



Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees

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I. Summary

“They kicked us, beat us, for no reason. When we asked for something to eat, the border policemen showed us a truck full of rotten food that cats were living in and told us to eat that.”

—Tesfai, an Eritrean migrant woman arrested on the outskirts of Kufra in 2003

“I can’t count the number of times I was beaten up on the street by Libyans... The people in cars try to run you down. There are always insults on the street. You live in fear. I just concentrated on getting home safely from work every day.”

—Ahmad, a Sudanese asylum seeker in Italy, describing conditions he experienced in Libya from 1992-2003

“They hung me by a chain from the wall. There was a stick behind my knees, and my hands were tied to it. They hung me up on the wall. I stayed like that for forty-five minutes. They were beating me during that time. They told me ‘If we kill you, no one will know.’”

—Sub-Saharan African migrant describing treatment after his arrest for drugs in 2004

Not long ago, Libya opened its doors to foreigners. Eager for cheap labor, the Libyan government and its leader Mu`ammar al-Qadhafi welcomed Africans in the spirit of pan-African solidarity.

Those days are gone. Around 2000, the government began fearing that too many foreigners had come, saturating the market for jobs. In a country with just over five million people, well over one million non-Libyans had arrived. The government blamed them for rising crime, new disease and social tension.

Around the same time, European governments began pressuring Libya to control illegal migration. In recent years thousands of sub-Saharan migrants, asylum seekers and refugees have left Libya or transited through it to Europe, riding in packed smugglers’ boats to Italy. The European Union has urged Libya to stem the flow.

Over the past three years, the Libyan government has taken a number of steps towards that aim. It has toughened its border controls, both in the desert and along the coast. It has bolstered its immigration department, and now cooperates more closely with the European Union, individual European governments and the International Organization for Migration (IOM) on migration control.

More problematically, the government has implemented a plan to arrest and forcibly return tens of thousands of foreigners who illegally enter Libya or are there without proper documentation. Many of these people are migrant workers who came for economic reasons, but the government has made no attempt to differentiate between these people and the asylum seekers, refugees and others in need of international protection who also came. The plan, chaotic and poorly organized at first, has led to arbitrary arrests, physical abuse, lengthy and arbitrary detention in poor conditions, and forced deportations without the opportunity for deportees to seek asylum, all of which violate Libyan and international law.

A persistent problem is physical abuse at the time of arrest, usually on Libya's borders or in urban sweeps. In Libya and Italy, Human Rights Watch interviewed dozens of migrants, refugees and asylum seekers who had experienced or witnessed beatings and other maltreatment during their time in Libya by border guards and police.

In addition, migrants, asylum seekers and refugees reported numerous violations during their detention at a variety of facilities in Libya, including beatings, overcrowding, sub-standard conditions, not having access to a lawyer, and having limited information about pending deportation. In three cases, witnesses reported that physical abuse by guards led to a person's death. Three interviewees reported that security officials threatened women detainees with sexual violence, and one witness saw what he believed to be a rape. While detention conditions for migrants and refugees have reportedly improved in recent years, the evidence suggests that many of these abuses persist.

Those interviewed frequently saw or experienced police corruption during arrest or in detention. After a bribe, police and prison guards let detainees go or turned a blind eye to their escape.

The Libyan government maintains that the arrests of foreigners illegally in the country are necessary for public order, and that the security forces carry them out in accordance with immigration law. In an April 2006 memo to Human Rights Watch, the government said that some police officers "overindulge in the use of force" but that "the failings in these cases are nothing more than the isolated actions of individuals unrelated to

methodology.” In such cases, “legal action was taken,” although the government did not provide statistics on the number of police charged or convicted for using excessive force or otherwise violating the law (see Appendix I).

From 2003 to 2005, the Libyan government repatriated approximately 145,000 undocumented foreigners according to official figures, mostly to countries in sub-Saharan Africa. Today most of the deportations are by plane but some initial expulsions were overland by car, truck or bus through the desert, with reports of deaths en route.

The Libyan government says the majority of deportees were economic migrants, but some were undoubtedly asylum seekers or refugees who faced the risk of persecution or maltreatment back home. Of particular concern are mass returns to Eritrea, where the government has detained and possibly tortured returnees from Libya. In one case in 2004, Eritreans forcibly returned from Libya hijacked their plane en route and forced it to land in Sudan, where UNHCR recognized sixty of the deportees as refugees.

An overarching problem is Libya’s refusal to introduce an asylum law or procedures. It is not a party to the 1951 Refugee Convention and has no formal cooperation with the United Nations High Commissioner for Refugees (UNHCR), although UNHCR does maintain an office in Tripoli. Throughout the deportation process, from arrest to forced return, individuals have no opportunity to present an asylum claim.

Some Libyan officials say Libya does not offer asylum because none of the foreigners illegally in the country need protection. Others are more candid, saying they fear opening Libya’s door to asylum seekers when the government’s goal is to reduce the number of foreigners. One official told Human Rights Watch that if Libya provided the opportunity for asylum, “they would come like locusts.”

The Libyan government says it does not deport those with a legitimate claim of persecution or abuse back home. But without an asylum law and procedures, it remains unclear how individuals can effectively seek protection, what authority decides to give it, and on what criteria.

The forced return of refugees – or refoulement – violates Libyan and international law. Libya’s Constitutional Proclamation from 1969 states that, “the extradition of political refugees is prohibited.” Law 20 of 1991, “On Enhancing Freedom,” says that Libya, “supports the oppressed and the defenders on the road to freedom and they should not abandon the refugees and their protection.” Both the Convention against Torture and

the African Refugee Convention forbid Libya from sending individuals to countries where they face a serious risk of persecution or torture. To ensure compliance with these obligations, it is incumbent on Libya to identify any refugees who might be amongst the migrants they return or expel.

Human Rights Watch interviewed fifty-six migrants, asylum seekers and refugees with experience in Libya for this report. At the time of the interviews, seventeen of the interviewees had received refugee status, either from UNHCR in Libya or from the Italian government. Thirteen others were waiting for the Italian government's response to their asylum claim. Some of the interviewees said they would have stayed in Libya rather than risk a dangerous boat trip to Italy if asylum had been an option there.

The report also addresses the treatment of sub-Saharan Africans in the Libyan criminal justice system. Foreigners in Libya reported police violence and due process violations, including torture and unfair trials. According to foreigners who live or lived in Libya, sub-Saharan Africans in the country face hostility from a xenophobic host population that is expressed in blanket accusations of criminality, verbal and physical attacks, harassment and extortion.

Some of the abuses that migrants and refugees reported, such as extortion, police abuse and due process violations, are endemic to Libya, stemming from the weak rule of law. But many of the abuses seemed related, or at least exacerbated, by the victims' status as foreigners. Without tribal support, and considered unwanted outsiders by many Libyans, sub-Saharan Africans are particularly vulnerable to abuse.

The Libyan government claims that foreigners enjoy the same rights as Libyan citizens, such as the right to a fair trial and the right to be free from torture, and that the government punishes abuses, which it describes as isolated cases. It denies that any foreigner in detention on immigration or criminal grounds has died as a result of abuse.

The report's final chapter looks at the migration and asylum policies of the European Union, which is cooperating with Libya on migration control without prioritizing protection. The E.U. should condition future cooperation on Libya signing and implementing the Refugee Convention – which would entail, among other things, a commitment not to return individuals to countries where they may face torture or persecution – and to cooperate fully with UNHCR. The Libyan government must also implement the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter, the Migrant Workers Convention),

to which it is a party, by ceasing abuse against migrants, such as the use of torture and detention in sub-standard conditions.

Italy, the country most affected by migration from Libya, has most egregiously flouted international laws intended to protect migrants, asylum seekers and refugees. The Italian government denied Human Rights Watch access to the main detention center for people coming from Libya, on the island of Lampedusa, but eyewitnesses have reported unhygienic facilities, overcrowding and physical abuse by guards against detainees. In a positive development, the Italian government recently allowed UNHCR, the Italian Red Cross and the International Organization for Migration (IOM) to maintain a permanent presence on the island that could help the government to identify asylum seekers and assist those in need. After strong pressure from some members of parliament and nongovernmental organizations, the Interior Minister has formed a commission to investigate conditions in the various government centers.

Most problematic is the Italian policy to collectively expel groups of people back to Libya, in violation of Italy's own human rights and asylum obligations. The government has conducted thousands of expulsions since 2004 in a hasty and indiscriminate manner, and has not provided all individuals with an adequate opportunity to present an asylum claim. Once in Libya, the Libyan government returned these people to their home countries, regardless of whether they feared persecution or maltreatment. Between August 2003 and December 2004 alone, the Italian government funded fifty charter flights from Libya that returned 5,688 people.

On July 14, 2003, the Italian Ministry of Interior issued a decree that enabled the Italian navy to intercept ships carrying asylum seekers and migrants and, if possible, to force the vessels back to the territorial waters of the countries from which they came. The decree included no consideration for identifying asylum seekers, and its terms violated the principle that the State in whose territorial waters a vessel is intercepted has the primary responsibility for addressing any protection needs of persons on board.

Italy has the same legal obligations to foreigners on its soil as Libya has under universal human rights instruments (in particular, not to arbitrarily detain, collectively expel or refoule anyone), but it also has obligations under European human rights law. Italy's non-refoulement obligations under both the Refugee Convention and the European Convention on Human Rights (ECHR) are triggered the moment an individual enters Italian waters or is interdicted on the high seas. Italy therefore shares responsibility for any refoulement resulting from expulsions, and for any torture or inhuman or degrading

treatment that expelled individuals may suffer if returned to their country of origin or any other place.

Methodology

Human Rights Watch conducted research between April 20 and May 13, 2005, in several locations in Libya's north. This was the organization's first visit to the country – part of a process whereby Libya has slowly opened itself to international scrutiny from human rights groups over the past two years. Further research was conducted between May 23 and 27, 2005 in Rome with refugees and migrants who had traveled through Libya.

In total, Human Rights Watch interviewed fifty-six migrants, asylum seekers and refugees who had spent between five days and thirty-five years in Libya. Of the interviews conducted in Libya, sixteen were with individuals in prison and nine were with individuals awaiting deportation in Tripoli's al-Fellah facility. Of the fifty-six interviewees, six were women and none were children (one was an adolescent at the time he was in Libya). As noted above, seventeen of the interviewees were recognized as refugees by either UNHCR in Libya or by the Italian government, and thirteen others had asylum claims pending in Italy; a further two had had their asylum claims rejected there.

In our research, we had greater access to refugees and asylum seekers (through various United Nations and nongovernmental agencies) than to economic migrants, so their predominance among the fifty-six interviewees does not accurately reflect the composition of Libya's foreign population, most of whom are economic migrants. Human Rights Watch did not interview any non-Libyans from outside of Africa, such as Asian migrant workers, so their experiences are not examined. The interviewees' countries of origin were: Cameroon, Democratic Republic of Congo, Egypt, Eritrea, Ethiopia, Ghana, Liberia, Niger, Nigeria, Somalia, and Sudan. We have used pseudonyms to protect the identity of the migrants, refugees and asylum seekers who provided information.

In addition to refugees, asylum seekers and migrants, in Libya and Italy Human Rights Watch interviewed government officials, politicians, representatives of nongovernmental organizations (NGOs), lawyers, judges, journalists with eyewitness accounts, representatives of UNHCR, IOM, the United Nations Office of the High Commissioner for Human Rights (OHCHR), and others. We drew on secondary sources and reports of United Nations treaty bodies, as noted in footnotes.

The Libyan government allowed Human Rights Watch to interview all relevant government officials dealing with migration, including top officials in the General People's Committees for Foreign Liaison and International Cooperation, Justice and Public Security (equivalent to the Ministries of Foreign Affairs, Justice and Internal Affairs). Human Rights Watch visited five prisons and the al-Fellah deportation center in Tripoli. Interviews with prisoners and detainees in all places were conducted in private. Libyan officials told Human Rights Watch that none of the individuals with whom the organization spoke would suffer repercussions for sharing their views. The Libyan government also provided Human Rights Watch with a memo outlining its position on migrants, asylum seekers and refugees, and that document is presented in its entirety as Appendix I.

At the same time, the government severely curtailed our contact with migrants, asylum seekers and refugees outside of the prison and detention systems in Libya. The government explicitly told Human Rights Watch not to speak with individuals – Libyans or foreigners – without the government's prior consent. Government representatives escorted or monitored the delegation at all times. In one case, the police arrested a Liberian refugee one hour after he had spoken with Human Rights Watch. The police released the man the next day after Human Rights Watch complained, and assured the organization that they had arrested him because he did not possess the proper residency documents, which was the case. Human Rights Watch believes, however, that his arrest was due to his having provided information to the organization. The individual has since left Libya because he felt monitored and under threat.

In Italy, as already noted, the government refused Human Rights Watch access to the reception and detention centers where they hold migrants and asylum seekers who come from Libya, including the camp on Lampedusa island. Human Rights Watch's first request to the Italian Ministry of the Interior, on May 13, 2005, went unanswered, and a follow-up request to enter the identification center in Crotone, Calabria, was refused in a fax from the Prefect of Crotone on May 23, 2005. The Italian government has also denied access to UNHCR during times of expulsions, Amnesty International and other independent observers, as well as to lawyers with clients inside the centers.

This report is the third in a three-part series on Libya stemming from Human Rights Watch's first-ever visit to Libya in April-May 2005. The first report, "Words to Deeds: The Urgent Need for Human Rights Reform," examines restrictions on civil and political rights. The second report, "A Threat to Society: Arbitrary Detention of Women and Girls for 'Social Rehabilitation,'" documents abuses against women and girls in facilities ostensibly intended for their protection. Both reports and other material on Libya are available at <http://hrw.org/doc?t=mideast&c=libya>.

II. Key Recommendations

Detailed recommendations are presented at the end of this report.

To the Government of Libya

- Adopt and implement legislation to fulfill Libya's asylum obligations under domestic laws – the Constitutional Proclamation, Great Green Charter for Human Rights and the Law on Enhancing Freedom – and international conventions to which Libya is party. Above all, introduce laws to respect the absolute prohibition on refoulement and to establish an effective, fair and lawful asylum procedure.
- Monitor conditions in all detention facilities housing migrants and possible asylum seekers, and criminally prosecute guards and other officials who physically abuse or otherwise mistreat detainees.
- Sign a Memorandum of Understanding with the United Nations High Commissioner for Refugees (UNHCR) and allow the agency to perform its functions freely in Libya, including by granting it unfettered access to all immigration detention facilities.
- Establish effective and accessible mechanisms by which non-nationals facing expulsion may challenge both their detention and expulsion on human rights as well as immigration grounds. Until such mechanisms are in place, suspend all expulsions.
- Present all migrants, asylum seekers and refugees taken into custody on non-immigration offenses promptly before a judicial authority, and charge them with a recognizable criminal offense or release them.
- Hold foreign nationals detained for immigration or non-immigration-related offences in conditions that conform to international minimum standards.

To the European Union

To E.U. Member States

- Refrain from expelling third-country (non-Libyan) nationals to Libya until Libya's treatment of migrants meets international human rights standards: ending physical abuse and other mistreatment, protecting the rights of refugees and avoiding forced return to countries where the individual is at risk of torture.
- Ensure that all national measures to prevent unauthorized entry and residence and the removal of undocumented residents from the territory of the European Union fully respect human rights and refugee law.

To E.U. Institutions and Member States

- Encourage Libya to 1) ratify the 1951 Refugee Convention and its 1967 Protocol; 2) adopt a national asylum law; and 3) formally recognize UNHCR.
- Apply strict human rights conditionality to any cooperation with the Libyan government on migration (including border control), such that the observance of human rights, and the rights of refugees and migrants in particular, are dramatically improved.

To the Government of Italy¹

- Ensure there are no more mass expulsions of third-country nationals to Libya, which violate Italian law, as well as European and international human rights law.
- Grant UNHCR, human rights and legal advocacy NGOs, lawyers, journalists and other independent observers access to all reception, identification and detention centers in Italy.

¹ Recommendations to the Italian government here and in the "Detailed Recommendations" chapter at the end of the report focus on human rights concerns relating to Italy's cooperation with Libya and do not address other human rights issues relating to the Italian asylum and immigration system.

III. Background

Libya's Geography

Libya is a large country, 1,759,540 square kilometers (679,363 sq. miles), with relatively few people, just over 5.3 million.² The vast Sahara Desert encompasses more than 90 percent of the country, and the majority of the population lives on the Mediterranean coast.

The northern coast is approximately 1,770 kilometers long, and is some 300 kilometers from Italian territory at its closest point (the island of Lampedusa). In the east, south and west, Libya shares borders with Egypt (1,150 km.), Chad (1,055 km.), Algeria (982 km.), Tunisia, (459 km.), Sudan (383 km.) and Niger (354 km.). Most of the land borders in the remote desert are not marked.

Libya's Political System

Libya's contemporary political system has its origins in the al-Fateh Revolution of 1969, a bloodless coup d'état that overthrew the monarchy and installed a Revolutionary Command Council headed by Mu`ammar al-Qadhafi. Al-Qadhafi has remained the country's leader, and despite having no official title (he is variously referred to as "Brother Leader" and "Guide to the Revolution") he controls all major aspects of the country's political and economic life.

During the 1970s, al-Qadhafi developed a political philosophy, the Third Universal Theory, a hybrid of Socialism and Islam, and elaborated a system of government he termed Jamahiriya, or "state of the masses." In the Jamahiriya all citizens are obliged to participate in Basic People's Congresses, which exist in every local administrative unit, where they debate all matters of government, from budgets to defense. Each Basic People's Congress elects a People's Committee as an executive body, which appoints a local representative to the General People's Congress, the equivalent of a national legislative assembly. The General People's Congress in turn is run by its own people's committees, which are the equivalent of ministries. Since 1977, when this system was enshrined by the Declaration of the People's Authority, the country has been formally known as the Great Socialist People's Libyan Arab Jamahiriya.

² "Libya's Population Numbers 5.3 Million—Census," Reuters, June 1, 2006.

Al-Qadhafi and the current Libyan government characterize the system based on the Basic People's Congresses as the most advanced form of democracy, noting that citizens do not elect representatives but participate themselves directly in government affairs. At the same time, the government bans the formation of political parties and any group activity based on a political ideology opposed to the principles of the al-Fateh Revolution. The Revolutionary Committees – which exist in virtually all sectors, including the various people's congresses, workers' unions, universities, state companies and the media – are a parallel mechanism maintaining ideological and political control of Libya's economic, social and political life.

With Africa's largest crude oil reserves, Libya is the second wealthiest country on the continent, after South Africa, and notably more developed than other countries in the north. At the same time, Libya's wealth is centralized in the hands of the elite, and Libyan citizens and government officials both complain of endemic corruption.

For much of the period of al-Qadhafi's leadership, Libya has had poor international relations with the United States and most of the major European powers. An improvement in relations with the U.S. and Europe began in 1999 after Libya's cooperation on the Lockerbie case (involving the bombing of Pan Am flight 103 over Scotland in 1988) and has continued, with Libya in 2003 disclosing its weapons programs, agreeing to scrap its weapons of mass destruction, and cooperating with the U.S.-led "war on terror" in the aftermath of the September 11, 2001 attacks on the United States. On May 15, 2006 the U.S. government announced that the two countries were resuming full diplomatic relations and the Bush administration requested the U.S. Congress to remove Libya from the U.S. list of states that sponsor terrorism. The Congress obliged on June 30.

Human Rights in Libya³

Since coming to power in 1969, al-Qadhafi has used repressive measures to maintain control. In 1973 police and security forces arrested hundreds of Libyans who opposed, or the authorities feared could oppose, the new political system. In what some Libyans call a cultural revolution to "educate the masses," police and security forces rounded up academics, lawyers, students, journalists, Trotskyists, Communists and members of the Muslim Brotherhood. Some of them were forcibly disappeared. Throughout the 1970s

³ The current state of human rights in Libya is addressed in detail in Human Rights Watch's January 2006 report, "Words to Deeds: The Urgent Need for Human Rights Reform," available at <http://hrw.org/reports/2006/libya0106/>, as of May 7, 2006. See also Human Rights Watch's February 2006 report, "A Threat to Society: Arbitrary Detention of Women and Girls for "Social Rehabilitation," available at <http://hrw.org/reports/2006/libya0206/>, as of May 7, 2006.

and 1980s, state repression increased in a wave of revolutionary fervor, with critics imprisoned or forcibly disappeared. The state assumed control of religious institutions.

In 1988 Libya saw slight reform, including the release of some political prisoners, and in June of that year the General People's Congress adopted the Great Green Charter for Human Rights in the Jamahiriyan Era, which recognized some basic rights and prohibited any punishment that "would violate the dignity and the integrity of a human being." In particular, the charter guarantees the independence of the judiciary (article 9), freedom of thought (article 19), equality between men and women (article 21), and says the goal of Jamahiriya society is to abolish capital punishment – a goal not yet achieved. However, the next year saw another wave of internal repression, and there were no further signs of improvement for a decade.

The human rights situation has improved again since 1998, although there remains a long way to go for the country to meet its obligations under international human rights law. Al-Qadhafi's son Seif al-Islam al-Qadhafi founded the Qadhafi International Foundation for Development in 1998, which began a human rights program run by a former political prisoner, and in 2003 it began a campaign against torture. In 2001 and 2002 the authorities released approximately 300 prisoners, some of whom the government had imprisoned since 1973 for peaceful political activity.

In April 2004 Mu`ammar al-Qadhafi called for a series of legal reforms, including the abolition of the People's Court, which primarily tried political crimes (abolition came in January 2005), a reduction in the number of crimes for which the death penalty was applicable, and a more stringent application of Libyan laws with regard to due process. In February 2006, the authorities granted a pardon to 132 political prisoners, most of whom had spent more than seven years in detention, imprisoned for nonviolent activities after unfair trials.⁴ In general, however, the promises of reform have been greater than the reform itself. Libya remains tightly controlled from the top, with very little room for expression or organizations that criticize the ruling ideology or its implementers.

