004; it was leaked into the public domain in May 2005.[2] It focuses on migration issues and provides useful insights into the European Commission's analysis of the situation of migrants and refugees in Libya. However, at the time of conducting research for this study, there has been little documentation and analysis carried out with a view to analyzing how the rights of the foreign population, be they refugees or migrants, are being upheld in Libya in addition to people's journeys, failed or successful, to Italy through Libya.

The principle questions guiding this research were the following:
- Does Libya provide adequate protection to refugees and asylum-seekers?
- What is the legal framework relating to refugees and migrants in Libya and how does this affect people's experiences in the country?
- How is the notion of protection understood and applied within Libya?
- How is the EU responding to the transformation of Libya from a destination to a transit country?
- Does the cooperation between the EU and Libya on combating irregular migration lay sufficient emphasis on human rights protection for refugees and migrants?

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[2] It was published by Statewatch (www.statewatch.org). Statewatch is a European non-profit-making voluntary group which publishes journalistic pieces and research studies in the fields of the state, justice and home affairs, civil liberties, accountability and openness.

Part 1 sets the scene of Libya's transformation from a destination to a transit country and provides information on the legal and institutional framework relating to refugees and asylum-seekers in Libya. It further looks at the profile of refugees and migrants passing through Libya, their reasons for leaving their place of origin and their reasons for "choosing" Libya as a destination. Part 2 focuses on the experiences of refugees, asylum-seekers and migrants in Libya, which are characterized by a lack of state protection regardless of their legal status in the country. Part 3 presents the research findings on the routes and means used to arrive in the EU from Libya. It aims to demonstrate how the irregular situation of refugees and migrants alike exposes them to great risks as they are forced to travel along difficult routes using dangerous means of transport. Part 4 presents and analyzes the cooperation between the EU and Libya on irregular migration and its potential impact on the protection of refugees. The paper concludes by identifying some key areas for further research and offering a set of recommendations.

METHODOLOGY

This paper is the outcome of a six-month project conducted for the Forced Migration and Refugee Studies Program at the American University in Cairo. It focuses on a selected group of nationalities, namely Egyptians, Sudanese, Eritreans, Ethiopians and Somalis. This combination was shaped by the availability of material obtained during the research but also ensures a mixture of refugees, asylum-seekers and migrants which allows for comparisons to be drawn between the experiences of refugees and migrants.

Field locations

The interviews were conducted in different geographical locations and different spatial settings. In total, interviews were conducted in three countries – Egypt, Italy and Sudan - with 65 refugees, asylum-seekers and migrants as well as interviews with 11 individuals whose relatives had gone missing after heading for Italy from Libya. In each country, interviews were also conducted with relevant civil society actors, notably non-governmental organizations (NGOs) and journalists, who provided general information and several further detailed case studies.

Libya

At the outset of the study, a research visit to Libya was envisaged. However, this proved not to be possible after my application for a visa was rejected by the Libyan authorities. The Libyan Embassy in Cairo said that they were not given a reason for this rejection by the central authorities in Tripoli, where the decision was said to be taken.[3] Although Libya has begun to open up to international scrutiny, including allowing international human rights organizations into the country,[4] it remains largely a closed country posing problems of access for researchers. In addition, the political system of the Jamahiriya has left little, if any, space for an independent civil society to grow outside the officially sanctioned structures (in particular, the Basic People's Congresses and Revolutionary Committees, but also a number of charitable

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[3] I was informed orally by telephone on 20 July 2005
[4] Two notable visits took place: the first by Amnesty International in February 2004 and the second by Human Rights Watch in May 2005

associations). This makes field work more difficult since it is challenging to find truly independent partners on the ground.

While it would have been by far preferable to have been allowed access to Libya, I do not believe that it was of significant detriment to the research for at least one essential reason: people in Libya are reluctant to speak about the problems they face for fear of reprisals from the authorities. While this is beginning to change, any research conducted in the country is severely restricted since it may put the informant at great personal risk, including being detained and possibly ill-treated.

Egypt

In Egypt, I conducted interviews with refugees and migrants and their families at different times over the six-month period. Interviews took place in: Cairo; the village of Mit Nagi in the governorate of al-Daqhaliya; the village of Tatun in the governorate of al-Fayyoum; and the town of Tala in the governorate of al-Manufiya. The main nationalities interviewed were Egyptians and Somalis. I also interviewed several human rights organizations.

Italy

In Italy, I visited Rome and Palermo, spending approximately one week in each place (29 May-13 June 2005). I approached refugee and human rights organizations to provide an analysis of the situation and to help locate refugees, asylum-seekers and migrants who had arrived in Italy via Libya. This meant that, in all cases but one, those met were either refugees or asylum-seekers since migrants do not make themselves known to these organizations and in a short space of time are much harder to locate. I was able to interview people from a range of countries, mostly Sudanese, Eritreans and Ethiopians but also a few from other countries, such as Ghana and Liberia.

Sudan

In Sudan, I carried out research in Khartoum for one week (24-31 August 2005), interviewing NGO activists, academics and selected individual contacts to provide an analysis of the situation and to help locate refugees, asylum-seekers and migrants who had been through Libya with a view of reaching Italy. The majority of respondents in Khartoum came from Sudan, Eritrea and Ethiopia.

Interviewing techniques and strategies

It was not possible to draw a representative sample of the population for this study since no sampling frame exists. The migrant population, in this context as in many others, is a "hidden population" and its true size is thus unknown (Tyldum and Brunovskis 2005: 18).[5] The majority of those who use Libya as a transit point to Europe are considered 'illegal' for some or all of their journey and are therefore by definition not known to the authorities and not counted in official statistics. In the specific case of Libya, the Libyan authorities only offer estimates of the foreign population and no precise breakdown of each nationality appears to exist.

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[5] Quoting Heckathorn 1997 on *Respondent-driven sampling: a new approach to the study of hidden populations* in *Social Problems*, 44(2): 174-198)

It would therefore have been arbitrary and false to set particular figures for the number of each nationality to be interviewed. In addition, it would have been setting oneself up for failure since access to informants is not easy and it would have been too restrictive to have established set quotas. Having said that, I tried, as far as possible, to achieve a gender balance and to seek out, where possible, individuals who fell under different categories, namely: a range of nationalities and ages; a balance of married and single men and women; pregnant women; and families.

The 'snowball' technique was used as a means to identify and select the refugees, asylum-seekers and migrants interviewed. Wary of the possible pitfalls of the 'snowball' technique, I tried to counterbalance the possible risk of producing a biased sample by using multiple entry points for the 'snowball' sample. In Italy, for example, I approached a variety of human rights and refugee organizations and church groups as well as seeking out friends or acquaintances of individuals I had interviewed. This broadened the scope of the interviewees and allowed me to find people who fell under different categories. This attempt to reduce potential bias was also facilitated by the research being carried out in three different locations.

The interviews conducted were semi-structured and I usually met respondents on one occasion only, although in a few instances, I was able to make repeat visits. The interviews were recorded by means of taking notes. In many, but not all, instances, the respondents were aware of my previous employment with Amnesty International[6]. I made it clear at the outset of each interview that the information would be treated confidentially. I also explained the purpose of the research; though it should be noted that for many people the worlds of NGOs, journalism and UNHCR are not clearly defined and understood. Therefore, for some people it seemed to remain unclear quite how my task as a researcher differed from that of a journalist or how it bore no relation to their application for asylum.

The interviews were conducted in different places: in the homes of respondents; in the offices of NGOs; and in public spaces, such as cafés. Given that my contact with respondents was usually limited to one interview, it was necessary to take into account issues of trust and familiarity. I was not able to build up a relationship with my respondents over a prolonged period of time since I was not based in a particular community for any length of time.

Many respondents showed great willingness to be interviewed and to share their experiences with an outsider, though a number of difficulties were also encountered. Inherent in interviewing asylum-seekers is a danger that some may be reluctant or afraid to answer questions accurately since they fear that it may affect their asylum application. Some respondents explained that the information provided differed from that which appeared on their asylum application. In Italy and Egypt, some informants had been interviewed several times already, first for their asylum application (by the government and by NGOs) and then by the media. For some, this led to "interview fatigue" and a disinterest in being interviewed since they saw no benefit from it. Some others had had bad experiences - for example with a journalist resulting in an article

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[6] I was employed in the Middle East and North Africa Program of Amnesty International's International Secretariat in London, UK between 2000 and 2005. During this period, my colleagues and I were responsible for monitoring and reacting to the human rights situation in Libya, among other countries. In 2004 I participated in Amnesty International's first research visit to Libya in 15 years.

which they believed to be harmful to their case - and were therefore reluctant to be interviewed again.

A further difficulty was that the focus of this research, namely their time in Libya and the journey to Italy, often differed from the interest of the interviewee, depending on the nature of their experiences in Libya and en route to Italy. In Italy, for example, many interviewees wanted to focus more strongly on their current situation in Italy and difficulties faced there and less on the time in Libya and their journey to Italy. Even in cases where people had been detained and ill-treated in Libya, they often did not view this as something 'important'; somehow, given the totality of all that they had experienced, it was often presented as just a minor aside.

One aspect that seemed to work to my advantage in gaining the trust of many interviewees was related to language. My ability to speak Arabic coupled with my Yemenite origin was a real 'ice-breaker' in many situations and allowed firstly for direct communication with the interviewees and secondly for a sense of commonality or a certain proximity. The majority of interviews were conducted in Arabic, some in English, one in French and a few required translation. Those in Arabic involved people who were not necessarily native speakers but in many cases had spent considerable time in an Arabic-speaking country, usually Sudan and Libya, and had therefore learnt sufficient Arabic. Translation was required for a small proportion of interviews, mainly some of the Eritrean interviewees. The disadvantages of translation are known, including its effect on the depth and quality of the information.

The research confirmed the difficulty in distinguishing between refugees and migrants in many cases as people usually have multiple reasons for moving. It was not my aim in this research to assess the asylum claim of those that I interviewed. Nevertheless, I evaluated the information provided in interviews in as much as it affected the focus of my research and in some cases, where it was considered to be false, I was forced to discount the interview. For example, I was unable to use an interview with a man who claimed to be from Darfur but whom I believe to be from Ghana since changing his nationality discredited many aspects of his story, including seemingly unrelated factors such as the real route he took to arrive in Libya.

A special mention should be made of the information related to smuggling networks. This information comes predominantly from interviews with refugees, asylum-seekers and migrants; though in the case of Egyptians, newspaper articles and some research by NGOs and inter-governmental organizations (IGOs) have also provided insights. With regard to understanding the smuggling process from information collected from refugees, asylum-seekers and migrants, there are obvious drawbacks to this approach. In particular, those interviewed may be reluctant to speak about smugglers because they fear that it may have a negative impact on their application for asylum.

With regard to trafficking, Salt and Stein (1997: 478) have pointed out that tasks within trafficking operations are designed to be separated in order to protect the whole organization from collapsing should one segment be discovered by the police. This explains why victims of trafficking often have little useful information about trafficking operations since they are only exposed to a small part of the operation. Koser and Pinkerton (2002: 40) argue that even when refugees and asylum-seekers are willing and able to present the whole picture as they understand it, they may have

only a limited insight into the smuggling process. It is important to take this into consideration when analyzing smuggling networks solely from information collected from 'clients'. However, given difficulties of obtaining information directly from smugglers, information from 'clients', as long as treated with caution, can provide valuable insights into how smuggling operations function.

Despite these problems, it is believed that the research findings are informative and challenging and provide valuable insights into the experiences of refugees, asylum-seekers and migrants residing in and passing through Libya en route to the EU. Nevertheless, it is clear that there is a need for further research looking at a number of aspects which were not possible to cover in this study.

TERMINOLOGY

What is meant by the protection of refugees?

The 1951 Convention relating to the Status of Refugees (hereafter the UN Refugee Convention) and its 1967 Protocol are the key legal documents defining who is a refugee, setting out their rights and stipulating the legal obligations of states towards refugees. According to Article 1(2), a refugee is a person who:

> "[…]*owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable to or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*"

It is important to note that a person becomes a refugee as soon as s/he meets the criteria set out in the UN Refugee Convention, something which necessarily occurs before s/he gains formal recognition as a refugee.

One of the most fundamental principles regarding the protection of refugees, established in the UN Refugee Convention, is the principle of non-*refoulement*. The principle of non-*refoulement* is widely accepted under international customary law as binding on all states, regardless of whether they are party to the UN Refugee Convention. It prohibits the return of anyone to a country "*where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion*" (Article 33). This is most importantly taken to mean countries in which s/he would be at risk of grave human rights violations, including torture or ill-treatment.

The UN Refugee Convention sets out a more comprehensive set of rights than merely ensuring physical safety, including access to employment (Articles 17 and 18), education (Article 22), housing (Article 21), social security (Article 24) and the rights to freedom of religion (Article 4), non-discrimination (Article 3) and freedom of movement (Article 26). Refugees should also be given certain basic rights afforded to everyone, notably freedom from torture or ill-treatment and from arbitrary detention. In addition, refugees should have access to a durable solution: either local integration in their country of asylum, resettlement in another country, or voluntary repatriation to their country of origin.

While the UN Refugee Convention remains the central instrument of international refugee protection, it has been complemented by regional instruments pertaining to refugee issues. Of relevance to the Libyan context is the 1969 Organization of African Unity Convention on the Specific Aspects of Refugee Problems in Africa (hereafter OAU Refugee Convention), to which Libya is a State Party. The OAU Refugee Convention incorporates the definition of a refugee contained in the UN Refugee Convention and further expands it to include people fleeing their country of origin "*owing to external aggression, foreign domination or events seriously disturbing public order in either part or the whole of his country of origin or nationality*". This enables people fleeing generalized situations of violence to claim refugee status, regardless of whether they face an individual well-founded fear of persecution. The OAU Refugee Convention also prohibits "*…measures such as rejection at the frontier, return or expulsion, which would compel him to return to or remain in a territory where his life, physical integrity or liberty would be threatened…*" (Article 2).

An asylum-seeker is someone who has left their country and applied to be recognized as a refugee but is still awaiting formal and final determination of their status. The right to seek asylum is enshrined in the Universal Declaration of Human Rights (Article 14). Until found not to be in need of international protection, an asylum-seeker should be considered to be a refugee with all the ensuing rights and protection.

Do migrants have rights?

Migrants are people who reside temporarily or permanently in another country. It is assumed that they move voluntarily and therefore enjoy the protection of their national government. However, the reasons for moving to another country are often complex and mixed in many cases so that many migrants feel forced to leave their country of origin due to economic hardships.

While there is a long history of recognition of refugee rights and a great body of accompanying literature, the field of migrant rights is relatively new in comparison. There continues to be no international agency devoted to the protection of migrants' rights. The International Organization for Migration is mandated to facilitate orderly migration rather than protect migrants' rights. Nevertheless, migrants have rights, including general rights afforded to all human beings, such as the right to freedom from arbitrary detention and from torture and cruel, inhuman or degrading treatment.

In 2003 a major step forward was achieved as the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Family entered into force. This treaty accords fundamental civil and political rights and certain economic, social and cultural rights to all migrant workers, regardless of their legal status. A few additional rights are extended to regular migrants. Despite the significance of this treaty, it remains a largely theoretical document. Difficulty to enforce it stems from the fact that many of the largest recipient countries of migrants have not yet ratified the treaty.

The 'migration-asylum' nexus

This research raises the oft-asked question as to whether it is possible and/or relevant to differentiate between the experiences of refugees and those of migrants. In the Libyan context, this question is all the more pertinent given the lack of distinction

between refugees and migrants, even at a legal level.[7] Furthermore, as demonstrated later in the paper, the route to Italy via Libya is characterized by mixed migratory flows, whereby refugees and migrants use the same routes and methods to arrive at their intended destination.

In general, the relevance of the conventional dichotomy between forced and voluntary migration in modern migratory movements has been called into question. It is widely acknowledged that the distinction between refugees and migrants has become blurred and numerous studies have shown the motivation for migration to be varied and complex (e.g. UNHCR, 1995). Today, people commonly leave their place of origin for a mixture of reasons that can be difficult to classify in strict terms of those who have a choice and those who do not. It appears that there is an element both of compulsion and of choice in the decision-making of most migrants to varying degrees. The causes of forced and economic migration are often closely related: countries afflicted by armed conflicts and human rights abuses usually also suffer from a poor economic situation and those fleeing to secure their physical safety also want to safeguard their economic security.

In addition, it is important to recognize that decisions to migrate are also guided by other factors. These include the existence of a social network of friends and family who have already settled abroad - or at least an awareness of acquaintances who have done so - and the financial benefits of whose work abroad are felt by their family in the place of origin. Other reasons might be termed "transnational activities": nationalist sentiments, aspirations towards increased prestige and status, and social pressure and family responsibility (Koser and Ali 2002; Castles, 2004: 212).

"Illegal aliens"?

There is much evidence to demonstrate the lack of differentiation by governments between asylum-seekers and irregular migrants and the increasing difficulties in gaining access to EU countries as an asylum-seeker (Koser 2001; Koslowski 2000). This leaves refugees with little choice but to flee in irregular situations and encourages migrants to seek to enter countries through the asylum channel as their only possible means of getting into and remaining in Europe. Whether fleeing persecution or economic hardship, there are few options left open to refugees and migrants but to resort to the services of traffickers and smugglers.

The "illegal" or irregular status of refugees and migrants is largely determined by factors outside their control. At a general level, recent years have witnessed diminishing options for legal migration to the North, increasingly restrictive asylum policies and greater border controls by EU countries. Morrison and Crosland demonstrate that *"the vast majority of asylum-seekers now enter Europe in an irregular fashion and more than likely with the assistance of traffickers and smugglers….*[and] *that the main nationalities who are trafficked/smuggled are those who go on to gain refugee status"* (Morrison and Crosland, 2001: 65). As noted, specific to the Libyan context, refugees and asylum-seekers in particular must contend with an irregular status in Libya brought about largely by the regularly

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[7] This is detailed below: see *Theoretical framework relating to refugees in Libya*

changing official policy towards foreigners and a lack of clarity about the regularization of stay in the country.[8]

Smuggling or trafficking?

It is important to distinguish between human smuggling and human trafficking.[9] The key differentiating factor is that trafficking entails the use of coercion placing people in exploitative positions in the destination countries, typically prostitution, while smuggling is simply the material gain from the illegal crossing of a national border, and in the Libyan case also within the national border. A vital distinction then is the issue of consent, considered to be lacking in the case of trafficking but present in that of smuggling. In reality, studies have shown that the distinction between trafficking and smuggling is not always so clear-cut and that in some cases some overlap between the two exists (Kelly, 2005: 238). As Morrison and Crosland (2001: 55) argue, engagement with the smuggling process itself "*is not as consensual or as free from human rights abuses as the smuggling process suggests*".

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[8] This is detailed below: see *Theoretical framework relating to refugees in Libya*

[9] The definitions adopted under international law, as defined in the United Nations Convention against Transnational Organized Crime, ratified by Libya in June 2004, and its Protocol against the Smuggling of Migrants by Land, Sea and Air, ratified by Libya in September 2004, will provide the basis for this study. Article 3 of the United Nations Convention against Transnational Organized Crime states:
(*a*) *"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs*. While Article 3 of its Protocol against the Smuggling of Migrants by Land, Sea and Air states: (*a*) *"Smuggling of migrants" shall mean the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident*.

PART 1: SETTING THE SCENE

Libya's transformation from a destination to a transit country: the political and historical context

In recent years, the character and nature of migration to Libya has evolved. For over four decades, the country has served as a destination for migrants seeking employment, usually for a limited period of time before returning home. In many cases, migrants would make repeated visits of varying duration to Libya to boost their annual income while maintaining their home in their country of origin. Throughout this period, little distinction has been made to differentiate between refugees and migrants in the country. Nevertheless, it is safe to assume that the foreign community, especially since the nineties, has been composed of a mixture of refugees and migrants. Although Libya remains a destination country, around the turn of the 21st century a significant proportion of migrants came to view Libya as a transit country, used as a temporary stop along the way to reach their ultimate destination of Europe.

In 1951, when Libya gained independence from the Italian colonial powers that had seized control of the country in 1911, the country possessed a small and poor population. Less than a decade later, the course of the country's economic situation was set to change dramatically with the discovery of hydrocarbons. From the early sixties, the petroleum industry came to dominate the whole economy, developing swiftly and expanding widely. Revenues increased significantly in the seventies allowing Libya to launch ambitious programmes for economic and social development with its newfound resources. Programmes included large-scale agricultural schemes, such as the multi-billion-dollar Great Man-Made River project, which aimed to transfer water found deep under the desert to the coastal areas and thus to make Libya self-sufficient in food production.

The scale of work in the development schemes necessitated significant manpower, unavailable among the local population. This was initially supplied by Arab countries, predominantly by the neighbouring countries of Egypt and Tunisia. Egyptians, then, as now, the single largest nationality present in Libya, worked predominantly in the spheres of agriculture and education. Later, a number of Asian and East European nationals were brought over to work in Libya under contracts.

The composition of the foreign population changed considerably in the nineties with the influx of sub-Saharan Africans. An air and arms embargo, imposed on Libya by the UN Security Council in 1992 following the bombings of flights over Lockerbie in Scotland in 1988, and over Niger in 1989, spelt an era of isolation from the international community. Disappointed by the perceived lack of support from fellow Arab countries and the failure of pan-Arabism, Colonel Mu'ammar al-Qaddafi embarked upon a reorientation of Libyan policy towards his southern neighbours in sub-Saharan Africa.

This pro-African policy took many forms. A series of bilateral and multilateral cooperation agreements were signed between Libya and African states; notably, with Sudan in 1990 and several treaties with Chad in 1994 (Pliez, 2004b). In 1998 Libya played an integral role in the foundation of the Community of Sahel-Saharan States

(CEN-SAD), which currently links 21 African countries,[10] whose aim is to create a unified regional bloc, promoting: the free movement of persons, capital and interests of nationals of Member States; the right of establishment, ownership and exercise of economic activity; and free trade, movement of goods, commodities and services originating from the signatory countries. At the same time, Libya ran an internal and external campaign situating Libya in the African domain and encouraging Africans to come to work in Libya, even by placing advertisements in daily African newspapers (Pliez, 2002).

To counteract the effects of the air embargo and the subsequent international isolation, Libya facilitated entry by land. Initially, due to the more modest flows, Libyan border police were able to direct migrants to areas where they could fill labour needs and many were sent to the Saharan border areas to work in the major agricultural projects. Thus, towns such as Kufra and Sebha now have sizeable established communities of sub-Saharan Africans. The core of migration at this earlier stage emanated from three sub-Saharan African countries: Sudan; Chad; and Niger (Pliez, 2004a); all of which have come to be transit countries themselves.