Foreigners in Libya

As already noted, Libya has a population of approximately 5.3 million. It declares itself to be a culturally and socially homogenous state, and does not acknowledge the existence

⁴ See Human Rights Watch, "Libya: Hopeful Sign as 132 Political Prisoners Freed," March 2, 2006, available at <http://hrw.org/english/docs/2006/03/02/libya12750.htm>, as of May 7, 2006.

of national, ethnic or religious minorities.⁵ Although no reliable statistics exist, as of 2005 the Libyan government estimated that 600,000 “legal” foreign workers resided in the country, which means they had registered with the authorities. Additionally, the government estimates the country has between 1 and 1.2 million “illegal” migrants. According to the government, between 70,000 and 100,000 foreigners of both varieties enter the country every year.⁶

The high number of foreigners has various causes. First, the country’s 4,400 kilometers of mostly desert borders with six countries are difficult to patrol. Second, the relatively prosperous economy draws people from poorer countries looking for work. Third, in the past the government pursued an open-door policy, first for Arabs and later for sub-Saharan Africans.

The influx began in the 1970s as Libya swiftly developed with revenues from oil, first discovered in 1959. Libya needed manpower for ambitious projects, including the massive Great Man-Made River project, which pumps water from the desert to the coastal towns. The workers came predominantly from Egypt and Tunisia, and Egyptians are still the largest group of foreign nationals in Libya today.⁷

Throughout the 1990s, al-Qadhafi turned his attention away from the Arab world towards Africa, disappointed with Arab governments’ response to his increasing international isolation after the airplane bombings over Lockerbie and Niger.⁸ He began

⁵ Committee on the Elimination of Racial Discrimination, Fifteenth, Sixteenth and Seventeenth periodic reports of the Libyan Arab Jamahiriya, February 25, 2003, UN Doc. CERD/C/431/Add.5. CCPR, concluding observations on the Third periodic report of the Libyan Arab Jamahiriya, November 6, 1998. UN Doc ICCPR/C/79/Add 101.

The head of the Committee for Human Rights and Legal Affairs in the General People’s Congress, Husni al-Wahaishi, likewise told Human Rights Watch: “Libya has no minorities. No racial minorities. No religious minorities. We thank God for this advantage.” Human Rights Watch interview with Husni al-Wahaishi, Tripoli, April 27, 2005.

⁶ Human Rights Watch interview with Muhammad al-Ramalli, General Director of Passports and Nationality Office (immigration department), April 25, 2005. The Libyan government also gave these numbers to a technical mission from the E.U. that visited the country in November-December 2004. See European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report,” Brussels, April 4, 2005, available at <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>, as of May 7, 2006. In a Libyan government memo to Human Rights Watch, provided on April 18, 2006, the government said that Libya had approximately 1.5 million foreigners, although it did not specify how many resided legally in the country (see Appendix I).

⁷ Sara Hamood, *African Transit Migration Through Libya to Europe: The Human Cost*, (Cairo: American University of Cairo, 2006), p. 17. According to official Egyptian statistics, approximately 323,000 Egyptians legally resided in Libya as of January 2005 (Hamood, p. 24.).

⁸ The U.N. Security Council imposed an air and arms embargo on Libya in 1992 after the airplane bombings over Lockerbie in 1988 and Niger in 1989, followed by a limited assets freeze and embargo on select oil equipment in 1993. The U.N. lifted sanctions in September 2003.

to articulate a policy of pan-Africanism, which included an open door for individuals south of the Sahara.

Libya signed a series of bilateral and multilateral agreements with countries such as Sudan and Chad. It advertised in African newspapers, encouraging workers to come.⁹ And in 1998 it was instrumental in forming the Community of Sahel-Saharan States (CEN-SAD), an organization of twenty-one African countries, headquartered in Tripoli. CEN-SAD says it works towards “facilitating the free movement of individuals, capital and meeting the interest of member states citizens” as well as “freedom of residence, work, ownership and economic activity.”¹⁰

Al-Qadhafi articulated his welcoming policy at a September 1999 extraordinary summit of the Organization of African Unity, where he declared himself a pan-Africanist and expressed Libya’s intention to welcome immigrants of African origin, while continuing such a policy for Arab immigrants.¹¹ Africans with passports could freely enter Libya, he said, and could stay without visas for three months with easier access to residency and work permits than other foreigners. The least populous country in North Africa, Libya still relied heavily on foreign labor for its economic growth, particularly in sectors such as agriculture and construction.¹²

Tens of thousands of Africans answered al-Qadhafi’s call. While most came for the economic opportunities, motivations were mixed. Some were fleeing persecution or war back home.

A fourth reason for the large foreigner population is Libya’s transition in recent years from a destination country to a place of transit. Since around 2000, Libya has increasingly become a gateway from Africa to Europe. Smugglers’ routes have flourished both into the country through the desert and out of the country on rickety boats, especially since states around Europe such as Turkey and other Balkan countries have tightened their border controls.

⁹ Hamood, p. 18.

¹⁰ CEN-SAD website. See <http://www.cen-sad.org/aboutcensad.htm#whatiszensad>, as of March 9, 2006.

¹¹ The summit produced the Sirte Declaration, precursor to the 2000 Constitutive Act of the African Union, the Organization of African Unity’s (OAU) successor organization. See <http://www.africa-union.org/root/au/index/index.htm>, as of May 7, 2006. See also Gamal Nkrumah, “Time for African Unity,” *Al-Ahram Weekly Online*, Cairo, September 16-22, 1999, available at <http://weekly.ahram.org.eg/1999/447/in1.htm>, as of May 7, 2006.

¹² International Labour Organization, Workers Group Secretariat 2004 Factsheet, available at <http://www.ilo.org/public/english/dialogue/actrav/new/ilc04/file4.pdf>, as of March 6, 2006.

“Geography is not nice to us,” said Shukri Ghanim, General Secretary of the General People’s Congress until March 2006. Libya is “between rich Europeans and poor Africans.”¹³ In late 2004, a European Commission report on migration in Libya noted “a sharp rise in illegal immigration through the Sicily Channel and the strengthening of the Libyan transit route.”¹⁴

Some of the migrants, asylum seekers and refugees interviewed by Human Rights Watch for this report said that some Libyan officials were involved in smuggling operations. “It is all organized by the Libyan authorities, and in some cases there are Libyan brokers who collect the money in advance,” alleged Ephrem S., a twenty-one-year-old student from Ethiopia of mixed Ethiopian-Eritrean parentage. “I have seen the military allow a big bus of people to come to the coast and then the captain who steers the boats is given an international mobile telephone.”¹⁵

According to the Libyan government, all of the foreigners in Libya are economic migrants, either looking for jobs in the country or planning to travel further north, and none of them have a legitimate fear of returning home. “We do not have political refugees,” Assistant Secretary of Foreign Liaison and International Cooperation (Foreign Affairs) Sa`id Eribi Hafiana, told Human Rights Watch. “The problem is Africans who came in the framework of illegal immigration.”¹⁶ Head of the Passports and Nationality Office Muhammad al-Ramalli agreed. “I have worked here for more than twenty years,” he said. “We have not received these people. Most people go on to the West.”¹⁷

Indeed, according to UNHCR and other migration experts, the vast majority of people who enter Libya come for economic reasons, either seeking to stay in Libya or to reach Europe. A number of those interviewed by Human Rights Watch said they hoped to find work in Libya but then moved north when they could not find a job. “I came because I am from a poor family,” said one Nigerian man, who came to Libya in 2003

¹³ Human Rights Watch interview with Shukri Ghanim, then-General Secretary of the General People’s Committee, Tripoli, April 28, 2005. In March 2006, Ghanim was removed from his post and became head the state-owned Libya National Oil Company.

¹⁴ European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report,” Brussels, April 4, 2005, available at <http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf>, as of May 7, 2006.

¹⁵ Human Rights Watch interview with Ethiopian refugee Ephrem S., Rome, May 24, 2005.

¹⁶ Human Rights Watch interview with Sa`id Eribi Hafiana, Assistant Secretary of the Committee for Foreign Liaison and International Cooperation, Tripoli, April 21, 2005.

¹⁷ Human Rights Watch interview with Muhammad al-Ramalli, April 25, 2005.

and was subsequently arrested for dealing drugs. “I just wanted to earn some money and set up a business back home.”¹⁸

But not all people came to Libya for economic reasons, either to work in Libya or to transit to Europe. Some were fleeing persecution in their home countries. They had either fled directly to Libya in search of protection or they went to Libya from other countries, such as Sudan, where they no longer felt safe. A man from Darfur, Sudan, for example, told Human Rights Watch how in 1993, at age fifteen, he fled Sudan because of attacks by a government-backed militia on his village. “I was looking to find a place where I could return to a school to study,” he said.¹⁹ A young Eritrean man who fled arrest in Eritrea for resisting conscription in September 2002 walked from Asmara to Kassala, Sudan, and then hitched a ride to Khartoum. “My intention was to stay, but... it looked like they would repatriate Eritreans because of an accord between Sudan and Eritrea, so I decided to escape again [to Libya].”²⁰

Whether migrants, asylum seekers or refugees, people enter Libya through centuries-old trade, caravan and migration routes. The most common route taken by those Human Rights Watch interviewed was from Sudan or Chad, across the desert in the south, towards the Libyan town of Kufra in the southeast. East Africans (and sometimes Asians) enter from this direction, while migrants from the states on the Gulf of Guinea such as Ghana and Nigeria enter mostly through Niger and Mali (and often then head further west to depart from Morocco to Spain).²¹ Those who travel from Sudan often break the journey for some days in Kufra to change vehicles. From Kufra the next stop is usually Benghazi, where migrants attempt to purchase Libyan documentation. Many individuals eventually make their way to the capital, Tripoli.

Some enter Libya in other ways. According to a Libyan official dealing with migration, Tunisian officials sometimes “dump” migrants against their will on the Libyan side of the border, either after they are caught trying to go to Europe or after their Tunisian

¹⁸ Human Rights Watch interview with Henry O., Misrata, May 4, 2005.

¹⁹ Human Rights Watch interview with Ahmad A., Rome, May 27, 2005.

²⁰ Human Rights Watch interview with Abraha M., Rome, May 26, 2005. The governments of Eritrea and Sudan signed an accord with UNHCR for the repatriation of Eritrean refugees in March 2002. See UNHCR News Stories, March 27, 2002, available at <http://www.unhcr.ch/cgi-in/texis/vtx/news/opendoc.htm?tbl=NEWS&id=3ca1ed1da&page=news>, as of September 7, 2005.

²¹ In early 2004, the Italian journalist Fabrizio Gatti traveled incognito into Libya from the Niger border. He reported that he saw four or five trucks of migrants entering every day, each carrying 150-300 people. Other migrants paid higher fees to travel in four-wheel-drive vehicles, each stuffed with twenty-five to thirty passengers. Human Rights Watch interview with Fabrizio Gatti, Rome, May 26, 2005.

work or study permits expire.²² Human Rights Watch spoke with six men at al-Fellah deportation facility (three Liberians, an Ivorian, a Guinean and a Congolese) who said they had been working in Tunisia until early April 2005, when Tunisian authorities dumped them on the Libyan side of the border.²³

According to the Libyan government, the influx of foreigners has strained Libya's resources. "We try to provide a work opportunity for all, but due to our population, about 5.5 million, we can absorb only one million or less," immigration official Muhammad al-Ramalli explained. "The true problem is with the individuals who enter the country illegally without documentation," the Libyan government said in an April 2006 memo to Human Rights Watch. "They pose a threat to public security, the issue that necessitates taking the legal steps with regard to them."²⁴

Due to the high unemployment among foreigners, officials told Human Rights Watch, Libya's crime rate has soared. According to Nasr al-Mabruk, Secretary of Public Security (Minister of Internal Affairs) until March 2006, foreigners commit 30 percent of all crimes. "We suffer a lot from this phenomenon," he said.²⁵ Officials at the Libyan immigration department appealed for sympathy. "When you have a meal for yourself, you can always share it with another person, but it is impossible to share it with five other people," Muhammad al-Ramalli said.²⁶ Other Libyan officials described the country as "exposed to a flood" of migrants.²⁷ Many of them expressed the belief that irregular immigration is threatening public health and introducing new types of crime, such as drugs and prostitution.²⁸ Secretary of Social Affairs Amal Nuri Safar, when asked about violence against women in Libya, replied: "It might not come from a Libyan but it might be from cultures that are from outside Libya."²⁹

A number of Libyan officials and citizens also said that sub-Saharan Africans are introducing HIV/AIDS. In an informational film on immigration produced by the General People's Committee for Public Security, the government claims the HIV/AIDS

²² Human Rights Watch interview with `Ali Mdorad, General Director of Consular Affairs, General People's Committee for Foreign Liaison and International Cooperation, Tripoli, April 30, 2005.

²³ Human Rights Watch interviews with detainees in al-Fellah deportation camp, Tripoli, April 25, 2005.

²⁴ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

²⁵ Human Rights Watch interview with Nasr al-Mabruk, then-Secretary of Public Security, Tripoli, April 26, 2005.

²⁶ Human Rights Watch interview with Muhammad al-Ramalli, Tripoli, April 21, 2005.

²⁷ Human Rights Watch interview with Brig. Salih Rajab, then-Assistant Secretary of Public Security, April 21, 2005. Brig. Rajab became Secretary of Public Security in March 2006.

²⁸ Human Rights Watch interview with Sa`id Eribi Hafiana, Tripoli, April 21, 2005.

²⁹ Human Rights Watch interview with Amal Nuri Safar, Secretary of Social Affairs in the General People's Congress, Tripoli, April 25, 2005.

infection rate is rising with the immigration rate, although it provides no statistics or evidence that the virus is being transferred beyond the migrant population.³⁰ According to Shukri Ghanim, General Secretary of the General People's Committee at the time of Human Rights Watch's visit, "poor Africans are pouring in and bringing AIDS, drugs, crime." He complained that African farm workers were attacking Libyans and their property on isolated farms.³¹

The government's concerns were articulated in a report by the European Commission delegation that visited Libya in November-December 2004 to look at the issue of migration. The report concluded:

According to the Libyan authorities, the uncontrolled movement of illegal immigrants to and through Libya has reached the level of a national crisis, in particular with regards to immigration originating from sub-Saharan Africa. Authorities are concerned about the management of this situation and its possible consequences: criminal activities, a degradation of the overall health situation with particular emphasis on the possible spread of HIV/AIDS and hepatitis, economic disruption due to an excess of availability of cheap labor, cultural difficulties resulting in tensions between Libyan and foreign communities, and the possible infiltration of terrorists. Yet there seems to exist little understanding of the need for a strategic approach, except at the level of [a] few interlocutors at a high level.³²

Anti-foreigner sentiment in the country has also risen. The most serious incident occurred in late September 2000 in the town of Zawiyya, west of Tripoli, where a mob of Libyans clashed with foreigners primarily from Sudan and Chad, killing up to fifty people, according to press reports (see Chapter VIII, "Other Abuses Against Migrants, Asylum Seekers and Refugees").³³ According to the Libyan government, seven people died. The General People's Congress subsequently ordered the authorities to stem the private sector's hiring of foreigners, and the police began large-scale arrests.

³⁰ Video on illegal immigration by the General People's Committee for Public Security, November 2004. The Libyan government provided Human Rights Watch with the video in May 2005.

³¹ Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

³² European Commission, "Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report."

³³ "Libya Tightens Security," BBC, September 27, 2000, available at <http://news.bbc.co.uk/1/hi/world/africa/943863.stm>, as of March 6, 2006. Some media reports from Nigeria said up to 500 people had died. ("At Least 500 Nigerians Reported Dead in Libya," PANA news agency, October 8, 2000.)

The problem intensified as Libya's relations with Europe improved, especially after the U.N. lifted sanctions in September 2003. European governments, in particular Italy, began pressuring Libya to better control the outflow of migrants from its shores, and Italy began forcibly expelling migrants and asylum seekers who had come from Libya.

Today Libya is far from the welcoming country for foreigners that al-Qadhafi had said it would be seven years before. Most of the non-Libyans interviewed for this report complained of unchecked discrimination and racist violence in Libya. For some, whether their motivation to be in Libya had been work or refuge, the xenophobia has inspired them to move on to Italy. "At first I had no clear idea to go to Italy," said Marta T., an Eritrean woman now recognized as a refugee in Italy. "I stayed in a private house with six other people [in Tripoli]. We couldn't go outside because we were afraid. The one time when I went to buy something with my friend, they threw a Coca-Cola can at her head."³⁴

A Sudanese man now in Italy shared his sense of betrayal with Human Rights Watch: "In my experience, the Libyan government is deceiving the world that it is helping the Africans. Africans come in the name of African unity, and then the Libyan government doesn't give them anything."³⁵

³⁴ Human Rights Watch interview with Marta T., Rome, May 26, 2005.

³⁵ Human Rights Watch interview with 'Abd al-M., Rome, May 27, 2005.

IV. Denial of the Right to Seek Asylum

Libya has no asylum law or asylum procedures. For individuals fleeing persecution, there is no formal mechanism to seek protection.³⁶

According to top Libyan officials, an asylum system is not required because the country has no asylum seekers or refugees. “We do not have a law for this,” said Muhammad al-Ramalli, the director of the Passports and Nationality Office. “If you do not have this problem, you do not need a law for it.” He continued, “When people start to complain that they need asylum, then we’ll know [that we need a law].”³⁷

Other officials did not deny that Libya has refugees among the foreign population, but they argued that Libya’s administration could not handle asylum requests. They expressed a fear that offering the option of asylum would attract a new wave of undocumented migrants who would use the asylum channel to avoid deportation, as well as make it more difficult for Libya to get rid of the people who had already come.

According to the General Director of Consular Affairs at the General People’s Committee for Foreign Liaison and International Cooperation, if Libya offered asylum, the asylum seekers would come “like a plague of locusts.”³⁸ According to Shukri Ghanim, Secretary General of the General People’s Congress from 2003 until March 2006, “We cannot open our doors to asylum or there will be fifty million people.”³⁹

³⁶ In the past, the Libyan government has granted asylum to a few individuals on an ad hoc basis despite the lack of an asylum law. According to Secretary of Foreign Affairs at the General People’s Congress Sulaiman al-Shahumi, the person must present the request to the Secretary of Foreign Affairs in the General People’s Congress if he or she is in Libya, or to a Libyan embassy if abroad. “In the past, political asylum requests have been rare,” he told Human Rights Watch. “Maybe one case every two to three years.” According to al-Shahumi, some Iraqis, Afghans and individuals from the Maghreb and the rest of Africa have applied for asylum in order to “make use of the provisions in our system for a home, a car or security.” Former General Secretary of the General People’s Congress Shukri Ghanim told Human Rights Watch that Libya had granted asylum to a handful of individuals over the years if they were “in imminent danger for his life due to his beliefs.” As an example, he cited the former Ugandan leader Idi Amin, who fled to Libya in 1979. Amin spent two years under the protection of al-Qadhafi before moving to Saudi Arabia, where he died in 2003.

³⁷ Human Rights Watch interview with Muhammad al-Ramalli, Tripoli, April 25, 2005.

³⁸ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

³⁹ Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

According to Libya's Constitutional Proclamation from 1969, "the extradition of political refugees is prohibited."⁴⁰ In addition, Law 20 of 1991, "On Enhancing Freedom," says, "the Jamahiriya supports the oppressed and the defenders on the road to freedom and they should not abandon the refugees and their protection."⁴¹ Law 20 and the Constitutional Proclamation are two of four fundamental laws in Libya that assume constitutional weight.⁴² Whatever the Libyan government might maintain about all foreigners being economic migrants and not refugees, without a determination procedure, it is impossible to distinguish between the two.

Libya has signed neither the 1951 Geneva Convention on the protection of refugees nor its 1967 Protocol, but both the Convention against Torture and the African Refugee Convention forbid Libya from sending individuals to countries where they face a serious risk of persecution or torture. Under customary international law, Libya is also obliged not to return any person to a place where they may face persecution or their lives or freedom are at risk.⁴³ In order to ensure compliance with these obligations, it is incumbent upon Libya to identify – by an individual or group-recognition mechanism – any refugees or persons otherwise in need of international protection who might be amongst the migrants they return or expel.

Although some Libyan officials claim there are no refugees who would wish to seek asylum in Libya, Human Rights Watch interviewed seventeen individuals who had been unable to obtain protection in Libya, but received refugee status from UNHCR or subsequently from the Italian government. Some of these people said they would have claimed asylum in Libya if that option had been available. Thirteen others were waiting for the Italian government's response to their asylum claim.

⁴⁰ Constitutional Proclamation of 1969, article 11.

⁴¹ Law 20 (1991), article 21.

⁴² The other two fundamental laws are The Declaration of the People's Authority, adopted March 2, 1977, and the Great Green Charter for Human Rights of the Jamahiriyan Era, adopted June 1988. For details see Human Rights Watch, "Words to Deeds: The Urgent Need for Human Rights Reform," January 2006.

⁴³ See Executive Committee (ExCom) Conclusion No. 25, General Conclusion on International Protection, 1982; 1982, para b, available at <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&page=home&id=3ae68c434c>, as of March 6, 2006; article 5 of the Cartagena Declaration on Refugees, 1984, available at <http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RSDLEGAL&id=3ae6b36ec>, as of March 6, 2006; and Article V of the Revised Bangkok Principles on Status and Treatment of Refugees of 2001, available at <http://www.aalco.org/Final%20Text%20of%20Bangkok%20Principles.htm>, as of March 6, 2006. There is near scholarly consensus on this point. See Lauterpacht and Bethlehem, "The Scope and Content of the Principle of Non-refoulement: Opinion," February 2003, UNHCR, para.216; Bruin and Wouters, "Terrorism and the Non-Derogability of Non-refoulement," *International Journal of Refugee Law*, Vol.15, No.5 (2003), section 4.6; Allain, Jean, "The Jus Cogens Nature of Nonrefoulement," *International Journal of Refugee Law*, Vol.13 (2001), p.538; Weissbrodt and Hortreitere, "The Principle of Non-refoulement," *Buffalo Human Rights Law Review*, Vol.5 (1999).

One such person was Yohannes, an Eritrean journalist whom Human Rights Watch interviewed in Italy, where his asylum request was under review as of December 2005. In Eritrea, Yohannes worked as a journalist for an opposition newspaper. The authorities arrested him briefly for his writing in 2001,⁴⁴ the same year the government closed his newspaper as part of a crackdown on the independent press.⁴⁵ Eritrean authorities detained Yohannes, but he managed to escape, eventually fleeing to Sudan. Eight months later he went to Libya, entering without authorization.

The trip to Libya with a smuggler was perilous, Yohannes said. Along the way, he saw more than twenty dead men and women in the sand. The driver tried to avoid Libyan security forces, but police arrested the group near the town of Kufra.

According to Yohannes, the police saw his press card and called him a spy. They separated him from the group of forty people, and he spent the next eight months in four different prisons. First was a prison at a place he called “Ogella,” where the authorities held him in solitary confinement and provided inadequate food. At times the guards beat him, he said, and once they hit him so hard on the head that he lost consciousness (see Chapter VI, “Abuse in Detention”).

Security officials beat him at another prison he called “Jalo,” Yohannes said, where he stayed for another two months. Eventually they transferred him to a prison in Benghazi where he saw the guards use violence against many of the prisoners. In one case he witnessed, the prison guards beat a prisoner from Chad so badly that he died.

Shortly thereafter, Yohannes received a visit in prison from officials of the Eritrean embassy. They took his photograph and fingerprints and told him to get ready for his deportation home. Given his two previous arrests in Eritrea and the government’s closure of his newspaper, Yohannes feared what the government would do when he returned. With the help of fellow prisoners, he bribed the Libyan guards and escaped. Eventually he paid a smuggler to take him to Italy, where he is currently seeking asylum.⁴⁶

⁴⁴ Committee to Protect Journalists, “CPJ Asks Justice Minister to Clarify Whereabouts of 15 Journalists,” June 7, 2001, available at <http://www.cpj.org/news/2001/Eritrea07jun01na.html>, as of March 6, 2006.

⁴⁵ Committee to Protect Journalists, *Attacks on the Press 2001*, March 2002, available at <http://www.cpj.org/attacks01/africa01/eritrea.html>, as of March 6, 2006.

⁴⁶ Human Rights Watch interview with Yohannes G., Rome, May 24, 2005.

Draft Asylum Law

According to the head of the Libya's immigration office, Muhammad al-Ramalli, the government has formed an "informal ad hoc committee" to examine proposals for an asylum law even though "we do not feel we have to do this now." The head of the committee is Sulaiman al-Shahumi, Secretary of Foreign Affairs at the General People's Congress. Al-Shahumi told Human Rights Watch that the committee began work in mid-2004 to "establish a law dealing with refugees – political, social, cultural, economic and even groups like from Darfur." The law was necessary, he said, so that asylum requests were "not left up to an individual to decide and there are certain criteria and standards." He continued:

This proposal defines the cases and the privileges and mechanisms of requesting and approving asylum, and the administration to oversee this on the Libyan end, and the budget. There are a lot of procedures to accept asylum seekers. Over the past year we took from various laws from across the Arab world, but we did not find a good example. We looked to Germany, the U.K., Italy, Belgium and France. We looked at the laws and privileges.⁴⁷

According to al-Shahumi, the committee was going to present the law to the Basic People's Congresses – where Libya's citizens debate the merits of draft laws – in November 2005. If approved, it would go to the General People's Congress for final approval. As of August 1, 2006, the committee had not submitted its draft law. The Libyan government did not respond to a Human Rights Watch request to see the draft.

UNHCR in Libya

The presence of a UNHCR office in Libya dates back fifteen years, but the Libyan government still refuses to sign an Accord de Siège or Memorandum of Understanding with the agency. Around 2004, the government ceased to recognize the letters of attestation that UNHCR gives refugees and asylum seekers whom the agency has recognized through its own procedures. The security forces continue to arrest such individuals for immigration offences, although the government did not deport any of these people in 2005.⁴⁸ These arrests and the lack of a formal working agreement severely restrict UNHCR from performing its mandate.

⁴⁷ Human Rights Watch interview with Sulaiman al-Shahumi, Secretary of Foreign Affairs at the General People's Congress, Tripoli, May 4, 2005.

⁴⁸ UNHCR communication to Human Rights Watch, April 5, 2006.

On the positive side, the government has recently granted UNHCR access to the main detention center in Tripoli. The agency has interviewed refugees and asylum seekers, processed some cases for repatriation and/or resettlement and conducted interviews for refugee status determination (RSD). According to UNHCR, it has managed to release some of the detained refugees.⁴⁹ The government has, however, denied them access to other detention centers in Libya, however.

The government's non-recognition of UNHCR is linked to its oft-stated position that Libya has no refugees. Assistant Secretary of Foreign Liaison and International Cooperation Sa'id Eribi Hafiana told Human Rights Watch that the government cooperates with the U.N. when there is a need. "The Jamahariya has no objection to cooperation with any body of the United Nations, provided that the issue in question on which we have to cooperate has to be a real problem," he said.⁵⁰

UNHCR has publicly stated its dissatisfaction with the lack of cooperation. Its Libya operations plan for 2006 states:

The conclusion of a Memorandum of Understanding with the Libyan Government is imperative, particularly where, as in the case of Libya, refugees are increasingly part of a broader mixed or composite migratory flow and where *ad hoc* migration management politics do not provide for the identification of and proper response to the needs of asylum seekers and refugees, including access to protection.⁵¹

UNHCR's activity in Libya began in 1991, when the Libyan government accepted some 300 Somali refugees whom UNHCR had resettled from Saudi Arabia during the first Gulf War.⁵² A request from the Somalis for housing in Tripoli led to the establishment of a Somali refugee camp on Kennedy Street in Tripoli, which the government invited UNHCR to manage. New arrivals added to the camp's population (Somalis and other Africans who had entered Libya through the desert), and the facility grew to almost 3,000 residents. Later, the government moved the camp to Salah al-Din for better

⁴⁹ Ibid.

⁵⁰ Human Rights Watch interview with Sa'id Eribi Hafiana, Tripoli, April 21, 2005.

⁵¹ UNHCR, Country Operations Plan for Libya, 2006, available at <http://www.unhcr.org/cgi-bin/texis/vtx/home/opendoc.pdf?tbl=RSDCOI&id=43327bfb2>, as of May 6, 2006.

⁵² Human Rights Watch interviewed one Somali man in Libya who said the Saudi government had detained him for two months in 1991, and then deported him to Libya in October 1991 with 300 other Somalis. (Human Rights Watch interview with Muhammad B., Tripoli, April 25, 2005.)

protection and control, but security problems forced its closure in 2004, according to both UNHCR and a former resident of the camp.⁵³

In August 1995, to protest the Oslo accords between the Palestine Liberation Organization and Israel, al-Qadhafi ordered the expulsion of some 30,000 Palestinians from Libya to Palestinian self-rule areas in the West Bank and the Gaza Strip.⁵⁴ The Libyan government requested UNHCR to assist roughly one thousand of these refugees who it had stranded in a desert camp in Libya near the Egyptian border.⁵⁵ One legacy of this episode is that Palestinians make up the largest group of refugees registered with the UNHCR Tripoli office today. In October 1995, al-Qadhafi invited the Palestinians back and today the government provides Palestinian refugees free education and health care.

Until mid-2004, UNHCR was able to provide assistance from its Tripoli office to a large number of refugees, including some financial aid, vocational training, medical assistance and help enrolling children in Libyan schools. Despite the lack of a formal cooperation agreement, the agency communicated regularly with the government and succeeded in freeing detainees with UNHCR letters of attestation, thereby preventing their expulsion. In summer 2004, however, relations soured, and the government forced UNHCR to scale back its assistance.

In July of that year, the Libyan government forcibly returned more than 100 Eritreans (see Chapter VII, “Forced Return”). Human Rights Watch and other groups received credible information that the Eritrean government arrested the returnees upon arrival and held them in incommunicado detention.⁵⁶ The following month, the Libyan government forcibly returned another seventy-five Eritreans despite UNHCR protests. The group rebelled and hijacked the plane, forcing it to land in Sudan, where sixty of the Eritreans requested asylum. UNHCR granted all sixty of them refugee status.⁵⁷

⁵³ Human Rights Watch interview with UNHCR officials, Tripoli, April 21, 2005, and Human Rights Watch interview with Aadan M., Rome, May 26, 2005.

⁵⁴ Samia Nakhoul, “Palestinians in Camps Dismiss Gaddafi Reprieve,” Reuters, October 26, 2005.

⁵⁵ See Amnesty International, “Middle East: Fear, Flight and Forcible Exile,” AI Index: MDE 01/01/97, September 3, 1997, available at <http://web.amnesty.org/library/Index/ENGMDE010011997?open&of=ENG-376>, as of March 6, 2006.

⁵⁶ Amnesty International, “Report 2005–Libya,” available at <http://web.amnesty.org/report2005/lby-summary-eng>, as of March 6, 2006. See also Human Rights Watch letter to Mu’ ammar al-Qadhafi, July 22, 2004, available at <http://hrw.org/english/docs/2004/07/22/libya9127.htm> and Human Rights Watch letter to Eritrean President Issayas Afewerki, August 3, 2004, available at <http://hrw.org/english/docs/2004/08/03/eritre9178.htm>, as of March 6, 2006.

⁵⁷ UNHCR Briefing Notes, “UNHCR Concerned Over Continued Forcible Return of Potential Refugees from Libya,” September 21, 2004, available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=414ffeb4c&page=news>, as of May 7, 2006.

The incident marked the start of a government crackdown on undocumented migrants in Libya, UNHCR officials said. In October 2004, UNHCR called publicly for access to the hundreds of undocumented migrants the Libyan government was preparing to deport, after Italy had returned them. (UNHCR had condemned the Italian government's actions as unlawful expulsions. See Chapter X, "Role of the European Union and Italy.") "We recognize the very strong pressures that these continuing arrivals are generating, but all those who request asylum should have access to a fair procedure to assess their possible protection needs under the 1951 Refugee Convention," a UNHCR official said.⁵⁸ The Libyan government denied UNHCR access to the detainees awaiting onward deportation, and it has continued to deny the agency access to most of its deportation facilities ever since (although it has allowed access to the main facility in Tripoli since November 2005).

In December 2004, the European Commission approved some €740,000 for a UNHCR project of "Institution Building for Asylum in North Africa," which covered the five countries of the Arab Maghreb Union (Algeria, Mauritania, Morocco, Libya, and Tunisia). Today the project is underway in all these countries with the exception of Libya, due to the lack of official recognition and cooperation.

As of mid-2006, the UNHCR office in Tripoli consisted of three international staff, including one protection officer, and eight local staff. Without proper legal status, their powers are limited. Despite this, the agency continues to conduct refugee status determinations when individuals reach its premises. It grants "mandate status"⁵⁹ to refugees and asylum seekers and issues letters of attestation, even if the Libyan government does not recognize these letters, and continues to subject letter-holders to arrest. UNHCR has not conducted outreach among foreigner communities; it says it fears to raise false expectations that the organization can protect the refugees among them.

⁵⁸ UNHCR press release, "UNHCR deeply concerned over returns from Italy," October 4, 2004, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=4165521c4>, as of March 6, 2006, and UNHCR press release, "Italy: UNHCR Rome granted access at Lampedusa centre, but not in Libya," October 8, 2004, available at <http://www.unhcr.ch/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=416668e110>, as of March 6, 2006.

⁵⁹ A person who meets the criteria of the UNHCR's Statute qualifies for UNHCR's protection whether or not he or she is residing in a country that is a party to the Refugee Convention or Protocol, or whether or not he or she has been recognized by a state party to the Convention or Protocol. Refugees found to be within the High Commissioner's mandate are referred to as "mandate refugees." UNHCR exercises its protection obligations and other responsibilities on their behalf.

Human Rights Watch interviewed migrants, asylum seekers and refugees in Libya and Italy who said they did not know that UNHCR existed in Libya. “There is no office in Tripoli, or I never heard of it,” said one Eritrean refugee in Rome, who had spent one month in Libya in 2003.⁶⁰ An Ethiopian asylum seeker in Rome who spent nearly two years in Libya between 2003 and 2005 said he had had no contact with UNHCR’s Tripoli office. “I have no idea if there is an office there,” he said.⁶¹

Other refugees and asylum seekers told Human Rights Watch that they knew of UNHCR’s office but they did not go there because they knew the agency could not provide help. “In Libya there is a UNHCR office but it is just symbolic,” said the Ethiopian Ephrem S., who spent nearly two years in Libya illegally and then got refugee status in Italy in 2002. “There is nothing they can do.” He continued: “No one from UNHCR was coming to see under what conditions the refugees were living, so I assumed they were no use.”⁶²

Despite restrictions on its work, as of April 2006, UNHCR Tripoli had registered 12,166 mandate refugees, including the rejected cases. From this group, 8,873 were Palestinians. The rest included approximately 1,500 Somalis, 100 Liberians, 100 Sierra Leoneans and individuals from Eritrea, Ethiopia, Sudan and other countries.⁶³ According to UNHCR, the Tripoli office has lost contact with some of these registered refugees after they left Libya or were repatriated by the Libyan government.

UNHCR provided Human Rights Watch with its figures for registered refugees in 2004. In that year, UNHCR Tripoli reviewed 356 cases to determine refugee status. UNHCR recognized forty-six of these people as refugees and did not recognize seventy-three others.⁶⁴ The agency closed 237 cases for other reasons, primarily the disappearance of the applicant who, in most cases, UNCHR said, probably left Libya.

One effective protection UNHCR Tripoli can offer refugees in Libya is resettlement to a third country via its resettlement referral system. It rarely uses this in Libya, and only for individual emergency cases, UNHCR said. The agency resettled seven Eritrean refugees

⁶⁰ Human Rights Watch interview with Alamin S., Rome, May 24, 2005.

⁶¹ Human Rights Watch interview with Getachew J., Rome, May 24, 2005.

⁶² Human Rights Watch interview with Ephrem S., Rome, May 24, 2005.

⁶³ UNHCR, Country Operations Plan for Libya, 2006, and statistics provided to Human Rights Watch by UNHCR Tripoli in June 2005.

⁶⁴ Applicants have the right to appeal a rejection within the same UNHCR office. In that case, the chief of mission checks the decision of the protection officer. As of April 2005, four or five cases were pending an appeal.

whom Amnesty International found in detention when the organization visited Libya in February 2004. The Libyan government had set resettlement as a condition for the Eritreans' release.⁶⁵

General conditions for foreigners in Libya, such as physical insecurity, a lack of integration prospects and the risk of forced return may meet the UNHCR Resettlement Handbook criteria for resettlement need. As such, UNHCR should seek resettlement solutions for mandate refugees with no prospects for integration in Libya or voluntary repatriation.⁶⁶ Between 1995 and 2002, UNHCR provided financial assistance to many registered refugees, but today only a handful of particularly vulnerable cases receive financial support, such as pregnant women and the elderly.⁶⁷ UNHCR policy is to prevent the dependency of long-term urban refugees on outside aid and to stress integration through self-reliance, agency officials said.⁶⁸ Since 2002, the organization has also offered refugees assistance with vocational training and job placement.⁶⁹ Micro-credit schemes operated in 2003 and 2004 to help UNHCR refugees set up market stalls to sell coffee, but a police crackdown on unauthorized migrants in the summer of 2004 forced the stalls to close, and UNHCR abandoned the project.⁷⁰

Without cooperation from the government, UNHCR works with a number of semi-official local charities and aid organizations to provide services to migrants, asylum seekers, refugees and others in need of international protection.⁷¹ Through an implementing partner called the al-Wafa Charity Society for Humane Services and

⁶⁵ Human Rights Watch interview with UNHCR officials, Tripoli, April 25, 2005. See also Amnesty International, "Libya: Time to Make Human Rights a Reality," AI Index: MDE 19/002/2004, April 27, 2004.

⁶⁶ Resettlement Handbook, UNHCR, Division of International Protection, Geneva, July 1997.

⁶⁷ For emergency cases, UNHCR provides per month: 35 dinars for a single adult; 50 dinars for a couple; 10 extra dinars per child (1 dinar equals approximately €0.60). The decision on who should receive assistance, and how much, is made by an assistance advisory committee, consisting of the UNHCR protection officer, program officer, the local implementing partner (al-Wafa Charity Society for Humane Services and Relations), local government agencies and a representative from the Social Affairs Committee on the municipal level.

⁶⁸ Human Rights Watch interview with UNHCR officials, Tripoli, April 25, 2005.

⁶⁹ Vocational training includes electrical engineering, computing, sewing, and so on. Some refugees get toolkits so they can work as mechanics or welders. Such training is viewed as preparation for stay in Libya or for eventual repatriation.

⁷⁰ Human Rights Watch interview with UNHCR officials, Tripoli, April 25, 2005.

⁷¹ The Qadhafi Foundation for Development, run by al-Qadhafi's son Seif al-Islam; the Watasimu Association, run by al-Qadhafi's daughter `Aisha, the International Organization for Peace, Care and Relief, the World Islamic Call Society, and the Libyan Red Crescent Society all cooperate to varying degrees with UNHCR. The main local implementing partner is the al-Wafa Charity Society for Humane Services and Relations. According to UNHCR, the other organizations have been "more inclined to assist refugees outside Libya." (UNHCR, Country Operations Plan for Libya, 2006.)

Relations, UNHCR gives support to the refugees its office has recognized.⁷² In addition to vocational training, al-Wafa provides health care to UNHCR-mandate refugees either by treating them directly (its employees include an obstetrician) or by referring them to state hospitals and clinics.⁷³

As mentioned above, the Libyan government has granted UNHCR access to the main Tripoli detention center since November 2005, which has allowed the agency to conduct RSD interviews and, in some cases, secure the release of detained refugees.

Regarding the Libyan government's draft asylum law, UNHCR has offered its help. The agency provided the authorities with sample national laws adopted in neighboring countries, such as Sudan, Mauritania and Iraq. It has also proposed that the government establish a working group to assist the drafting process and to provide legal and technical advice.⁷⁴

⁷² Human Rights Watch interview with `Ali S. Abani, General Secretary of al-Wafa, Tripoli, April 30, 2005. Al-Wafa helps large families with limited incomes and also individuals with creative talents. Assistance to refugees became one of its main projects when the Libyan government invited the Somalis to Libya in 1991. The organization has a special branch office with five staff members to help refugees every day except holidays. Al-Wafa also conducts home visits for vulnerable cases and runs a program for the participation of refugee children in the community (e.g., parties on religious days). Al-Wafa does no outreach beyond the community registered with UNHCR.

⁷³ Al-Wafa helps all refugees whose treatment it has organized even if they cannot pay. According to al-Wafa officials, either the organization pays half the bill (with the refugee paying the other half or the hospital writing it off), or it negotiates an agreement with the hospital.

⁷⁴ UNHCR e-mail communication to Human Rights Watch, April 5, 2006.

V. Abuse during Arrest

At various times over the past decade, and most recently since 2004, Libyan authorities have engaged in wide-scale and systematic arrests of undocumented migrants, asylum seekers and refugees.⁷⁵ Many of those Human Rights Watch interviewed described physical abuse and other mistreatment, and their testimonies are consistent with other published accounts.

Libyan security officials typically arrest migrants and refugees in two circumstances: at or near the borders – entering or departing the country – and during urban sweeps. In both circumstances, migrants and refugees reported abuse by Libyan police and prison guards. They also complained of overcrowding in detention facilities, poor sanitation and food, not knowing the reasons for their detention and not having access to a lawyer or legal review. In one case, a witness said he heard four women screaming and crying after security guards had taken them to separate rooms, suggesting the women had been sexually abused. In several cases, foreigners in Libya reported that the police let them go or allowed them to escape after they paid a bribe.

The arrests are largely geared towards repatriation, with the authorities detaining large groups of foreigners in various facilities for different lengths of time as they prepare them for return. Despite Human Rights Watch requests, the Libyan government provided no information on the procedures or criteria it uses to arrest undocumented foreigners. As the European Commission delegation to Libya looking into irregular migration concluded in its report, “[M]any of the illegal immigrants met in the [detention] centres seem to have been arrested on a random basis.”

Of the fifty-six migrants and refugees Human Rights Watch interviewed for this report, more than half said the Libyan authorities had detained them at some point during their stay. A similar proportion was reported by the American University in Cairo, which interviewed sixty-five refugees, asylum seekers and migrants for a January 2006 study on migration through Libya to Europe. Of those sixty-five interviewees, Libyan authorities had detained “just under half” and “almost all respondents expressed a constant fear of being detained.”⁷⁶

⁷⁵ Here and throughout this report, the phrase “migrants and refugees” should be understood to include asylum seekers and persons otherwise in need of international protection.

⁷⁶ Hamood, p. 30.

As documented in the previous chapter, “Denial of the Right to Seek Asylum,” Libya has no asylum law or procedures. As such, detained individuals have no opportunity to submit an asylum request. On the contrary, the Libyan government forcibly returns many of the individuals detained for unauthorized presence, regardless of whether they might face persecution or torture upon their return.

The Libyan government maintains that the arrests of foreigners illegally in the country are necessary for public order, and that the security forces carry them out in accordance with immigration law.⁷⁷ In its April 2006 memo to Human Rights Watch, the government said that some police officers “overindulge in the use of force” but that “the failings in these cases are nothing more than the isolated actions of individuals unrelated to methodology.” In such cases, “legal action was taken,” although the government did not provide statistics on the number of police charged or convicted for using excessive force or otherwise violating the law.⁷⁸

The government flatly rejects claims that the police or other security forces have sexually abused detainees or used excessive force resulting in a foreigner’s death. “The level of bodily harm could never reach the point of death, critical condition or gross bodily harm, rape, violation of physical integrity,” the memo said.

Arrests on Entry and Departure

Libyan security forces frequently arrest migrants, asylum seekers and refugees on or near Libya’s borders as they are attempting to enter or leave the country. In one case, Libyan border police arrested a married couple from Eritrea, Tesfai and Almaz, on the outskirts of Kufra in April 2003. The couple, who had fled Eritrea in 1997 after both being forced to serve in the military, said they subsequently spent six years in Sudan. In 2003 they hired a smuggler to take them and their baby daughter to Libya. The border police caught them and twenty-five others in the vehicle, they said in a joint interview, and sent them to an unknown detention center where they remained for eight days. “They made us clean the courtyard as soon as we got up and whipped us if we stopped. They kicked us, beat us, for no reason,” Tesfai said, “When we asked for something to eat, the border policemen showed us a truck full of rotten food that cats were living in and told us to eat that.”⁷⁹

⁷⁷ The main Libyan law regulating the entry, stay and departure of foreigners is Law No. 6 (1987), as amended by Law No. 2 (2004). See chapter IX, “Legal Standards.”