Despite the need for manpower and the policy of soliciting labour migration, the past four decades of migration to Libya have, at times, been turbulent and unpredictable for migrants. The status of migrants has been directly affected by the tumultuous political relations between their countries of origin and Libya, which have been repeatedly used as a pretext to expel migrant labourers from Libya. These migrants were expelled only to return a short while later. For example, Tunisians faced no less than eight expulsions and three waves of large-scale returns between 1966 and 1985.[11]

The booming oil economy did not endure the hardships of the oil recessions and, more importantly, the impact of sanctions. A downturn in the economy brought about measures to privilege Libyan nationals for employment beginning as early as the early eighties. In response to periods of economic difficulty, tens of thousands of migrants would be forcibly expelled or would leave voluntarily at any one time. However, it was never long before Libya renewed its calls for migrant labour to satisfy domestic needs, with the most readily-available work increasingly being low-paid, short-term manual labour taken up by sub-Saharan Africans.

It was in this context of a country heavily geared towards migration that a significant proportion of refugees and migrants were attracted by increasing opportunities to travel beyond Libya to Europe. North African countries had long been used as a means to access Europe, both by their own nationals and more recently by sub-Saharan Africans and others in transit. In contrast, Libya has not been a migrant-producing country itself due to its oil economy, and this in turn has meant that there is no chain migration (in which the presence of one's own nationals in a particular country attracts fellow nationals to migrate there too). It was therefore the last of the North African countries to develop as a point of departure for Europe. Traveling by boat from Libya has now become one of the most important and hotly-contested

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[10] According to its website (http://www.cen-sad.org/index.htm), checked on 9 August 2005, the 21 member states are: Benin; Burkina Faso; the Central African Republic; Chad; Côte d'Ivoire; Djibouti; Egypt; Eritrea; Gambia; Guinea Bissau; Liberia; Libya; Mali; Morocco; Niger; Nigeria; Senegal; Somalia; Sudan; Togo; and Tunisia.
[11] N. Grimaud, 1994, quoted in Pliez, 2004b

routes for entry into Europe by sea, with some 80,000 migrants estimated to reach Italy's southern islands and Malta each year from Libya and Tunisia (ICMPD 2004: 12).

A number of factors have made it eligible as a transit country. The ease of entry into Libya, its geographical location near some of the world's poorest and most conflict-ridden societies, and its history as a destination country provide a ready-made supply of refugees and migrants. Its long coast line and proximity to southern Italy and its outlying islands and to Malta facilitate access to Europe. In addition, Libya's attraction may be derived in part from developments taking place in the field of irregular migration in neighbouring countries of the Maghreb (in particular Morocco and Tunisia).

Morocco and Tunisia have long been migrant-producing countries, whose nationals have sought ways to reach the EU, including by means of smugglers across the Mediterranean Sea to Italy and Spain. Cooperation between the EU and Morocco and Tunisia has developed in recent years, making it more difficult to make the sea crossing from those countries, though by no means eliminating the traffic. It may be the case that Libya has come to be seen as a more convenient point of departure following tougher policing at the maritime borders of Morocco and Tunisia.

The status of refugees and migrants under Libyan law

The situation for refugees and asylum-seekers in Libya is complicated by a legal framework and official rhetoric which do not recognize the existence of refugees on Libyan territory. In effect, refugees and asylum seekers are not distinguished from other migrants residing in the country, all of whom fall under the generalized category of 'economic migrants'. Consequently, refugees in Libya are not accorded special treatment. Given this lack of recognition of refugees as a distinct entity benefiting from a specific legal status, Libya has not developed its own national asylum legislation nor does it have administrative structures in place to deal with refugees and asylum seekers.[12]

Despite this, brief references are made to refugee protection within existing Libyan legislation. Article 11 of the Libyan Constitution Proclamation, which entered into force in 1969 shortly after Colonel al-Qaddafi came to power, prohibits "[t]*he extradition of political refugees*". Article 21 of Law 20 of 1991 on the Consolidation of Freedom states that, "[t]*he Great Jamahiriayah is a refuge for the oppressed and strugglers for freedom. It is impermissible to hand over refugees under its protection to any party*". As noted, Libya is also signatory to the OAU Convention governing the specific aspects of refugee problems in Africa (OAU Refugee Convention), which applies a broad definition of refugees and obliges state parties to protect the rights of refugees, notably guaranteeing the principle of non-*refoulement*. Libya has neither signed the UN Refugee Convention nor its 1967 Protocol, but it should be recalled that provisions of the UN Refugee Convention are subsumed in the OAU Refugee Convention. Furthermore, the OAU Refugee Convention calls on signatories to accede to the UN Refugee Convention and its 1967 Protocol.

Statements by Libyan officials reflect the lack of distinction between refugees and migrants. In meetings with European officials, their Libyan counterparts confirmed

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[12] Unconfirmed reports suggest that the Libyan authorities may be developing asylum legislation.

that they did not acknowledge the presence of refugees and asylum-seekers, but considered all those present in Libya as economic migrants. They further expressed concern at the problems that may arise out of creating such a legal distinction, which may lead to "*an unmanageable situation*" in which large numbers of economic migrants would present unfounded applications for asylum (European Commission, 2005: 6, 13, 52).

While there is no national legislation relating specifically to refugees, the situation of refugees, asylum-seekers and migrants alike is regulated by a series of laws broadly relating to foreigners in the country.[13] As noted, Libya's membership of the CEN-SAD should theoretically allow for the free movement of people between member states; however, how and whether it functions in reality is unclear. Of particular importance in the context of the flow of people who use Libya both as a destination and a transit country is Law 6 of 1987 on the organization of entry, residence and exit of foreigners in Libya and recent amendments to this law as laid out in Law 2 of 1372 (2004).[14] The law stipulates that foreigners must have a valid visa to enter, reside in and leave Libya.[15] Those who violate the provisions of this law (Article 19 after 2004 amendment) – for example, by not obtaining the correct visa, violating the conditions of their visa or overstaying the duration of the visa – are liable to a prison sentence without fixed duration and a minimum fine of 1,000 dinars (approximately $800). In August 2005 there were reports that an additional entry requirement obliging people to carry 500 dinars (approximately $400) to cover their expenses during their stay in Libya (eg al-Bayan, U.A.E., 19 August 2005; U.P.I., 30 August 2005).

The 2004 amendments make specific reference to activities relating to irregular migration, notably smuggling migrants by any means, and creating, supplying or carrying false travel or identification documents. These activities are punishable by a minimum one year's imprisonment and a fine of no less than 1,000 dinars (Article 19 bis). While the 2004 amendments to the Law 6 of 1987 have introduced tighter penalties on illegal residence in and passage through Libya as well as penalties for smuggling, there have not yet been parallel amendments in legislation to strengthen the protection of refugees in the country.

It appears that the Libyan authorities have begun to make efforts to inform people, both foreigners and Libyan employers, of the requirements for foreign nationals residing in Libya and that a stricter application of the law will be enforced. On 10 May 2005 the official Libyan Jamahiriya Broadcasting Corporation reported a statement made by the Ministry of the Interior[16] notifying foreign residents that they must have "*authorized visa entry or they will be sent back to their countries.*" Three documents are required to make a foreigner eligible for employment in Libya: "*a legal visa, valid passport and authorized health certificate*". The Ministry stated its intention to take "*appropriate action against anyone, even foreigners and people smugglers who violate legislations, including a prison sentence of more than a year,*

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[13] These include: Law 18 of 1980 on nationality and Law 15 of 1984 on marriage to non-Libyans.

[14] Libyan laws are not easy to obtain but I have copies of the laws mentioned in this paper.

[15] According to information obtained from the Libyan Embassy in Cairo in October 2005, Sudanese and Egyptian nationals do not require a visa but must travel with a valid passport. An Egyptian migrant described the ease of traveling to Libya as an Egyptian national saying, "*it's like travelling to another governorate of Egypt*".

[16] Formally known in Libya as the Secretariat of the General People's Committee for Public Security

and a fine of more than LYD 2,000". A contract for employment also appears to be a requirement, though there seems to be a certain amount of flexibility allowing for it to be obtained after arrival.

The health certificate is theoretically obtained after a medical check-up conducted at a hospital, whose purpose is broadly-speaking to examine the general health situation of the foreigner, and specifically to establish if s/he has any sexually transmitted diseases, in particular HIV/AIDs. Several foreigners interviewed in this study explained that the health certificate, however, is often obtained without actually undergoing a medical examination but rather by paying a sum of money to the hospital to issue the certificate.

A variety of identification documents (ID) were mentioned by those interviewed in this study but there seems to be no common understanding among foreigners in Libya of which IDs were necessary for whom and what purpose each one served. Other than the health certificate, the *bitaqat hasr al-ajanib* (ID for counting foreigners) was regularly mentioned and appears to be issued by *al-amn al-sha'bi al-mahali*, the local security office. ID from the foreigner's country of origin seems to be required in order to obtain the Libyan ID.

Interviews with respondents indicate that, in reality, the majority of foreigners do not manage to obtain the relevant IDs. They witness many others around them who have been living in the country in an irregular situation, some for several years without having been caught, and prefer to try their luck instead of going through the long, complicated and costly process of obtaining them. For others, it is simply not possible to acquire the ID since they have no passport or ID from their own country. For others still, they may believe that they have the correct ID and they are residing in Libya legally, only to discover that their ID is not valid. A Darfurian asylum-seeker in Italy explained his surprise at being detained although he carried an ID,[17] which he thought should have regularized his stay in Libya. He explained that he was leaving his house one day on his way to work when he was stopped in the street by a police officer, who demanded to see his ID. On production of his ID, he was detained and had to pay guards to obtain his release.

An analysis of statements by Libyan officials reported in the media over the past year reveal a mixed message towards the presence of migrants in the country. On the one hand, Libyan officials can show sympathy towards migrants, acknowledging the reasons for flight from the countries of origin as genuine.[18] In meetings with European officials, Libyan authorities have asserted that people originating from conflict zones would not be sent back to their countries of origin until such time as the conflict had been resolved. However, this appears to be at the discretion of the authorities without necessarily being tied to a particular law or judicial procedure (European Commission, 2005: 52; European Parliament, 2005b: 4). Furthermore, in October 2004, Foreign Minister 'Abd al-Rahman Shalgam argued that "*first and foremost migrants need job opportunities to be created in the countries of origin…*"

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[17] An ID, known as *ihwa al-'arab*, can be obtained by Arabs in Libya.

[18] Yusuf al-Misri reporting from Cairo on an interview of Foreign Minister 'Abd al-Rahman Shalgam by PANA News Agency on 9 October 2004 (posted in Arabic on www.akhbar-libya.com)

and called for a comprehensive approach to dealing with illegal immigration by addressing its root causes rather than simply taking a security approach.[19]

However, statements by Libyan officials reported in the media more regularly describe the phenomenon of illegal immigration in negative terms, describing it as an "*invasion*" (AFP, 9 August 2004) and recalling the heavy price Libya has paid for the rise in immigration, especially after the increase in smuggling activities.[20] Migrants are often presented as causing wide-ranging problems in Libya related to health, cultural norms, social relations, and the economic situation. They are also portrayed as bringing about a degradation in the security situation. Thus, they are said to be at the heart of the rise in criminality, the spread of disease (particularly HIV/AIDs), the decline in morality, the economic downturn (brought about by the abundance of cheap labour), and even to be linked to "terrorism".[21] This view, current in press articles, has also been communicated to European officials (European Commission, 2005: 11).

In recent months, Libyan officials have increasingly publicized Libya's efforts to control its borders. In November 2005, Interior Minister Nasser al-Mabrouk announced that in the first nine months of 2005, Libya had stopped over 40,000 "illegal migrants" trying to reach Europe, adding that the number of those fleeing from Africa was increasing (Reuters, 25 November 2005; BBC, 26 November 2005). He further noted that 120 trials, linked to illegal immigration, had been opened in 2005, with 5,290 foreigners and 35 Libyans having been named in the trials (Times of Malta, 26 November 2005). The official Libyan news agency, which reflects the official governmental viewpoint, has also increased its reporting of the authorities' fight against illegal immigration, frequently running short articles on arrests of alleged smugglers or irregular migrants (e.g. JANA, 26, 28, 29 August 2005)

The role and capacity of international organizations and NGOs

The work of international organizations operating in Libya is severely restricted. Further, it is important to bear in mind that there is virtually no independent civil society. It may therefore come as no surprise that the rights of refugees and migrants are also extremely limited. The United Nations High Commissioner for Refugees (UNHCR) is not officially recognized by the Libyan authorities. For several years, UNHCR Tripoli has been trying to negotiate a memorandum of understanding with the Libyan government to enable them to operate freely but at the time of writing this had still not come to fruition.

Given the lack of distinction between refugees and migrants by the Libyan authorities, UNHCR Tripoli cannot fulfill its full mandate in terms of offering refugee protection in Libya. Nevertheless, its small office in Tripoli is able to conduct certain activities. In cases where refugees present themselves to the UNHCR office to claim asylum, the office processes their applications. In their 2005 country operation plan for Libya, UNHCR noted a total of 11,897 urban refugees registered with their office: the

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[19] Ibid.

[20] *Libyan Interior Minister confirms his country's determination to deal with illegal immigration*, UPS News Agency, 30 November 2004 (posted in Arabic on www.akhbar-libya.com)

[21] See for example: *Libyan Interior Minister confirms his country's determination to deal with illegal immigration*, UPS News Agency, 30 November 2004 (posted in Arabic on www.akhbar-libya.com); and *Libya pressures Europe to stop flow of immigrants*, Helsingen Sansomat (Finland), 16 January 2005.

majority Palestinian (74%) and Somali (25%). The rest included a mixture of nationals from different Arab and African countries. 40% of the refugee population is estimated to be female. As a result of these figures, UNHCR explains that the two main beneficiary communities are the Palestinians and Somalis. However, judging by the proportion of people who apply for asylum on arrival in Italy having passed through Libya and by the accounts of those refugees and asylum-seekers in Italy, it would indicate that the majority of people do not apply for refugee status while in Libya. Rather, they wait until they reach the EU or elsewhere[22] before doing so, or remain in Libya without recognition of their specific status as refugees as many do not conceive of applying for asylum in Libya as a viable or safe option.[23] This is also attested to by the small number of asylum requests lodged with UNHCR each year. In 2003 the number of official requests lodged with their Tripoli office amounted to 391, representing an increase over previous years.[24]

In September 2002 UNHCR helped to establish a compound, located in a suburb of Tripoli, for Somali and Congolese refugees. Initially, the compound housed some 300 refugees who had been moved from another location in Tripoli, where they had been living in poor conditions. Figures quoted by UNHCR in 2005 indicate that the number of refugees in the compound has dwindled to 178 Somalis. The compound also includes a school and a health centre, the latter of which is overseen by the national Red Crescent society. Accommodation for this community was provided free of charge by the government; but other refugee communities are not provided with accommodation and must find their own housing among the rest of the population.

Importantly, UNHCR is not given access to places of detention in Libya. This prevents them from being able to cater for the needs of refugees and asylum-seekers who are detained in Libya. Since the end of 2004 hundreds of men, women and children, including those who may be considered refugees, have been returned from Italy to Libya without adequate access to a fair and satisfactory asylum procedure in Italy. On arrival in Libya, many were detained and of them many have been returned to their countries of origin in what may amount to *refoulement*.[25] While in detention, UNHCR has not been allowed access to them despite repeated requests for such access. This has prevented the organization from being able to identify refugees and asylum-seekers before deportations take place.

Other than the limited activities of UNHCR Tripoli, there is minimal assistance given to refugees in Libya. UNHCR Tripoli works with three main bodies within Libya: the Ministry of Health – Tripoli; and two charitable associations, namely al-WAFA and the Libyan Red Crescent (UNHCR, 2004b: 3). Although there is no real independent civil society in Libya, numerous local charitable associations do operate in the country, most notably the Gaddafi International Foundation for Charitable Associations (GIFCA). However, these charitable associations appear to be unwilling or unable to provide substantial assistance to refugee communities within their

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[22] Several people interviewed in the context of this study applied for and were granted asylum in Egypt, having spent time in Libya, where they did not approach the UNHCR office.
[23] For more information, see below *Notion of asylum in Libya – refugees' perspectives*
[24] According to the latest confirmed figures as published in the 2003 UNHCR Statistical Yearbook: Libyan Arab Jamahiriya. Figures for 2004 published on the UNHCR website were marked provisional.
[25] For more information, see below *Mass expulsions from Italy to Libya*

country; though it is worth noting that several of these associations, including GIFCA, do provide some assistance to refugees abroad.[26]

The International Organization for Migration (IOM), on the other hand, has reached an agreement to cooperate with Libya on migration management. Libya joined the IOM as a Member State in June 2004. Since 2003 the IOM and Libya have participated in a series of technical and policy consultations, resulting in the development of a one-year plan of action, scheduled to begin in late 2004, under the Programme for the Enhancement of Transit and Irregular Migration Management in Libya – TRIM. Four main activities are envisaged: the enhancement of three reception centres, including the provision of improved health services to migrants; assisted voluntary programmes for irregular migrants, including social and economic reintegration assistance for returnees; information campaigns in origin and transit countries providing information on the dangers of irregular migration; and the initiation of dialogue between selected countries of origin, transit and destination (IOM, 2005). While these activities may be valid means of addressing the issue of irregular migration, one key element is missing, namely ensuring refugee protection. Without simultaneous work by UNHCR, there is a danger that returns may result in a *refoulement*, particularly given the absence of a specific legal status for refugees.

The profile of refugees and migrants

General overview

As noted, since the seventies Libya has been host to nationals from many different countries, predominantly from the Middle East and Africa. Initially, attracting considerable numbers of Egyptians and Tunisians along with a sizeable community of several thousand Palestinian refugees, the change in the political situation led to an influx of sub-Saharan Africans. There are also Asians, mainly from the Indian sub-continent, and Eastern Europeans present in smaller numbers.

Figures of foreign communities in Libya are unreliable since there does not appear to have been a systematic collection of data carried out by the Libyan authorities. Perhaps more importantly, much of the foreign community residing in or passing through Libya does not have a legal status and this renders them outside of the framework of statistics collected either by their own governments or by the Libyan government. Official estimates of the number of legal foreign workers in Libya are 600,000 (European Commission, 2005: 10). Among an indigenous population of just under 6 million (Libyan census, 2004), foreign nationals are said to number anything between ¾ million to 2.5 million (European Commission, 2005: 10; ICMPD, 2004: 2) It is thought that between around 75,000 and 100,000 foreigners enter Libya each year (European Commission, 2005: 10; ICMPD, 2004: 4).

Today the single largest foreign community remains the Egyptians, who according to official Egyptian statistics of January 2005 are estimated at around 323,000 Egyptians legally residing in Libya. For Egyptians, Libya remains the second most important country for labour migration in the Arab world, second only to Saudi Arabia (data

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[26] Between 2001 and 2003, UNHCR worked with GIFCA in Pakistan, with the World Islamic call Society in Guinea, and with Wa-atasmo Charity Association in Sudan to assist refugees (UNHCR, 2004b: 3).

from the Central Agency for Public Mobilisation and Statistics, quoted in the Egyptian daily newspaper *al-Masry al-Youm*, 29 May 2005). However, much higher figures are also quoted. For example, the Egyptian Ambassador to Libya reportedly cited a figure of about one million Egyptians in Libya remitting some $200 million per annum (*al-Bayan* newspaper, U.A.E., 3 October 2005).

While much of this foreign community does not have the intention of traveling by boat to Europe, members of all the aforementioned communities have been reported to attempt the journey, with the most significant numbers being generated by Egyptians and nationals from a variety of sub-Saharan African countries. Since the research for this study has focused on Egyptians, Sudanese and nationals of the Horn of Africa, the analysis of the profile of refugees and migrants in Libya is derived from this information; however, the findings might also be taken to reflect the broader composition of foreigners in the country.

The majority of those who try to reach Europe are single men aged between 20 and 40 years old. However, women and children from certain countries are also frequenting the route. While women originating from Sudan and Egypt tend not to travel to Libya, women form a considerable proportion of arrivals originating from Eritrea, Ethiopia and Somalia. These women include: young, unmarried women traveling alone; and more often married women, frequently traveling with young children or in varying stages of pregnancy. Pregnant women and those traveling with small children represent a particularly vulnerable group as they undertake the harrowing journeys through the desert and across the sea. In some instances, especially in the case of Eritreans and Ethiopians, parents described having left their children behind with their extended families in the country of origin, and travelled alone.

Regardless of the country of origin, the costs of the journey seem to exclude the poorest communities in these countries since the journey requires a certain amount of financial capital and often family backing. In numerous countries, such as Egypt and Somalia, the decision for an individual to travel is usually taken at the level of the family in order to improve the economic prospects of the family as a whole. In the Egyptian context, for example, the family often provides the necessary financial support to fund travel to Europe, which sometimes involves selling land or taking out substantial loans, where the capital is not readily available.

Reasons for leaving place of origin

The motivation for leaving the place of origin, or "push" factors, elaborated upon in this section is rooted in the reasons given by the refugees and migrants themselves during this research. Those interviewed in the context of this study expressed a variety of reasons for leaving their place of origin, including fleeing the effects of war and conflict as well as economic and social reasons of searching for employment and educational opportunities. The most common reasons for leaving the place of origin are outlined by nationality below. Often interviewees expressed more than one reason for leaving their place of origin, placing political and economic reasons side by side.

Egyptians

Interviews conducted in this study confirm that social and economic reasons form the driving force behind the emigration of Egyptians, in particular poor economic and employment prospects. Graduates of school and university express intense frustration at their inability to find work suited to their level of education and being forced to take on work they deem to be menial and thus beneath their status. Once abroad the stigma of the type of employment is removed due to the distance from relatives and friends and to the relatively high wages in comparison to those earned in Egypt. Many also explain that the same financial investment in Egypt would not reap the same benefits as those possible abroad. Y.S., an Egyptian migrant, summed up the situation, "*We are clutching at straws, we are desperate, most people will do anything to change their financial situation. Once in Italy, I don't look at the job I'll do, there's no shame in any job as long as you work hard. I look at the fact that I will earn in Euros and so there is an enormous difference in what I would earn here*".

In certain governorates of Egypt, there is also a certain momentum created by large numbers of young men from a particular village having traveled to and worked in Italy (Stocchiero et al, 2005). Those villages, such as that of Tatun in the Fayoum Governorate, are wealthier and marked with a very low illiteracy rate in comparison with neighbouring areas (al-Maydan, Egypt, 3 March 2005; al-Wafd, Egypt, 23 February 2005). This development is attributed to thousands of its residents having migrated to Italy and sent remittances back to their village. Local young men witness families who have a relative in Italy becoming richer while their own family situation remains the same with little prospect of improvement (e.g. Nahdat Masr, Egypt, 7-8 April 2005; al-Wafd, Egypt, 22 April 2005). In addition, respondents explained that as a result of migration to Italy, the price of land and other commodities in the village increase to become unaffordable to those who are not receiving remittances from abroad. Young men also require significant economic stability in order to get married and this is also often cited as a motivation for migration. A.A., an Egyptian migrant, explained, "*How can I go to ask for a bride with just two rings, when she sees people coming back from Italy who have lots of money and who offer a big 'shabka'* (pre-wedding gift offered to bride, usually consisting of gold jewellery). *Naturally, she'll say no thank you, I'll wait for someone coming back from Italy*."