⁷⁸ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

⁷⁹ Human Rights Watch interviews with Tesfai H. and Almaz N., Rome, May 25, 2005.

According to the couple, the authorities held the twenty-eight detainees in one room without a window; Almaz with the baby was the only woman in the group. They slept on the floor without bedding. The police forced the group to work every day, either cleaning the courtyard or digging trenches, Tesfai and Almaz said. Their daughter became dehydrated, but the guards refused her medical attention. Tesfai spoke Arabic and understood that the border police were waiting to arrest more people, so they could deport them to Sudan en masse.

Fearful of being returned, the others in the group managed to escape the detention facility at night. Tesfai and Almaz decided not to leave because of their baby daughter. When the guards woke the next morning and saw the other detainees had escaped, one of them beat Tesfai in an attempt to learn where the men had gone. Later, however, the guard unexpectedly put the family in a car and released them in a Kufra park.

Another Eritrean who entered Libya from Sudan without authorization told Human Rights Watch that security forces arrested and beat him in Kufra, and he believes they sexually abused four women in his group. According to Barakat, twenty-three years old, he fled Eritrea to Sudan in June 2002 to escape military service. In August he went to Libya “because I saw so many people going to Libya.”⁸⁰

Libyan forces in Kufra wearing khaki uniforms and carrying guns arrested him en route for illegal entry, together with four women and ten other men, he said. The security forces confiscated people’s money and beat the men. After the beating, four security members apparently tried to assault the four women in the building where they were being held. “Each man took one of the girls to a different room, and then we heard crying and shouting, so we rebelled,” he told Human Rights Watch. “This was at night. We were beaten for trying to rebel.”

Shortly thereafter Barakat managed to escape the detention facility, and he got to Tripoli, where he spent two months. “I wondered whether there was any organization or embassy in Libya who might help refugees,” he said. “I never heard of UNHCR being there. I thought my only chance was to jump to Italy to save my life.”

Barakat arrived in Italy in October 2002. He applied for asylum but was rejected and ordered to leave the country. As of May 2005, he was working without authorization and hiding from police.

⁸⁰ Human Rights Watch interview with Barakat T., Rome, May 25, 2005.

A twenty-seven-year-old man from Darfur, Ahmad, said that Libyan police beat him shortly after his arrival in Libya. The man, who said he had fled his village in Darfur due to militia attacks in 1993, made it to Libya illegally that year in a truck of smuggled goods. The Libyan driver was kind, Ahmad said, and when the truck arrived in Kufra, the driver gave him money to travel on to Benghazi. Shortly after his arrival in town, he said, the police found him sleeping in a park. He told Human Rights Watch that they beat him, and one of the police officers whipped him with a belt with a large metal buckle that left a gash in his head.⁸¹

The police took Ahmad to a police station, and from there a man he described as a kind senior officer took him to the neighborhood in town where Sudanese migrants lived. The policeman also took him to a hospital to treat the wound on his head, he said. The doctor, a Bulgarian, asked who had hit him. When Ahmad said it was the police, the doctor wrote him a note and told him to report the case to the police. When Ahmad went to the police station with the note, the policemen allegedly replied angrily, tearing up the doctor's note: "Get out of here and disappear... We can kill you if you do this," Ahmad recalled one officer said.

Anabesa, a twenty-three-year-old Orthodox Christian Ethiopian woman now recognized as a refugee in Italy, told Human Rights Watch how Libyan police beat foreigners they had arrested after a failed attempt to reach Italy. According to the woman, she and forty-seven others took a smuggler's boat from the Libyan coast in September 2003 but it sank along the way. Four people drowned, she said, and a French ship rescued the remaining forty-three (Eritreans, Ethiopians, Somalis, Moroccans and others from the Maghreb). The French handed the survivors over to the Libyans, who drove them to prison in a windowless truck. Along the way, Anabesa said, the Libyan security officials kicked and beat the migrants and refugees, including the women.⁸² Her experience in detention is recounted in Chapter VI, "Abuse in Detention."

Arrests in Urban Sweeps

In 2001, the Libyan government initiated a more concerted effort to arrest migrants and refugees in urban areas following mob violence against foreigners in Zawiyya and other parts of the country in September 2000 (see chapter VIII, "Other Abuses Against Migrants and Refugees"). The government reportedly expelled thousands of foreigners without proper documentation to the borders with Niger and Chad, even if they did not

⁸¹ Human Rights Watch interview with Ahmad A., Rome, May 27, 2005.

⁸² Human Rights Watch interview with Anabesa C., Rome, May 25, 2005.

come from those countries.⁸³ In August 2003 the police intensified the effort by conducting broad sweeps, including raids on four migrant areas in Tripoli.⁸⁴ In some of these sweeps, witnesses said, Libyan security forces used excessive force.

A thirty-year-old Ethiopian man, Gebre, who has applied for asylum in Italy, recounted his experience of being caught in a police sweep in Tripoli in September 2003. Libyan police, armed but in civilian clothes, came to his home in the suburb of Gurgee, he said. They checked his documents and, finding that his identity card was forged, arrested him. The police arrested more than 100 other Ethiopians and Eritreans that night, among them women and children. Gebre claimed that the police used sticks and a plastic pipe about three feet long to beat the men, but not the women or children, at the time of arrest. The police also took Gebre's savings without giving a receipt, he said. The police drove the arrested foreigners to a large prison somewhere outside Tripoli. In the prison, the guards told them they had been arrested because they were Christians, and "spies for Israel."

Some migrants and refugees told Human Rights Watch that the police let them go or allowed them to escape after they paid a bribe. During five months in Tripoli in 2003, for example, an Eritrean man said the police had arrested him six or seven times, but usually let him go after he paid money. "It was a difficult situation because the police arrested us often and took us to the police station where they beat us and then let us go after we paid a certain sum of money," he said. "Sometimes people were rearrested as they left the police station."⁸⁵

Ahmad from Darfur, mentioned above, said the police arrested him in 2002 in Shar`a al-Rashid, Tripoli, during a sweep for undocumented migrants, of which he was one. The police conducted regular sweeps on Tuesdays and Thursdays at the market in Tajura, he explained. "In the beginning they beat all the black foreigners. They didn't even ask where you were from – just started beating," Ahmad told Human Rights Watch. "But one day the police made a mistake and beat a black Libyan. After that they were more careful. They would ask you where you came from before they hit you." Ahmad said the police put him in a room in a police station with over 100 people. He stayed there for

⁸³ U.S. Department of State, Country Report on Human Rights Practices: Libya, 2001, released March 4, 2002, available at <http://www.state.gov/g/drl/rls/hrrpt/2001/nea/8273.htm>, as of March 13, 2006.

⁸⁴ The four areas were known as: the Airport Road Camp (mostly Nigerians and West Africans); the Crimea Camp (Chadians and Sudanese); the second Crimea Camp (West Africans); and the Zahra area camp, called Ghot Bu Sag. The Libyan authorities bulldozed all except the last, which was the only one remaining in 2005. All were on land owned by the government, except the Airport Road Camp where a private landlord was involved. Human Rights Watch interview, Tripoli, April 2005, name withheld.

⁸⁵ Human Rights Watch interviews with Tesfai H. and Almaz N., Rome, May 25, 2005.

five days before getting transferred to prison, where he claimed he stayed without charge for another two months.⁸⁶

Mass arrests of undocumented foreigners apparently intensified in mid-2004. According to UNHCR and testimony from migrants and refugees in Libya at the time, the police conducted sweeps in the streets of Tripoli and Sebha, as well as going house to house. A Liberian named David B. who witnessed some of the arrests said the authorities took detainees to a facility he called “Janzur” (possibly the police station in Tripoli’s Janzur district), “where they were packed into a small open building... without proper healthcare services [or] food.”⁸⁷ Some of the detainees died as a result of suffocation, trauma and hunger, David B. claimed.

According to UNHCR, the Libyan police arrested thirty-one refugees and asylum seekers with attestation letters from UNHCR during police sweeps that began around September 2004.⁸⁸ The authorities detained all of these people in Tripoli’s al-Fellah deportation facility, with the exception of one Somali refugee whom they detained at the immigration department. The authorities eventually released these people after UNHCR mobilized the support of ambassadors from African Union states.⁸⁹

According to one senior Libyan official, the Libyan government has stopped conducting large urban sweeps for undocumented migrants. “For the time being, we have stopped making arrests,” said `Ali Mdorad, General Director of Consular Affairs in the General People’s Committee for Foreign Liaison and International Cooperation. He suggested that current policy was to arrest only those leaving for Europe, not to conduct police sweeps in Tripoli or other cities.⁹⁰

Mdorad did, however, say that the police continue to arrest foreigners who beg in the street, mainly Moroccans, Egyptians and Tunisians, whom Mdorad claimed are used in organized criminal networks run by their co-nationals. “Foreigners must have a job, so if we find someone doing this, we grab them.”

⁸⁶ Human Rights Watch interview with Ahmad A., Rome, May 27, 2005.

⁸⁷ E-mail communication from David B. to Human Rights Watch, August 2004.

⁸⁸ Those detained included: twelve Liberian refugees; two Somali refugee families, one with four children and one with six (unexplainably, the father of the family with six children was not detained, only the mother and children); one Somali refugee (detained separately); three Ethiopian asylum seekers; three Eritrean asylum seekers, one of whom was detained with two children (eight-month-old twins); and one Congolese asylum seeker.

⁸⁹ Human Rights Watch interview with UNHCR officials, Tripoli, April 21, 2005.

⁹⁰ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

Mdorad and other Libyan officials deny that the police arbitrarily detain foreigners. They emphasize that the government is taking action to eradicate abuses by police officers at the time of arrest. After an investigation in 2004, he said, disciplinary measures were taken against policemen involved in three cases of corruption, although he did not provide specifics.

On August 8, 2004, a committee in the General People's Committee for Public Security issued guidelines to protect the life and property of arrested foreigners, although it remains unclear to what extent they are implemented. These guidelines, viewed by Human Rights Watch, specify that:

“the collection and deportation is to be done quietly, without violence, beating or any other uncivilized act.”

“the money belonging to these persons is to be recorded in official registers and official minutes.”

“these people are to be treated in a proper manner while avoiding their harm and respecting their humanity.”

“[officials should] allow them to carry their belongings and monies and provide them the necessary transportation in coordination with the relevant departments.”⁹¹

Decision No. 67 (2004) of the Secretary of Public Security accompanying these guidelines calls for the formation of a committee to monitor the arrests, detentions and deportations of unauthorized migrants. Article 5 of this decision requires the committee to consider “the special constraints relating to human rights that guarantee the safety of people and property of illegal immigrants.”⁹²

Human Rights Watch asked the Libyan government whether it had formed such a committee to monitor the arrests, detentions and deportations of undocumented

⁹¹ Document on file with Human Rights Watch.

⁹² Decision No. 67/2004 of the General People's Committee for Security, unofficial translation by Human Rights Watch.

foreigners and, if so, which officials were taking part. As of August 1, 2006, the government had not replied.⁹³

⁹³ Human Rights Watch also asked the Libyan government how many policemen and border guards it had investigated and punished for violating the guidelines.

VI. Abuse in Detention

In addition to abuses at the time of arrest, migrants and refugees reported numerous violations during their detention at a variety of facilities in Libya, including beatings, sub-standard conditions, and denial of access to legal counsel. In three cases, witnesses reported that physical abuse by guards led to a person's death. Three interviewees reported that security officials threatened women detainees with sexual violence, and one witness saw what he believed to be a rape. While detention conditions for migrants and refugees have reportedly improved in recent years, the evidence suggests that many of these abuses persist.

Struggling to cope with the large influx of migrants and refugees, the Libyan authorities have used a variety of detention facilities. Interviewees reported being held in police stations, ordinary prisons (sometimes with regular criminals), military bases and in camps with tents in the desert. Human Rights Watch asked the Libyan government if it had standards for the detention of foreigners but, as of August 1, 2006, the government had not replied. Migrants and refugees report overcrowding, inadequate health care and highly restricted access to visitors and lawyers.

A European Commission technical mission visited detention sites across Libya in late 2004 and reported that it found the conditions varied "from relatively acceptable to extremely poor."⁹⁴ There were short-term and long-term centers, the mission said, and the long-term centers are comparable to prisons. The mission reported overcrowding, detainees claiming to have been fed only bread and water, detainees held for seven months or more without legal review, detention of unaccompanied children, and instances where those detained seemed to have valid documents for residence in the country.

Human Rights Watch noted an additional problem: endemic corruption in the immigration system. Migrants and refugees consistently reported that detainees could buy their way out of detention by bribing guards or their commanders.

As noted above, the Libyan government claims that the authorities treat foreigners within the parameters of the law, and prosecute officials who overstep their bounds by using excessive force or otherwise mistreating those in detention. The government

⁹⁴ European Commission, "Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report."

admitted that some detention facilities are overcrowded, but attributed this to the large number of illegal migrants, the lack of funds, and the slow response time of some embassies and consulates, which must confirm the identity of their nationals before a deportation can commence. “It is difficult to find a quick solution to the question of overcrowding due to the huge numbers of illegal migrants that enter the Libyan Jamahiriya,” the government said. Such a large number requires “a large amount of funds not within the Libyan Jamahiriya’s capability.”⁹⁵

Bribery is punishable under Law No. 2 (1979), the government said. In the case of corruption by a state employee or police officer, “it is assured that the specialized branches will take the legal procedures in any specific case reported to it.” The government did not say how many cases of bribery or corruption it had investigated or prosecuted.

Libya is a party to the International Covenant on Civil and Political Rights (ICCPR), article 9 of which states that “No one shall be subjected to arbitrary arrest or detention [or] be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.” Detention is considered “arbitrary” if it is not authorized by law or in accordance with law. It is also arbitrary when it is random, capricious, or not accompanied by fair procedures for legal review.⁹⁶

Arbitrary detention has also been defined not only as contrary to law but as including elements of injustice and lack of predictability. Due to the growing phenomenon of indefinite detention of migrants and refugees, the U.N. Working Group on Arbitrary Detention has developed criteria for determining whether the deprivation of liberty of migrants and asylum seekers is arbitrary. Principle Three mandates that a migrant or asylum seeker placed in custody “be brought promptly before a judge or other authority,” and Principle Seven requires that a “maximum period should be set by law and the custody may in no case be unlimited or of excessive length.”⁹⁷

⁹⁵ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

⁹⁶ Moreover, migrants and asylum seekers in detention must be notified in writing—in a language they understand—of the grounds for detention and that remedy may be sought from a judicial authority empowered to decide promptly on the lawfulness of detention and to order release if appropriate. United Nations Commission on Human Rights, *Report of the Working Group on Arbitrary Detention*, E/CN.4/2000/4, December 28, 1999, Annex II, Deliberation No. 5, “Situation Regarding Immigrants and Asylum Seekers,” available at <http://www.unhchr.ch/Huridocda/Huridoca.nsf/0811fcbd0b9f6bd58025667300306dea/39bc3afe4eb9c8b480256890003e77c2?OpenDocument#annexII>, as of March 6, 2006.

⁹⁷ *Ibid.*

Detention Conditions in Kufra

Most migrants and refugees who are intercepted as they enter in the southeast from Sudan or Chad are detained in or near the desert town of Kufra. The government appears to have detained migrants and refugees in a variety of camps in the area. Interviewees reported a host of abuses there, including severe physical abuse.

A senior Libyan official dealing with immigration, `Ali Mdorad, admitted that the detention conditions in Kufra were at times bad. A pregnant woman died, he said, without explaining how. The government subsequently arranged to repatriate 130 adults at the facility from Eritrea, Sudan and Somalia with the assistance of their respective embassies and IOM, he said, which gave each person U.S. \$100. (IOM denied giving money to people Libya has returned.⁹⁸) Bringing embassy officials to people in Libya who may face persecution from their governments posed no problem, Mdorad said, because “[N]one of them said they were afraid.”⁹⁹

Eight individuals detained in and around Kufra, three of whom were subsequently granted asylum in Italy, told Human Rights Watch about the maltreatment they witnessed and experienced in various detention facilities. Abraha, a refugee from Eritrea who fled his country in 2002 after he protested mandatory military service, told Human Rights Watch how Libyan security forces arrested him for lack of documents and took him to a police station in Kufra in 2002. The two smugglers who had brought him into Libya for U.S. \$200 were at the station, and the police were beating one of them, he said. The police said they only wanted the smugglers and would let Abraha and the approximately twenty-five other people go, but they kept them at the station for three days. The detainees slept on the ground without bedding in a courtyard, but received food and water. The women and children slept at the other end of the courtyard.

After three days, the authorities transferred the group to a prison outside Kufra, where the conditions were notably worse. The prison had no doctor and, to Abraha’s knowledge, the guards never took anyone elsewhere for medical care. Abraha stayed in a cell with about forty men that had one toilet. The guards did not allow them out for one month, and over the following two months, let them out on an arbitrary basis. “It depended on the guard,” Abraha said. The detainees could not make phone calls, contact a lawyer or have visitors. He told Human Rights Watch:

⁹⁸ Human Rights Watch communication with Robert Paiva, Director of IOM External Relations Department, April 28, 2006.

⁹⁹ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005. Mdorad mentioned the death of a pregnant woman at the Kufra camp, but declined to provide details.

Nobody would know if we were alive or dead because we couldn't communicate with anyone... We asked to speak to the prison director to demand information, but the guards kept saying "tomorrow, tomorrow." Then the director did come and told us we had to wait until they determined the day we would be repatriated. The Eritrean ambassador came one day, saying he was there to help us get out, but he was really there to repatriate us.¹⁰⁰

Abraha and others went on a hunger strike to protest the detention conditions, but they gave up after fifteen days because they felt weak. Abraha and two others became sick, and the guards lay them on the ground in the courtyard. According to Abraha, the prison director came and hit the three men with a rubber baton. The group of hunger-striking detainees revolted, but the guards managed to get them back in their cells. "Two were really hurt, and a doctor came the next day to look at them," Abraha said.

After three months, the prison director told the detainees that the Libyan government did not have enough money to send them back to Eritrea, but that they could go to Sudan. The director took all of the prisoners – about 100 people in total – and drove them in four vehicles towards Sudan. When they stopped along the way, all the prisoners paid the director \$100 each to be taken back to Kufra and were left on the side of the road. From Kufra, Abraha paid \$200 to get to Tripoli, where he spent approximately six weeks. He then paid a smuggler \$1,000 to take a boat with more than 150 people to Italy. He arrived in March 2003 after two days at sea and received refugee status in May 2005.

Another Eritrean refugee, Teclu, who now has refugee status in Italy, told Human Rights Watch about his three-month detention in a prison in Kufra, where the guards regularly beat the detainees. He said the authorities detained him in 2002 with approximately one hundred inmates, both criminals and immigrants. He and four other men shared a cell without a window or beds. According to Teclu, Libyan officials interrogated him "morning and night" after his arrest. They beat him repeatedly with electric cords and a whip, he said, asking him the whereabouts and names of other immigrants who had escaped the police, and details of their unauthorized entry. The interrogations and beatings continued for about twenty days, and then sporadically after that. Teclu said he was not allowed to make any phone calls or contact a lawyer.¹⁰¹

¹⁰⁰ Human Rights Watch interview with Abraha M., Rome, May 26, 2005.

¹⁰¹ Human Rights Watch interview with Teclu A., Rome, May 26, 2005.

Iskinder, an Ethiopian refugee, said he paid a smuggler \$300 to get from Sudan to Kufra in January 2002 but Libyan security forces arrested the group he was traveling with upon arrival. According to Iskinder, he spent one year in a prison on a military base on the outskirts of Kufra with approximately 170 people, seventy of them women. “For a whole year, I couldn’t call or write anyone,” he said. “They told us only that they were trying to get in touch with our countries to repatriate us.” Two adult men died while he was there, he said, but he did not know the cause of death. “They were sick and they weren’t taken care of,” he explained. “We slept on the floor, and they caught colds. They were also really depressed.”

Iskinder said the guards never let the detainees out of their cells. At some point (he did not know the date), they protested with a hunger strike. He told Human Rights Watch how the Libyan authorities responded:

We were stuck there, they weren’t sending us back. We were locked in like animals. So we went on hunger strike, all of us, for five days. The colonel came with lots of guards and surrounded the courtyard and let us all out of the cells. We told the colonel that we didn’t understand why we were there if we weren’t accused of any crime. The colonel told us he would get in touch with our countries, and we said we would wait for his answer sitting right there in the courtyard. That’s when the guards started hitting everyone with sticks and shooting into the air to force us back into our cells.¹⁰²

Some three months later, during deportation, Iskinder paid a bribe and escaped, making it to Tripoli, where he spent six months. In June 2003 he paid \$1,000 to get smuggled by boat to Italy. “There were about 110 people in the small fishing boat,” he said. “We landed at Lampedusa at dawn, but there was no one around, so we just waited on the boat for the police to come.” When Italian authorities arrived, Iskinder asked for political asylum. In May 2005 he received a one-year permit for humanitarian reasons.¹⁰³

In a more recent case, Woldemariam, an Eritrean seeking asylum in Italy as of May 2005, was arrested outside Kufra in March 2004 for lack of documents, just after he entered Libya from Sudan. Libyan authorities detained him and forty-six other people, including two children, for three weeks in a desert camp with tents, about forty kilometers from

¹⁰² Human Rights Watch interview with Iskinder S., Rome, May 26, 2005.

¹⁰³ The Italian government grants temporary permits for up to two years under article 5(6) of Law No.189/2002, known as the “Bossi-Fini law;” see Chapter X of this report.

the town, he said. Woldemariam stayed in a tent with approximately fifteen men and the women and children stayed in a tent by themselves.