Knowing that purely economic motivations for migration are no longer accepted as a reason for entry by European states, Egyptians arriving in Italy either manage to pass through undetected by the Italian authorities or are widely said to try to claim asylum by pretending to be either Palestinian or Iraqi (e.g. al-Masry al-Yom, Egypt, 14 March 2005). It is clear that the vast majority of those migrating to Italy via Libya are motivated by prospects of economic improvement. Having said this, it should not be assumed that Egyptian asylum-seekers, fleeing human rights violations in their country, do not, in some cases, use the same route.

Sudanese

The Sudanese nationals interviewed in the context of this study fall within both categories of refugees and economic migrants. Many of those interviewed claimed to be fleeing the crisis in Darfur, western Sudan, to escape a conflict which has resulted in the rape and killing of thousands of people while hundreds of thousands have fled their homes to seek refuge elsewhere, either within Sudan or outside the country (ICG, 2004). It should be noted that some people may be pretending to be from

Darfur, while in fact having no connection to the region, in a bid to gain asylum in Europe.

The lengthy civil war between northern and southern Sudan, or more accurately between the Khartoum government and the Sudan People's Liberation Movement/Army (SPLM/A), was described by several respondents as a driving force behind the flight of Sudanese, especially southerners, from their country of origin. For the southern Sudanese, a major factor was the ensuing discrimination of northern domination over the country. In the case of northerners who cited the war as a reason for leaving their country, they explained that they were opposed to the compulsory military service while a civil war was ongoing. The January 2005 Comprehensive Peace Agreement formally brought to an end the long years of civil war. In addition, some Sudanese respondents simply stated that they had left Sudan to improve their financial situation.

Eritreans and Ethiopians

The most common reason for leaving Eritrea cited by Eritrean nationals, particularly by the men, was the practice of forced military service and compulsory enrolment in the army. National service is compulsory for all men and women aged between 18 and 40 and the right to conscientious objection is not recognized by the authorities. Amnesty International (2005a) recorded regular arrests of evaders and deserters in 2004 as well as the use of torture and indefinite arbitrary detention to punish conscripts accused of military offences. Many respondents said that they fled Eritrea after escaping from detention or left shortly after release from detention after having been detained on several occasions for short periods. Women, interviewed in this study, occasionally described fleeing military service and detention but more commonly explained that they left Eritrea to follow their husbands who had fled for these reasons.

Common to both Eritrean and Ethiopian respondents were reasons related to the impact of the 1998-2000 war between Eritrea and Ethiopia. Many fled to Sudan while the war was ongoing and did not return to Eritrea or Ethiopia after it came to an end but either remained in Sudan or sought alternatives, such as migration to Libya and/or Italy. Others mentioned particular problems arising from mixed marriages between an Eritrean and an Ethiopian, causing problems for the couple themselves or their offspring. The desire to improve their economic situation was also mentioned by many.

Somalis

Currently a quarter of Somalis are thought to live outside of their country of origin (al-Sharmani, 2004). The reasons for their flight are well-documented (e.g. Menkhaus, 2003). The gradual collapse of the Somali state throughout the nineties until 2004 created a situation of intense instability and insecurity and a fall in the standard of living. This led to large numbers of the population seeking refuge in various countries around the world. Al-Sharmani (2004) has demonstrated that among the Somali diaspora, a transnational lifestyle has been established as families make collective decisions on who lives where and who provides for whom. The majority do not appear to have a defined plan of their destinations when leaving Somalia and as a result often pass through several countries, each time testing out a place's viability and suitability as a place of residence. However, al-Sharmani argues that the ultimate goal is to live in the West which is seen as a means of gaining increased mobility

since refugee status allows travel abroad and consequently facilitates a transnational lifestyle.

The Somalis interviewed in the context of this study were all based in Egypt. Some headed directly to Libya, crossing Ethiopia and Sudan, and after failing to reach Europe from Libya, made for Cairo, Egypt. Others were residing in Cairo and had even been granted refugee status; however, the difficulties of life as a refugee in Cairo (al-Sharmani, 2003) drove them to seek alternatives elsewhere, in many cases to Libya sometimes with a view of continuing on to Europe. A young Somali in Cairo offered his analysis of the situation; his view was also shared by other Somali interviewees: "*50% of Somalis here in Egypt are young. They ran away from their country because of the problems there and then they encounter problems here as well. This leads people to seek another way so they try to go to Libya for a better world, to search for a better life. Many of those who went to Libya were legally registered as refugees in Cairo. My best friend here in Cairo left for Libya and died on the way. He left just one week after he heard UNHCR's decision that he was not eligible for resettlement. He travelled with friends to Niger and crossed the desert. Their car broke down and they had to continue the journey by foot. En route he died. He was only 19 years old.*"

Reasons for "choosing" Libya

The major attraction, or "pull" factor, of Libya has traditionally been the possibility for financial improvement and the relative ease of access into the country. As noted, in past decades, the country served as a popular destination for migrants seeking employment. For some of those interviewed, it is clear that the opportunities for economic gain remain a reality and for them Libya still presents a viable option for migration.

However, it would seem that the Libyan economy no longer requires such a high supply of predominantly unskilled labour. Information about the decline in the economy coupled with difficult living conditions and a lack of adequate state protection for refugees and migrants has filtered out to those thinking of migrating to or through Libya. Thus, the majority of those interviewed did not present Libya as their target destination but rather felt that they had little choice but to end up there. This was either for lack of another place to go to or since they saw Libya as a temporary stop along their route to the desired destination of Europe. Thus, one of the major "pulls" of Libya today is as an access point to Europe and knowledge of this can drive people there despite their awareness of the hardships of life in the country.

PART 2: EXPERIENCES OF REFUGEES AND MIGRANTS IN LIBYA

Before examining how foreign nationals, in particular those from Sudan and the Horn of Africa, assess their treatment in Libya, it is important to set their experiences in the broader context of poor human rights protection for all those residing in the country, including Libyan nationals[27]. In 2004, following a field visit, Amnesty International issued a report (Amnesty International, 2004a), documenting routine human rights violations of the rights of real and suspected political opponents as well as migrants and potential asylum-seekers in recent years. These violations, which take place in a context of near total impunity, include: arbitrary and unlawful detention, incommunicado detention, torture and ill-treatment, unfair trials, and the death penalty.

For sub-Saharan Africans, there are additional difficulties faced from society at large, notably racism. Testimonies of some of the Egyptian respondents, as well as those of sub-Saharan Africans, describe a situation in which sub-Saharan Africans face greater difficulties both from state officials, such as police officers and prison guards, and from ordinary members of society by virtue of the colour of their skin. The difficulties faced, which are compounded by their irregular situation, lead many concerned to deem Libya an unsafe and undesirable place to remain[28].

The notion of asylum: refugees' perspectives

Those who find themselves in Libya are faced with the possibility of remaining there or of trying to move on to Europe. Among them, a significant proportion might be eligible for refugee status. However, the majority do not consider applying for asylum in Libya as they do not conceive of it as a possible option.

Respondents interviewed in Italy, who had not claimed asylum in Libya but had done so once in Italy, explained their understanding of the notion of asylum in Libya. They comprised a mixture of asylum-seekers and those granted refugee or humanitarian status in Italy. They included the following:

> (1) F., a recognised Ethiopian refugee in Italy, explained: "*I didn't think about staying in Libya because there is no life there. They don't give you any documents…. If you want to stay there you must do it illegally, I think, I don't know any other way.*"
>
> (2) T.O., a recognised refugee from Eritrea in Italy, stated simply: "*It is not possible to apply for refugee status in Libya*".

Naturally, dealings with the Libyan authorities are not sought by asylum-seekers, due to their irregular status in Libya. The presence of a UNHCR office in Tripoli is either not known of or not believed to exist by many potential asylum-seekers.

> After escape from detention in Libya for irregular migration, D.G., an independent journalist persecuted in Eritrea, contacted international human rights organizations by e-mail asking for their advice. He says that they advised him to go to UNHCR Tripoli to apply for asylum but he did not

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[27] Extensive documentation can be found on the Amnesty International website: www.amnesty.org

[28] Research in Libya is needed to ascertain whether those recognized as refugees by UNHCR Tripoli enjoy greater security in Libya as a result of their refugee status.

follow the advice as he did not believe that UNHCR operates in Libya. At the time of interview, he had applied for asylum in Italy and was waiting to be interviewed by the Italian authorities.

For those who are aware of its presence and the possibility of seeking asylum with UNHCR, they often fear going to the UNHCR office in Tripoli. It is perceived by some to be a possible danger, which might expose their irregular situation in Libya and put them at risk of detention and deportation.

> S.L., from southern Sudan, was granted humanitarian status in Italy in 2003. He described his only attempt to submit his asylum application, at UNHCR Tripoli in the mid-nineties, as a failed one. The timing of the interview, set by UNHCR Tripoli, apparently coincided with mass street round-ups of sub-Saharan Africans leading him to miss the interview for fear of being caught near the office and returned to Sudan. In any case, he explained that "*you can't apply for asylum in Libya as a Sudanese national because they* [the Libyan government] *tell you that Libya is your country. You are not a refugee; you are just a Sudanese national.*"

> Similarly, M., a Darfurian asylum-seeker, expressed the practical difficulties of making an asylum application: "*You can't apply for asylum in Libya. How do you even reach the UN if you have no papers? It is known that there are no human rights in Libya.*"

Other reasons for deficiencies in the asylum system were attributed to the general lack of respect for human rights, including the racism faced by many potential asylum-seekers in Libya.

> G.K., an Eritrean national granted humanitarian status in Italy, said: "*I don't think you can claim asylum in Libya because there is no respect for blacks, it is very hard there.*"

The risk of detention and torture/ill-treatment

Interviews conducted during this study highlighted the all too real threat of detention for refugees and migrants in Libya. At least hundreds, possibly thousands, are said to be held in police stations, prisons and camps around the country. Some are held temporarily for a matter of days, while others are left to languish in cells for months and even years, often without understanding the whys and wherefores of their detention. Those arrested include men and women; where they are accompanied by children, they too are taken into custody.

Just under half of the refugees, asylum-seekers and migrants interviewed for this study were detained during their stay in Libya. Regardless of whether they were actually detained or not, almost all respondents expressed a constant fear of being detained as they knew others who had been. Many described how this threat of detention significantly affected their everyday lives, forcing them to alter their behaviour in order to try to avoid any contact with the police. This included reducing outings from the house to a strict minimum to those tasks needed to fulfil their basic needs. In some cases, respondents explained that if the police found out that a group of "black Africans" were living in a particular house, its residents were compelled to move house – for some this happened on several occasions – in order to avoid arrest.

Describing the findings of its visit to Libya in late 2004, the European Commission noted that "[v]*arying from one centre to the other, the experts had the opportunity to interview the detainees who, when not in presence of the Police guards, complained about the arbitrary character of their detention. The detainees did not understand the reasons for their detention since many had already spent years in Libya, mostly working and establishing themselves on a temporary basis in the fringes of any process allowing legal residence. Some of the detainees had refugee documents obtained in other countries such as Ghana. Others confirmed that, although escaping from civil war (Sudan, Ethiopia), they were unable to obtain refugee documents.*" (European Commission, 2005: 33) The Commission further remarks that the Libyan authorities failed to provide any "*information on specific procedures and criteria for detaining individuals*" and that many of those met by the delegation in migrant centres of detention "*seem to have been arrested on a random basis*" (European Commission, 2005: 14).

Interviews with respondents demonstrate that the two principal moments at which migrants are at risk of arrest and detention are: on arrival at the points of entry into Libya on the border, such as Kufra and when trying to leave by boat to Italy. In the case of the latter, this may be due to a failed attempt to leave Libyan shores due to a faulty boat, or difficult weather conditions causing the passengers to return to Libyan soil or to be rescued from the sea by Libyan officials. Refugees and migrants are also sometimes discovered when waiting for their boat to be readied as they congregate in large groups in the farm areas near the point of departure. In addition, there are also reports of police round-ups from time to time, which result in the arrest of large numbers of migrants, who are taken from the street having been deemed to be residing in the country illegally.

Most of the respondents were detained for short periods of time of between several days and a few months, though some reported being detained for up to one year. In virtually all cases, detainees were given no formal reason or explanation for their detention though they came to understand informally from police officers or prison guards that they were held for *tahrib* (meaning 'smuggling' in Arabic). They understood this to mean trying to leave Libya illegally using a smuggler. However, there were no formal charges of which they were aware. Throughout this period of detention, they had no access to a lawyer, nor were they presented before a judicial authority. In addition, no trial took place to establish their guilt or innocence, so far as they were aware.

Non-Arabic speakers were not provided with interpretation facilities but appear to use the goodwill or services of fellow prisoners who were able to speak Arabic, usually Sudanese nationals, to translate for them if possible. Having said that, many detainees from Eritrea, Ethiopia and Somalia, though not fluent in Arabic, had learnt, at least, some basics of the language, during time spent in Sudan and/or Libya, which enabled them to communicate with guards in the detention facilities.

Given these factors, it is not surprising then that the majority of those who had been detained were unable, during interviews conducted in the context of this study, to explain precisely where they were held, knowing neither the name or exact location of the detention centre. Although they usually referred to the place of detention as a

prison, it is not clear whether they were held in a prison, a police station or a camp for migrants.

In most cases, it appears that men and women are held separately in places of detention. If accompanied by children, they too were detained and in all cases held with the mother. In some cases, respondents mentioned that it was possible for men and women to meet in a central courtyard at certain times of the day. Almost all respondents who had been detained complained of the difficult conditions, notably poor quality and insufficient quantities of food, overcrowding and unhygienic conditions.

> L.L., an Eritrean woman now seeking asylum in Italy, said that she spent three months in detention in Misratah, in north-western Libya, in 2004. She described being beaten with a stick by male guards. She was detained with her then 4-year-old son and her husband - who was held separately – after they were rescued at sea by Libyan officials following the breakdown of their boat's engine.

Both men and women reported being regularly insulted by guards who used racist remarks.

The majority of respondents who had been detained reported having been ill-treated in detention and in some instances tortured. From their description, it appears that while not systematic, beatings were regular, depending on the particular guard on duty. The two main times when beatings occur appear to be: in the evening when guards bring detainees their meal; and when detainees try to inquire about the reasons for their detention or to ask for their release. The men and women described being beaten with anything to hand, including sticks and canes.

> A Sudanese man A.K. reported being detained in al-Janzur Prison, near Tripoli, in 1996 for two days, during which time he, and over 40 other Sudanese arrested alongside him, were made to roll around in dirty water until they became dizzy and immediately forced to stand and run for short distances from wall to wall, causing some to fall to the ground. They also had dirty water poured on their heads.
> An Eritrean man B.G., granted humanitarian status in Italy in November 2004, also related having to roll around in dirty water, as well as being forced to stand in the burning sun for long periods of time. He was detained for one month in late 2002/early 2003.

There was consensus among those who had experienced a period of detention that male detainees were treated more harshly than female detainees, suffering more severe and more frequent beatings.

> D.G., an Eritrean asylum-seeker in Italy, was detained in 2003 for six months in four different locations. He described regular evening beatings, and on one occasion being burnt with a cigarette butt on his leg. He recalls the horrific experience of seeing a newly-arrived inmate, a Chadian, being struck on the head with an iron stick which caused him to fall to the ground. The guards reportedly ignored the fall and continued to beat others. The Chadian detainee died shortly afterwards in the presence of D.G. and the guards.

Women also reported beatings and in some cases being threatened with rape when guards became drunk at night; though no actual cases of rape were reported.

F.H., a Somali refugee in Egypt, was detained in three different locations for nine months in 2004. She described the beatings to be a feature of each place of detention. She was initially held for ten days in what she understood to be the local police station in a small village at the border between Libya and Tunisia. She was held together with men, whom she watched being beaten with truncheons on a regular basis. She said: "*The Libyans have no mercy for the prisoner. They think that a prisoner is like a donkey.*" She was also beaten though not as severely or as often as the men. She explained that, on one occasion, two policemen tried to rape her but a senior police officer heard her screaming and ordered his colleagues to stop. She explained that the treatment in prison was particularly difficult because of the "*bitter experience I had gone through*". She had just lost her family, who had died on a failed attempt to reach Italy by boat.

As documented by Amnesty International, "*the practice of unlawful detention after completion of sentence seems to be widespread*" in Libya (Amnesty International, 2004a: 23). In this regard, the organization documented a case of seven Eritrean nationals, who were arrested in August 2002 as they attempted to cross the Mediterranean, heading for Italy where they planned to seek asylum. Unlike many others, the men were tried and convicted of "illegal entry"; however, they remained in detention for a further 17 months after the expiry of their three-month sentences in November 2002. The men were eventually released in April 2004, following international pressure, including by UNHCR which had granted the men refugee status in March 2004. While in prison, "*the men lived in fear of being deported to Eritrea, where they would be at risk of serious human rights violations*" (Amnesty International, 2004a: 24). They had reportedly deserted the Eritrean army at different times during 2002 and fled from Eritrea to Sudan and then to Libya.

Aware of the possibility of remaining in detention for lengthy periods, many of those detained actively explored ways to secure their release themselves. The two most common ways to obtain release were to pay the guards a substantial sum of money or where possible to escape. There are indications that smugglers and police or prison guards may cooperate in order to make financial gains both from receiving payments in exchange for the release of detainees and from facilitating further travel by illegal means within or outside the country.[29]

The pattern of detention of migrants in Libya does not appear to be a new phenomenon with reports of periods of clampdowns - involving arrests, detention and deportations - on foreigners known to have taken place in previous years when Libya functioned primarily as a destination country. It is hard to assess whether the incidence of detentions has increased in recent years after Libya's transformation to a transit country and its subsequent cooperation with the EU. Regardless, the detention of migrants is characterized by the lack of a formal process, the apparent arbitrary nature of the arrests, and a total deficit of information provided to the migrant as to the reasons and duration of their detention.

However, there are some exceptions to this pattern, in which proceedings follow a more formal path.

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[29] This is elaborated upon below: see *smuggling networks*

In late 2004 eight men were detained and brought to trial. They included three Libyan men, apparently including one security official, accused of operating as smugglers, and five foreign men,[30] accused of "trying to infiltrate to a foreign land by way of Libyan territorial waters". Two Egyptian defendants reported that they had no lawyer during the trial proceedings. They said that during the period of questioning, they were not informed of the charges against them and were merely interrogated about the means of arrival in Libya and their experiences in trying to leave Libya for Italy. They also described facing pressure from the smugglers, with whom they came into regular contact in prison, not to reveal details of the smuggling operation. Two of the smugglers were apparently sentenced to two years' imprisonment and the other to one year's imprisonment and all fined 1,000 dinars. The Egyptians were found innocent, having been deemed to have been duped by the smugglers, and released.

Places of detention

Refugees and migrants appear to be held in different types of detention centres, including police stations, prisons and camps specifically designed for migrants. As mentioned above, the majority of those who had been detained were unable, during interviews conducted in the context of this study, to explain precisely where they were held, knowing neither the name or exact location of the detention centre. Although they usually referred to the place of detention as a prison, it is not clear whether they were held in a prison, a police station or a camp for migrants. The two most common places of detention mentioned by respondents in this study were: *sijn al-tarhil fi-l-jawazat*, the deportation prison in the Passport Office, located in Tripoli, and a detention centre in Kufra, sometimes referred to as *sijn al-hangar*. It is not clear from the interviews whether this detention centre in Kufra is a prison, a police station or a camp for migrants or whether there is more than one place of detention in Kufra where refugees and migrants are held.

Camps for migrants

Little information exists about camps for migrants in Libya and for reasons stated above it is, in many cases, very difficult to obtain information about these camps from refugees and migrants themselves.[31] The most detailed and valuable information to date is provided by the European Commission, based on the findings of its mission to Libya in November/December 2004. Delegates participating in the visit to Libya were able to visit several different centres, specifically holding migrants.

According to the analysis of the European Commission delegation (European Commission, 2005: 30-32), based on a two-day trip along the northern coasts accompanied by Libyan officials, there are four main types of camp: "*short-stay*

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[30] They included two Egyptian men interviewed on 22 May 2005 in the context of this study in the governorate of al-Manufiya.
[31] As a result of being denied a visa to conduct research in Libya in the context of this study and of the lack of information given to migrants themselves, the material on camps for migrants found in this section is taken from secondary sources.

detention centres"; "*long-term detention centres*"; "*open camp-villages*"; and "*repatriation centres*".[32]

The short-stay detention centres are used to hold migrants "*until they are returned to other centres or another decision is made: either to be set free, be deported directly or be granted another permit under Libyan law. The prisoners are guarded in these centres by the Police*". In long-term detention centres, "*detainees do not have the freedom to enter or to leave*" and some of these "*can be assimilated to prisons*". In just one of these centres, located in central Tripoli, 1,100 African nationals were allegedly registered by the authorities at the time of the European Commission's visit.

The report describes a third category of camp, termed "*open camp-villages*", which consist of small villages with their own Local Council "*without apparent police control*". The inhabitants are able to leave the camp-village to seek work or go about their everyday business. The report views these camps as a "*form of control by the Libyan Authorities of the illegal immigrants....a way for the authorities to keep undesirable foreigners away from Libyan citizens.*"

Finally, a fourth category applies to repatriation centres, which accommodate migrants who voluntarily choose to return to their countries of origin while their papers are processed. One such "*centre was an open area located in the back of the prison… where illegal immigrants who wished to return voluntarily to their country could be interviewed by a Consular officer from his/her Embassy and issued a Travel Certificate in the expectation that an airplane would take them home. In this centre, the immigrants sit still with their luggage as they do not dare to leave for fear of being arrested by the Police.*"

Among the issues of concern were the presence of unaccompanied minors and women in some centres, who in certain cases were not held separately. Differing conditions of detention, ranging from "*relatively acceptable to extremely poor*" were documented by the delegation (European Commission, 2005: 14).

Deportations and the risk of *refoulement*

Numerous questions relating to the protection of refugees arise from the regular deportations from Libya. How and on what basis is the decision taken to carry out a deportation? Are cases dealt with at the level of the individual or on a collective basis by nationality? What efforts are made to ensure that people have access to an asylum procedure? This last question must be set in the specific Libyan context in which no distinction is made between refugees and migrants. Finally, how do the returnees themselves view the returns process?

As noted, for several decades Libya has been welcoming foreign labour into the country. Despite this, over certain periods, it has also carried out mass deportations of people on a collective basis, often according to their nationality, to coincide with deteriorating political relations between their country of origin and Libya, or following a decline in the economic situation.

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[32] Findings of the mission to Libya, led by the European Commission in late 2004, should be treated with some caution. Visits to camps for migrants formed only a small part of their short visit to the country and delegates were accompanied by Libyan officials.