According to Woldemariam, the guards frequently beat the detainees. He told Human Rights Watch:

At night the guards would smoke hashish and then come through with a flashlight and pick out people to beat. One night they came through, and I lifted up my head. They asked me my religion, and I said Christian, so they took me outside and beat me. Two other men said they were Muslim, and they weren't taken out.¹⁰⁴

Woldemariam added that often the guards made the men say they were Jewish while they beat them. At other times the guards ordered the men to stay in a push-up position on their knuckles and toes for extended periods. "After a while, your whole body begins to shake," Woldemariam said. "Whenever someone fell, the guards would beat him."

One night one of the men escaped, only to be found four hours later collapsed in the desert. That night, the guards made all the men in the camp strip naked and lie down on the ground, Woldemariam said. Approximately ten guards beat the men on their heads and bodies with rubber batons.

According to Woldemariam, the guards sometimes went into the women's tent at night, but the camp commander ordered them to stop. "The guards would go to that tent at night to bother the girls," he said. "We would have defended them even with our lives. We spoke with the camp head, and he told the guards to stop."

After three weeks in the tent camp, the authorities transferred the detainees to a prison in Kufra. According to Woldemariam, it was a regular prison, with about 600 inmates, and the authorities placed him in a cell with 150 other undocumented migrants of different nationalities. Approximately fifteen women and children stayed in a separate cell. At one point the guards took a pregnant woman to the hospital and then let her go.

Woldemariam's cell had one toilet, and the detainees also used it to clean themselves with buckets of water, which is where the detainees also bathed. They never received a change of clothes, pillow, blankets or sheets, and there were no beds. The cell had one

¹⁰⁴ Human Rights Watch interview with Woldemariam G., Rome, May 26, 2005.

window with bars, and the guards let the men out of the cell three times a day for a headcount. They ate boiled rice or pasta once a day. They were not allowed to make phone calls or receive visitors. At one point the Eritrean ambassador came to identify Eritreans for repatriation. “Most of us said we were Ethiopian to avoid being sent back,” Woldemariam said.

In June 2004, many of the Eritreans and Ethiopians revolted over the lack of food: “We decided to revolt, we threw anything at them, our cups and plates,” Woldemariam said. Following the revolt, security officials took all the Eritreans and Ethiopians back to the desert camp. At the camp, Woldemariam bribed a guard to let him go. He eventually made it to Tripoli and then paid \$1,400 for a boat to Italy. He arrived in September, after a three-day journey at sea, and applied for asylum.

Conditions in Other Detention Facilities

Libyan authorities have detained migrants, asylum seekers and refugees in a variety of facilities across the country. In September 2004, Somalis deported from Libya told reporters in Mogadishu that Libyan police had held them in a chemical warehouse, causing them to develop skin problems.¹⁰⁵

In September 2003, the Ethiopian refugee Anabesa made her first attempt to reach Italy from Libya on a smuggler’s boat, with forty-seven other people. As described in Chapter V, “Abuse During Arrest,” the boat sank and four people drowned before the crew of a French ship rescued the survivors, handing them over to Libyan authorities.

The Libyans detained the group at a prison about one-and-a-half-hours’ drive from the coast, she said. She thought it was a detention center for “immigrants and refugees only.” Four pregnant women were among the group, and one immediately gave birth. The authorities released the other three women shortly before they were due to give birth. A four-year-old boy whose mother had drowned in the attempted crossing was also in the group. His father came and took him back to Eritrea.

According to Anebesa, the guards at the camp regularly beat the detainees with plastic tubing. After about six weeks, the authorities tried to transfer the women in the group, which would have entailed separating husbands and wives. The male detainees protested

¹⁰⁵ Muhammad Olad Hassan, “Perils of Somali Migrants in Libya,” BBC News, September 16, 2004, available at <http://news.bbc.co.uk/2/hi/africa/3659658.stm>, as of May 7, 2006.

vigorously, which prompted further beatings including with batons that gave an electric shock.

The authorities transferred the women to a facility in Misrata despite the protest. Anebesa stayed with twelve other women in a small cell that had no showers. They washed with water brought to them in plastic bottles and were allowed only one trip to the toilet per day. They got bread and tea in the morning and one meal of rice during the day. According to Anebesa, the conditions were extremely unsanitary, and many of the women fell sick. She said that one Ethiopian woman died after she went on a hunger strike to protest the conditions, but she could not recall her name.

The male guards also threatened the women detainees sexually, Anebesa said. She described the fear in which the women lived:

Whenever we needed to collect the food, we women all went together, all thirteen of us, so that we never left a woman in a room alone. This was successful in preventing attacks. In the same way, at night, the male guards would come with a set of keys and let themselves into our cell. We would always wake each other up when this happened and sit down in a group and start crying and screaming, until they gave up and went out.¹⁰⁶

In Misrata, Anebesa claimed to have seen the guards beat a Nigerian man to death after he tried to escape but she did not know his name. They also tortured a Ghanaian man by tying his feet and hands behind his back and leaving him outside in the sun covered in sugar syrup, which attracted flies, she said.

Anebesa spent three months in Misrata and then bribed a guard to let her and three other women escape. She took another boat to Italy, arriving in December 2003, and subsequently got refugee status. Some of the people she was arrested with stayed in Misrata for up to nine months, she said.

Two other persons interviewed by Human Rights Watch, both Eritreans, were also held at different times at a facility in Misrata. Both alleged that guards routinely beat the detainees.¹⁰⁷

¹⁰⁶ Human Rights Watch interview with Anebesa C., Rome, May 25, 2005.

¹⁰⁷ Human Rights Watch interviews with Alamin S., May 24, 2005, and Estefanos H., May 26, 2005.

According to an Ethiopian refugee, Getachew, the authorities held him at a detention facility apparently only for foreigners near Tripoli for twenty-nine days in late 2003. The guards forced the detainees to carry blocks of cement on a construction site, he said, and they beat with a stick those who could not carry the heavy loads. In one case, he claimed, the guards beat a fellow Ethiopian so badly that they broke his spinal cord and he died. He did not know the man's name.¹⁰⁸

Getachew managed to escape by bribing a guard. He worked without a permit to earn money and then paid for a trip to Italy, arriving in October 2004. As of May 2005, his asylum claim was pending.

The Eritrean journalist and refugee Yohannes, who fled to Libya in 2002 after failing to find protection in Sudan, was arrested as his car tried to skirt checkpoints near Kufra in 2002. He told Human Rights Watch that he spent time in four prisons in different parts of Libya.

First was a place he called "Ogella," where the authorities kept him in solitary confinement and beat him over the course of his two-month stay. At 6:00 p.m. every day they beat him with sticks and kicked him, telling him that he must convert to Islam, he said. Once they beat him so hard with a stick on his head that he lost consciousness. "They told me I was a spy and laughed while they tortured me," he said.

At a facility he called "Jalo," the authorities kept him alone in a cell for about two months. The guards beat him while forcing him to renounce Christianity and pray to Allah, he said. He was then moved to what he called "El Jdabiyah," where he stayed in a cell with about fifty migrants and refugees from Chad. The guards beat him there as well, and forced him to pray to Allah, he said. At this facility, he became very sick. One day he was too sick to move when they called the prisoners outside to the yard, which angered the guards. They put cigarettes out on his leg to make him move, he said, and Human Rights Watch saw two burn scars on one leg that Yohannes said were from the attack. After nearly two months in this prison, the authorities transferred him to a prison in Benghazi. There, he claims, the guards beat prisoners in the corridors. In one case they beat a prisoner from Chad so badly that he died, Yohannes said, although he did not provide details. Shortly thereafter, Yohannes bribed some guards and managed to escape, making it to Italy, where he submitted an asylum request.¹⁰⁹

¹⁰⁸ Human Rights Watch interview with Getachew J., Rome, May 24, 2005.

¹⁰⁹ Human Rights Watch interview with Yohannes G., Rome, May 24, 2005.

Ephrem S., the refugee from Ethiopia with an Ethiopian father and Eritrean mother, spent time in March 2001 in a facility in Tripoli, where the sanitary conditions were dangerously bad. According to Ephrem, he was arrested when the smuggler's boat he was taking to Italy faced trouble and the group was rescued by Italian fishermen, who handed them over to Libyan authorities. Ephrem spent twelve days in what he believed was a regular Tripoli prison. The Muslims and Christians were separated, he said, and Ephrem stayed in a large room with some thirty men. They ate "disgusting" food all together in one dish, he said. There were no showers or other washing facilities and only one toilet for the thirty men. No one could talk to the guards, and they were not allowed outside. "Many of us were afraid for our lives. We thought they would deport or kill us," he told Human Rights Watch. "I had no chance to tell anyone that I was a refugee, that I was afraid."¹¹⁰ Ephrem managed to escape the facility and make it to Italy in 2002, where he was granted refugee status.

Teclu, the twenty-three-year-old Eritrean refugee mentioned above, told Human Rights Watch what happened after his arrest while attempting to leave Libya for Italy, and the abuse he saw at his place of detention, including possible sexual abuse. The police arrested him and a group of foreigners in May 2003, he said, while they were waiting for a smuggler's boat to arrive. According to Teclu, he spent three months at a Navy base in Zlitan. He explained the conditions at the base:

We lived in the courtyard, divided by nationality and sex into different sections of the courtyard. The soldiers were young, and they smoked a lot of hashish. They made us run around the courtyard in the morning while they threw things at us, anything they could get their hands on.¹¹¹

According to Teclu, all of the detained men slept outdoors; they were not given bedding. The women and children stayed in a garage-like structure at one end of the courtyard. "The guards would go there at night, and the women would scream," Teclu said. "The men would go see what was going on, but the soldiers would beat them. I can't swear to it, I don't know if any of them were raped. If they were, they wouldn't say so for the shame."

In the end of July 2003, the commander of the facility said that all those who had paid the smugglers in local currency could go free, while those who had paid in U.S. dollars would remain. Teclu was released, and he claims the director told him and the others

¹¹⁰ Human Rights Watch with Ephrem S., Rome, May 24, 2005.

¹¹¹ Human Rights Watch interview with Teclu A., Rome, May 26, 2005.

that they could stay in Libya and work if they wanted, but that it was prohibited to try to reach Europe. In August, Teclu paid \$1,000 and took a boat to Italy, where he received refugee status.

Deportation Facilities

The Libyan government has two types of facilities to hold undocumented foreigners before it deports them from Libya: “voluntary” and “involuntary.” The voluntary centers are occupied by migrants and refugees who agree to go home. Most of these centers are in Tripoli.

According to the authorities, the voluntary centers are “open,” meaning the residents can come and go as they please while their repatriation is being arranged. The European Commission mission to Libya in November-December 2004, however, observed that the residents of the voluntary center on Tripoli’s al-Fellah Street (located near the involuntary center on the same street) were too afraid to leave the area. Instead, the mission report said, they “sit still with their luggage as they do not dare to leave for fear of being arrested by the Police.”¹¹²

A western journalist who visited the voluntary center on al-Fellah Street in the latter part of 2004 was denied entry by armed Libyan police. She spoke to non-Libyans around the center and, according to her report, several hundred Ghanaians and Nigerians were sleeping in tents in an area surrounded by a wall topped with barbed wire and guarded by police. Migrants said the center was overflowing as people waited for flights home.¹¹³

The Libyan immigration official `Ali Mdorad agreed that the term “voluntary” was relative because some of the people in the voluntary centers had agreed to go home due to fear of arrest and detention in one of the involuntary facilities.¹¹⁴ They might also have been attracted by the \$100 that the Libyan government said IOM gives each person who volunteers to go home, although IOM denied paying such money.¹¹⁵

The conditions in the involuntary facilities are worse, although evidence suggests that they are improving. Unlike the voluntary centers, full of people who have agreed to go

¹¹²The European Commission technical mission in late 2004 visited both the voluntary and involuntary camps. See the European Commission report, pp. 31-32, (where the location is wrongly presented as El Fatah Street).

¹¹³ Vivienne Walt, “Caught Between Continents,” *Time Europe*, October 18, 2004, available at <http://www.time.com/time/europe/magazine/article/0,13005,901041018-713167,00.html>, as of March 6, 2006.

¹¹⁴ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

¹¹⁵ Human Rights Watch communication with Bob Paiva, April 28, 2006.

home, the involuntary facilities hold undocumented foreigners arrested and held by the police until their deportation. Those fearing persecution back home have no possibility to submit an asylum claim or to challenge their deportation.

According to the Libyan government, detained foreigners are first held in smaller detention sites around the country. “Sometimes we gather and feed them,” `Ali Mdorad explained, “but this is not detention, only very temporary holding.” Detainees are given three meals a day and provided basic health care, he said. “If you visit them, you are likely to find overcrowding and conditions not up to U.S. and E.U. standards, but they are being treated and fed the same as us.”¹¹⁶

After the initial holding period, the authorities transfer the detainees to the larger involuntary facilities. The main involuntary deportation facility is on Tripoli’s al-Fellah Street, known as the al-Fellah camp. The other permanent deportation facilities are in Misrata (200 km east of Tripoli), Sulmam (between Sabrata and Zuwarah, west of Tripoli), Kufra and Sebha.

The future of the deportation centers is unclear. Director of the immigration department Muhammad al-Ramalli told Human Rights Watch that the impact of Law No. 2 (2004) to regulate the entry, stay and departure of foreigners in Libya will be the eventual elimination of the camps. (For discussion of Law No. 2, see Chapter IX, “Legal Standards”.) Instead, under the new law, the government will charge undocumented foreigners and bring them before courts where judges would either sentence them to deportation within twenty-four hours, or imprison them for up to one year.¹¹⁷

Conditions in al-Fellah Deportation Center

Human Rights Watch visited the involuntary al-Fellah deportation center twice, on April 25 and on May 9, 2005. The conditions at the facility improved markedly between the two visits, with the authorities painting the walls, installing beds and providing more food, according to Human Rights Watch’s physical inspection and interviews with detainees.

In the brief visit on April 25, Human Rights Watch counted twenty-seven detainees at the facility from countries including Liberia, Côte D’Ivoire, Guinea, Morocco, Bangladesh and Congo. Human Rights Watch was able to briefly put questions to a

¹¹⁶ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

¹¹⁷ Human Rights Watch interview with Muhammad al-Ramalli, April 25, 2005.

small group of detainees – three Liberians, one Ivorean, one Guinean and one Congolese. The conditions at the facility were generally acceptable, they said, but they feared going home.¹¹⁸

The facility consisted of a large, rectangular open-air courtyard, with some six sleeping rooms on one long side opposite the gate, three rooms on one short side and a cooking area on the other short side. The sleeping rooms had approximately twenty mattresses and blankets on the floor, and toilets were in separate rooms to the side.

On the second visit, immigration officials told Human Rights Watch that the facility was holding 172 persons slated for repatriation, among them forty-three Egyptians. There were also Moroccans, Nigerians, Congolese, Ghanaians, Ivoreans and Liberians.¹¹⁹

On this second visit, the rooms had bunk beds, which the detainees said the authorities had installed days before. The walls had fresh paint. The facility was clean and orderly. The officials showed a small medical clinic staffed by a doctor, and said that detainees were transferred to the hospital if seriously sick.

No women or children were being held in the facility at the time, but the official in charge of Libya's deportation facilities told Human Rights Watch that they kept women and children in their own room.¹²⁰ A delegation from the European Parliament that visited the al-Fellah facility in April 2005 did interview some female detainees. According to the delegation's report, the women did not complain of harassment or maltreatment, but they did ask for a female doctor and better care for unaccompanied minors. Libyan officials told the delegation that the total number of detainees in al-Fellah ranged from fewer than 100 to more than 700.¹²¹

Human Rights Watch conducted brief interviews in a group with nine of the detainees, all of whom had been arrested for lacking the proper documentation. They said the conditions at the facility were generally good, especially on the day of Human Rights Watch's visit, when the authorities provided ample amounts of chicken. "I've never seen so much chicken," one man said. Most of the men had been at the center for about two

¹¹⁸ Human Rights Watch visit to al-Fellah deportation facility, April 25, 2005.

¹¹⁹ Human Rights Watch interview with Hadi Khamis, director of deportation camps, Passports and Nationality Office, Tripoli, May 9, 2005.

¹²⁰ Ibid.

¹²¹ "Compte-Rendu de mission: Libye, 17-20 April 2005" by Helene Flautre MEP, European Parliament, June 2, 2005, available at <http://libertysecurity.org/IMG/pdf/flautre-libye-avr05.pdf>, as of May 7, 2006.

weeks, and one had been there for one month.¹²² The detainees main complaint was not having information about their pending deportations and not being able to phone their families back home. The authorities only made a local phone available for use. “We do not know when we’re leaving,” said a thirty-two-year-old Egyptian man who had paid about \$2,000 in Egypt to be smuggled through Libya to Italy. “There is no news.”¹²³ Two of the nine men, an Egyptian and a Nigerian, said the Libyan police had beaten them after their arrests.¹²⁴

The conditions Human Rights Watch observed in al-Fellah were dramatically better than what a refugee said he saw in December 2004. The man, a Liberian who has subsequently left Libya, said he bribed the camp guards with cigarettes to let him in, so he could take care of friends who had been detained. Inside, he told Human Rights Watch, he saw “a lot of refugees and other detainees who are suffering from chest infection due to the degree of cold inside the prison” and “lots of children who are severely sick and malnourished.” There had been no water for three days when he visited, he said, and no medical treatment was available. Detainees with contagious diseases were mixed with the other detainees. According to the man, the detainees had previously rioted due to the poor conditions.¹²⁵

¹²² Libyan officials told the European Parliament delegation that the average length of stay in al-Fellah is two weeks, but some individuals are held for up to eight months. See “Compte-Rendu de mission: Libye, 17-20 Avril 2005,” p. 7.

¹²³ Human Rights Watch interview, al-Fellah deportation camp, Tripoli, May 9, 2005; name withheld.

¹²⁴ Human Rights Watch interviews, al-Fellah deportation camp, Tripoli, May 9, 2005; names withheld.

¹²⁵ Human Rights Watch interview with David B., Tripoli, April 21, 2005.

VII. Forced Return

Deportations are a central component of the Libyan government's plan to reduce the numbers of undocumented foreigners. In the years 2003-2005, it returned roughly 140,000 individuals to their home countries. While the majority of these people were economic migrants who had entered the country illegally, some of them were asylum seekers and refugees who faced the risk of persecution or maltreatment back home.

Without a specific asylum law or procedure, including any clearly articulated process for determining whether persons face the risk of torture upon return, Libya has no way to determine whether the people it deports should receive protection. As the European Commission mission concluded after its Libya trip, "[T]he decision to return illegal immigrants to their country of origin seems to be taken for groups of nationalities rather than after having examined individual cases in detail."¹²⁶ UNHCR was more critical, expressing concern for the "minimum standards of treatment for persons who might be in need of international protection."¹²⁷

According to the Libyan government, the authorities returned 47,991 people in 2005. 35,627 of these people, or 74 percent, went home willingly, the government said, meaning the individuals surrendered to the authorities and agreed to go home. They deported the rest "after consulting with their countries' authorities."¹²⁸ The European Commission report said that Libya deported 54,000 people in 2004, and 43,000 in 2003, although the report does not specify how many of these volunteered to go home.¹²⁹

As mentioned above, the concept of a voluntary return is imprecise. As the senior immigration official `Ali Mdorad conceded, some people volunteer to go home because they fear arrest, detention and forced return.¹³⁰ Abuses during arrest and detention, as

¹²⁶European Commission, "Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report."

¹²⁷ "UNHCR Concerned Over Continued Forcible Return of Potential Refugees from Libya," UNHCR Briefing Notes, September 21, 2004.

¹²⁸ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

¹²⁹ European Commission report. According to the report, in 2003, 38 percent of the returnees were Egyptians, 15 percent Nigerians, 12 percent Sudanese, 11 percent Ghanians, and 10 percent Nigerians. The remaining nationals were Moroccans, Malians, Eritreans and Somalis, and a small percentage came from Bangladesh, Pakistan and the Far East. 2004 saw a significant increase in nationals coming from Egypt and Sub-Saharan Africa, particularly to Nigeria, Niger, Ghana and Mali.

¹³⁰ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

well as general discrimination against foreigners, may further persuade individuals that going home willingly is the best course.

Deportations of people to countries where they are at risk of abuse are in direct violation of international instruments ratified by Libya. In particular, Article 3 of the Convention against Torture states that “No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.”

The Libyan government claims it is only returning unauthorized economic migrants, so they face no risk of torture. “They were sent back legally at our cost,” Assistant Secretary of Foreign Liaison and International Cooperation Sa`id Eribi Hafiana said.¹³¹

In its third periodic report to the CAT Committee in 1998, the Libyan government stated that, “expulsion, extradition or refoulement [to torture or ill-treatment]” are prohibited under Libyan law.¹³² It is not clear whether the Libyan government was referring to Libyan Law 20, “On Enhancing Freedom,” which says the government should not “abandon the refugees and their protection,” or to the direct effect of international treaties such as the CAT.

In its April 2006 memo to Human Rights Watch, the government elaborated on its position, stating that both Libyan law and international obligations prevented refoulement:

Regarding the claim that asylum seekers are detained and deported, the GPC for Foreign Liaison and International Cooperation asserts that the Libyan Jamahiriya is not party to the 1951 Geneva Convention on Refugees and its appended protocol but that, in accordance with domestic legislation—in the first place, the Great Green Charter for Human Rights in the Jamahiriyan Era and the Law on Enhancing Freedom—Libya provides a haven for those struggling for freedom and the law prohibits the transfer of refugees to any other party for their protection. The GPC for Foreign Liaison and International Cooperation clarifies that the report greatly confuses illegal migrants whose goal is to stay or migrate to other countries with those who enter the country

¹³¹ Human Rights Watch interview with Eribi Hafiana, Tripoli, April 21, 2005.

¹³² UN Doc CAT/C/44/Add.3, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.44.Add.3.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.44.Add.3.En?OpenDocument), as of March 6, 2006.

legally and declare their intent to stay, requesting freedom for which Libya will accept them as guests. As for those deported, they are the ones who either entered the country illegally or legally entered but were caught trying to sneak away to other countries, and they were turned away only after the appropriate legal steps were taken against them.

The GPC for Foreign Liaison and International Cooperation asserts that Libya would not turn a person over to a country or turn him away at a time when there exists evidence that he may be exposed to torture or that he would not receive fair judgment in the country to which he would be deported, based on domestic law and the agreements that Libya has signed, among them the Convention Against Torture. On that basis, the agreements with other countries which the Libyan Jamahiriya has signed, under which migrants are transferred, does not allow transfer in the case of political crimes.¹³³

In the Libyan government's view, it is doing undocumented foreigners a favor by sending them home. The smugglers' route to Italy is dangerous, and hundreds of people die every year in overcrowded boats, immigration officials said. And the repatriation effort is paid for by the Libyan government, at great expense. According to `Ali Mdorad, between August 2004 and February 2005, the government spent \$16 million on returns.¹³⁴

According to the Libyan government's April memo, in 2005 the government spent 3,678,756 Libyan dinars on "deportation operations," which equals roughly U.S. \$2,935,000.

As mentioned above, with the lack of an asylum law and asylum procedures to implement the general principles of Libyan law and international human rights treaties, it remains unclear how the government distinguishes between economic migrants and asylum seekers and refugees. It is not known which authorities review asylum requests and on what criteria their decisions are based.

¹³³ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

¹³⁴ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

The Deportation Process

As the previous two chapters make clear, the arrest and detention process is often arbitrary and chaotic, with detainees held in a variety of facilities, many of them with substandard conditions. The evidence suggests that the government has taken positive steps to improve conditions and improve the process, although deportations without respect for minimum standards continue apace.

Libyan immigration officials claim that, after non-nationals are arrested, whether attempting to cross a border or during an urban sweep, the authorities first contact their embassies to verify identity and nationality. Libyan officials complain that some embassies are slow to respond, which extends the detention period. Egypt, Niger and Chad are quick and usually respond within one week, officials said, while Nigeria and Ghana are frequently slow.¹³⁵

Providing the names of detained foreigners to embassies potentially places asylum seekers and refugees at risk by allowing governments to identify them. Again, the Libyan government claims it is not a problem because all of the detainees are illegal migrants. Whether they are legal or illegal migrants, without an asylum procedure there is no way to guarantee that people with legitimate fears of persecution by their governments are not among the detainees.

The quickest returns are of persons sent back from Italy because the Libyan and Italian governments have arranged their onward removal to countries of origin prior to their arrival in Libya (see Chapter X, “Role of the European Union and Italy”). “This is arranged before they come [from Italy], so we do not hold them,” said Hadi Khamis, the director of Libya’s deportation camps. He explained, “They are not held in al-Fellah but sent right home.”¹³⁶ In most cases, this means return by land to Egypt because most are from Egypt. According to Khamis, the Libyans returned about 300 people sent back from Italy in the first half of 2005. The Libyan government later informed Human Rights Watch that the Italian government returned 1,876 “illegal immigrants” to Libya in 2005, and the Libyan government then sent these people to their countries of origin.¹³⁷

¹³⁵ Human Rights Watch interview with Muhammad al-Ramalli, Tripoli, April 25, 2005.

¹³⁶ Human Rights Watch interview with Hadi Khamis, Tripoli, May 9, 2005.

¹³⁷ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

Dangers During Deportation

The deportation process has become more orderly with time. At first, the Libyan government sent groups back to their home countries by land in dangerous conditions. According to some reports, the authorities sometimes left deportees stranded and some died along the way. An Italian journalist who has reported extensively on migration transiting Libya and traveled Libya's southern borders told Human Rights Watch that, after a series of police sweeps in August 2003, Libyan authorities returned some fifty Egyptians to Egypt by truck and seven men died in transit.¹³⁸ The same journalist also reported fifty deaths of people being returned to Niger in October 2004, when their truck overturned.¹³⁹ Human Rights Watch did not independently confirm his accounts.

On April 14, 2005, the European Parliament passed a resolution that called on the Italian government to cease the collective expulsions of migrants and refugees to Libya due to that country's "recent massive repatriations of foreigners in conditions guaranteeing neither their dignity nor their survival." The resolution cited "Libyan sources" as reporting "106 alleged deaths resulting from these expulsions."¹⁴⁰ The "Libyan sources" cited in the resolution remain unclear.¹⁴¹

For large groups, the Libyan government has chartered planes. At first they used cargo planes without seats, prompting some African governments to complain. One ambassador in Libya from a sub-Saharan African country told Human Rights Watch that some deportees, including sick people, had to stand five to six hours in the plane, which had no toilets. Those taken by road via Chad or Niger faced even more difficulties, he said. If the transport vehicles had problems, Libyan officials stranded the deportees and the embassy never heard what happened to them.¹⁴² In March 2004, the Ghanaian Interior Minister condemned the inhumane conditions for deportees. Libya had returned some 6,000 Ghanaians in 2004, he said, and was planning another 14,000 for 2005.¹⁴³

¹³⁸ Human Rights Watch interview with Fabrizio Gatti, Rome, May 26, 2005.

¹³⁹ Fabrizio Gatti, "L'ultimo viaggio dei dannati del Sahara ["The Last Journey of the Damned of the Sahara]," *L'Espresso*, Rome, March 24, 2005.

¹⁴⁰ European Parliament resolution on Lampedusa, April 14, 2005, available at <http://www.europarl.eu.int/omk/sipade3?PUBREF=-//EP//TEXT+TA+P6-TA-2005-0138+0+DOC+XML+V0//EN&L=EN&LEVEL=2&NAV=S&LSTDOC=Y>, as of May 7, 2006.

¹⁴¹ The resolution may have cited Fabrizio Gatti's article, "L'ultima viaggio dei dannati del Sahara," which also mentions 106 as an "official number."

¹⁴² Human Rights Watch interview with ambassador to Libya from an unnamed African country, Tripoli, May 2005. The U.S. Department of State Country Reports on Human Rights Practices for 2001 also reported that Libya had "deported hundreds of thousands of African migrant workers by driving them in convoys to the southern border and leaving them stranded in the desert."

¹⁴³ "Ghana Defends Rights of Illegal Immigrants in Libya," *Afronews*, March 11, 2004, available at <http://www.afrol.com/articles/15868>, as of May 7, 2006.

Migrants, asylum seekers and refugees interviewed by Human Rights Watch frequently reported an additional problem: bribes demanded by Libyan border guards, soldiers and police. For a few hundred dollars, the government's security escorts sometimes offered to let deportees go. In one example, the Ethiopian refugee Iskinder, whose experience of abuse in detention is described in the previous chapter, told Human Rights Watch that in early 2003 soldiers loaded him and other detainees onto military trucks and drove them to the border with Sudan. There the soldiers said they would let them go for the price of \$200 per person. Iskinder paid and made it to Tripoli, where he paid a smuggler to take him to Italy.¹⁴⁴

Eritreans at High Risk of Refoulement

Since 2002, Libya has deported hundreds of Eritreans, and some of them have faced serious abuse upon their return.¹⁴⁵ A well-publicized mass deportation took place on July 21, 2004, when Libya forcibly returned 109 Eritrean nationals on an Italian-funded Air Libia Tibesti chartered flight.¹⁴⁶ According to human rights groups, the Eritrean government detained the deportees upon arrival and held them incommunicado in a secret prison.¹⁴⁷

A few weeks later, on August 27, the Libyan authorities attempted to forcibly return another group of seventy-five Eritreans, among them six children. Afraid of returning home, the Eritreans hijacked the plane and forced the pilot to land in Sudan, where sixty people from the group sought asylum. UNHCR interviewed the sixty asylum seekers and determined that they needed protection.¹⁴⁸ In a statement issued on September 21, UNHCR said:

UNHCR conducted interviews with sixty of the Eritrean passengers after their arrival in Khartoum on 27 August. The group said that they had been detained without charges for a prolonged period of time in the

¹⁴⁴ Human Rights Watch interview with Iskinder S., Rome, May 26, 2005.

¹⁴⁵ Human Rights Watch asked the Libyan government whether it had a formal agreement on returns with the Eritrean government but, as of May 1, 2006, the Libyan government had not replied.

¹⁴⁶ The flight is listed in Annex 2, "Charter Flights List," of the European Commission report from its 2004 Libya trip.

¹⁴⁷ Amnesty International, "Report 2005-Libya," available at <http://web.amnesty.org/report2005/lby-summary-eng>, as of March 6, 2006. See also Human Rights Watch letters to Mu'ammur al-Qadhafi, July 22, 2004, and Eritrean President Issayas Afewerki, August 3, 2004.

¹⁴⁸ See "Eritreans in Plane Hijack Drama," BBC News, August 27, 2004, available at <http://news.bbc.co.uk/2/hi/africa/3605184.stm>, as of May 7, 2006.

Libyan town of Kufra, and had endured repeated physical abuse. They also said that, despite their request to see UNHCR, they had not been given access to any asylum procedure. Additionally, the group was never informed of the decision to deport them to Eritrea, were forced to board a special charter flight, and only found out after their plane took off that the destination was their country of origin. Sixty of the seventy-five passengers have since been granted refugee status in Sudan.¹⁴⁹

UNHCR strongly rebuked the Libyan government, reminding it to respect its obligations under the OAU Convention governing the specific aspects of refugee problems in Africa of 1969 (African Refugee Convention – see Chapter IX, “Legal Standards”). “The deportation of potential refugees from Eritrea on 27 August constitutes a severe violation of the OAU Convention and clearly goes against the norms of international protection and the principle of *non-refoulement*,” the statement said.

One refugee interviewed by Human Rights Watch in Italy said that Libyan police had detained him in Libya alongside a group of other Eritreans. He believes the government expelled the group in July or August 2004. “Like me, they were refugees,” he said. “They called themselves refugees, and they tried to say ‘we are refugees’ but there is a diplomatic agreement between the governments of Libya and Eritrea, so they always return those the [Eritrean] government wants.” He knew four of the people well, and they were all members of Eritrean opposition groups working from Sudan, he said.¹⁵⁰

Temporary Reprieves for Some Nationalities

According to Libyan immigration officials, the government does not return people with certain nationalities because conditions in their home countries do not allow for return. “Somalis are a problem because no planes can land there,” Muhammad al-Ramalli said. “Even if the Somali embassy cooperates, which is rare, we cannot coordinate the plane. So I decided to let them go from the camp.”¹⁵¹ As of April 2005, he said, 120 Somalis had volunteered to repatriate but there were no flights.

‘Ali Mdorad told Human Rights Watch that the government will not deport people if they were from a “hotspot” such as Liberia or Somalia, although Human Rights Watch researchers met Liberians when they visited the al-Fellah detention center on April 25

¹⁴⁹ UNHCR Briefing Notes, “UNHCR Concerned Over Continued Forcible Return of Potential Refugees from Libya,” September 21, 2004.

¹⁵⁰ Human Rights Watch interview with Alamin S., Rome, May 24, 2005.

¹⁵¹ Human Rights Watch interview with the Muhammad al-Ramalli, Tripoli, April 25, 2005.

and May 9, 2005.¹⁵² Muhammad al-Ramalli said the government was not returning fifty-seven Liberians and twenty-seven Ivoreans due to the situation in those countries. As of April 2005, Libya had an informal agreement with Sudan not to deport anyone, `Ali Mdorad said. If they come from Darfur, they cannot return them to Khartoum, he explained, because the Sudanese government has no capacity to return the individual to other parts of the country.¹⁵³

The Libyan government allows individuals who benefit from these temporary reprieves to seek contractual work; they can apply for a residence permit if they find a job, Mdorad said. If they fail to find work, the government temporarily may tolerate their illegal presence so long as they remain registered and ready for return when conditions allow.

The Libyan government cannot return some people because their countries are too far away, or because their numbers are too few to justify charter flights, `Ali Mdorad explained. For this reason, sometimes refugees or migrants held indefinitely in deportation camps claim to come from a third country like Ghana or Nigeria in order to get out of detention. Third country returns – returning a person to a country that is not his or her country of origin – from Libya only take place unknowingly, under such circumstances, Mdorad said.

Libyan authorities also told the European Commission delegation of November-December 2004 that the government did not return people to areas of conflict. In its report, however, the commission noted that it was “unable to assess who makes the decision that one or another area is excluded for repatriation purposes, and how such a decision is then implemented in operational terms.”¹⁵⁴

¹⁵² During the April 25 visit, Human Rights Watch briefly interviewed three men from Liberia. During the May 9 visit, immigration officials told Human Rights Watch that Liberians were among the detainees awaiting deportation.

¹⁵³ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

¹⁵⁴ European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report.”

VIII. Other Abuses Against Migrants and Refugees

Migrants and refugees interviewed by Human Rights Watch reported a litany of violations unrelated to immigration powers. Both documented and undocumented sub-Saharan Africans staying in Libya during the past five years said they had experienced xenophobia and racism, including violence and discriminatory treatment by authorities and Libyan citizens. They said that they rarely reported crimes committed against them out of fear of the police or a lack of faith in the police's willingness to pursue their allegations.

Some of the abuses that migrants and refugees reported, such as corruption and extortion, police abuse and due process violations, are endemic to Libya, stemming from the weak rule of law. But many of the abuses seemed related, or at least exacerbated, by the victims' status as foreigners. Without tribal support, and considered unwanted outsiders by many Libyans, sub-Saharan Africans are particularly vulnerable to abuse.¹⁵⁵

Libyan officials emphatically denied that xenophobia or racism existed in a country that welcomed fellow Africans to come and work. "We have harmony between groups," said Assistant Secretary of Foreign Liaison and International Cooperation Sa'id Eribi Hafiana. "We are an African state."¹⁵⁶

The Libyan government's April 2006 memo to Human Rights Watch repeated this claim. "The Libyan Jamahiriya was and remains prominent in its role in fighting discrimination as witnessed by the entire world, and clarifies that the problems occur between foreigners themselves and citizens themselves and are not born of any discriminatory practices."¹⁵⁷

Libya's last report to the Committee on the Elimination of Racial Discrimination was even more emphatic. "It is possible to state categorically that there is no racial discrimination of any kind in Libya," the report said. The reason, the government said, is because Libya has no "religious or ethnic communities that are defined by their religion, race, language, gender, colour or political affiliations." The fact that all Libyan citizens

¹⁵⁵ Tribes play an important role in Libya's social, political and economic life and membership in a powerful tribe provides protection and support.

¹⁵⁶ Human Rights Watch interview with Sa'id Eribi Hafiana, Tripoli, April 21, 2005.

¹⁵⁷ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

share a common origin, religion and language “has undoubtedly been a determining factor in the absence of racial discrimination in the country.”¹⁵⁸

The Committee on the Elimination of Racial Discrimination challenged the claim that Libya had no minority groups. In its concluding observations of March 2004, it noted “the discrepancy between the assessment of the State party... and information indicating that Amazigh, Tuareg, and Black African populations live in the country.”¹⁵⁹

Article 17 of the Great Green Charter for Human Rights, one of Libya’s fundamental laws, states that “members of the Jamahiriya society reject any discrimination between human beings on the grounds of their color, sex, religion or culture.” The Committee on the Elimination of Racial Discrimination pointed out that Libya nevertheless has no comprehensive legislation to prevent, prohibit, or remedy racial discrimination.¹⁶⁰

The vast majority of sub-Saharan migrants and refugees interviewed by Human Rights Watch reported regular discrimination during their time in Libya, usually on account of their race. A twenty-nine-year-old Eritrean asylum seeker named Yusuf, who stayed in Libya from May to August 2004, told Human Rights Watch that Libyan citizens stopped him on the street for money six times, beating him when he had nothing to give. “In Libya the government and people are the same,” he said. “You can’t tell who is who, and both are racist.” As a result, Yusuf and other migrants and refugees said that many foreigners in Libya rarely leave their homes, or they do so only for work or to buy food during daylight hours.¹⁶¹

Getachew, a thirty-year-old Ethiopian man, spent two years in Libya illegally beginning in July 2003 before making it to Italy, where he has sought asylum. He had intended to stay in Libya indefinitely, until he realized how difficult life was for undocumented foreigners. “I saw the situation there. I saw how the society reacted to foreigners, immigrants and refugees,” he said. “If you want to move around, to go to the shops, the Libyans ask you for money for cigarettes, and if you say no, they attack you.” Libyan men attacked Getachew three times in the suburbs of Tripoli, he said. “Every time we

¹⁵⁸ Committee on the Elimination of Racial Discrimination, Libyan Arab Jamahiriya, Seventeenth Periodic Report of States Parties Due in 2002, June 18, 2003, CERD/C/431/Add.5.

¹⁵⁹ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya, March 12, 2004, CERD/C/64/CO/4.

¹⁶⁰ *Ibid.*

¹⁶¹ Human Rights Watch interview with Yusuf G., Rome, May 24, 2005.

stood at a bus stop, our money was taken. At every checkpoint on the bus home, you have to pay 40 dinars (approx. €24) to the policeman or you're arrested."¹⁶²

Ephrem S., the twenty-one-year-old Ethiopian who received refugee status in Italy, spent 2000-2002 in Libya without proper documents. "Young Libyans in the street sit around and wait to attack foreigners," he said. He explained for Human Rights Watch how Libyan men beat him in April 2002. "One day five Libyan men asked me my religion. I responded that I am Christian," he said. "They asked me my name and then grabbed me and beat me on the back. I don't know their motive." He added: "It's very risky to live there because of the ignorance of the Libyan citizens. You cannot move freely on the streets, cannot attend school, cannot buy things in shops."¹⁶³

Most migrants and refugees in Libya work in the informal sector, where they are susceptible to exploitation and abuse. A Liberian refugee, David, who washed cars in Tripoli, told Human Rights Watch that his employers sometimes did not pay for work he had completed, and there was no way to lodge a complaint.¹⁶⁴ A young Sudanese man described how he helped sell vegetables for a Libyan man at a market in Tripoli. He worked twelve hours a day, he said, earning on average two dinars a day (approx. €1.20). If business was poor, the pay was one dinar, and sometimes he went home empty handed. After one-and-a-half years, his Libyan boss failed to pay him for a full month. There was no way to seek redress, so he quit.¹⁶⁵

In its concluding observations of March 2004, the Committee on the Elimination of Racial Discrimination expressed concern that "anti-black sentiment and racially motivated acts against foreign workers have an adverse impact on their employment situation and terms and conditions of employment." The Committee urged Libya to "ensure that foreign workers are not discriminated against in employment on the basis of their colour or their ethnic or national origin."¹⁶⁶

¹⁶² Human Rights Watch interview with Getachew J., Rome May 24, 2005.

¹⁶³ Human Rights Watch interview with Ephrem S., Rome, May 24, 2005.

¹⁶⁴ Human Rights Watch interview with David B., Tripoli, April 21, 2005.

¹⁶⁵ Human Rights Watch interview with Ahmad A., Rome, May 27, 2005. Law No. 6 (1987), article 12, requires employers to declare all non-Libyan employees within seven days. The new immigration law (No. 2 (2004)) and its implementing regulations require foreigners to hold a work permit or leave the country and impose penalties on employers who do not register any foreign employee with the authorities.

¹⁶⁶ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya, March 12, 2004, CERD/C/64/CO/4.

The International Labour Organization has also raised concerns. In its 2004 report, the ILO noted that “[M]igrant workers make up much of the labour force, but are badly treated. As they are not allowed to form or join trade unions, even the official so-called workers’ organization, the General Federation of Producers/Workers (GUP/N), they have no protection from the discrimination to which they are regularly subjected.”¹⁶⁷

Racially Motivated Violence

The largest incident of anti-foreigner violence took place in late September 2000 in Zawiyya, about forty kilometers west of Tripoli, where a mob of Libyans clashed with foreigners, resulting in what most media reports said was up to fifty foreigner deaths. The government said seven people died. The foreigners reportedly came mostly from Sudan, Nigeria, Ghana and Chad but included other sub-Saharan African states.¹⁶⁸

Human Rights Watch was unable to conduct a full investigation into the incident, and many details remain unclear, including the number of injured and dead. A top Libyan official at the time denied a major clash, saying some “fights broke out” between Nigerians and Libyans after the Nigerians had teased some Libyan girls. “The police intervened immediately and took the necessary measures and arrested those who were involved,” the official said.¹⁶⁹ In response to questions from Human Rights Watch, the Libyan government said in April 2006 that seven people had died in the incident, although it did not specify how many of the victims were Libyans and how many were foreigners.¹⁷⁰

According to Saudi and Sudanese newspapers, however, clashes that began on September 20 left up to fifty people dead and dozens hurt. “Most of the victims are Chadian while a certain number of Sudanese, probably around five people, were also killed,” reported the Saudi-owned newspaper *al-Hayat*, published in London and several Arab capitals. In Khartoum, the daily *Akbbar al-Yom* reported, “fifty people were killed and dozens hurt in clashes between Libyans on one hand and nationals of the Chadian and Sudanese communities on the other in Zawiyya.”¹⁷¹ The most dramatic reports came

¹⁶⁷ International Labour Organization, Workers Group Secretariat 2004 Factsheet, available at <http://www.ilo.org/public/english/dialogue/actrav/new/ilc04/file4.pdf>, as of March 6, 2006.

¹⁶⁸ “Libya Tightens Security,” BBC News, September 27, 2000, available at <http://news.bbc.co.uk/1/hi/world/africa/943863.stm> as of March 7, 2006.

¹⁶⁹ “Libyan Minister Says Reports of Clashes in Libya are ‘Baseless,’” Agence France-Presse, September 26, 2000.

¹⁷⁰ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

¹⁷¹ “Around 50 Africans Killed in Clashes in Libya: Press Reports,” Agence France-Presse, September 26, 2000.

from Nigeria, where local media reported that up to 500 Nigerians had died, prompting a violent demonstration in Lagos that left one dead.¹⁷²

According to a report on Sudanese television, the Sudanese president asked al-Qadhafi to intervene.¹⁷³ Later in the week, a crowd of Libyan youths reportedly ransacked the embassy of Niger.¹⁷⁴

To this day, the Libyan government has not provided details on the Zawiyaa incident, although it has claimed that it opened an investigation. In its concluding observations of March 2004, the Committee on the Elimination of Racial Discrimination urged Libya to “submit 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.”¹⁷⁵ Human Rights Watch also requested information about the incident, but the Libyan government only informed the organization that “seven Libyans and foreigners” had died.