In recent years, there have been regular reports of both voluntary and forced returns of nationals from different countries from Libya to their countries of origin. There are few reliable figures available regarding the numbers of returns which have been carried out in recent years. According to media reports, official Libyan statistics set the number of those arrested and deported in connection with illegal immigration at over 20,000 over the three-year period of 2002 to 2004, with 7,000 deported after having been caught trying to reach Europe by boat (al-Quds al-'Arabi, 18 January 2005). The deportations are clearly continuing into 2005; as an example, the Egyptian media regularly reports the returns of its nationals from Libya in connection with illegal immigration.[33] In April 2005 the Associated Press cited the Egyptian police as saying that "*about 10 to 15 illegal deportees are returned to Cairo every week*" (Associated Press, 13 April 2005). An official Libyan source apparently reported that 582 people, of different nationalities were deported from Libya to their countries of origin over a seven-day period, from 10 to 17 October 2005 (PANA, 27 October 2005).

The European Commission finds that, between August 2003 and end 2004, Italy had funded the repatriation of 5,688 people of different nationalities from Libya to their countries of origin. Three nationalities dominated: 1,804 Nigerians; 1,580 Ghanaians; and 1,401 Egyptians (European Commission, 2005: 61-2). While there are clearly large numbers of nationals from these three countries in Libya, these figures should not necessarily be taken as an indication that their nationals are the most numerous in Libya; rather, it may more accurately reflect which communities are presumed by EU countries to produce migrants rather than refugees. In any case, these figures represent only a part of the total number of deportations by Libya, namely those funded by Italy.

Following meetings with Libyan officials and an examination of the returns process, the European Commission concluded that "[t]*he decision to return illegal immigrants to their country of origin seems to be taken for groups of nationalities rather than having examined individual cases in detail.*" (European Commission, 2005: 14) "*The mission* [of the European Commission] *was informed* [by the Libyan authorities] *that administrative procedures and paper work for the purpose of identification is conducted, including involvement of concerned national consulates, concluded by a decision taken by the Head of the 'Commission for deportation' in Tripoli. However, the mission expresses doubts about the systematic implementation as well as the efficiency of this procedure…. Finally, no individual order of deportation seems to be taken.*" (European Commission, 2005: 35)

This collective approach, coupled with the lack of distinction between refugees and migrants leads to the threat of *refoulement,* by which people are returned to a country where they are at risk of serious human rights violations. In recent years, several instances of *refoulement* have been recorded. Having said this, returns from Libya have not been consistently monitored either with regard to an analysis of the profile of

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[33] The issue of returns of Egyptians from Libya became known in Egypt after two men died in August 2004 while being transferred from the Egyptian border to Cairo. Fellow returnees claimed that the cause of death was ill-treatment, and in particular suffocation, brought about by the refusal of the guards to open the door of the vehicle throughout the journey, which took place in the summer heat. During this study, Egyptian human rights organizations who covered this incident and returnees themselves were interviewed.

returnees or their fate on arrival in their countries of origin. As a result, it is probable that many more cases of *refoulement* have taken place but have gone unnoticed.

On 21 July 2004, 110 Eritrean nationals were returned from Libya to Eritrea, where they were at risk of torture. On arrival, they were arrested and reportedly held in incommunicado detention - that is without access to the outside world - in a secret prison (Amnesty International, 2004b). Until today, there is no news of their fate and whereabouts.

With this in mind, a group of 75 Eritrean men, women and children, who were being returned from Libya to Eritrea by military plane on 27 August 2004, hijacked their plane, forcing it to land in Khartoum, Sudan[34]. As one of them explained to me, "*What was waiting for us in Eritrea was nothing but death. What we did was for our safety. We did not beat or hurt anyone, we just did what we had to because we knew that on landing in Assmara Airport we would be greeted by death.*" On arrival in Khartoum, 60 of them applied for asylum and were all recognized as refugees and have applied for resettlement.

The 15 others were identified as the hijackers and detained on arrival. They were initially sentenced to five years' imprisonment but this was eventually reduced to two years by the Supreme Court. Their sentence also carries an expulsion order. At the time of writing, the Sudanese authorities would not allow their application for asylum to be considered; although there was some pressure for them to do so. Some of the prisoners, serving their sentence in Khartoum's Kobar Prison, are married to women who were also on board the airplane and were recognized as refugees after it landed in Khartoum.

They had all been arrested in Libya at different times and spent several months in detention prior to their deportation. Sixteen of them had been detained in *sijn al-tarhil fi-l-Jawazat*, the deportation prison in the Passport Office in Tripoli and the rest in *sijn al-hangar* in Kufra. Like many others, they complained of ill-treatment in detention, including regular beatings particularly for the men, and of a lack of access to legal counsel or due process. The 16 in Tripoli were transferred to the airport in Kufra where they met the other Eritreans. They spent the night there and were loaded on to a military airplane destined for Eritrea. On the airplane, there were no chairs or toilets; they sat freely on the floor, watched over by unarmed Libyan guards. Just over an hour into the journey, a group of men took charge of the airplane and forced it to land in Khartoum, demanding the presence of the UN for their protection. They were met off the plane by representatives of several UN agencies, notably UNHCR.

An examination of the process of deportation reveals a flawed procedure in which no consideration appears to have been given to the risk the men and women would face if returned to Eritrea. Ten of the passengers were recognized as refugees in Sudan before traveling to Libya.
>   One such individual, M.M.T. decided to move to Libya for a period of time to earn money to send home to her family. She said that while in detention in

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[34] I interviewed several of the passengers in the context of this study in addition to staff of UNHCR Khartoum, the Sudanese Commission on Refugees and the *SUWEIRA Centre for Human Rights*, an organization working on behalf of Eritreans in Sudan.

Kufra, she showed her refugee document to an official whose response was apparently to say that he did not know what this was.

On arrival in Sudan, it was determined that at least 60 of those returned were considered refugees. It is therefore clear that, in their case, they should have been given the opportunity to claim asylum in Libya or at the very least not to have been returned to their country of origin. In contrast, they were not given access to an asylum procedure and for those detained in Tripoli, they were further put at risk through identification by an official from the Eritrean Embassy.

> A.I., one of the group of 16 Eritreans held in Tripoli, described being visited by an official from the Eritrean Embassy and the Head of the Passport Office who informed them that they would be returned to Eritrea. The official from the Eritrean Embassy apparently told him that "*his time was up*". In front of the official from the Eritrean Embassy, he asked the Head of the Passport Office to arrange for a representative of UNHCR to visit him in prison. The response from the Head of the Passport Office was apparently to say that he did not know anything about refugees or UNHCR. At this juncture, it is important to recall that UNHCR Tripoli does not have access to places of detention, including to those places which serve as deportation centres.

While those in Tripoli were visited by an official from the Eritrean Embassy, those in Kufra reported that they did not receive any such visit. In their case, their nationality was apparently determined merely on the basis of their own assertion. According to those interviewed in the context of this study, some of the Eritreans detained at the same time as those deported avoided deportation by claiming to be from Ethiopia. This was confirmed by B.M., an Eritrean national, who explained that he managed to escape deportation along with other Eritreans detained alongside him in 2004 since he falsely claimed to be Ethiopian. On the other hand, one of those on the hijacked airplane was an Ethiopian woman Y.T., who would have been returned to Eritrea had the airplane arrived at its intended destination. She was married to an Eritrean and it therefore seems to have been assumed that she was of the same nationality.

Finally, those in Kufra were not told the real destination of the airplane. Those interviewed in this study thought that they were being transferred within Tripoli. One man B.T. explained that he thought that he, his wife and daughter would be released once in Tripoli to coincide with the Anniversary of the Revolution, marking Colonel al-Gaddafi's coming to power. It was only when they met the group of 16 Eritreans who had been transferred from Tripoli that they realized their fate.

> In a separate instance, H.J.R., a 29-year-old Sudanese man, was returned to Sudan by airplane in August 2005 with tens of other Sudanese men. He was arrested 32 days earlier after being found by police waiting in a *hawsh* (basic lodgings), on a farm on the outskirts of Tripoli, for his boat to be prepared to travel to Italy. He had lived in Libya since his childhood, having moved there with his family in the mid-eighties. He and his family were residing legally and he benefited from a Sudanese passport with a residence visa. In 2005 he decided to try his luck and go to Italy following in the footsteps of many others whom he had seen traveling every day. However, his plans were foiled when the police entered the *hawsh* and arrested the group of men.

He said that he was detained in *sijn al-tarhil fi-l-Jawazat*, the deportation prison in the Passport Office, along with hundreds of others from different African and Asian countries. An official from the Sudanese Embassy paid a visit to the prison in order to identify the Sudanese nationals, which would have put any Sudanese asylum-seekers at risk. He confirmed that although he did not need to claim asylum and could return safely to Sudan, he thought that there was no possibility of seeking asylum and no one raised this as an option. According to H.J.R., "*It doesn't make a difference if you have the residence visa or not, since you are trying to leave Libya by boat to Italy, this is considered a reason to remove you from the country. I accept that this happened, because I broke the law.*"

Expulsion from Libya for those who consider themselves to be residing legally in the country appears not to be an isolated incident. O.I., a Sudanese national, described that in 2004 he entered Libya legally by airplane with his passport, which was stamped with an entry visa. When he returned to Sudan several months later, the Libyan authorities stamped his passport with an expulsion stamp. He said that no one explained to him why his voluntary exit from Libya was considered an expulsion by the authorities.

Those interviewed in the context of this study were unable to rationalize the procedure of how the decision to deport a particular person or group of people is taken. The interviews confirmed that there is no individual identification procedure beyond asking the person's name, parents' names and country of origin. The explanation of Sudanese national H.S., who spent nearly one year in Libya returning voluntarily in May 2005, reflects the descriptions given by several other interviewees: "*It all depends on the period of time you are there: sometimes it is easy to enter and people arriving by the desert trail, even those without proper documentation, enter from the bawaba* (gate)*; at other times, you must bypass the bawaba and enter illegally. It is not clear what is needed in order to make your stay legal. One day the police will ask you for one particular document, like your passport, and the next day you'll be asked for something else, say the health certificate. It's hard to know which is necessary, for whom, when and why.*"

While the Libyan authorities have a legitimate right to deport those residing illegally in the country, it is clear that the current manner in which deportations are carried out fall short of the minimum necessary to ensure that *refoulements* do not occur. The two main deficiencies in the deportation procedure are the lack of a thorough individual assessment and the opportunity for the individual, regardless of his or her country of origin, to access the asylum procedure.

Racial discrimination and religious freedom

Migrants and refugees interviewed in this study articulated the root of many of their problems and their inability to address those problems less in terms of their irregular status but rather in relation to the high degree of racism in Libyan society. The majority of respondents made reference to racism in Libya as one of the aspects which made their life there particularly difficult, suffering bad treatment from members of society and from the security forces as a result.

M.O., a Sudanese asylum-seeker in Italy, explained: "*I was lucky enough to avoid any personal problems but I feared that something would happen to me, that the police would arrest me, since foreigners are blamed for everything.*"

When probed, respondents using the term 'foreigners' explained that they specifically meant 'blacks'. Egyptian respondents also described feeling as though they were treated with contempt by Libyans but their testimonies bore witness to the greater severity of this problem for sub-Saharan Africans.

Typical examples of the problems mentioned by respondents from Sudan and the Horn of Africa are: Libyan youth throwing stones at them or hitting, spitting or insulting them, often shouting '*abeed/'abd* (meaning 'slave' in Arabic). Both men and women described facing such harassment when walking in the street or taking public transport. Some respondents made a distinction between the treatment of sub-Saharan Africans by the older and younger generation of Libyans.

A.K., an Ethiopian refugee in Italy, said, "*The older generation are decent but the teenagers are problematic. They don't let you pass by on the street. Each time you make any movement in your daily life, like going to a shop, you will face a problem.*"

As can be seen from this quote, for this refugee but also for many others, the harassment feels relentless. It also leads to a heightened sense of vulnerability, as expressed by M.A.A., a Somali man recognised as a refugee in Egypt: "*Because we are black we have no rights, anyone can do anything to you*".

F.H., another Somali refugee in Egypt, said "*Libyans have a separate plate for their black servant and they refuse to eat from it after it has been used from them, they might even throw it away*".

She had never worked in a Libyan home as a maid but the strength of her statement reveals the perception of many sub-Saharan Africans of the racism in the country. Unsurprisingly therefore, mixing between Libyans and sub-Saharan Africans seems to be minimal, at least in parts of the country (such as Tripoli).

The potential for this racism to have dangerous and even fatal consequences was borne out in 2000, when racist attacks against sub-Saharan Africans led to dozens of deaths and scores of injuries. Disturbances in Tripoli and neighbouring al-Zawiyah soon spread to other parts of the country. Many sub-Saharan Africans found themselves homeless after their homes were burned and looted, forcing them to move to camps, "*where on occasion members of the security forces failed to protect them from further attack. On at least one occasion, there were allegations of police involvement in the attacks*" (Amnesty International, 2001). The attacks were followed by a wave of large-scale repatriations. In 2001 two Libyans, a Ghanaian and four Nigerians were sentenced to death in connection with the attacks. Although these attacks took place in 2000, respondents interviewed in 2005, some five years later, continued to mention them, showing that they remain present in the minds of many sub-Saharan Africans who have since spent time in Libya.

In March 2004 the Committee on the Elimination of Racial Discrimination issued its concluding observations on Libya's compliance with its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination. The Committee expressed its deep concerns about the events in 2000 and called on the Libyan authorities to provide "*detailed information about the number of persons*

who died and their nationality, the results of the inquiry made by the authorities, the prosecution of persons in relation to these events, and sentences, if any, that were pronounced." It also asked for information about measures previously announced by Libya in response to these events, "*in particular the creation of a committee to look into the events and to study all manifestations of xenophobia, as well as measures for the regularization of undocumented migrants*". The Committee further noted the "*absence of comprehensive legislation to prevent and prohibit racial discrimination*" and the need for awareness raising among the general population and the police and judicial authorities on the issue of racism.

With regard to religious freedom, there is little information about the extent to which adherents to religions other than Islam are able to practise their religion in Libya. The majority of respondents interviewed in this study were Muslim with only a handful of Christians. It is perhaps significant to note that all the Christian respondents felt that they faced increased hostility on account of their religion. It is clear that churches, in which Christians are able to worship, can be found in some of the so-called "open camp-villages", isolated areas inhabited solely by foreign nationals (European Commission, 2005: 32), in the two main cities of Tripoli and Benghazi and perhaps elsewhere. Nevertheless, there appears to be a sense among at least some Christians of the fragility of their situation. S.L., a southern Sudanese Christian granted humanitarian status in Italy described that "*sometimes when you are coming out of the church locals throw stones at you*". An Egyptian Muslim migrant, A.A., said that he heard the Director of the prison in which he was held ordering the prison guards not to beat Egyptians while telling them that "*they could do what they liked with Christians*".[35]

Lack of state protection

A recurring theme which emerged in the majority of interviews was the lack of protection offered by the state to foreigners, regardless of one's legal status in the country; naturally, those residing illegally are more vulnerable since they do not wish to expose themselves to the authorities. When relating the problems they faced from Libyan society, interviewees regularly described what they saw as a massive disparity between the treatment by police and other state officials of foreigners, particularly sub-Saharan Africans, and that of Libyan nationals. Those interviewed felt that they had no recourse to the police, who would never take action against a Libyan in the case of a dispute between a Libyan and a "black African".

The two most common problems faced were related to thefts, especially by Libyan youth, and not being paid their salary after having completed their work. M.A.A., a Somali refugee in Egypt, said, "*Somalis prefer not working in Libya because they know they will be beaten and humiliated*". M., a Darfurian asylum-seeker in Italy, elaborated further with a somewhat typical response, "*Many people work and do not receive their salary at the end. If you ask for your money, they beat you and the police do nothing to help. The police are no better than the citizens, even those with papers receive the same treatment. They always want something from you. It is possible to*

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[35] No Egyptian Christians were interviewed during this study. However, it would be interesting to see whether they share similar feelings of discrimination on the grounds of their religion as those of sub-Saharan African Christians. Further research is required to fully ascertain the level and nature of religious discrimination.

pay them off but ultimately they treat you like that because they can't stand foreigners."

H.M.D., a Darfurian asylum-seeker in Italy, related his point of view, "*Libyans are racist. They steal your things while you are in the street and if you go to the police they tell you to get lost. This happened to my friends and I*". T., a Darfurian asylum-seeker in Italy, added, "*Anything a Libyan says goes, you can't challenge it. I was beaten up twice but I couldn't do anything about it. I couldn't go to the police because I had no papers.*" Finally, A.K. from north Sudan summed up the feelings of many of the sub-Saharan African respondents, "*the law stands by Libyans and not foreigners. If a foreigner goes to complain to the police, they will stand by the Libyan no matter what*".

How do the experiences in Libya inform migratory decisions?

As we have seen, some continue to see Libya as a possible destination country while others view their time there as a temporary pause on the way to their intended destination of Italy. For a proportion of people, though not all, they articulate their experiences in Libya as defining their choice to leave the country to seek a more secure and stable life elsewhere.

> S.L., the southern Sudanese respondent mentioned above, indicated that he left Libya "*because the situation was very difficult. Living there, you are always scared that one day they will kill you just like a dog and there is nothing that can be done.*"

> This was reiterated by M., the Darfurian asylum-seeker mentioned above, who said: "*I could have stayed in Libya or anywhere else for that matter. But I saw that life in Libya was too hard.*"

> H.M.D., a Darfurian asylum-seeker in Italy, thought Libya would be a "*safe place*". He left Sudan "*looking for a safe place but did not find that in Libya*" leading him to seek that elsewhere.

> Another Darfurian asylum-seeker, T., said that while in Libya "*I began to hear about people travelling to Europe and was told that you could get asylum there. The idea was planted in my head that it was in Europe that I would find justice and obtain my rights.*" He said this just after he had detailed the many problems he had experienced of living in Libya.

> In the case of M.I., also a Darfurian asylum-seeker, he felt that despite the problems in Libya, life was "*okay*" While in Tripoli, he began to hear about the possibility of going to Europe and began to think of whether he should try to go to Europe. He finally took the decision to leave Libya after being detained in connection with having insufficient documentation. After his release, he decided to leave Libya for Italy.

PART 3: THE PASSAGE TO EUROPE

This section focuses on the routes and means used to arrive in the EU from Libya. It aims to demonstrate how, in the case of migration through Libya to Italy, the irregular situation of refugees and migrants alike exposes them to great risks as they have little choice but to travel along difficult routes using dangerous means of transport, organized by smugglers, whose priority is financial gain rather than ensuring safe passage to Europe.

Routes

For many refugees and migrants, the passage to the EU is riddled with dangerous and life-threatening situations at various stages of their lengthy journey. The journey typically comprises three stages: a desert crossing to the Libyan border, traveling within Libya from the frontier to the northern coastal towns and cities, and a boat trip across the Mediterranean Sea to Italy. At all stages of the journey, they must resort to smugglers to enable them to arrive at their intended destination.

With over 4,000km of land borders, each of the six countries bordering Libya on its south, east and western frontiers[36] acts as a point of entry for refugees and migrants. Where possible, refugees and migrants have adopted existing trans-Saharan trade routes, which have operated for centuries in the transport of goods between Libya and neighbouring African countries, notably Sudan and Chad.[37] Routes are regularly changing, their popularity rising or falling depending on the political and security circumstances.

The nature of the journey is determined by whether the traveler can enter Libya legally or not. Those entering by legal channels, such as Egyptians, enjoy a straight forward journey; while for others, notably thousands of sub-Saharan Africans, their journey to Libya is characterized by the long desert crossing in treacherous conditions, often facing starvation and thirst leading to death. Others are abandoned by smugglers supposed to be ensuring their safe passage, who have also been reported to steal their belongings and to swindle their 'clients'.[38]

This section looks specifically at the route taken by nationals of Sudan and the Horn of Africa. Their journey to Libya usually begins in Sudan. From there, three routes have been in operation: the first through Darfur, a route which is currently officially closed;[39] the second less frequented route passes through Dongola in northern Sudan; and the third via Chad. In the case of Egyptians, these first two stages of the journey (namely, the desert trip and travel within Libya) do not apply since they enter and travel within Libya legally; they begin to be exposed to the dangers of travel when attempting to leave Libya by boat to Italy.

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[36] These are: Tunisia; Algeria; Niger; Chad; Sudan; and Egypt.

[37] Olivier Pliez (2002, 2004) and Karine Bennafla (2004) have written on this subject. Emmanuel Gregoire (2004) has written about the long-standing and long-distance trading routes linking Libya and Niger.

[38] This is attested to by interviews conducted in this study and confirmed by media reports, such as that of Fabrizio Gatti in *L'Espresso*, Italy, 17 March 2005.

[39] The border between Sudan and Libya was closed by the Sudanese government in 2003 for reasons related to the conflict in Darfur, western Sudan.

The journey to Libya

While interviews with respondents indicate that some refugees and migrants coming from the Horn of Africa take a direct route from their place of origin to Libya, breaking their journey with just a few days at a time, it appears to be more common for them to spend a period of time in transit, usually in Sudan, before finally arriving in Libya. Many Eritreans and Ethiopians settled in Sudan, usually in Khartoum, after fleeing their countries of origin. During this time, many worked and some even married, remaining there for an average of one to two years before moving on. In the case of Sudanese nationals, many of those interviewed had moved within Sudan, away from their home towns and villages, before deciding to leave their country of origin for Libya and/or Europe.

Sudan and Chad have offered two important points of entry to Libya both for their own nationals and for those from the Horn of Africa.[40] Routes from Sudan and Chad to Libya have changed over the years in accordance with political developments. Historically, direct travel from Darfur, Sudan, to Libya had been a well-frequented route for labour migration as well as for trade (Young et al, 2005: 83-4). Travel, originally by foot or camel over about one month, has in recent years been replaced by modern forms of transport, namely trucks and four-wheel drives. Travel commences from Mellit alongside other points in Darfur to the Libyan border town of al-'Uwaynat, located in the south-east of the country.

Of recent significance was the closure of the border between Sudan and Libya in May 2003. The official closure of the passage between Sudan and Libya would seem to indicate the end of direct travel between the two countries. While some respondents argue that this has effectively stopped the majority of both official and unofficial traffic across the border, interviews with refugees and migrants and with academics and activists in Sudan suggest that the route is still operational for at least some unofficial traffic, including people smuggling. A number of respondents suggested that lorries and other large vehicles could no longer be used, but that smaller pick-up trucks continued to cross the border carrying refugees and migrants, though perhaps in reduced numbers. It is worth recalling that the borders between Chad, Sudan and Libya are a relatively recent invention and that the flow of people and goods between the three countries has been a reality of life for centuries (Young et al, 2005; Bennafla, 2004). Another well-frequented route takes refugees and migrants through Chad. The main point of departure is from Tine, located at the border of Chad and Darfur.[41] From there, travelers cross the desert, on average taking about a fortnight,

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[40] Niger represents another important point of transit en route to Libya, used particularly by West and central Africans. From Niger several routes have been used in recent years to enter Libya:
- From Agadez, Niger, across the Tenere desert by truck to Dirkou and entering Libya at al-Gatroun. This journey takes a minimum of two weeks but often longer.
- From Agadez to Arlit, Niger; then on to Algeria: Tamanrasset to Djanet. From here access to Libya involves several days on foot across the massif de Tadrart to arrive in Ghat, Libya.
- The same route can also be taken beginning in Arlit and going directly to Djanet. The trek across the massif de Tadrart is, however, unavoidable.