According to Amnesty International, in May 2001 a Libyan court sentenced two Libyans, a Ghanaian and four Nigerians to death for “plotting against the policy of Libya and its leading role in Africa, undermining the aim of the Libyan Jamahiriya of creating a united African entity, and disturbing public order.” The court also convicted the Nigerians and the Ghanaian of “the murder of Libyan citizens and theft.” It is not known if the authorities carried out the executions.¹⁷⁶

Human Rights Watch interviewed one man, David B., who said he had witnessed some of the violence at Zawiyaa’s so-called Nigerian Camp. According to him, the clash began after a Nigerian murdered a Libyan. A large mob of Libyans threw Molotov cocktails at the camp and set it on fire, he said. Government bulldozers razed the camp, he said, suggesting that the government was involved.¹⁷⁷

¹⁷² Segun Adeyemi, “One Killed in Anti-Libyan Protest,” PANA news agency, October 12, 2000 and “At Least 500 Nigerians Reported Dead in Libya,” PANA news agency, October 8, 2000.

¹⁷³ “Sudan Calls on Qadhafi to Intervene in Libyan Clashes,” BBC Monitoring Middle East, Sudan TV, September 26, 2000.

¹⁷⁴ “Niger Embassy Ransacked in Libyan Capital,” Agence France-Presse, September 30, 2000.

¹⁷⁵ Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya, March 12, 2004, CERD/C/64/CO/4.

¹⁷⁶ Amnesty International, “Annual Report 2002,” available at <http://web.amnesty.org/report2002/mde/libya!Open>, as of April 29, 2006.

¹⁷⁷ Human Rights Watch interview with David B., Tripoli, April 21, 2005.

During the ensuing week, young Libyan men ransacked the house on the outskirts of Tripoli where David B. was living with eight other men from his home country. The nine men fled to their country's embassy for protection, he said. Crowds smashed the taxi windshield with a stick on the way. According to David B, the embassy was full of women and children who had fled similar attacks.

Some African governments organized the evacuation of their citizens. At least 230 Ghanaians returned home in early October, and Ghanaian officials told the press that at least 5,000 others had been listed for evacuation after the violence.¹⁷⁸ The Nigerian government reportedly brought more than 4,000 Nigerians home.¹⁷⁹

While the September 2000 events were by far the most violent in recent years, the vast majority of migrants and refugees interviewed by Human Rights Watch said they had seen or experienced physical harassment or violence during their stay in Libya, often with little intervention by the police. Sometimes the threats and violence came from the police.

Ahmad, the Sudanese man seeking asylum in Italy, told Human Rights Watch about the violence he endured during his time in Benghazi and Tripoli from 1993 to 2003 as an undocumented migrant. "It was really tough living there. If I took the bus to work, the Libyans threw me off their seats, so I often went by foot. I can't count the number of times I was beaten up on the street by Libyans," he said, showing Human Rights Watch scars on his body that he said were from the beatings. "Even if you wear western clothes with English words printed on them, this is a reason for them to beat you. The people in cars try to run you down. There are always insults on the street. You live in fear. I just concentrated on getting home safely from work every day."¹⁸⁰

Ethiopian refugee Alex, who spent six months illegally in Tripoli in 2002, said that all neighborhoods of the capital were equally difficult for foreigners. "Young Libyan people in cars try to run you down in the street or shout insults at you. I don't understand Arabic, but I understood them saying 'negro,'" he said. "Once I was attacked in the street in Abu Salim [neighborhood of Tripoli] by some young kids." Alex also remembered witnessing a more serious attack: "I saw a black man going on a bus home, and he quarreled with the driver. Then they all started fighting. All the passengers beat

¹⁷⁸ "First Batch of Evacuees Arrives from Libya," BBC Monitoring Service: Africa, October 10, 2000, taken from PANA news agency, October 8, 2000.

¹⁷⁹ Segun Adeyemi, "One Killed in Anti-Libyan Protest," PANA news agency, October 12, 2000.

¹⁸⁰ Human Rights Watch interview with Ahmad A., Rome, May 27, 2005.

him up. He was only rescued by an African diplomat who was passing in his car and pulled him into it, safe from the mob.”¹⁸¹

Migrants, asylum seekers and refugees consistently scoffed at the notion of going to the police to report crimes because of the police’s indifference or outright hostility. A thirty-two-year-old Eritrean man, seeking asylum in Italy as of May 2005, had spent five-and-a-half months illegally in Tripoli during 2004; he commented: “I would never have gone to the police [to report violence from Libyans] because they would arrest me. They wouldn’t believe me. There are people who are robbed of \$1,000 and don’t go to the police.”¹⁸²

David B., whose account of the Zawiyya events is given above, told Human Rights what happened when Libyan citizens beat him in August 2002 and he went to the police:

We were three [nationality withheld] getting on a bus. It was crowded. The Libyans got mad and called us “animals.” Someone pulled me from behind. They beat me. People grabbed sticks. They threw stones. A policeman was near, and we went to him. He asked for my passport and then he hit me behind my head. He saw us getting beaten, and he let the guys go free.

We went to the police station, and they said we must get a medical report. We went to Shar`a Zawiyya Hospital. They bandaged my forehead without payment. We went back to the police, and they said “we can do nothing.”¹⁸³

The Ethiopian asylum seeker Getachew said that young Libyan men looking for drugs and prostitutes sometimes came to his shared house in Tripoli and the houses of other migrants. Once there was a fight in which a Libyan drew a knife and his friends locked four Ethiopian and Eritrean women in a room. Getachew and the other migrants called the police to save the women, who were not prostitutes, he said. The police came and got the women out of the locked room, but they did not arrest the Libyan men, who later returned to the house and threw stones.¹⁸⁴

¹⁸¹ Human Rights Watch interview with Alex M., Rome, May 25, 2005.

¹⁸² Human Rights Watch interview with Estefanos H., Rome, May 26, 2005.

¹⁸³ Human Rights Watch interview with David B., Tripoli, April 21, 2005.

¹⁸⁴ Human Rights Watch interview with Getachew J., Rome, May 24, 2005.

As the example above indicates, non-Muslim women from sub-Saharan Africa appear to have particular problems because some Libyans assume them to be immoral, if not sex workers. A twenty-six-year-old Sudanese asylum seeker, `Abd al-M., who worked illegally in Benghazi and Tripoli for a year and a half, said he saw black women face many difficulties. “Black foreign women have to stay in the house in Libya because the Libyan men and boys always try to touch their bodies if they go out,” he said. “Once I saw a Sudanese woman being pulled into a car by some Libyans. This can happen any time – the police see things but they don’t say anything because Libya is ruled by the law of the tribe, not the law of fairness.”¹⁸⁵

Miriam, a twenty-three-year-old Eritrean woman seeking asylum in Italy as of May 2005, spent seven months working illegally in Tripoli in early 2004. “I saw so many bad things there: women who were raped, children who threw stones and hit adult men,” she said. “I speak Arabic and dress like an Arab woman, so I was okay, but people who don’t speak the language are in terror of just going to the store.” During her time in Tripoli, Miriam worked illegally in a tea room run by Sudanese employers. “It was better than other work, better than working for a family. I knew many women who worked for families where they were never paid or had boiling water thrown in their faces,” she said.¹⁸⁶

Foreigners in the Criminal Justice System

According to the Libyan government, foreigners in Libya are responsible for a disproportionate amount of crime. Former Secretary of Public Security Nasr al-Mabruk, who left the post in March 2006, told Human Rights Watch that migrants were responsible for 30 percent of Libya’s crimes. “We suffer a lot from this phenomenon,” he said. The commander of the main Zawiyya police station claimed that undocumented migrants might be responsible for as much as 80 percent of certain crimes in his district, such as theft. He also claimed that the rate was high for counterfeiting money and other documents, and for some drug crimes.¹⁸⁷ He did not provide any reports or official statistics to support his claims.

¹⁸⁵ Human Rights Watch interview with `Abd al-M., Rome, May 27, 2005.

¹⁸⁶ Human Rights Watch interview with Miriam H., Rome, May 25, 2005. Miriam has Eritrean parents but was born and raised in Sudan; she has citizenship documents from neither country.

Under Libyan law, domestic workers are banned. Article 22 of the Great Green Charter for Human Rights states: “The members of the Jamahiriyan society consider servants as the slaves of modern times, enslaved by their masters... For this reason, the Jamahiriyan society proscribes recourse to servants in the home. The house must be maintained by its owners.”

¹⁸⁷ Human Rights Watch interview with commander of the Zawiyya police station, name unknown, May 2, 2005.

Libya's General Prosecutor Muhammad al-Misrati said that the police arrest many foreigners for crimes. "The police sometimes collect them up like a fishing net," he said. "But then the prosecutor follows the law."¹⁸⁸ His metaphor suggests the arbitrariness that many foreigners reported during the process of arrest.

Within the Libyan criminal justice system, foreigners enjoy the same legal rights as Libyans. They should be informed of the reason for their arrest, have access to counsel and receive a fair trial. Torture is banned (see Appendix I).

Despite this, migrants and refugees who were arrested under criminal law reported a host of abuses. In some cases, investigators used torture to extract confessions. In many cases, the defendant was not provided a lawyer, or the first time they saw legal counsel was at their trial. Migrants and refugees said they frequently endured long periods of pre-trial detention. And in court, the translation was sometimes very poor, if provided at all. With the exception of the issue of translation, the abuses listed above are not unique to foreigners – Libyan citizens also experience such abuse. But without tribal support networks, and often viewed as unwanted outsiders, foreigners are particularly vulnerable to violations of the law.

Torture

Libyan law makes torture a crime. The government has repeatedly claimed that it investigates and prosecutes cases in which torture is alleged. "We will not allow any police officer to subject any person to torture," former Secretary of Public Security Nasr al-Mabruk told Human Rights Watch. "When we learn of a violation by a policeman we inform Justice."¹⁸⁹

Former General Secretary of the General People's Committee Shukri Ghanim told Human Rights Watch that torture is strictly against state policy and, if it took place, was the result of "sick" individuals who must be held accountable. "The difference is whether it is a premeditated policy or an abuse of power," he said. He maintained that the problem could be solved by training.¹⁹⁰

¹⁸⁸ Human Rights Watch interview with Muhammad al-Misrati, General Prosecutor, April 28, 2005.

¹⁸⁹ Human Rights Watch interview with Nasr al-Mabruk, Tripoli, April 26, 2005.

¹⁹⁰ Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

Article 2 of the Great Green Charter for Human Rights proscribes any punishment that would “violate the dignity and the integrity of a human being.” It prohibits “any and all injuries, whether physical or moral, against the person of a prisoner.” Article 17 of Law 20, On Enhancing Freedom, states: “It is prohibited to inflict any form of corporal or psychological punishment on the accused, or to treat him with severity or degradation, or in any manner which is damaging to his dignity as a human being.”

Article 435 of the penal code states that, “[A]ny public official who orders the torture of the accused or tortures them himself shall be punished by a prison term of three to ten years.” Article 341 of the code stipulates a prison sentence of ten years for those who carry out the order. Article 337 of the code imposes imprisonment on “any public official who uses violence against any person while on duty in a way that is degrading and causes physical pain.”

The Libyan government says it has taken all possible steps to minimize torture. In an October 20, 2005 statement, in response to Human Rights Watch allegations of torture, the government announced:

The Libyan people have enshrined in all their Basic People’s Congresses and reaffirmed in their fundamental documents such as the Declaration of the People’s Authority, the Great Green Charter for Human Rights and the Freedom Consolidation Act [also known as the Law on Enhancing Freedom] that degrading punishments must be abolished and all penalties that curb freedom must be restricted to a minimum. Prison is only for those whose freedom poses a danger to others. The harshest penalties have been prescribed for all who inflict any torture or mistreatment on detainees. However the competent authorities did not deny that violations by some individuals have been detected and appropriate measures were taken to hold them accountable and put them on trial.¹⁹¹

¹⁹¹ “Statement by Secretary for Information Affairs at the Foreign Liaison Secretariat,” October 20 2005. See “Tripoli “Surprised” by Charges of Torture in Libya, Agence France-Presse, October 19, 2005. The full statement is available at “Libya Denies Torture Cases Reported by Human Rights Watch,” BBC Monitoring Middle East, translated from the Jana News Agency, October 19, 2005.

The Libyan government was responding to a Human Rights Watch statement on torture in Libya. (See Human Rights Watch, “U.K.: Torture a Risk in Libya Deportation Accord,” October 18, 2005, available at <http://hrw.org/english/docs/2005/10/18/libya11890.htm>, as of May 7, 2006.)

Nevertheless, many of the migrants and refugees Human Rights Watch spoke with complained of torture after their arrest, usually by the special police, known as the *mukafaha*, who deal with drug-related crimes. Human Rights Watch interviewed six non-Libyan nationals in prison for the possession or sale of drugs or alcohol who said they had been tortured, usually by the police, to extract a confession.

One man from sub-Saharan Africa imprisoned for possession of drugs told Human Rights Watch that members of the *mukafaha* in Tripoli beat him after his arrest in 2004. He said:

They hung me by a chain from the wall. There was a stick behind my knees, and my hands were tied to it. They hung me up on the wall. I stayed like that for forty-five minutes. They were beating me during that time. They told me “If we kill you, no one will know.”¹⁹²

Another prisoner from sub-Saharan Africa gave a similar account. He said that Libyan authorities held him in Zawiyya police station without food or water for some days after his arrest in August 2003. He alleged that *mukafaha* agents then tied his hands behind his back and used a piece of wood or an iron bar to hang him from the wall. This happened for two or three hours at a time, he said, and sometimes he was beaten too. After six days he signed a confession in Arabic that he said he could not read. “The first time I saw my lawyer was the second to last [court] session,” he said.¹⁹³

Another sub-Saharan African arrested for drug possession in May 2004 said the police held him in the Geria police station for three days without food or water. Then, in the *mukafaha*, interrogators hung him for four hours with his hands behind his back. He said:

They put an iron rod behind my back and they hung me. It was for about four hours. They beat me with a cable on my legs... They hung me every day. On the fourth day – it was Friday – I had to write my statement.¹⁹⁴

According to the man, he did not know what the statement said. “I was afraid because I have my family and I don’t want to die,” he told Human Rights Watch. “Because I was

¹⁹² Human Rights Watch interview, name, date and place withheld.

¹⁹³ Human Rights Watch interview, name, date and place withheld.

¹⁹⁴ Human Rights Watch interview, name, date and place withheld.

afraid, anything they asked me to do, I did it. In the *mukafaba*, I signed something under duress. I don't know what it said."

Some migrants and refugees said they were abused in regular police stations. A sub-Saharan African man arrested in 2005 in Sirte said he was taken to a police station in the town. "They made me stand for two days," he told Human Rights Watch. "I had carbon paper and they thought I was counterfeiting money... They beat me like a prisoner of war."¹⁹⁵

Another sub-Saharan African charged in 2004 with drinking and with forging money was taken to a police station (he did not state the location) where he claims the police beat him:

I was handcuffed, and they put wood under my knees, and they flogged me with a cable on the bottom of my feet. They asked us who owned the fake money. They beat all of us. They beat us for one day. They said we should admit that the money was ours. I don't speak Arabic. I signed a statement, but I did not understand it.¹⁹⁶

One man from sub-Saharan Africa who was charged with a group of men for murder said that interrogators had subjected him to torture in Misrata. He told Human Rights Watch:

For five months I could not sit down. It was a room four by four feet. I could not lie down. They questioned us. First they brought me in, and for ten days they didn't speak to me. After ten days, they brought a rope, and they tied my hands and legs together, and they hung me up. Then every day for five months, they took me out and beat me up.... They beat us with a cable on the bottom of our feet.... I confessed under the beating.¹⁹⁷

According to the man, after the beatings the authorities held him in a solitary confinement cell for twenty days, five more than Libyan law allows. He got food three

¹⁹⁵ Human Rights Watch interview, name, date and place withheld.

¹⁹⁶ Human Rights Watch interview, name, date and place withheld.

¹⁹⁷ Human Rights Watch interview, name, date and place withheld.

times per day in his cell and was allowed a shower every day, he said, although he was not allowed to exercise in the courtyard.

Human Rights Watch visited the main police station in Zawiyya, one of six stations in the town. The commanding officer there said, “The citizen has full freedom to complain [about torture].” He was not able to provide Human Rights Watch with information on how many complaints of abuse people had registered in Zawiyya or how many police officers, if any, had been disciplined for abusing detainees.¹⁹⁸

Unfair Trials

Migrants and refugees Human Rights Watch interviewed in Libyan prisons made consistent and credible complaints of due process violations in their cases from the time of arrest. Common complaints included not being informed promptly of the reason for their arrest, lengthy periods of pre-trial detention, restricted access to a lawyer, poor translation during the trial and the inability to mount an adequate defense.

A Nigerian man, Iniko, who came to Libya to work as a welder and car mechanic, said he was arrested in March 2004 in Tripoli’s Janzur district while coming home from an Internet café. The police took him to the police station in Janzur and then to the *mukafaha*. According to the man, the authorities did not tell him the reason for his arrest for thirty days, when he first appeared before a judge, and he then waited eleven months before his trial, which ended in conviction. He said he did not know the length of his sentence because the interpreter left the trial before telling him. His sentence began in March 2004, and he said he thought he was due to get out soon.¹⁹⁹

A forty-four-year-old Ghanaian man, Kwami, who had lived in Libya for ten years, said the police arrested him in July 2004 for making wine.²⁰⁰ He met his state appointed lawyer for the first time on the day of the trial in February 2005, he said, and the two men did not speak directly. The trial took two minutes, and the translation was poor, so he could not fully communicate with the court. Kwami said he wanted to file an appeal but he did not know how.²⁰¹

¹⁹⁸ Human Rights Watch interview with police officers in Zawiyya police station, names unknown, Zawiyya, May 2, 2005.

¹⁹⁹ Human Rights Watch interviews with Iniko O., April 26, 2005.

²⁰⁰ In Libya, the production, sale and consumption of alcohol are illegal.

²⁰¹ Human Rights Watch interview with Kwami D., ‘Ain Zara prison, April 26, 2005.

One sub-Saharan African who claimed to have confessed to a drug crime after torture by the *mukafaba* in Zawiyya said that his trial lasted four months, with adjournments, and involved six sessions, but he only got a public lawyer at the final sentencing in January 2004. The first time he spoke with the lawyer was in the courtroom. “We had asked for a government lawyer at the beginning,” he said. “They said, ‘You have drugs, so why don’t you have money for a private lawyer?’”²⁰²

At another prison, a young migrant from Nigeria, Ibrahim, told Human Rights Watch that during his court appearance in 2003 for possession of heroin, the judges asked him no questions and he did not speak. According to Ibrahim, he had neither a lawyer nor an interpreter, and therefore could not understand the proceedings. The judge eventually sentenced him to three years’ imprisonment and fined him 1,000 dinars, he said.²⁰³

Libyan officials and lawyers agree that interpretation is a problem due to the lack of qualified interpreters. This results in delays before a defendant can go to court. A bigger problem is the general backlog in the criminal justice system, which forces people to wait for up to one year in pre-trial detention.

According to a public defender Human Rights Watch interviewed at the Benghazi appeals court, if the court cannot find an interpreter for a foreigner who speaks an unusual language, then the person is treated by the court “as if he or she were deaf,” although it remains unclear what this means. Such instances are rare, the public lawyer said: “Usually defendants find friends to speak for them, or the embassy sends an interpreter. A defendant has to insist if he or she wants to change the interpreter assigned to him or her.”²⁰⁴

Libya’s General Prosecutor al-Misrati told Human Rights Watch that non-nationals have a right to counsel, including a right to a public defender if they have no means to hire a lawyer, and the right to apply for bail as a pre-trial detainee. Non-nationals are supposed to pay a fee to get a public lawyer, but usually this is waived.²⁰⁵

²⁰² Human Rights Watch interview, name, place and date withheld.

²⁰³ Human Rights Watch interview with man Ibrahim K., al-Kuwaifiyya prison, April 23, 2005.

²⁰⁴ Human Rights Watch interview with Juma` Abdullah Buzaid, Benghazi, April 23, 2005.

²⁰⁵ Human Rights Watch interview with `Ali `Umar Abu Bakr, April 28, 2005.

Prison Conditions

Libya currently has thirty-four prisons, called “correction and rehabilitation facilities.” In addition, the Internal Security Agency runs other detention facilities for security suspects and prisoners, such as Abu Salim prison in Tripoli. According to the director of the national prison authority, Brig. Belqassim Gargoom, Libya had 12,860 prisoners as of late April 2005.²⁰⁶ Of these, 40 percent were non-Libyans.²⁰⁷

In recent years, prison conditions in Libya have improved, prisoners and lawyers said. The government has refurbished some facilities, and since September 2004 it is participating in a project with the International Centre for Prison Studies, funded by the U.K. government, to “improve the standard of human rights in the Libyan prisons.”²⁰⁸

Human Rights Watch visited five prisons in Libya. Each of them held both Libyans and foreigners, and one of them – al-Kuwaifiyya in Benghazi – held women. In general the conditions seemed adequate. In each prison, the prisoners said the area had recently been cleaned, and in some places, the smell of fresh paint was strong. At Janduba prison, inmates said that a ping-pong table had been delivered the day before Human Rights Watch researchers arrived.²⁰⁹

Despite conditions appearing adequate, prisoners and pre-trial detainees expressed a number of complaints. Most serious was the use of physical violence by guards as punishment. While punitive beatings are not limited to non-nationals, they apparently occurred more frequently against non-Libyans. “If you complain, they beat you seriously – the Africans. It is difficult for them to beat a Libyan,” one prisoner said.²¹⁰ A prisoner in another prison told Human Rights Watch: “If you make trouble, the guards beat you. I myself have never been beaten, but I see this happen at least two or three times a week.” He added that the beatings often happen after the prisoners have broken the rules. “Prisoners use sharpened spoons as weapons and start fights,” he said. “As punishment, they are taken to solitary confinement and beaten.”²¹¹

²⁰⁶ Human Rights Watch interview with Brig. Belqassim Gargoom, Director of the Prison Authority, Benghazi, April 23, 2005.

²⁰⁷ Ibid.

²⁰⁸ Website of the International Centre for Prison Studies, available at <http://www.prisonstudies.org/>, as of March 7, 2006.