A media reportage in 2005 suggested that since early 2005 the first route may have been used primarily for deportations of migrants expelled from Libya to Niger. It also suggested that the same smugglers who used to transport migrants to Libya are now used to execute their deportations (*L'Espresso*, 17 March 2005).

[41] There are two towns both named Tine on either side of the border of Sudan and Chad.

arriving in Kufra and sometimes in al-Qatroun, from where they continue on to Sebha.

Interviews with respondents suggest that the journey from Sudan to Chad does not appear to necessitate the use of a smuggler, at least for Sudanese nationals. However, nationals from the Horn of Africa, are by necessity exposed to smugglers. In a few instances, the accounts of respondents revealed that the journey to Libya - sometimes via several countries of transit, including Sudan - can leave the traveller at risk, not only of exploitation from smugglers but also of arrest and detention by the authorities of the different countries that they pass.

> A.K., a young Ethiopian refugee in Italy, described being arrested on two separate occasions by the Sudanese authorities. Trying to leave directly from Sudan to Libya in mid-2001, he said that he was detained twice in central Khartoum. On the second occasion, during four days of detention, he explained that he was severely beaten after trying to escape from prison for fear of being returned to Ethiopia where he had been imprisoned. He also described waiting for one-and-a-half months in a village in the desert for a smuggler to assemble enough passengers before finally realizing that the smuggler had run off with his money.

The desert crossing[42]

A typical journey

The vast majority of those interviewed in this study described travelling through the desert on a "Toyota Landcruiser", a pick-up truck. However, in limited cases, people have reported travelling in lorries[43] or covering a considerable distance across the desert on foot. The pick-up truck carries anything from 25 to 45 people squeezed into the open back at any one time. In a state of severe overcrowding, struggling to find enough space to sit and sometimes piled on top of one another, a convoy of two to three vehicles travels for an average of about 10 days. The drivers, either Sudanese or Chadians, usually drive by night and rest during the day; in winter months some also drive during the day. While the vehicles are stationary, the passengers vie for a place under the car to profit from its meagre shade from the burning sun. The journey is sometimes also broken at the Sudanese-Libyan border when passengers are transferred to another vehicle: the first carries a Sudanese number plate and the second a Libyan one. The cost quoted by respondents varied from 150,000 to 450,000 Sudanese pounds (approximately $60-180), though one respondent R.D. claimed to have paid one million Sudanese pounds for her trip in 2004 (approximately $400).

The vast majority of trips, as described by respondents, were riddled with problems. The basics of food and water are severely rationed, primarily due to the lack of space on the truck to transport large quantities of food and water for each passenger. Some respondents added that they were advised to consume the strict minimum of food and water since too much of either can be harmful to the health on such a journey. One respondent, A.K., claimed that the smugglers mixed the water with petrol to discourage people from drinking too much. The journeys are often prolonged for

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[42] This section concentrates on personal testimonies of nationals of Sudan and the Horn of Africa who made the desert crossing to Libya either from Sudan or from Chad.

[43] Lorries carry between 150-300 people and are more commonly used on the desert crossing between Niger and Libya.

several reasons. In some cases, the vehicle breaks down or runs out of petrol, while in others passengers are transported out of sight to a location just inside the desert where they wait for additional passengers to be gathered before setting off. In other instances, passengers described the driver not knowing the correct direction of travel and getting lost. All these scenarios can lead to several days' delay to the journey.

Such delays often mean that passengers run out of basic provisions of food and water. A Sudanese father of two, M.O., travelling with 37 men, related his 27-day journey. Within a few days, their food and water supplies ran out and they only survived after a passing car offered them some of its provisions. It must be borne in mind that passengers include women, sometimes pregnant, and children. One female respondent, AY., remembered as many as seven children, between the ages of two and seven years old, travelling in her vehicle. A 30-year-old Ethiopian woman, AS., described her 15-day ordeal, travelling with her two children: *"The desert is much harder than the sea* [referring to the boat trip to Italy] *because it is a longer journey and there are so many hardships, like no food and drink. You travel all the time, stopping only a few hours at a time when the driver takes a rest, and you are so crammed in that you can't move so that your body starts to ache."*

At certain points on the journey, the convoy is faced with enormous sand dunes that form *"big mountains"* (AS.). At this juncture, there are two options: the driver either stops the car, asks the passengers to descend and push the car to the top of the dune and walk the rest of the way themselves to rejoin their vehicle on the other side at the bottom of the dune; or the driver continues with the passengers remaining in the open back. In the latter scenario, passengers often fall out of the back as the truck descends the sand dune, sometimes becoming injured as a result. In some cases, the driver does not stop for those who have fallen out. One respondent, E.B., described that a passenger in the pick-up truck in front of his fell out of the truck and was run over by another truck. The vehicles did not stop and the man was abandoned to his fate in the desert.

While the description above depicts the most common experiences shared by those who make the desert crossing, there are some people whose means of travel through the desert differ, in this case travelling on foot.

> A Darfurian, A.M., in his mid-twenties, granted humanitarian status in Italy, described his flight from Darfur in the summer of 2003, *"I can't tell you what happened to me. I don't even remember some of it myself. I don't know how I managed to get from one place to another"*. He travelled from Darfur to Tine in Chad and on to Libya by foot. He began the journey on his own but soon found others making the same journey. He said that none of them knew the route but they just kept walking. On the way, they met a Toyota Landcruiser which picked them up for the final leg of the journey to Libya, a further day's travel. *"Even in the desert when things were really bad I knew that I couldn't go back. I knew I had to arrive in Libya."*

Deaths in the desert

"Probably more people have died in the desert than by boat but of course there are no statistics," said M.I., a Darfurian asylum-seeker in Italy.

Between 1997 and 2004 the Sudanese Popular Congress, a Sudanese association based in Kufra, south-eastern Libya, recorded 486 deaths of travellers on the journey from the Sudanese border to Libya. This figure relates only to those who died and were discovered and buried inside Libyan territory (Young et al, 2005: 89). The total number of deaths is likely to be a great deal higher.

Statistics surrounding deaths of irregular migrants are notoriously difficult to locate and this case is by no means an exception. In fact, very little research has been conducted into the desert crossings as a whole[44] and very little attention is devoted to those that lose their lives in this hostile environment. Many of the respondents of this study related witnessing deaths of fellow passengers. D.G., an Eritrean asylum-seeker in Italy, who travelled from Sudan to Libya across the desert, said, "*The one-week journey was very hard. I don't know how to describe the journey. I don't even want to remember it. So many people died everywhere. You can see their bodies scattered in the desert as you drive past.*"

Moving around Libya

Research findings suggest that the vast majority of refugees and migrants, including those coming from Sudan and the Horn of Africa, enter Libya illegally or in fear of being illegal due to the lack of clarity over their legal status in the country.[45] As a result, they fear being caught by the police and detained or sent back to their countries of origin. This irregular status forces them to continue to resort to smugglers even when not crossing an international border. This contrasts with the case of Egyptian nationals, who, as noted, are able to enter Libya directly from the east traveling by road and remain there legally. They catch a public bus from Marsa Matrouh along the northern coast of Egypt and once in Libya travel freely within the country.

The majority of people coming from Sudan and the Horn of Africa arrive in Kufra, in the south-eastern corner of Libya. Kufra provides the main point of entry for commercial traders as well as for irregular arrivals of refugees and migrants. In 2004 the Governor of Kufra reportedly said that 10-12,000 people pass through Kufra every month (Young et al, 2005: 90). Those arriving by irregular means from the desert routes of Chad and Sudan often reported having been left just outside Kufra and made to walk there in order to avoid detection by the police. Some also reported having entered the town by car, avoiding the main entrance gate to the town. At this stage many risk arrest and detention.[46]

Most people do not plan to stay in Kufra beyond a few days, but rather use it as a transit point en route to other cities in Libya (Young et al, 2005: 90; Pliez, 2004b); this was confirmed by respondents in this research. Many of them reported having to wait for several days in hiding in the town before moving on to other destinations,

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[44] A compelling journalistic account of the route from Niger to Libya can be found in *L'Espresso*, Italy, 17 March 2005. This piece was written after journalist Fabrizio Gatti of *L'Espresso* traveled for one month along the desert route in February/March 2005, interviewing refugees and migrants along the way. This was his second such trip; the first took place in November/December 2003. An interview conducted with Fabrizio Gatti in Italy on 13 June 2005 in the context of this study. Michael Collyer (2004) has also produced a paper, which includes a section on the desert crossing of sub-Saharan Africans to Morocco.

[45] This is addressed above: see *Theoretical framework relating to refugees in Libya*

[46] For details on arrest and detention, refer to *Treatment of refugees and migrants*

usually Tripoli, to a lesser extent Benghazi, and to other towns. This period is usually necessary in order to find a smuggler to take the traveler out of Kufra to the next destination. Due to the lack of documentation, nationals of Sudan and the Horn of Africa usually fear traveling on public buses and, as such, travel within Libya is facilitated by a smuggler for a fee.

Common routes out of Kufra, cited by respondents, include: Kufra to Ajdabiya and then to Tripoli (sometimes described as direct Kufra to Tripoli); Kufra to Benghazi; and Kufra to Benghazi and then to Tripoli. These internal trips can be costly; the smuggler can demand as much as $150 to travel for approximately 1,000km from Kufra to Benghazi. Many respondents complained that they had to pay for the same trip several times before actually undertaking the journey after Libyan smugglers ran off with their money.

In some cases, the desert smuggler is paid to continue inland and transport the migrants to the northern coastal towns of Tripoli and Benghazi. In other cases, the desert smuggler might introduce the refugees and migrants to a Libyan smuggler who will then transport them within Libya. For the most part, though, interviews with refugees and migrants suggest that on arrival in the border towns, they are left to locate the means of transport to move around Libya themselves. Those with sufficient money are able to arrange a trip immediately. For others, a short period in Kufra offers the opportunity to earn enough money to fund the next leg of the journey within Libya. These people often stop off at various locations on the way, spending a few days in each, where they take on odd jobs to earn some cash, before moving on to the next destination. In this way, they fund their trip along the way.

Kufra, among other trans-saharan border towns, has come to revolve around the flow of refugees and migrants and a "transit economy" (Pliez, 2002) has developed. Short-term work in Kufra usually involves working on farms, in the construction industry, loading trucks, washing cars, or working as a waiter in one of the many local restaurants or cafés. Salaries are typically lower in Kufra than in the coastal cities of Tripoli and Benghazi[47] (Young et al, 2005: 93).

Although for the majority of refugees and migrants, Kufra represents a temporary stop along their way, there is a significant foreign community living in the town itself and in the neighbouring area of Jinsia,[48] some 10km away. Foreigners of many different nationalities, including nationals of Sudan and Chad but also of Nigeria, Ghana, Egypt and elsewhere, live in Jinsia, and work in the extensive market which has developed there. Members of this community provide crucial support and guidance for the new arrivals. They provide the main point of contact between new arrivals hoping to travel within Libya and the Libyan smugglers who will eventually transport them. These long-standing members of the foreign community in Kufra operate both on an individual basis and as associations or informal groups. One such example is the Sudanese Popular Congress, established in 1981 and authorized by the Libyan authorities (Young et al, 2005: 91). The importance of tribal and national affiliations in providing a support network to give help and advice on matters in Libya and on how to travel within the country should not be underestimated. In Libya, as

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[47] Unskilled daily labourers earn approximately 2–3 dinars per day in Kufra in comparison to 3–5 dinars per day in Benghazi. The more highly skilled jobs are much better paid.
[48] *Jinsia* means nationality in Arabic

elsewhere, new arrivals seek out fellow nationals and tribesmen as trusted sources of information all along the way (Koser and Pinkerton, 2002: 10).

For those able to obtain some form of ID, this can help to regularize their situation and facilitate their travel for at least part of the journey. One informant, A.K., traveled from Kufra to Ajdabiya and then on to Benghazi with the help of a smuggler. In Benghazi, he was able to purchase an ID, which enabled him to catch a bus from Benghazi to Tripoli. According to his understanding, the ID was no longer valid on arrival in Tripoli.

Crossing the Mediterranean Sea

The final stage of the journey is the boat trip across the Mediterranean Sea from the Libyan coast to southern Italy and Malta. The boat trip itself is a common experience shared by all nationalities who pass through Libya with the aim of reaching Europe. The European Commission (2005: 48) estimates "*approximately 15,000 migrants tried to reach the Italian coast illegally by crossing the Mediterranean Sea*"; however, it does not specify the period of time nor how many of these people departed from Libya.

The travel of refugees and migrants by irregular means across the Mediterranean Sea to reach southern Europe is not a new phenomenon. In recent years, research has attested to four main sea routes operating across the Mediterranean: from the Maghreb (ie Tunisia, Algeria and Morocco) to the southern coast of Spain; from Turkey to Greece or Sicily; from the south-eastern Adriatic coast to Italy; from Egypt and Tunisia to Sicily or mainland Italy, sometimes via Malta (Pugh, 2001: 8). What is new is the addition of Libya to this list as a main Mediterranean sea route to gain access to Italy and thereby to mainland Europe.

The Libyan coastline, forming the country's northern border, runs for over 1,700km, much of which is used as points of departure for boats heading to Italy. The adjacent land is one of the most populous with the country's main cities, including Tripoli and Benghazi, and provides a stretch of cultivable land, housing numerous farms which are used to accommodate those waiting to depart for Italy. The largest concentration of those seeking to travel by boat depart from Zuwarrah, some 100km west of the capital Tripoli, close to the Tunisian border. Zlitan, some 100km east of Tripoli, was also regularly mentioned by respondents. Others points of departure mentioned by respondents include: points on the coast near or in Tripoli itself, such as Janzur; Sabratha, located between Tripoli and Zuwarrah; and Benghazi, in the north-east. Western coastal areas, such as Zuwarrah offer a more direct and shorter route and are therefore more popular.

Most refugees and migrants who take the boat from the Libyan coast arrive in the small Italian island of Lampedusa, some 300km from Libya, and to a lesser extent at other points along the southern Italian coast. Since 2002 Malta has also received many refugees and migrants who have set off from Libyan shores, probably heading for Italy but finding themselves on Maltese territory by accident.

A typical journey[49]

Preparation for the journey begins by establishing contact with a *wasit* or "facilitator" from the traveler's own national community, usually someone who has been residing in Libya for a number of years. This person acts as a link between the traveler and the Libyan smuggler. Once the contact is established, the traveler moves to the place of departure, usually Zuwarrah; though sometimes the contact is made in Zuwarrah itself. From here a deal is reached between the traveler and the Libyan smuggler (facilitated by an own national) over the price of the journey. This can vary widely but a price regularly paid is between $1,000 and $1,200 per person. The full amount is usually paid to the smuggler at this stage of the proceedings.

It was clear from many of the interviewees that a real sense of community and solidarity among foreign nationals exists, which enables the less fortunate to travel. Those without sufficient funds to pay for the trip are sometimes helped by those who are financially better off, apparently without any expectation of remuneration. Travellers are advised by smugglers not to carry anything on the boat, not even surplus money. The practice appears to be to give any extra cash to family, friends or acquaintances waiting to undertake the trip themselves. Sometimes, smugglers themselves take pity on a traveler and allow them on the boat at a reduced rate. This is facilitated by the lack of a fixed price; frequently passengers on the same boat pay different amounts. For example, one informant, T., said that he paid $500 though others on the same boat paid substantially more. The smuggler agreed as T. did not have any more money. This may also be explained by the fact that he traveled in January, which is not considered "high season".

After the exchange of money, the traveler is transported to a *hawsh*, basic lodgings, often just a large room, usually located on a farm near the point of departure. Many travelers are crammed together, not allowed to leave the *hawsh* for fear of being discovered by the police. Here the traveler waits for preparations for travel to be completed. This period can vary between one day and several months; the longest duration among respondents interviewed in this research was six months.

While the travelers are gathered in the *hawsh* the smuggler finalizes preparations for the trip. Usually, it would seem, the smugglers do not own a boat but rather acquire one only when they know that they will need it. For smugglers operating along the western strip of coast, the boats are apparently acquired from across the border in Tunisia. As one informant noted, there are three important conditions which determine the timing of departure: (1) the boat itself must be acquired and/or prepared to be sea worthy; (2) a sufficient number of travelers must be gathered for the journey in order for the venture to be financially worthwhile for the smuggler; and (3) conditions at sea must be suitable. The ideal periods to travel are the months of March to July and September to October when conditions at sea are kinder. This is attested to by the sharp increase in the numbers of arrivals in Italy reported by the media during this period; for example, in March 2005 there were reports of up to 1,000 people arriving in Lampedusa within 48 hours (Ansa, 15 March 2005). Once these conditions are satisfied, the travelers are transported, either by car or by rowing boat, on to the boat in small numbers in order to avoid drawing attention to the operation. According

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[49] This section is based on interviews with refugees and migrants who took boats from Libyan shores or attempted to do so. Certain elements were mentioned by almost all respondents.

to one informant, E.B., this process can take several hours to complete since there are often dozens of passengers on each boat.

In reality, the most important condition appears to be ensuring an adequate number of passengers. Often smugglers are willing to compromise on whether or not the boat is truly sea worthy or whether weather conditions are really suitable for travel. Smugglers are reported to push refugees and migrants on to the boats, even if they are not safe. Travelers are in a vulnerable situation at the mercy of the smuggler, meaning that they can be forced to take additional risks in order to avoid being caught by the police.

> One informant, F.K.A., described this sense of vulnerability. He was accommodated in a farm in the Zuwarrah area, waiting for his boat to be ready. The first boat acquired by the smuggler was in a state of disrepair. The smuggler and some passengers tried to fix it over a few days but it was beyond repair and so they smashed the boat to pieces rather than leave it where it might attract the attention of the police. A second boat was brought just a week later. It arrived at a time when weather conditions were poor which should have prevented them from traveling. However, they set off nonetheless as they feared that if they stayed around for too long they would further increase their chances of being caught by the police. Due to the high waves, his boat became filled with water on day two of their four-day journey. They spent the next two days, until they were eventually rescued by the Italian authorities, continually emptying water from the boat in order to prevent it from sinking.

The three main problems relating to the boat trip are: overcrowding, the poor condition of the boat resulting in technical failures, and the lack of a 'professional driver'. The boats seem to vary significantly in size and quality. Small inflatable boats as well as large, old wooden fishing boats of differing sizes are commonly used. Regardless of the type of boat, the prerogative of the smuggler is to squeeze in as many passengers as possible into each boat. The number of passengers per boat, as related in interviews, varies between 20 and 199. Passengers sit with their knees tucked up against their chest and are lined up in rows to ensure that as many people as possible fit into each boat.

Many of the boats do not get very far, either drifting in the sea after engine failure or running out of petrol. The boat is often acquired in a state of disrepair and requires mending before it is fit to travel. The ensuing technical problems are therefore only to be expected.

> A Darfurian, A.M., granted humanitarian status in Italy described his five-day journey in late 2003 with some 20 Sudanese and Liberian men traveling on a small inflatable boat:
>
> *"The boat broke down during the journey and we spent two days drifting in the sea before we were eventually rescued by the Italian coastguard and taken to the reception centre[50] in Lampedusa.*
>
> *En route we realized that the boat had holes in it so that we had to use our fingers to block the holes to prevent water from entering the boat. It was a*

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[50] The reception centre is more accurately the 'temporary stay and assistance centre' (CPTA) located on the island of Lampedusa. It theoretically acts as the first holding centre for migrants and refugees who arrive at the island.

really old and rubbish boat which had holes from the outset. We had tried to fix it but hadn't managed well. We knew that many, if not all, of us would not arrive.

In the middle of the sea, the boat lost all its air. It was like a piece of paper flapping around in the sea. To avoid drowning, we all ended up piled on top of one another, clinging on to what was left of the boat."

In other cases, the boat and its passengers often travel aimlessly as a result of "drivers" losing their direction. All respondents in this study asserted that the "driver" of the boat is neither a smuggler nor a professional but rather one of the passengers who assumes responsibility of steering the boat. In many cases, it appears that this may be his first time at the helm of a boat. Accounts indicate that the "driver" does not pay for the trip, thereby encouraging many to volunteer to avoid the enormous costs of paying for a place on the boat. The "driver" is given a compass and told a general direction to follow. As a result, many boats do not go far, often only ending up on the Tunisian coast or drifting in the sea until they are rescued by the Italian, Tunisian or Libyan authorities, depending on where they are found.

In some cases, the passengers are helped by Tunisian fishermen, who point them in the right direction or give them food or water. However, in other cases, the fishermen alert the authorities, resulting in the deportation of passengers to Tunisia. In one such case, five Somalis, including one woman, were deported back to Libya from Tunisia.

F.H., the female passenger, described the expulsion from Tunisia:

"The Tunisian authorities questioned us wanting to know where we had come from. When they found out it was Libya they returned us there. We were taken by a Tunisian police car to within a few hours' walk from the Libyan border and left in the middle of nowhere in the early hours of the morning with nothing but a torch and told to walk in a certain direction until we reached the Libyan border. We walked for about four hours. The four men who were with me helped me to walk that night as I was still so weak from having nearly drowned on the boat.

At the border we were stopped by the Libyan border police, who asked us where we had come from. One of the four Somali men acted as a spokesman for the group and said that the Tunisians had brought us. To the Libyans, this was the signal that we had come illegally and so we were arrested and I spent the next nine months in detention."

Unlike in some smuggling operations on other routes across the Mediterranean Sea or in other parts of the world,[51] the boat is not returned to the smuggler but rather has a one-time use only. It is either abandoned on arrival to Italy or in many cases intercepted by the Italian authorities who catch boats while still at sea. The dispensability of the boat coupled with a "driver" who is essentially just another passenger, rather than an operative in the smuggling operation, increases the risks of the boat trip between Libya and Italy since it is not in the interests of the smuggler to ensure the safe arrival of the boat or its passengers. Moreover, since the passengers have usually paid the fee to the smuggler up-front,[52] there is no financial incentive for the smuggler in their arriving alive.

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[51] For example, the route from Albania to Italy. (Salt and Stein, 1997: 476; Harding, 2000:15)

[52] The method of payment to the smuggler is described more fully below under *Smuggling networks*

Personal accounts of the boat journey

The descriptions of the boat journey from refugees and migrants alike frequently tell of a sense of panic as people drift at sea suddenly realizing the dangerous reality that has befallen them. As on the desert trip, the lack of space in the boat dictates that only a minimum of food and water can be taken. As journeys are frequently delayed, these meagre rations often run out, at times leaving passengers for days without food or drink. In this eventuality, desperation leads some passengers to drink sea water which causes many to fall ill. Death goes hand-in-hand with many of the journeys; passengers watch their family, friends and acquaintances die in front of them. When passengers have the strength, they throw the bodies overboard, which removes the corpse from among the living but also creates much-needed space on the overcrowded boats.

While a direct and straight-forward journey by boat can take just 27 hours, for others the journey lasts for days. The longest journey among respondents in this study was 17 days at sea though press accounts relate journeys of up to 23 days.[53] These are the tales of the "fortunate" who managed to survive against the odds. For many others, who are never found, there is no way of knowing how long their ordeal of drifting at sea without food or water may have lasted.

> F.H. left Somalia with her aunt, her aunt's husband and their son in October 2003 at the age of 17. She had lost her immediate family in Somalia after the civil war broke out in 1991. They traveled to Libya from Somalia, with the intention of moving on to Italy, having arranged the trip in Somalia through a smuggler. In Libya, a Somali put them in touch with a Libyan smuggler with whom they agreed a price of $800 each for a place on a boat to Lampedusa, Italy.
>
> *"My family knew about the dangers of traveling to Italy from Libya by boat. We had heard about many people dying en route. But we had hope. Hope is the only thing we knew to hold on to. We knew it was dangerous but when you are in that situation you do not see the dangers, you just see the hope inside yourself. If Libya had been nice we would not have left it. We just said, 'God help me and save me and maybe for me it will be ok to go by sea'."*
>
> They traveled in a narrow boat, which was crammed over capacity with people sitting one against the other. The passengers, all from Somalia, were mainly male with a few women and children. One family consisted of a mother and her four children, the oldest of which looked about ten years old.
>
> *"We expected the journey to last for two to three days but we never arrived in Italy because the motor on the boat broke shortly after leaving Libya. We spent fifteen days on the boat during which time all but nine of the forty-five passengers died on the boat, including my aunt, her husband and their son. They died from thirst and hunger. After about seven or eight days we ran out of the small amount of bread and clean water that we had brought with us. We tried drinking the sea water but it made us sick and gave us terrible diarrhoea.*

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[53] 23 of the 28 passengers on this boat reportedly died. *al-Wafd* newspaper, Egypt, 22 April 2005.

My aunt died on the third day. She gave up as soon as she found out that the motor was broken. Her husband died on the ninth day and their son some time in the last few days."

She lost consciousness in the last few days. Initially, she would wake up intermittently but by the end she totally lost consciousness:

"*But I knew my relatives were dead. I watched them die and I watched them be thrown into the sea.*"

In the first days, F.H. explained that when someone died on the boat they would throw them in the water to make the boat lighter. In the last few days they did not have the strength to do that so the corpses of friends and family members remained with her and the other passengers in the boat.

Their boat was eventually seen by Tunisian fishermen and shortly after they were picked up by another boat which took them to a hospital in Tunisia, where they spent one month. During that time, four others died, leaving five survivors. After being discharged from hospital, F.H. and the four male survivors were returned to Libya by the Tunisian authorities. On re-entering Libya, they were stopped by Libyan police at the border with Tunisia and detained. F.H. spent the next nine months in detention, ending her period of detention only after she managed to escape.

After her escape from prison, she traveled to Cairo with a group of Somalis, her travel expenses paid by several members of the Somali community in Libya. She explained that Cairo was not chosen as a destination but she had heard that Cairo was better than Libya and she wanted to go anywhere apart from Libya and Italy. She arrived in Cairo in late 2004 and was granted refugee status by UNHCR under the OAU Convention in 2005.

F.H.'s ordeal is by no means an isolated incident with scores of others suffering the same fate as her family and fellow travelers in the boat. The psychological impact of this experience on F.H. cannot be overestimated.

Another young person, a man from Ethiopia, related his account of the boat trip.

"*No one would travel by sea if they knew what the journey by sea was like. It's fate who survives and who doesn't. The sea was too terrible.*"

F. paid $800 in Zlitan for a space on an overcrowded boat carrying between 80 and 90 people. They were all Somali except for five Ethiopians; there were some women, one who was pregnant, but no children. He travelled with a friend, a fellow Ethiopian he had met in Libya.

The journey lasted 17 days. The boat stopped working soon after they had left due to engine problems and they soon discovered that assurances from the smugglers on the Libyan shore that a mechanic was among the passengers were false. The coming long days and nights were spent drifting along,

moving with the waves. They had taken no food or water. Although they had prepared their food and water for the journey and stored them in the *hawsh*, the police had discovered where they were hiding, forcing them to flee and leave everything behind. It was not possible to buy more provisions before getting on the boat.

Only 15 of the passengers arrived alive. It was mainly the young men, like F., who withstood the hardships; the others all died. At the beginning, when they had the energy, they would throw the bodies overboard. This would create space as they began the journey sitting with their knees tucked up to their chest as there was no room on the boat to sit otherwise. Later, as the days passed, they could no longer muster the strength to remove the bodies and simply left the corpses alongside them in the boat.

F. adopted several strategies to try to remain alive. For the first five to six days, he drank no water. After that, he began to drink a little sea water. He knew not to drink too much since he was told, before boarding, that those who drank too much sea water died, and this was what he witnessed on his trip. He tried sometimes to lean over the side of the boat and catch fish, and remembers once being able to catch a small one. He thinks what also helped him to survive was conserving his energy. While others were panicking when the engine broke and ran around trying to fix it, he refused to help, knowing that he should not use up too much energy. He spent most of the journey just sitting very still.

They were eventually spotted by a ship which picked them up and took them to the Italian island of Lampedusa. He remembers being rescued as he was somehow still aware of what was happening. Many of the remaining survivors had lost consciousness by that stage. After applying for asylum in Italy, F. was, in 2005, granted refugee status.

Many refugees and migrants are not successful in their first attempt to arrive in Italy by boat on Italian soil. Despite first-hand experience of the precarious boat trip, many are not deterred by an initial bad experience and take the risk for a second time.

M.A.A. and his family (his father, brother and sister) had fled Somalia together in late 2000 and moved to Libya, hoping to go to Italy, where they planned to claim asylum. Initially, they were unable to travel to Italy as they did not have enough money. Eventually, they managed to collect enough money – in this case $1,000 – for just one member of the family to travel and M.A.A. was chosen. This first attempt failed after his small boat, containing 35 Somali men, women and children, broke down two days into the journey and was swept back to the Libyan shore by the waves. Some of the passengers were arrested on arrival, particularly the women, children and elderly who were not able to run fast; while most of the young men, including M.A.A. managed to escape. M.A.A.returned to his family in Tripoli.

The family's second chance to travel came in early 2004. The voyage was organized through the same Somali smuggler for a reduced fee of $700 for the

whole family. A boat which should have accommodated a maximum of twenty people carried double that number:

> *"Within hours of setting off from Zuwarrah, water had started to enter the boat. We asked the Ghanaian driver to return to Libya. He turned the boat too quickly and at the same time the boat was met by a big wave which made it capsize. We were all trapped beneath the boat. Each one of us had to struggle by ourselves to try to make it. Those who knew how to swim had greater chances for survival."*

M.A.A.'s father, brother and sister all drowned.

The only survivors were M.A.A., two men and a young woman who was wearing a life jacket. They swam for hours until they neared the shore, though by this time they had lost the woman. In the water, they were caught by the Libyan police and detained for three months.

After escaping from detention, M.A.A. left Libya for Egypt, where he applied for asylum. He was granted refugee status under the OAU Convention.

For those people who try to cross the Mediterranean for a second time after a first failed attempt, there is frequently a considerable time lapse between the two attempts. This is usually for two reasons: firstly, a period of detention if the person is caught by the Libyan police after the first failed journey; and/or secondly, a period of trying to raise the money to pay for a second journey. This latter factor leads many family members and married couples to separate for a period of time as travelling together requires raising substantial amounts of money at one time. To deal with this, members of the same family and married couples separate with a view to reconnecting in Italy. One Eritrean woman G. had to leave her husband and travel alone with her baby son; once in Italy, she sent her allowance from the Italian government[54] to her husband in Libya to finance his boat trip, enabling him to join her in Italy.

The risks refugees and migrants are willing to take to arrive in Europe are great and in some cases the unimaginable takes place. S., a taxi driver from Eritrea, was on board a typically overcrowded boat on which a woman gave birth. On the boat, the passengers somehow managed to clear a space for her and assisted her with the delivery. Fortunately, they arrived in Italy about five hours after the birth and she and the baby were taken straight to hospital. Theirs was a two-day journey. While rare, this is not an isolated incident and others have been reported in the Italian press.[55] The Eritrean mother G., mentioned above, described the immense physical strain of breast-feeding her ten-month-old baby son during her three-day boat trip.

"Between death and life":[56] risks of travel to Europe via Libya

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[54] The Italian government provide financial assistance to asylum-seekers for a 45-day period, during which time a decision was expected to have been taken into their application for asylum. In reality, the asylum process usually lasts for many months longer, during which no further financial assistance is offered.

[55] For example, see *Two newborns among fresh group of migrant arrivals*, 5 May 2005, ANSA News Agency relating that among 149 arrivals of nationals from Sudan, Ethiopia and Eritrea, there were two newborn babies.

[56] Quote from J.A.O. an Eritrean asylum-seeker in Italy

As noted above, statistics surrounding deaths of irregular migrants are notoriously difficult to locate. According to the Italian Ministry of the Interior, 500 people are thought to die attempting to reach Italy by sea each year (ICMPD, 2004: 7). Pugh suggests that it "*is reasonable to believe that hundreds are lost throughout the Mediterranean every year*" (Pugh, 2001: 5). It seems that many do not necessarily drown but rather die of thirst in the middle of the sea.[57] A 'boat cemetery' is said to exist in the Sicilian town of Agrigento, where the shipwrecked boats are kept awaiting possible investigation (Moorehead, 2005: 48).

In the case of many migrants, a body is never discovered and their fate remains unknown for months, years and sometimes forever. Scores of Egyptians have disappeared in this way, going missing after arrival in Libya.[58] In some cases, family members have repeatedly travelled to Libya to search for them, making enquiries with Egyptian officials in Tripoli, with smugglers and with fellow Egyptian migrants, to no avail. An Egyptian man from a governorate neighbouring the capital Cairo, whose brother went missing in Libya in early 2003, described the impact of living with this uncertainty:

> "*We accept for the Libyans to detain them if they've done something wrong but at least tell us where they are so we can visit them. They have left women and children behind. Their women don't know what to do, they don't know if they are still married or widowed. Their status in unclear. We need to know their fate. If they've died, at least let us know.*"

Relatives of scores of Egyptian migrants continue to speculate as to whether their loved ones are detained in Libya or have died on the boat trip to Italy.[59]

Awareness of the risks of the voyage

Given the risks and extreme hardships along the route, why are refugees and migrants continuing to use it? Are they aware of the risks before they undertake their journey and how does this knowledge inform their decisions to migrate? It is pertinent to examine the extent to which an accurate and detailed knowledge of the risks involved in travelling through the desert and then by boat by clandestine means would actually deter refugees and migrants from embarking on the journey in the first place.[60]

From the interviews conducted in the context of this study and from Egyptian media sources, it is clear that the overwhelming majority of refugees and migrants are aware of the risks before they travel. An Egyptian daily newspaper (Nahdat Masr, 7-8 April 2005) began a lengthy article on Egyptian migration to Libya with a broad reflection of the feelings of Egyptian migrants:

> "*...the price of leaving may be death or the hell of detention but that's not important...what is important is leaving the country and travelling far from the nightmare of frustration and unemployment.*"

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[57] *Cap Anamur aids boat people in the Mediterranean*, Deutschlandfunk, 22 June 2004 (on http://www.cap-anamur.org/eng)

[58] The families of 12 Egyptians who went missing in Libya, in addition to several relatives of Somalis who suffered the same fate, were interviewed in the context of this study.

[59] An administrative court, attached to the Council of State (Conseil d'etat), in Egypt issued a verdict on 27 August 2004, in relation to the case of 21 Egyptian men who went missing in Libya. It recalled the duty of the Egyptian Ministry of Foreign Affairs to exert all efforts to protect its citizens abroad.

[60] In their paper *The social networks of asylum seekers and the dissemination of information about countries of asylum* (2002), Dr Khalid Koser and Charles Pinkerton explore how information dissemination to potential asylum-seekers on countries of asylum might inform their migration choices.

Below are some related examples of responses from refugees and migrants indicating that they were fully aware of the risks of travel but nonetheless went ahead:

> *"I knew my life would be in danger but I had no other choice. Either I would die or reach another life elsewhere. It would be better to die at sea than endure life in my country."* M.A.A., a Somali refugee in Cairo.

> *"It is not worse than the reality we are living; we are trying to escape marginalization, poverty and unemployment."* (al-Masry al-Yom, Egypt, 14 March 2005). A young Egyptian man from the governorate of al-Manufiya, who nearly died at sea. Now back in Egypt, he finds himself in debt from the expenses of the trip. Nevertheless, he wants to try again.

> *"I considered returning to Sudan but thought I would try my luck in Europe and leave it to God: either I would die or survive, I would try it out....I knew the journey to Italy was dangerous and that I could die. I accepted this and prayed to God."* S.L., a Sudanese man with humanitarian status in Italy.

> *"75% die, 25% survive, but I put my life in God's hands."* M., a Sudanese asylum-seeker in Italy.

> *"The number of people arriving are less than those who drown."* H.M.D., a Sudanese asylum-seeker in Italy.

> *"...when God wants you to arrive, you will go anywhere."* A.S., an Ethiopian asylum-seeker and mother of two.

Some people, however, explained that they were tricked by smugglers into believing that the risks are less acute.

> *"Before you travel the smugglers show you a big boat which looks ok and then you don't get on a boat like that."* MY., an Ethiopian asylum-seeker in Italy.

In two cases, respondents described smugglers threatening passengers in order to force them on to the boat, after passengers tried to back out at the last minute having realized that the boat on which they were supposed to travel was dangerous.

> G.Z., the father of an Egyptian migrant, searching for his missing son who had left for Libya heading for Italy, spent many weeks along the Libyan coast, observing the functioning of the smuggling operations. He said that he saw several Egyptians who refused to get on the boat at the moment of departure realizing that the boat provided by the smuggler was not seaworthy and arguing that they had been promised a better boat by the smuggler when making the deal. These men were apparently forced on to the boat after being threatened with a gun or a knife. The Egyptian father believed that the smugglers did not want them to leave once they had seen the intricate workings of the smuggling process for fear of being reported to the police.

> R.M.Y., an Egyptian migrant, described his first-hand experience:
> *"On the first day we were shown a big boat on which we thought we would be traveling but we ended up on a small inflatable boat with a motor. I*

told the smugglers that I didn't want to get on it but I was reassured that this boat was only meant to take us for a short distance, where we would be met by the big boat to take us for the rest of the journey to Italy. When me and three others still refused to get on it, the Libyan smuggler threatened us with a knife. He said that we were going to die regardless so we might as well get on the boat."

R.M.Y.'s journey was an eleven-day nightmare, in which all but four of the twenty-three passengers died. All four Egyptian men from the same village were returned to Egypt from Malta, where they were taken briefly for hospital treatment after being rescued at sea.

Only one respondent, Q., explained that he had sought alternative means of travel from Libya to Italy after assessing the risks to be too great.

"I saw that I would have to travel in a small boat, which was overcrowded, and realized that no one monitors whether people arrive safely or not. I also knew people who had died on the boat trip: they took a boat in June 2002 and 90 people died of whom I knew about five."

Since the boat trip was manifestly dangerous, he decided to find alternative means. He contemplated travelling to another African country such as Chad and from there travel to Europe. He had heard that from Chad it was possible to go to Europe by plane and travelled south to al-Qatroun, Libya, to find out more. Many Africans there advised him not to go to Chad since lots of people had been swindled there. Eventually, he discovered the route via Turkey travelling on a commercial boat. For $1,000 he travelled from Libya to Italy via Turkey, a trip lasting about a fortnight.

Data collected by other studies (e.g. IOM, 1995: 3) indicates that the vast majority of refugees and migrants are aware of the potential dangers that could befall them on their journey before they set off. For many, however, they see little alternative since their feelings of despair and frustration associated with their lives in their countries of origin or of transit have reached such levels that they are willing to risk everything for a chance, albeit slim, that they reach Europe. Many of the respondents, Muslims and Christians alike, evoked putting their trust in God and *"trying their luck"*.

Smuggling networks

This section reflects findings from interviews conducted in the context of this study and certainly more detailed research is required focusing specifically on the functioning of smuggling networks to, in and from Libya. The findings are based on an analysis of interviews conducted with refugees, asylum-seekers and migrants and therefore represent only one side of the picture, that presented by the 'clients' of human smugglers.[61]

There continues to be a tendency towards thinking of human smuggling as a form of 'organized crime', associated with highly organized and sophisticated transnational smuggling networks, despite works by a number of academics pointing to the great diversity of smuggling operations in different parts of the world. Several studies have drawn attention to evidence indicating that much of the world's human smuggling

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[61] Shortcomings of this method of research are discussed under the section on 'Methodology' at the beginning of this paper.

operations and activities cannot be categorized as 'organized crime' (Kyle and Dale, 2001; Icduygu and Toktas, 2002) but might be better described as "*crime that is organized*" (Finckenauer, 2001: 168-9).

Accounts from nationals of Sudan and the Horn of Africa

The preliminary findings brought to light during this research indicate that those travelling through Libya appear to conform with the smuggling model. From the interviews with respondents, there is no evidence to suggest that people are subjected to coercion or violence or that any contact is maintained with smugglers after leaving the Libyan coast, either in the form of their ensuring employment or in the form of placing them in exploitative industries on arrival. Those interviewed said that once on Italian soil, they were not put in touch with smugglers in Italy to further facilitate their travel within the EU. This does not, however, rule out the possible existence of such operations in Italy for some of those arriving from Libya since it is possible that respondents chose not to reveal this aspect during interviews for fear of negative repercussions.[62] For example, the smuggling of Egyptians appears to be more organized. Further research focused on this specific issue is required to ascertain if and to what extent such activity exists.

Respondents describe a system in which individuals or small groups of individuals cooperate for mutual financial interest. Operating at a local level, each provides a service in assisting people at the different legs of the journey to arrive at the next destination, be it, as we have seen above, across the Libyan border, initial transportation within Libya or across the waters to Italy. In some ways similar to the Turkish model described by Icduygu and Toktas, these units, while independent of one another, also cooperate along the way acting within "a loosely cast network" (Icduygu and Toktas, 2002). Two main actors are: the Libyan 'smuggler', who makes the necessary arrangements for the boat journey itself; and the non-Libyan 'go-between', who facilitates the contact between the non-Libyan 'clients' and the Libyan 'smuggler'.

Informal contacts may exist between the predominantly non-Libyan smugglers operating along the desert routes of Sudan and Chad and Libyan smugglers operating in the border towns, such as Kufra. For the most part though, it seems that there is little, if any, coordination between the smugglers at different parts of the journey to Italy (through the desert, within Libya, across the sea). At all stages of the journey, migrants refer to members of their own national, ethnic or tribal community, wherever possible, to facilitate the contact with Libyan smugglers in the border town. It is rare for direct contact to be made with Libyan smugglers, who for the most part appear to be looked upon with mistrust by the non-Libyan refugees and migrants.

The work of smugglers in Libya also appears to be facilitated by two important factors. In the first place, border control in this vast country with continuing porous borders is extremely challenging posing immense difficulties of effectively patrolling its lengthy land and maritime borders. According to the European Commission (2005), border management in Libya is currently insufficient, with too few personnel deployed for this purpose. Secondly, and arguably more importantly, respondents

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[62] Methodological challenges with deducing information on smuggling activities from the 'clients' of smugglers are elaborated upon above under *Methodology*

often pointed to cooperation between smugglers and the police, particularly in Kufra but also elsewhere. The extent of this cooperation is unknown. A stark example of this alleged corruption was related by an Ethiopian man, granted humanitarian status in Italy, YU., who was detained on arrival in Kufra after having crossed the desert in 2002.

> After about one year of detention without charge or trial for illegal immigration, he was released and told that he should return to Sudan, where he had lived prior to traveling to Libya. He and a group of others were driven to the border with Sudan and at the last minute the Libyan police offered to take them back with them to Kufra for a fee. Each man paid $300 and they were indeed taken back by the police to Kufra. On arrival in Kufra, the police themselves took them to a smuggler who could arrange for their travel to Benghazi.

A similar example was related by B.M., an Eritrean man in Sudan:

> On release from seven months' detention in Kufra in 2004, he explained that he was met by two officials, whom he understood to be the governor of Kufra and the Director of the Prison. They asked him how he had travelled to Libya and he replied that he had come by means of a smuggler. The officials went on to offer to organize to take him and a group of 127 Ethiopians, who were released at the same time, to Benghazi for a fee of $200 per person. When the detainees said that they did not have the money to pay such a fee, they were transferred some 5 km into the desert to a detention camp and threatened with being abandoned there if they did not pay the money. After the detainees insisted that they did not have money, the officials suggested that they use the 'hawala' system[63] to obtain money. The detainees agreed and were taken to a farm, apparently owned by a police officer, while they waited for the money to arrive. Those who had money were released immediately and once each group of 20 or so had paid their fee, they were sent with a smuggler in a pick-up truck to Benghazi. B.M.'s money arrived after a couple of days and he too was smuggled to Benghazi for $200.

It seems that at least some smugglers operating the boat route to Italy keep a record of the names, nationalities and payments received from passengers. This is demonstrated by the account of H.S.A., a Somali man, who was married with two children, all recognized refugees in Egypt.

> His wife became "obsessed" with the idea of going to Italy via Libya due to the frustrations of living as a refugee in Egypt. After months of trying to convince her husband to come with her, she left alone with the two children without telling her husband. He spent months searching for his wife, mainly through informal means – predominantly through Somali networks on the Internet, but also by means of the family tracing service of the International Committee of the Red Cross. Finally, he received confirmation that she was in Libya. He managed to make contact by e-mail with the Somali go-between who had facilitated her travel who, by checking his records, was able to confirm that she had taken a boat in October 2003. He was also able to confirm that her boat had sunk and all the passengers, including herself, had drowned. He presumes that their children also died but this was never confirmed. The Somali go-between later obtained copies of his wife's death

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[63] The *hawala* system is an informal means of transfering money or goods across countries.

and burial certificates, issued by the Libyan government, and sent them with an acquaintance traveling to Cairo.[64]

Accounts of migrants' dealings with Libyan, Sudanese and other smugglers demonstrate that some smugglers are trustworthy and honour the agreement made with their 'clients', while others abuse their position of relative power. Studies have shown that in many situations, the work of smugglers is seen as providing a necessary albeit illegal service to facilitate people's travel to a place where they can either financially improve themselves or flee from persecution (Kyle and Dale, 2001: 47). This sentiment also came across during interviews with respondents in this research. Although respondents were angered at their treatment by smugglers, such as when their money was stolen, they were seen as a "necessary evil" (Andreas, 2001: 118). At certain points in the transaction, smugglers and refugees or migrants are in the same position, both wanting to avoid detection by the police and both being considered to be carrying out an illegal act.

Regardless of the behaviour of the smuggler, the fact that refugees and migrants are left little choice but to resort to clandestine travel by means of a smuggler, and therefore to participate in an "illegal" act, puts them in a position of increased vulnerability and insecurity.[65] In this situation the traveler risks being duped, swindled, detained and deported without recourse to the police for their safeguard. In Libya, detention at the hands of the authorities also exposes the individual to human rights violations perpetrated by the state,[66] notably ill-treatment, torture and *refoulement*.

A significant proportion of respondents related their personal experiences of being duped and swindled by smugglers. One typical example was being shown a big, strong boat on which they would supposedly travel, only to be placed on a small ramshackle boat at the last minute for the actual journey.

> F.H., a 17-year-old Somali girl explained that her family contacted a Somali man who put them in contact with a Libyan man with a boat.

> *"It was clear that the Somali man was paid money by the Libyan for finding clients. The Somali man, who was known to act as a go-between between the Somali community and the Libyan smuggler, explained the journey to us, the size of the boat and reassured us that it would be safe. There were different prices for boats but in the end it was all the same: what they told you were lies. When you saw the boat it was much worse than they described."*

> The three members of her family traveling with her all died on the boat journey.

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[64] I have received a copy of these documents. The death certificate is dated 30 October 2003 and the burial certificate 4 November 2003. They include a number of details, including: her date of birth; ID/passport number and date of issue; the place of death (Surman); and the cause of death (drowning in the sea).

[65] This is also demonstrated by Khalid Koser's study of Iranian asylum-seekers smuggled to the Netherlands in which he argues that smuggling, and not only trafficking, should in some instances also be considered a human rights issue given migrants' exposure to political, economic and social vulnerability and insecurity. (Koser, 2001: 59). A similar argument is made by John Morrison and Beth Crosland (Morrison and Crosland, 2001: 61)

[66] Violations of the rights of refugees and migrants by the state are dealt with in detail above under *Treatment of refugees and migrants in Libya*

Others related having their money stolen by smugglers, often as a result of the smuggler taking the money and then running off without providing the necessary transportation. This was reported at all stages of the journey - the desert, travel within Libya and the boat trip - but seems to be most common in Kufra, as new arrivals attempt to travel to the northern coastal towns, in particular to Tripoli.

> R.D., a young Eritrean woman explained that she paid $400 for the journey from Kufra to Tripoli.
>
> *"We were left 40km from Kufra and from there different cars came to pick us up. The whole operation is run by Libyans. We were later asked to pay an additional $200 per person. Those without money were left behind in the desert without anything. Many of those who had money helped those without to pay for their way. After a total of $600 for the trip, we arrived in Tarhouna, and even then had to pay an additional 30 dinars* (approximately $25) *to arrive in Tripoli."*

In other cases, after a failed journey by boat, often due to a faulty boat, passengers would return to their point of departure and expect their money to be returned. In some instances the smugglers either returned the money or agreed to arrange a second trip at no extra cost; however, it appears to be more common for smugglers to refuse to return the money. In all cases, respondents stressed their frustration at their inability to redress the situation as they had no recourse to the police or to their usual affiliations in their country of origin which would have regulated such a situation.

Experiences of Egyptian migrants[67]

In certain ways, the smuggling operation relating to Egyptians traveling through Libya en route to Italy differs to that described by those coming from Sudan or the Horn of Africa. The important difference to remember is that Egyptians do not require a visa to enter Libya, where they are considered to be 'legal'. Egyptians organize the journey to Italy from their village in Egypt through a *wasit* (literally meaning *intermediary* in Arabic, used interchangeably with *muharrib* meaning *smuggler*) located in their village. In a number of Egyptian villages, which have seen the migration of vast numbers of their youth to Italy, there is often more than one *wasit* operating in the village. The *wasit* is known by word of mouth in the village. Each *wasit* operates in their own village and not outside; this provides a certain level of trust and accountability on both sides. The *wasit* enjoys a greater degree of security from police scrutiny and is also known in the village and therefore must act honourably in order to maintain his reputation. His future business may depend on customer satisfaction; thus, those who return after a failed journey are more likely to get a refund of their payment.

For those able to raise sufficient money to fund a direct journey from Egypt to Italy via Libya, the *wasit* in the Egyptian village appears to be involved in the smuggling operation even after the migrant has left Egyptian soil, cooperating with his counterparts in Libya. The *wasit* and the Libyan smuggler share the payment between them. The sizeable village of Tatun, near the Egyptian oasis town of Fayyoum, south-west of Cairo, known as *Tatun al-Italiya* (meaning *Italian Tatun* in Arabic) and

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[67] This section is derived from information from interviews and to a lesser extent studies and media reports on the smuggling of Egyptians to Europe via Libya.

visited in the context of this study[68] has witnessed the migration of many of its young men to Italy in recent years. This is reflected in the names of the shops in the village, such as a gift shop named *Dream Roma* (transliterated in Arabic) and a juice shop called *Asir Milano*. Locals from Tatun indicated that a number of smugglers in the village had been arrested in Egypt in connection with their smuggling activities. In response, certain smugglers have apparently moved to Libya; being able to communicate with the village from a distance, they did not need to be physically present to run their operation.

In at least one interview, conducted in the village of Mit Nagi in the governorate of al-Daqhaliya,[69] the Egyptian *wasit* pre-arranged with the migrant to meet him in Libya to ensure the operation ran smoothly. In another case, after their release from detention in Libya in connection with their failed attempt to migrate to Italy from Libya, two Egyptian migrants from the same village were apparently met by a Libyan smuggler, who had been contacted by the Egyptian *wasit* who had organized their trip. He collected them from the detention centre and offered to return them to a point where they could catch a boat to Italy. After their ordeal in detention, the two men declined, wanting to return home to Egypt.

In general, the migrant is briefed in Egypt as to what to do on arrival in Libya, including which town to go to and in which hotel to stay for the first night. He calls the *wasit* to confirm his arrival. The migrant is provided with the telephone number of the *wasit's* Libyan counterpart, whom the migrant must contact on arrival. The Libyan smuggler then either collects the migrant from an agreed location in the town or explains where he should travel to next. The smuggler then provides basic accommodation and food in a *hawsh*. While waiting for the boat in the *hawsh*, there are indications that the Libyan smugglers take the passports of Egyptian migrants with a view to sending them on to their family in Egypt should they arrive in Italy.

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[68] Several articles in Egyptian newspapers as well as a programme on Egyptian national television have been dedicated to the phenomenon of migration to Italy from the village of Tatun. These include articles in *al-Maydan*, *al-Akhbar* and *al-Wafd* (3 March, 22 and 23 February 2005 respectively). A visit to the village was conducted in the context of this study on 21 April 2005.
[69] Interview in the village of Mit Nagi in the governorate of al-Daqhaliya on 15 April 2005.

PART 4: LIBYA – EU COOPERATION ON MIGRATION

Libya – Italy/Malta cooperation on migration

Italy is the main point of entry to the EU for those arriving by boat from Libya. At times, several hundred 'boat people' have been reported to have arrived within the space of a few hours. Though perhaps not always the intended destination, since 2002 Malta has also received a significant number of arrivals from Libya. According to the Maltese Minster for Foreign Affairs, Malta received over 3,000 arrivals by boat since 2002 (AFP, 13 July 2005), with an increase over the first seven months of 2005 as levels reached over 800 arrivals (Times of Malta, 2 Aug 2005). Italy and to a lesser extent Malta have been the driving force behind the EU's moves towards enhancing cooperation on illegal immigration with Libya.

Italy

Over the past years, many high-level meetings have taken place between Italian and Libyan officials, in which the fight against illegal immigration has featured as a key item on the agenda. These have included meetings between Colonel al-Gaddafi and Italian Prime Minister Silvio Berlusconi. In 2000, Libya and Italy signed an agreement to fight terrorism, organized crime, drug trafficking and illegal immigration (European Commission, 2005: 58). In 2003, a permanent liaison on organized crime and illegal immigration was established between the two countries, involving collaboration between Italian police officers, based in Tripoli, and their counterparts. Over 2004 the Italian government provided Libya with training and equipment, in particular to assist in border surveillance and management, and plans were made to continue this support in 2005 (European Commission, 2005: 63). The Italian Minister of the Interior reportedly pledged to give Libya 15 million Euros over a three-year period for border control equipment (Corriere della Sera, Italy, 27 May 2005).

In addition to this support, Italy apparently intends to provide the technological means for sea rescue. In February 2005 the Italian Ministry of the Interior reportedly announced that Italy and Libya planned to create joint teams to tackle human smuggling gangs (AFP, 7 February 2005). Italy has also financed the construction of a camp for illegal immigrants in northern Libya, apparently in line with European criteria; two additional camps in Kufra and Sebha are envisaged (European Commission, 2005: 59). It is thought that Italy has also reached a readmission agreement with Libya,[70] allowing Italy to return illegal immigrants coming from Libya. The terms and nature of this agreement are unknown but, as detailed below, it clearly appears to be put into practice on a regular basis.

Malta

Cooperation with Malta has been slower to take off, in part since Malta's reception of large numbers of arrivals from Libya is a more recent phenomenon and gained particular momentum after Malta joined the EU in May 2004. There have been many high-level meetings between Maltese and Libyan officials. The Maltese Minister of the Interior reportedly said that starting talks with Libya on illegal immigration was not easy because too many EU countries wanted to impose "*too many pre-conditions*

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[70] For example, see: Jesuit Refugee Service, 12 October 2005, and European Council on Refugees and Exiles – Country Report 2004 - Italy

based on democracy and human rights" (Times of Malta, 18 July 2005). In July 2005 Malta sent a 17-point document to the EU highlighting the strains felt by the country as a result of the influx of irregular migrants. The document called for specific action to be taken, in particular: the return of irregular migrants, help with the resettlement of those who are granted asylum or humanitarian status, and assistance to provide adequate logistical and other facilities for the reception and efficient administration of migrants (Times of Malta, 31 July 2005). Malta has also been pushing for a readmission agreement with Libya to enable it to return irregular migrants; although a draft agreement appears to exist, Libya has not yet accepted to sign it (Times of Malta, 18 July 2005; European Commission, 2005: 57).

Mass deportations from Italy to Libya

There has been much concern expressed by Italian and international NGOs about the handling of arrivals by sea from Libya to the small touristic Italian island of Lampedusa. During "high season", hundreds of migrants and refugees arrive at the island each week, either directly or usually after being caught or rescued by Italian coastguards in the surrounding Italian waters. Occasionally, as many as 600 people – men, women and children – have arrived in Lampedusa overnight (BBC, 6 October 2004). On arrival, they are detained in the island's 'temporary stay and assistance centre' (CPTA),[71] which theoretically acts as the first holding centre for migrants and refugees before they are either transferred to CPTAs in other parts of the country for further processing of their case or deported.

Since late 2004, the Italian government has been carrying out a series of mass deportations at times when large influxes of foreign nationals arrive at Lampedusa. There have been two main instances: the first in October 2004 and the second in March 2005; in addition to other mass deportations carried out on a smaller scale, such as those in May and June 2005. On each occasion, a mixture of nationalities have been deported to Libya. Some have been detained on arrival in Libya, without access to UNHCR and where they are at risk of torture or ill-treatment; while others have been sent back to their countries of origin, where they too are at risk of serious human rights violations. In many cases, the fate of those returned to their country of origin is unknown.

The manner in which these deportations have been carried out raises serious concerns about conformity with Italy's national and international obligations, particularly with regard to the right to seek asylum and the principle of non-*refoulement*.[72] The main

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[71] Known in Italian as *Centri di Permanenza Temporanea e Assistenza* (CPTA). The treatment of foreign nationals in CPTAs, including the one in Lampedusa, has raised concerns among international and Italian human rights organizations. For more information, refer to: Amnesty International 2005c and FIDH 2005. Italian journalist Fabrizio Gatti describes first-hand the difficult conditions he witnessed in the CPTA in Lampedusa. He pretended to be a migrant from Iraqi Kurdistan arriving by sea and was detained as an 'illegal migrant' for one week in late September 2005 (*L'Espresso*, Italy, 8 October 2005).

[72] Article 3 of the UN Convention against Torture prohibits the return of *any* person to a country where they risk torture or cruel, inhuman or degrading treatment or punishment. Article 13 of the International Covenant on Civil and Political Rights, amplified by General Comment 15 of the UN Human Rights Committee, prohibits arbitrary expulsion, entitling each foreign national (whether with or without an asylum claim) to a decision in his or her own case. Protocol 4 to the European Convention for the Protection of Human Rights and Fundamental Freedoms prohibits the expulsion of entire groups of people without properly considering each individual's situation.

question is whether the Italian government has fully considered each individual's case before deciding to deport him/her or whether it has deported entire groups on the basis of generalized criteria, in particular nationality, deeming certain countries not to produce refugees. Moreover, international human rights organizations have expressed concern that nationality appears to have been determined simply by physical appearance and language (Amnesty International Italy, 2005; FIDH, 2005; European Parliament, 2005a). Article 3 of the UN Refugee Convention prohibits discrimination according to country of origin.

The Italian government maintains that its procedures with regard to handling arrivals by sea conform with its international human rights obligations. However, certain key breaches in the procedures, such as the lack of immediate access to UNHCR, to NGOs, to lawyers, to advice on the asylum determination procedure, and to competent interpretation, raise fears that it has, in fact, violated those obligations. Further, the speed with which deportations were carried out after arrivals makes it difficult to imagine that it was possible for a proper consideration of each individual's situation.

October 2004 deportations

On 8 October 2004 the Italian Ministry of the Interior announced that 1,787 foreign nationals had arrived in Lampedusa between 29 September and 8 October. Of them 1,153 had been readmitted to Libya in 11 charter flights of commercial and military planes. They were almost all Egyptians with the exception of 11 Moroccans and 23 Bangladeshis. A further 90 Egyptians were expected to be returned shortly after. The other 544 foreign nationals were distributed among CPTAs in Sicily and southern Italy where they could file their asylum applications.[73]

The men, women and children from different parts of North Africa, sub-Saharan Africa and Asia were detained in the CPTA in Lampedusa on arrival. During their stay in the Lampedusa CPTA, they were effectively cut off from the outside world as the centre was closed to visitors on security grounds and there was no public telephone available for use by detainees (Amnesty International Italy, 2005: 15). UNHCR was only granted access to the centre on 6 October, five days after their original request for access and after over 1,000 people had already been returned to Libya. Two members of the Italian Senate were granted authorization to visit the centre the following day, on 7 October, when few of the detainees remained. In March 2005, UNHCR Tripoli reiterated that they still did not have access to the places of detention where those returned in October 2004 were held (UNHCR 2005b).

On 8 October UNHCR gave its preliminary evaluation of the returns, saying that, "*the rushed method used to sort out the incoming persons by nationality has not allowed individual persons from all national groups concerned to claim asylum*" (UNHCR, 2004a). After field research conducted in Italy, the International Federation for Human Rights (FIDH) added its voice of concern about the speed of the process and about the process of identification of the arrivals. "*It appears the 'identification' was essentially based on the intuition of the two interpreters present (a Moroccan and a Tunisian) to accord to the migrants a different nationality than that claimed*." This

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[73] These figures were quoted by the Minister of the Interior in a speech to the Chamber of Deputies on 8 October 2004.

apparently arbitrary system was used to declare that the majority were Egyptian although many had professed to be Palestinian.

March 2005 deportations

Between 13 and 21 March 2005, 1,235 foreign nationals arrived on the island of Lampedusa (Amnesty International, 2005c: 15). As is the practice, they were detained in the CPTA in Lampedusa on arrival. On 16 March the Italian Minister of the Interior informed Parliament that almost all the foreign nationals who had arrived on Lampedusa over the month of March were Egyptians, who had claimed to be Palestinian or Iraqi. He also explained that Libyan officials had been allowed entry into the centre in Lampedusa with a view to assisting Italian officials with identifying human traffickers. On 17 March two flights returned 180 people from Lampedusa to Libya. By mid-April the Ministry of Interior noted that of the March arrivals 494 had been returned to Libya while 76 had been sent directly to Egypt (Amnesty International, 2005c: 16).

Similarly to October 2004, UNHCR was granted delayed entry to the centre in Lampedusa. The organization had requested access on 14 March only to gain authorization late on 21 March, meaning that by the time they entered the centre it was 24 March and there were only about 80 detainees remaining. UNHCR expressed similar concerns to those expressed in October 2004, saying that, "*it is far from clear that Italy has taken the necessary precautions to ensure that it is not sending back any bona fide refugees to Libya, which cannot be considered a safe country of asylum*". UNHCR further expressed concerns at the fact that Libyan officials were given access to detainees in the centre in Lampedusa since "[i]*f there was any Libyan asylum seeker in the group, this would run counter to basic refugee protection principles, and could create valid refugee claims sur place*" (UNHCR, 2005c).

Smaller-scale deportations

During the first weeks of May 2005 over 1,000 people arrived on Lampedusa, either directly or after first arriving on another small island off Sicily. On 16 and 21 May Italian media reported that two separate flights carrying a total of over 100 people were believed to have been returned to Libya from Lampedusa (Amnesty International, 2005c: 16). On 22 June over 45 people were returned to Libya from Italy, without being given adequate access to a fair and satisfactory asylum procedure. There were fears of more returns as 866 people were detained in the Lampedusa CPTA, which has a maximum capacity of 190 (Amnesty International, 2005d).

On 20 June 2004 Cap Anamur, a German humanitarian organization working to rescue 'boat people' at sea,[74] rescued 37 African nationals, whose small inflatable boat was sinking in international waters between the Libyan and Italian coasts. The rescue ship was at first denied entry into Italy and finally, under pressure from NGOs and UNHCR, on 11 July the Italian authorities allowed the ship to dock on its territory.

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[74] Cap Anamur, also the name of the boat used in rescue operations, can carry some 400 passengers and is fitted with a large crane designed to life shipwrecked boats from the sea as well as a small hospital to care temporarily for those rescued at sea. More information on the activities of the organization can be found at http://www.cap-anamur.org/eng.

On arrival in Italy, the crew of the rescue ship were taken into custody for several days, accused of assisting the illegal immigration of the 37 African nationals, before being released and asked to leave southern Italy. The passengers were transferred to a CPTA, where they expressed their wish to apply for asylum. All passengers claimed to be Sudanese nationals from Darfur. The Italian authorities later identified the passengers as Nigerians and Ghanaians, who, with the exception of one, were returned to Nigeria and Ghana. On 30 July, after they had been expelled, a Rome tribunal accepted an appeal lodged by 14 of the passengers, who had been identified as Nigerians, challenging their expulsion order, and ordered for their asylum request to be re-examined (FIDH, 2005).

Condemnations of deportations from Italy to Libya

The handling of the flow of arrivals to Lampedusa has generated widespread criticism. On 14 April 2005 the European Parliament adopted a 'resolution on Lampedusa', in which it expressed a number of concerns, the most important of which are highlighted here. The Parliament expressed concern at: "*the collective expulsions of migrants from…Italy to Libya…between October 2004 and March 2005*"; and the lack of access for UNHCR to the Lampedusa reception centre, although access was given to Libyan officials. It also expressed concern at: "*the fate of the hundreds of asylum-seekers returned to Libya, since that country is not a signatory to the Geneva Convention on Refugees, has no functioning asylum system, offers no effective guarantee of refugee rights and practices arbitrary arrest, detention and expulsion*"; and "*the treatment and deplorable conditions of people held in camps in Libya, as well as the recent massive repatriations of foreigners from Libya to their countries of origin in conditions guaranteeing neither their dignity nor their survival*".

As a result of these concerns, the European Parliament called on the Italian authorities to "*refrain from collective expulsions of asylum-seekers and 'irregular migrants' to Libya…and to guarantee that requests for asylum are examined individually and the principle of non-refoulement adhered to*". It also took the view that "*the collective expulsions of migrants by Italy to Libya, including those of 17 March 2005, constitute a violation of the principle of non-refoulement and that the Italian authorities have failed to meet their international obligations by not ensuring that the lives of the people expelled by them are not threatened in their countries of origin*". Finally, it called on Libya to "*call a halt to the expulsion and arbitrary arrest of migrants, to ratify the Geneva Convention on Refugees and to recognize the mandate of UNHCR*".

In a separate initiative, on 6 April 2005, the European Court of Human Rights requested information from the Italian government regarding the identification and expulsion procedures followed during the deportations from Italy to Libya in March 2005, and asked whether any asylum-seekers were among those deported. This followed an application filed by two Italian lawyers on behalf of 79 men who had given one of the lawyers authorization to legally represent them during a short visit by the lawyer to the Lampedusa CPTA on 1 April. Italy responded that 14 of the men had been expelled before the Court's request and that 11 were to be expelled shortly after, while the whereabouts of the remaining 54 were not mentioned. On 10 May the Court issued an interim measure ordering the suspension of the planned expulsion of the aforementioned 11 men until further notice. At the time of writing, the Court had not issued its final decision on the case.

Returns from Italy to Libya: the risk of indirect refoulement[75]

It is evident that Italy's current policy of returns of real and suspected migrants does not conform with its international obligations. In the first place, it appears that the Italian authorities do not carry out an adequate screening procedure to verify whether each individual has a genuine asylum claim before returning them to Libya. Secondly, Libya itself is not a safe country for many returnees. The lack of distinction between refugees and migrants and the absence of an asylum policy mean that people are effectively denied the right to seek asylum in Libya. Without access to an asylum procedure, there is a great risk that returns from Libya to countries of origin amount to *refoulement*. Finally, the inability of UNHCR Tripoli to fully carry out its mandate, in particular having access to people held in deportation camps and other places of detention, means that on return to Libya the effective rights of refugees cannot be guaranteed.

Libya – EU cooperation on migration

EU cooperation with southern Mediterranean countries on migration

Before looking at the specific cooperation between the EU and Libya, it is worth framing it briefly in the context of the EU's cooperation with all southern Mediterranean countries on the issue of migration, especially those in North Africa. Migration has become a core part of all relations between the EU and its neighbours across the Mediterranean, with an increasing focus on externalizing questions of migration and asylum management. In addition, for a number of years, the EU has been working towards developing a common European asylum system.

In 1999 the Amsterdam Treaty came into force, making issues of fundamental importance to the management of migration – such as the free movement of persons; controls on external borders; asylum, immigration and safeguarding of the rights of third-country nationals – a matter for the community of the EU at large. This made way for the 1999 European Council of Tampere, which recognized the need to establish a comprehensive approach to migration, integrating political, development and human rights issues in countries of origin and of transit. It called for partnerships to be established with third countries – both countries of origin and of transit; for a common European asylum system; and for the management of migration flows, including fighting trafficking and negotiating readmission agreements with third countries.

In 2002 the Euro-Mediterranean Conference of Foreign Ministers in Valencia and the European Council of Seville made significant developments in relation to affirming the EU's aim to externalize questions of migration and asylum management, which it placed at the centre of all Euro-Mediterranean relations. Further, offering protection to refugees came to be seen as a "burden" shared not only among EU Member States but also with third countries of origin and of transit (Cassarino, 2005: 11). By the end of the year, the link between migration and development became a key way of looking at migration issues in recognition of the need to address root causes of migratory flows (European Commission, 2002) and thus migration became linked to financial aid and development assistance.

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[75] An indirect *refoulement* in this context entails Libya carrying out a *refoulement* of people deported from Italy to Libya.

In 2003 the European Neighbourhood Policy was adopted, which aims at intensifying existing cooperation between the EU and its southern Mediterranean partners on several areas, including migration management and border control. In November 2004 the Hague Programme (for the years 2005-2010) was adopted, following on from where the Tampere Programme left off, with a view to achieve a more coordinated policy on asylum, immigration and border controls for the 25 EU member states. Partnerships with with countries of transit and of origin are one of the main priorities of the Programme, aiming to improve their asylum systems, better tackle illegal immigration and implement resettlement programmes.

One idea for such cooperation with third countries that has been tabled by certain EU countries relates to the handling of asylum claims outside the EU. Controversial proposals were launched by the UK in 2003 to set up "transit processing centres" in countries bordering the EU. It was envisaged that asylum-seekers arriving in an EU country, and possibly those intercepted en route, would be sent to these centres and detained pending a decision on their application for asylum. This proposal was not implemented after it met with sharp criticism that, among other things, it would prejudice the right to seek asylum spontaneously and undermine the international protection system (Amnesty International, 2003). Nevertheless, in 2004 Italy and Germany revived the proposal, citing North Africa as a suitable location for such centres. While several EU Member States (e.g. the UK and Austria) voiced their support for the proposal, several others (e.g. France, Sweden, Spain) rejected the idea.

Given the widespread criticism, EU Member States have been cautious in their presentation of plans for setting up these centres so that their exact nature is not clearly defined to the public. As mentioned above, what is known is that Italy has bilaterally begun the construction of a 'camp' in Libya and envisages the construction of a further two (European Commission, 2005). Little information has filtered out regarding the nature and use of these camps.

At the same time, in connection with the Hague Programme, the Council expressed "*its utmost concern about the human tragedies that take place in the Mediterranean as a result of attempts to enter the EU illegally*" and called upon "*all States to intensify their cooperation in preventing further loss of life*". In relation to cooperation with transit countries, the Council specifies that "[s]*upport for capacity-building in national asylum systems, border control and wider cooperation on migration issues will be provided to those countries that demonstrate a genuine commitment to fulfill their obligations under the Geneva Convention on Refugees*" (Council of the European Union, 2004: Annex I, p.21-22). Amnesty International expressed its concern that "*despite the intentions and appropriate references to fundamental rights there is too much of a vacuum in the substance of the programme as to how the stated ambition is to be realized*" (Amnesty International EU Office, 2004).

Summary of Libya-EU cooperation to date
It is worth emphasizing that the cooperation between the EU and Libya fundamentally differs from that with other Mediterranean countries since the EU does not have any formal relations with Libya. Relations between the EU and its southern Mediterranean partners fall under the Euro-Mediterranean Partnership (otherwise known as the

Barcelona Process), a wide framework of political, economic and social relations between EU Member States and Partners of the southern Mediterranean. Libya, the last of the southern Mediterranean countries to join the Barcelona Process, currently only holds passive observer status. The goal of the EU is to involve Libya as a full partner.

In recent years, Libya has begun a process of reintegration into the folds of the international community after years of isolation brought about by the imposition of UN sanctions in 1992. The UN air and arms embargo was imposed in response to the bombings of a Pan Am flight over Lockerbie in 1988 and a UTA flight over Niger in 1989. The embargo was lifted in September 2003 when the Libyan authorities accepted "*responsibility for the actions of Libyan officials*" for the attacks (UN Security Council Resolution 1506). In 2003 the Libyan authorities also reached agreement over compensation to the families of victims of the bombing. The year ended with an announcement by Libya of the dismantling of its programmes of weapons of mass destruction.

This made way for negotiations between the EU and Libya with a view to a full normalization of relations between the two parties. In April 2004 Colonel al-Qaddafi visited the European Commission headquarters in Brussels, his first visit to a European Member State in 15 years. Over the course of 2004 and 2005 a series of high-level official visits to Libya have been conducted by European heads of state as well as EU officials, in particular officials of the European Commission. In many instances, the issue of irregular migration has topped the agenda.

Although there is currently no formal framework governing relations between the EU and Libya, as demonstrated above, bilateral cooperation with individual EU Member States, notably Italy, and with the EU as a whole has developed where deemed necessary, in particular on the issue of immigration. In fact, one of the main driving forces behind the EU entering into cooperation with Libya appears to be the immigration dossier.

In November 2002 the Council of the European Union (the Council), the EU's main decision-making body, considered it "*essential to initiate cooperation with Libya*" in the context of "*intensified cooperation on the management of migration flows with third countries*" (Council of the European Union, 2002). In May 2003 an exploratory mission was conducted by the European Commission, which aimed to assess the willingness of the Libyan authorities to cooperate with the EU in the field of immigration. The mission found Libya to be ready and willing to cooperate in this area.

In October 2004 the Council decided to lift the EU arms embargo on Libya, in effect since 1986. The decision was taken after considerable pressure from Italy who were keen to enable Libya to acquire the necessary military equipment required for border surveillance. At this stage, the Council also noted that the EU was moving into a new phase of relations with Libya, namely "*a policy of engagement*".[76]

At the end of 2004 a technical mission, led by the European Commission, was conducted to Libya. Two key objectives of the mission were to deepen their understanding of migration in Libya and to identify concrete measures for cooperation

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[76] General Affairs and External Relations Council (GAERC) - Conclusions on Libya, 11 October 2004

in this field. During the eight-day visit, delegates met with central and local authorities, as well as other relevant parties, such as UNHCR, and conducted short field visits to migrants camps, in the north and south of the country. Their report, detailing the findings of the mission, noted that "[b]*order management was the subject of particular attention during the mission, considering its importance in the field of illegal immigration*"(European Commission, 2005: 12). It concluded with a set of recommendations to set the direction for future cooperation with Libya in the field of illegal immigration. These recommendations, dealt with in the section below, later formed the basis of the Council conclusions, adopted in June 2005, which in turn clarify the different methods of future cooperation with Libya in the field of illegal immigration.

The lack of a formal framework between the EU and Libya has therefore not prevented movement in the field of combating illegal immigration. Rather, the Council conclusions of June 2005, recognizing that full cooperation cannot take place with Libya as long as it is not party to the Barcelona Process, have allowed for "*an ad hoc dialogue*".

Before looking in some detail at the ways forward envisaged by the EU, it is worth noting that within the EU there are those who urge caution in proceeding with cooperation with Libya on this dossier. Notably, a European Parliament delegation, which visited Libya in April 2005, strongly pushed for human rights to be fully integrated into any cooperation, specifying that it must be tied to Libya's recognition of UNHCR in the country and its ratification of the UN Refugee Convention. The delegation noted numerous areas of concern in the area of refugee protection and human rights, including the lack of a clear definition of who is considered an 'illegal' immigrant and the lack of asylum and immigration legislation (European Parliament, 2005b).

The EU's vision of migration cooperation with Libya

The Council conclusions, adopted in June 2005, have set the direction for future cooperation with Libya in the field of irregular migration. As mentioned earlier, the methods of cooperation envisaged for the future are based wholly on the recommendations outlined by the European Commission. The conclusions were swiftly followed in late June by a high level visit by Jonathon Faull, Director General of the European Commission's Justice, Freedom and Security department, to Libya, which aimed at initiating operational cooperation with Libya. Since then, the EU has allocated additional budgetary support for combating irregular migration from Libya and begun to develop a number of concrete coordinated EU-Libya initiatives and approaches.

The report of the European Commission (2005) outlined the orientations for cooperation to deal with the phenomenon of illegal immigration through Libya. Three main levels of cooperation were suggested: specific cooperation with Libya; cooperation with countries of origin; and dialogue on a wider regional basis. With regard to cooperation with Libya, four key areas were suggested. Firstly, "reinforcement of institution building", which involves improving the legal framework and administrative structures dealing with visas, entry conditions, residence permits, asylum, human trafficking and repatriation. Secondly, "training initiatives", in particular on modern techniques of border control and surveillance and

particularly on document forgery and basic informatics equipment. The report also mentions other training, including on human rights and basic investigation techniques. Thirdly, "management of asylum", which is described as awareness raising and training on asylum issues for staff in charge of border control, reception centres and policy definition. The Commission also mentions UNHCR's role in helping to create an asylum system in Libya and in calling on Libya to adhere to its existing obligations towards refugees. Fourthly, "awareness raising", specifically media campaigns aimed at discouraging irregular migration to be launched in Libya and neighbouring countries.

Cooperation with countries of origin focuses on the improvement of border management between Libya and neighbouring countries. In this area, the European Commission also recommends that bilateral dialogue is initiated between the EU and countries of origin to discuss migration issues with a view to establishing closer cooperation. In this regard, Niger was suggested as a pilot country for further research and negotiation. Dialogue on a wider regional basis pertains to closer EU dialogue with the African Union (AU) on migration issues and increased EU focus on the dialogue on migration in already existing regional fora, such as the 5+5 Dialgoue on Migration in the Western Mediterranean,[77] among other things. In reference to regional dialogue, it is worth mentioning the dialogue on Mediterranean Transit Migration, initiated by the International Centre for Migration Policy Development (ICMPD), an inter-governmental organization, which brings together European countries with southern Mediterranean countries, including Libya, to discuss issues of migration development.

Since the adoption of the Hague Programme in November 2004, concerned parties have made particular efforts to frame the cooperation between the EU and Libya on immigration as being motivated by humanitarian concerns and guided by human rights principles. In June 2005 the European Council adopted its conclusions on the introduction of dialogue and cooperation with Libya on immigration issues. According to Luxembourg, who held the EU Presidency at the time, the conclusions are "*intended to clarify the different methods of this cooperation with Libya, based on a certain number of principles. It is essential that the European Union leads these third party countries of transit, including Libya, to respect certain basic principles – more particularly the principles enshrined in the Geneva Convention of 1951.*" This is a reiteration of one of the conclusions which states that: "*cooperation between the EU and third countries is guided by principles of full respect for human rights, respect for democratic principles, the rule of law and the demonstration by those countries of a genuine commitment to fulfil their obligations under the Geneva Convention on Refugees or other relevant international conventions.*" The Council also makes specific reference to the need for Libya to fulfil its obligations under the OAU Refugee Convention, which it goes on to say recognizes the UN Refugee Convention and "*requires effective cooperation with UNHCR and the respect of the principle of 'non-refoulement'*". The Council further states that the extent and development of cooperation with Libya will depend on Libya's commitments on asylum and fundamental rights.

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[77] The 5+5 members are: Algeria, Libya, Mauritania, Morocco and Tunisia + France, Italy, Malta, Portugal and Spain.

Having set compliance with international human rights standards as a benchmark for cooperation with Libya, the Council goes on to suggest certain concrete measures for the short and medium terms. In the short-term these include: finding ways to prevent further loss of life at sea; training on a range of issues, from border control to human rights; capacity-building in migration management and refugee protection in cooperation with UNHCR; and providing assistance for repatriation. In the medium-term, the measures suggested include: strengthening the legal and administrative framework with a view to improving migration management; strengthening border control at Tripoli International Airport; and working to prevent smuggling and trafficking.

On 1 July the European Commission allocated 2 million Euros (just under one-third of its 6.7 million euro budget) under the ARGO Work Programme to "*support operational activities to address the emergencies caused by illegal immigration in the Mediterranean*". Funds under the ARGO Work Programme can be used in four areas: external borders; visas; asylum; and immigration (EuropaWorld, 29 June 2005). Thus, the ARGO funds, mentioned above, have been presented as a response to calls by the European Council in its June 2005 conclusions, to "*address the crisis situation in the Mediterranean and to prevent the human tragedies that take place following attempts to enter the EU illegally by sea*". Around the time of the allocation of the ARGO funds, Franco Frattini, EU Commissioner for Justice, Freedom and Security, reportedly expressed his confidence in the commitment of Libya "*to the respect of human rights*" (Inter Press Service News Agency, 6 July 2005). The basis of this confidence in Libya's commitment to uphold human rights is difficult to decipher since there have been few tangible improvements in the human rights situation in the country in recent years.

This was followed on 20 July 2005 by a seminar on 'saving life at sea and in the desert', organized by the European Commission and hosted in Malta. The title of the seminar, the first technical meeting between the two parties since the initiation of the ad hoc dialogue, seems to indicate that priority is given to ensuring a reduction in the numbers of deaths. In the conclusions, issued at the end of the seminar, Libya and the EU declared their commitment to work together to address the human tragedies resulting in the Mediterranean and in the desert and to initiate dialogue and cooperation with other African countries of transit and origin.

Despite the apparent focus on 'saving life at sea and in the desert', the conclusions suggest that much of what was discussed and agreed upon related more to developing methods of work and cooperation between the EU and Libya to strengthen Libya's border surveillance. For example, the EU agreed to give due consideration to the particular difficulties articulated by Libya in controlling its desert borders and conducting rescue operations in the desert. Mention was made of a joint EU-Libya committee which had been established to deal with illegal immigration. According to the conclusions, in late 2005 this committee will discuss the following: the establishment of a contact network with round-clock coverage; a joint search and rescue plan, with an emphasis on an "*inventory of technical requirements*"; joint search and rescue exercises; and joint training on external border management, on search and rescue, and on asylum and protection issues.

The seminar conclusions also state that "*experts discussed international maritime law commitments on search an rescue, humanitarian protection and asylum issues*". The important work being coordinated by UNHCR on these last set of issues was noted and the Commission undertook to take that into account in the progress made by the EU and Libya. Despite the mention of asylum and protection issues, there was little specific development of how exactly the EU and Libya would cooperate to save the lives of those intercepted at sea or in the desert. Importantly, there is no mention of the need to respect human rights principles when intercepting migrants in these contexts. Specifically, no reference is made as to how the EU and Libya will cooperate to ensure that the right of those intercepted at sea to seek asylum is guaranteed and that the principle of non-*refoulement* is upheld.

The question arises as to whether this is merely cosmetic as a means of responding to criticism or whether there will be a real attempt to address the key issues. To what extent does the envisaged cooperation concretely take into account the findings of the European Commission mission to Libya in late 2004, which found that in "*in practice, international protection of refugees is not assured*" (European Commission, 2005: 13), or the findings of its colleagues in the European Parliament after their visit to Libya (European Parliament, 2005b), or those of Italian and international human rights organizations and of UNHCR? To what extent are the assurances, given by the Council in November 2004, that support and cooperation with transit countries on migration will be tied to a demonstration of the "*genuine commitment to fulfil their obligations under the Geneva Convention on Refugees*" intended to be implemented? By extension, therefore, to what extent is cooperation being linked to tangible steps on behalf of Libya to improve its current legal framework and treatment in practice of refugees and asylum seekers?

It is further important to note that both the Council conclusions of June 2005 and the conclusions of the Malta seminar have a similar starting point, that loss of life results from insufficiently managed migration flows. In the first place, the issue of whether more effective border control would result in a decrease in the numbers of arrivals both in Libya and Europe is highly questionable, as numerous studies have demonstrated (Andreas, 2001; Collyer, 2004). Further, this assumption appears to disregard the impact of refugees and asylum-seekers having been relegated to the status of 'illegals' as a result of diminishing legal migration options and left with little choice but to take ever more dangerous routes, placing their lives in the hands of smugglers, as this research has shown to be the case in the Libyan context.

CONCLUSION

The testimonies of refugees, asylum-seekers and migrants, collected for this study, demonstrate the lengths to which people are willing to go to escape a variety of problems, whether political, social or economic, which they face in their country of origin. While crossing the desert and the Mediterranean sea, men, women and children endure great hardships. With little choice but to place their lives in the hands of smugglers, they are faced with life-threatening situations, often ending in the unnecessary deaths of family members, friends and fellow travelers. Many of them are aware of the dangers they are likely to encounter en route to Libya and on to Europe. However, their feelings of despair and frustration in their countries of origin, transit or asylum, are such that they are willing to risk everything for a chance, albeit slim, to reach Europe.

Libya continues to represent a viable location for short and to a lesser extent long-term residence for some foreign nationals. For many others, their stay is overshadowed by racism, the constant risk of detention and ill-treatment, and possible deportation to their country of origin. The lack of distinction between refugees and migrants under Libyan law and the absence of an asylum policy mean that people are effectively denied the right to seek asylum in Libya and lack adequate protection. They suffer from unclear state policies towards refugees, which leave many with an irregular or ambiguous legal status, adding to their sense of vulnerability. For at least some, their experiences in Libya push them to continue their journey and seek a more secure and stable life elsewhere, specifically in Europe.

Yet, arrival in Europe does not ensure adequate levels of protection. Italy's policy of returns of alleged irregular migrants to Libya, without an adequate screening process, means that there are no guarantees that those in need of international protection are not deported. Libya cannot be considered a safe country for many returnees, who face return from Libya to their countries of origin, which may amount to *refoulement*.

Aside from the lack of protection for refugees, it is, to a great extent, hard to differentiate between the experiences of refugees and migrants both in Libya and on the desert and sea crossings. Testimonies, gathered in this study, confirm that their migratory decisions are often motivated by a combination of attempts to attain physical safety and economic security. Many of those who migrate for purely socio-economic reasons also describe a sense of compulsion to leave due to high levels of frustration at home and of familial and societal pressure to migrate, even if this means risking their lives.

As Libya begins to engage in cooperation on irregular migration with the EU, the question of how to reconcile migration control with refugee protection proves, as in many other settings today, to be most contentious. Libya's integration into the international community and its cooperation with the EU on matters of migration presents a potential for positive change in a country which has long been sidelined by the international community. This new environment could mean a higher degree of international scrutiny on Libya's human rights record, be it related to its treatment of foreigners or its own nationals. The need for the Libyan authorities to bring their national system relating to refugees, asylum-seekers and migrants into conformity with international human rights standards is great. Concretely, this might take the

form of a number of measures, such as: establishing greater clarity over regular and irregular status in Libya, and creating an asylum system in recognition of the special status of refugees and their need for international protection.

However, the impact on the ground for refugees, asylum-seekers and migrants will largely depend on the direction of EU policy and the emphasis it places in reality on human rights principles. While it is too early to pass judgment on the impact of EU-Libya immigration cooperation on the protection of refugees, the fear is that the EU is driven by motivations to restrict entry into its territory and that adequate procedures to distinguish between those who need protection and those who do not are lacking. Although framed in the human rights discourse, it is hard to see concretely how the EU is actively pushing forward an agenda for reform within Libya to ensure refugee protection beyond mere rhetoric.

One likely scenario is that cooperation on border control and management will move forward quickly without the necessary accompanying changes in the human rights framework. Specifically, this might entail the EU ignoring its stated condition of a demonstration by Libya of its "*genuine commitment to fulfil* [its] *obligations under the Geneva Convention on Refugees*" and failing to ensure that border control activities comply with EU Member States' own international obligations, specifically the right to seek and enjoy asylum and the principle of non-*refoulement*.

RECOMMENDATIONS

1. Areas for further research

It was not possible to cover all desired issues pertaining to the subject of refugee protection in the context of transit migration through Libya within this study. Limitations included factors which were predicted at the outset (e.g. time and financial constraints) and others that arose during the course of the research (in particular, the inability to carry out research in Libya). Nevertheless, a number of areas requiring further research have been identified, the most important of which are outlined below.

1. This study has focused on the experiences of Egyptians, Sudanese and nationals of the Horn of Africa. It would be useful to conduct research with other communities in order to be able to compare their experiences. In addition, this would also bring to light other routes used to arrive in Libya. Given the recommendation of the European Commission to initiate a pilot project with Niger, it would be important to prioritize research concerning the route through Niger to Libya.
2. Unrestricted field work in Libya is required in order to acquire more information on the following areas:
    a. the status and experiences of those in Libya who have been recognized as refugees by UNHCR Tripoli in order to ascertain to the extent to which their experiences differ from those of potential asylum-seekers and migrants in Libya;
    b. the living and working conditions of refugees and potential asylum-seekers in Libya, making comparisons between different parts of the country (the coastal cities, such as Tripoli and Benghazi, and the areas bordering the desert, such as Kufra);

c. detention facilities used to hold migrants with a view to gaining a more precise understanding of where migrants are held and under what circumstances. Specific attention should be given to studying the existing 'camps for migrants' and the nature and use of new 'camps', financed by Italy; and

d. the tension between refugees and migrants and the local population, and in particular refugees and migrants' experiences of racism and religious freedom.

2. Policy recommendations for the Libyan government

The Libyan government should take a number of urgent concrete steps to address the lack of a human rights framework in handling irregular migration through its territory:

1. Significant amendments should be made to Libyan legislation to ensure that the specific legal category of a refugee is recognized by law.
2. National asylum legislation should be developed in compliance with international standards for refugee protection.
3. Much emphasis is placed on the need for Libya to ratify the UN Refugee Convention. While this is certainly desirable, Libya should not overlook its existing obligations under the OAU Refugee Convention, which incorporates a broad definition of who is considered a refugee.
4. The Libyan authorities should finalize a memorandum of understanding with UNHCR Tripoli and grant it full recognition, allowing the organization to begin to carry out its full mandate in assuring refugee protection. This would include allowing UNHCR staff access to detention facilities where refugees and migrants are held, both to assess the legality and conditions of their detention and to prevent a *refoulement* from taking place.
5. While Libya has a right to expel people from its territory, this must take place in conformity with its international human rights obligations. The Libyan authorities should therefore desist from deporting people to their countries of origin until such time as a safe protection system for refugees and asylum-seekers is operating.

3. Policy recommendations for the EU

The EU must also consider its international obligations in its cooperation with Libya and its handling of arrivals from the North African country.

1. EU Member States should refrain from deporting so-called irregular migrants arriving from Libya while there remains a possibility of indirect *refoulement* (Libya carrying out a *refoulement* of people deported from Italy to Libya).
2. EU-Libyan cooperation on migration should be guided by human rights principles in practice and not only in theory. This means that cooperation should not be developed without Libya having taken certain basic measures, as outlined above, to address the lack of refugee protection in the country.
3. The EU should refrain from pursuing the idea of establishing "transit processing centres" in Libya with a view to processing asylum claims outside the EU.

4. Tackling root causes

To address the issue of irregular migration through Libya, as elsewhere, the EU, Libya and country of origin governments must work towards tackling the political, economic and social factors in the countries of origin, as well as in countries of transit and of asylum, which lead people to migrate.

The need to tackle root causes is widely recognized, as is evident from the EU's policy to link migration and development as a central means of dealing with migration issues. Yet, the EU and other governments currently only pay lip service to this policy without seriously implementing effective schemes to this end within a reasonable timeframe. Instead, the preference has been to increase border control and surveillance, to clamp down on smuggling networks, and to advocate information campaigns about the risks of travel through irregular channels. While these methods are valid, as long as they are carried out in conformity with international human rights standards, they are superficial and will do little to stem the flow of people attempting to reach the EU. Thus, people will continue to undertake the dangerous journey to Europe, knowing in advance that this might cost them their lives.

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