²⁰⁹ Human Rights Watch interview Jandouba prison, April 30, 2005, name withheld.

²¹⁰ Human Rights Watch interview, name, date and place withheld.

²¹¹ Human Rights Watch interview, name, date and place withheld. According to Brig. Gargoom, the normal maximum time allowed in solitary confinement is fifteen days. On his personal approval, the time can be extended to thirty days.

It is the job of the General Prosecutor's office to investigate reports of abuse by the judicial police in the prison system. Human Rights Watch saw complaint boxes in each prison visited. Brigadier Gargoom conceded that all guards were "not angels," but he said that they investigated all complaints of abuse, and punished or prosecuted those found to have used force unnecessarily or in excess. "We do not deny the existence of excessive use of force," he said. "But if it occurs, the officer is discharged."²¹²

According to Brigadier Gargoom, the main problem in the prisons is overcrowding. According to the International Centre for Prison Studies, Libyan prisons are operating at an occupancy level of 140 percent.²¹³

Most Sub-Saharan Africans interviewed said there was no problem of racism among the prisoners. Brigadier Gargoom agreed. "There is no racism," he said. "They are integrated together." In al-Kuwaifiyya prison in Benghazi, a foreign Christian prisoner told Human Rights Watch that the authorities allowed him to practice his religion freely.²¹⁴

Under the terms of the Vienna Convention on Consular Relations, to which Libya is a party, embassies must be notified of the imprisonment or detention of any of their nationals if the detained national so requests.²¹⁵ Human Rights Watch found cases where such notification had apparently not taken place. A foreign man in al-Kuwaifiyya prison, for example, said that his sisters and parents in his home country had no idea where he is. He and six others had not been able to contact their embassy, he said.²¹⁶ Another man who had not been able to contact his embassy told Human Rights Watch:

I don't know when my wife died. I learned of it in May last year. I requested to see her and they said, "Sorry, but we must tell you that she died." My twins are between five and six years old...I don't know where

²¹² Human Rights Watch interview with Brig. Belqassim Gargoom, Benghazi, April 23, 2005.

²¹³ International Centre for Prison Studies, "Prison Brief for Libya," updated December 14, 2005, available at <http://www.prisonstudies.org>, as of March 7, 2006.

²¹⁴ Human Rights Watch interview with George J., al-Kuwaifiyya prison, Benghazi, April 23, 2005.

²¹⁵ Article 36, Vienna Convention on Consular Relations and Optional Protocols, U.N.T.S. Nos. 8638-8640, vol. 596, pp. 262-512, done at Vienna, on 24 April 1963. Asylum seekers and others who fear contact with the embassy would be covered by the provision in the Convention (Article 36.1(c)) that "consular officials shall refrain from taking action on behalf of a national who is in prison, custody or detention if [the national] expressly opposes such action."

²¹⁶ Human Rights Watch interview with Ibrahim K., al-Kuwaifiyya prison, April 23, 2005.

they are... I didn't contact my embassy. I believe they know we're here, but they do nothing.²¹⁷

The Libyan government blames the embassies for negligence in responding to the needs of their nationals. Human Rights Watch interviewed a diplomat in Tripoli from one sub-Saharan country who said that the Libyan police arrested so many of his co-nationals – hundreds every week – that the authorities did not notify the embassies on a regular basis. The authorities occasionally grant him access to a prison, he said, but they only allow him to visit convicted criminals and not those awaiting trial.²¹⁸

Refugees who find themselves in prison are obviously reluctant to contact their embassies if they fear persecution by their home government. Without UNHCR access to prisons, such people have no alternative authority to contact for help.²¹⁹

Brigadier Gargoom told Human Rights Watch that the Libyan government had deported 1,800 foreigners, Africans and non-Africans, to their home countries in 2004. These were, he said, convicted criminals deported as part of their sentence.

Executions of Foreigners

Libyan leader Mu`ammar al-Qadhafi and the Libyan government have long talked about abolishing the death penalty. Article 8 of the Great Green Charter for Human Rights, enacted in 1988, states: “The goal of the Jamahiryan society is to abolish capital punishment.”

According to `Ali `Umar Abu Bakr, Secretary of Justice until March 2006, legal experts are drafting a new penal code which will reduce the number of crimes for which the death penalty can be applied to “the greatest possible extent,” leaving it in place only for “terrorism” and “the most serious crimes.”²²⁰ Secretary Bakr said the new code would be introduced to the General People's Congresses for review by the end of 2005 but, as of May 2006, the penal code had not been submitted. Until the new penal code comes into

²¹⁷ Human Rights Watch interview with George J., al-Kuwaifiyya Prison, Benghazi, April 23, 2005.

²¹⁸ Human Rights Watch interview with member of the Tripoli diplomatic corps, name, date and place withheld.

²¹⁹ The International Committee of the Red Cross (ICRC) has no presence in Libya. The country is covered by ICRC's regional delegation in Tunisia.

²²⁰ Human Rights Watch interview with `Ali `Umar Abu Bakr, Tripoli, April 28, 2005.

effect, Secretary Bakr said, the government has imposed a de facto moratorium on executions.²²¹

Despite this claim, the Libyan government is continuing to execute prisoners. Two sources in Libya with knowledge of the cases who wished to remain anonymous told Human Rights Watch that the authorities had executed two Nigerians convicted of murder in April 2005.²²²

In mid-July, Libyan authorities executed four Egyptian citizens: `Arafa `Ali `Abd al-Latif, Majid al-Sa`id Muhammad, Barakat `Abd al-Zahir, and Basyuni Ahmad al-Tayyib. They were among fifteen Egyptians sentenced to death for murder in 2004. Human Rights Watch has no information about the executed men or the other prisoners in the case.²²³ Also in July, Libyan authorities executed two Turkish citizens, according to the Turkish Foreign Ministry, which announced on July 14 that Selim Aslan and Yunus Ozkan had been put to death for a murder committed in 1995.²²⁴

Human Rights Watch asked the Libyan government how many executions the authorities had carried out in 2005, and how many of these people were foreigners but, as of May 1, 2006, the government had not replied.

²²¹ For a detailed discussion on the death penalty, see the Human Rights Watch report, "Words to Deeds: The Urgent Need for Human Rights Reform," pp. 31-34.

²²² Human Rights Watch interviews, Tripoli, May 2005, names withheld.

²²³ Egyptian Organization for Human Rights, "Egyptian Organization for Human Rights, in its Campaign Against the Death Sentence, Condemns the Execution of Four Egyptians in Libya," July 21, 2005; and Libyan League for Human Rights, "Libya: Four Executions by Firing Squad," July 26, 2005. See also "4 Egyptians Executed in Libya without Fair Trial," Agence France Presse, July 21, 2005.

²²⁴ Anadolu Agency, July 14, 2005.

IX. Legal Standards

Libyan Law

On December 11, 1969, post-monarchy Libya adopted a Constitutional Proclamation, intended as a provisional measure until a permanent constitution could be adopted.²²⁵ At this writing, Libya still had no unified constitution, but was governed by the proclamation and a series of fundamental laws deemed to have constitutional weight. Taken together, they guarantee many basic human rights, although with notable exceptions, particularly regarding freedom of expression and association.²²⁶

The Constitutional Proclamation provides for the right to work (article 4), the inviolability of homes (article 12), the right to education (article 14), and the right to health care (article 15). Regarding the judiciary, article 27 says the aim of judicial decisions is “the protection of the principles of the community and the rights, dignity and freedom of individuals.” Article 28 guarantees the independence of judges. Article 31 states that individuals are innocent until proven guilty and that they should be provided with a fair defense, as well as freedom from “mental or physical harm.”

Regarding the rights of refugees, article 11 of the Constitutional Proclamation states that, “[I]he extradition of political refugees is prohibited.”

The other laws deemed to have constitutional status are:²²⁷

- The Declaration of the People’s Authority, adopted March 2, 1977
- The Great Green Charter for Human Rights of the Jamahiriyan Era, adopted June 1988
- Law 20, “On Enhancing Freedom,” adopted 1991

²²⁵ Constitutional Proclamation of December 11, 1969, preamble and article 37.

²²⁶ Restrictions in Libyan law on the rights to freedom of expression and association are described in detail in the Human Rights Watch report “Words to Deeds: The Urgent Need for Human Rights Reform.”

²²⁷ All three constitutional laws are available in English at <http://www.unhcr.org/cgi-bin/texis/vtx/rsd?search=c&ISO=LBY>, as of March 7, 2006.

According to Libyan lawyers and law professors, judicial processes must respect these laws, and citizens have the right to appeal if the government violates the rights they enshrine.²²⁸

The Declaration of the People's Authority established the system of people's congresses that forms the basis of Libya's "direct democracy." It does not directly address human rights. More relevant to human rights is the Great Green Charter, which according to the Libyan government provides guidelines for review of legislation. Law No. 5 of 1991, On Implementation of the Principles of the Great Green Charter for Human Rights in the Jamahiriyan Era, states that all legislation in force prior to the promulgation of the Great Green Charter must be amended to become consistent with the principles set forth in the charter, and all new legislation must also be compatible with the charter.²²⁹ According to the government, the Great Green Charter therefore "has legal force in regard to legislation promulgated subsequent or prior to Act No. 5 of 1991."²³⁰ In addition, "any individual can challenge the legality of a legislative enactment that is inconsistent with the principles set forth in the document, whose provisions prevail over those of other legislation."²³¹

The Great Green Charter prohibits any punishment that "would violate the dignity and the integrity of a human being" (article 2). Article 9 guarantees the independence of the judiciary. Article 17 states: "The members of the society of the Jamahiriya reject any discrimination between human beings on grounds of their color, sex, religion or culture," and article 21 guarantees equality between men and women. As mentioned in the chapter immediately above, in the section on executions of foreigners, article 8 of the Charter declares the abolition of capital punishment as a societal goal.

Law 20, "On Enhancing Freedom," says that defendants are innocent until proven guilty (article 17) and also guarantees the independence of judges (article 31). Article 30 of the law states that, "everyone has the right to petition a court, in accordance with the law"

²²⁸ Human Rights Watch group interview with Libyan lawyers and law professors at al-Fateh University, Tripoli, May 5, 2005.

²²⁹ Act No. 5 (1991), Implementation of the Principles of the Great Green Charter for Human Rights in the Jamahiriya Era, article 1. Article 2 of the law states that all legislation must be amended to be consistent with the Great Green Charter within a period of one year, or up to three years following a decision by the General People's Congress.

²³⁰ Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/C/28/Add.17, March 2, 1995, available at <http://www.arabhumanrights.org/countries/libya/ccpr/ccpr-c-28-add17-95e.pdf>, as of March 7, 2006.

²³¹ Libyan Arab Jamahiriya report to the Committee Against Torture, CAT/C/44/Add.3, January 28, 1999, available at [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.44.Add.3.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.44.Add.3.En?Opendocument), as of March 7, 2006.

and that “the court shall provide him with all the necessary safeguards.”²³² Law 20 also says, in article 21, that “the Jamahiriya supports the oppressed and the defenders on the road to freedom and they should not abandon the refugees and their protection.”

Libya’s code of criminal procedure is largely up to international standards; violations mostly result from poor implementation of the law. The code guarantees the right to be defended by counsel. The police must have a warrant to make an arrest or to search a home. The police can hold a person for up to forty-eight hours, and the prosecution has up to six days to file charges, although a judge can extend this period to up to thirty days. Defendants have the right to be informed of the charges against them and to have access to a lawyer from the moment of arrest. They can hire an attorney privately, or get one appointed at no cost by the state.

Libya’s penal code is more problematic. It is currently under revision, but parts of the draft made public in 2004 suggest that the changes do not go far enough to bring the code up to the international human rights standards Libya has pledged to uphold.²³³

Libyan officials told Human Rights Watch that foreigners enjoy full legal rights in Libya and that they benefit from the same constitutional protections as Libyan citizens. They cite Law No. 10 (1989), which states that Arab citizens possess all rights and duties accorded to Libyans.²³⁴ Of course, not all foreigners in Libya are citizens of Arab states.

Laws Regulating the Entry, Stay and Departure of Foreigners

The main domestic law regulating the entry, stay and departure of foreigners is Law No. 6 (1987), as amended by Law No. 2 (2004)²³⁵ which, inter alia, would increase the penalties for illegal entry and presence. At the time of Human Rights Watch’s mission to Libya in April-May 2005, the General People’s Congress had approved Law No. 2, but the law’s implementing regulations were awaiting signature by Shukri Ghanim, then-General Secretary of the General People’s Congress. According to UNHCR in Tripoli, Law No. 2 is currently in force.²³⁶

²³² The independence of the judiciary is also guaranteed in the Organization of the Judiciary Act No. 55 of 1976.

²³³ For a critique of the penal code, see Human Rights Watch, “Words to Deeds: The Urgent Need for Human Rights Reform,” pp. 27-30.

²³⁴ *Al-Jarida al-Rasmiyya*, 1989-10-09, No. 20, p. 521.

²³⁵ All citations from these laws are based on translations by Human Rights Watch. The articles are cited at length because these laws are difficult to obtain outside Libya.

²³⁶ UNHCR communication to Human Rights Watch, April 5, 2006.

Law No. 6 does not state the requirements to obtain a residency permit, but Libyan immigration officials told Human Rights Watch that the implementing regulations require the following for a foreigner to work legally in the country:

- 1) proof that a Libyan could not do the job the foreigner is proposed to do;
- 2) contract with an employer;
- 3) registration with the tax authorities;
- 4) health certification proving that the foreigner does not have any contagious diseases, including HIV/AIDS.

Work permits are issued for a one-year period and can be renewed.²³⁷

Under the new law, every foreigner who does not already meet these requirements (and who is not exempted from requirements under an international agreement) will be required to register and will then receive a permit (red card) granting a short-term stay for three months, during which time he or she will have to find work and meet the conditions in order to gain a residency permit (green card). In theory, this system should protect those holding red or green cards from arrest and deportation, but would expose those without such documentation to greater risk.

Even without the implementing regulations for Law No. 2, UNHCR Tripoli reported in June 2005 that the government was implementing the new law because it had issued all of UNHCR's attested refugees with red cards. It remains unclear if the government will expel UNHCR attested refugees who fail to meet the requirements to obtain a green card.

Article 16 of Law No. 6 lists the grounds on which the Director of Passports and Nationality may cancel a resident's permit:²³⁸

- a) if he may pose a danger to the security and safety of the country, internally or externally, or the economy, public health, public morals or if he constitutes a burden on the state;
- b) if he is convicted of a felony or misdemeanor in violation of honor, loyalty or security;

²³⁷ Human Rights Watch interview with Muhammad al-Ramalli, Tripoli, April 25, 2005.

²³⁸ The Libyan government provided Human Rights Watch with a description of the administrative duties of the Department of Nationality and Passports, including a list of its thirteen branches and offices.

- c) if he violates the conditions on which he was granted the permit;
- d) if the reasons for which he was granted a permit no longer apply.

Article 17 of the law enumerates the situations in which the Director of Passports and Nationality may expel a foreigner from Libya:

- a) if he enters without a valid visa;
- b) if he refuses to leave the country despite the expiry of the visa, where the authorities have rejected its renewal;
- c) if the visa is cancelled in accordance with Article 16;
- d) if a court order was issued for his expulsion.

Libya told the U.N. Human Rights Committee that the safeguards contained in article 13 of the International Covenant on Civil and Political Rights (ICCPR), relating to challenges of an expulsion decision, apply to any expulsion permitted by Libyan law.²³⁹ It added, however, that challenging an expulsion requires that one has a legal status to be defended in the first place, and that these safeguards therefore do not apply to foreigners who enter Libyan territory without authorization.²⁴⁰ Libya furthermore noted that expulsion orders may be challenged on their legality and substance “unless compelling reasons of national security require otherwise”²⁴¹ and that the grounds on which discretionary decisions are taken concerning foreigners’ legal status are “motivated...by reasons of state, by which states protect themselves behind a solid wall of justificatory arguments that are difficult to ascertain and penetrate in inter-state relations.”²⁴²

According to senior justice officials, the decisions to deport or expel non-nationals are “often” challenged (appealed) in the Libyan courts, and the Supreme Court has reviewed such a case. Human Rights Watch twice requested but did not receive copies of court rulings related to such cases.²⁴³

²³⁹ Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/c/102/Add.1, 15 October 1997, para.89, available at <http://www.arabhumanrights.org/countries/libya/ccpr/ccpr-c-102-add1-97e.pdf>, as of January 26, 2006.

²⁴⁰ *Ibid.*, para. 90.

²⁴¹ *Ibid.*, para. 212.

²⁴² *Ibid.*, para. 213.

²⁴³ Human Rights Watch group interview with justice officials, Tripoli, April 26, 2005. Human Rights Watch asked again by letter on March 28, 2006 but, as of May 1, 2006, the government had not replied.

Article 18 of Law No. 6 is of particular importance, as it sets out the procedures for deporting a foreigner, including the administrative authority to detain:

The Director of Passports and Nationality has the right to restrict a foreigner who is to be expelled to a certain area of residence or to instruct him to visit the nearest security location [e.g. a police station] on certain dates until his date of expulsion. He is also allowed to detain him until the completion of expulsion arrangements. This foreigner is not to be readmitted to Libyan territory without a substantiated decision by the Director of Passports and Nationality.

The powers of administrative detention relating to foreigners in Libya are linked to the “completion of expulsion arrangements.” Therefore, the authorities should release people whom it is impossible for Libya to expel according to Law No. 6. It is, however, unclear given Libya’s above comments to the Human Rights Committee whether the term “expulsion” refers solely to those who formerly had a legal status (visa, residence permit) or to any removal of an unauthorized migrant from Libyan territory. No other provision in Law No. 6 seems to cover the detention and deportation of unauthorized migrants.

Article 18 offers a less restrictive alternative to detention in the context of expulsion, such as placing restrictions on the place of residence or imposing reporting requirements.

Article 19 (as amended by Law No. 2, which increases the monetary fine by a factor of ten) stipulates:

Provided no other law is violated, then the following persons will be sanctioned by imprisonment and/or a fine of at least 2,000 dinars:²⁴⁴

- Whoever knowingly makes false statements and presents incorrect information or documents in order to facilitate his or another person’s entry, residence or exit from the country in violation of the terms of this Act;
- Whoever enters, stays in or exits the country without the required visa, issued from the relevant authorities in accordance with the terms of this Act;
- Whoever violates the conditions of the visa issuance, extension or renewal;

²⁴⁴ Equivalent to approximately €1,200.

- Whoever stays in the country after receiving an order to depart by the relevant bodies, in accordance with the terms of this Act;
- Whoever hires a foreigner in contravention of Article 9 of this Act.

A number of other provisions of Law No. 6 relate to situations described in this report.²⁴⁵

An “executive table” accompanies Law No. 6 and sets out, inter alia, the procedures for expulsion and how they should be implemented. Human Rights Watch requested a copy of the executive table but, as of May 1, 2006, the Libyan government had failed to respond.

Reports indicate that the Libyan authorities are trying to inform both foreigners and Libyan employers about Law No. 6 and the relevant amendments to Law No. 2, suggesting that the government will strictly enforce the law. On May 10, 2005, the General People’s Committee for Public Security announced that foreign residents must have “authorized visa entry or they will be sent back to their countries.” Three documents are required to work in Libya, the statement said: “a legal visa, valid passport and authorized health certificate.” Furthermore, the authorities would take “appropriate action against anyone, even foreigners and people smugglers who violate legislation, including a prison sentence of more than a year and a fine of more than LYD 2,000 [€1,250].”²⁴⁶

Other National Legislation

Other laws dealing with foreigners in Libya include:

- Law No. 4 of 1985. This relates to travel documents, but does not implement or refer to article 6 of the African Refugee Convention, which obliges Libya to issue travel documents to refugees on its territory. With respect to refugees, Law

²⁴⁵ Article 3 of Law No.6 states that citizens of Arab countries may enter Libya only using their identity cards at special entry points. Article 5 requires captains of ships or planes to notify the Libyan authorities of anyone arriving without the required visa. (The Libyan government applies carrier sanctions– e.g. KLM reports that it pays 500 dinars for each undocumented migrant it lands. (See European Commission report, p. 49.)) Article 8 requires, inter alia, foreigners to register at the nearest Passport Office within seven days of entry, and Article 9 requires anyone who “harbors or lodges foreigners for any reason” to inform the authorities within forty-eight hours. Article 12 requires employers to inform the authorities within seven days when they hire or fire a foreigner.

²⁴⁶ Hamood, p. 20. See also “Libya Tightens Rules on Foreign Workers,” Libyan Jamahiriya Broadcasting Corporation, May 19, 2005, available at http://en.ljbc.net/online/news_details.php?id=847, as of May 7, 2006.

No. 4 refers (in article 7) only to the issuance of travel documents to Palestinians.

- General People's Congress Order No. 247 of 1989 on the executive regulation of Law No. 6 of 1987, regulating the admission and residency of foreigners. This regulation specifies the border points through which foreigners may enter Libya, as well as conditions of entry and required fees. It also lists the categories of foreigners who are either not allowed to enter or not allowed to leave Libya.²⁴⁷ Human Rights Watch asked the Libyan government to provide the categories of foreigners who are not allowed to enter or leave Libya but, as of May 1, 2006, the Libyan government had not replied.
- Law No. 10 of 1989 concerning the Rights and Duties of Arab Citizens in the Libyan Arab Jamahiriya. This law grants all citizens of Arab states the right to enter and reside in Libya, as well as all rights and duties accorded to Libyans.²⁴⁸
- General People's Congress Order No. 260 of 1989 concerning employment conditions. The law gives employment priority to Libyans and Arabs. Employment of foreigners is conditional upon approval by the Central Employment Bureau.²⁴⁹
- General People's Congress Order No. 238 of 1989 concerning foreign employees. This order prohibits the employment of any foreigner without the prior approval of the Central Employment bureau. It also establishes the procedures and conditions for the employment of foreigners.²⁵⁰

Libya and International Law

The Libyan government has repeatedly claimed that the international treaties it has ratified and published have direct effect and take precedence over the provisions of domestic legislation (with the exception of Libyan law that stems from *shari`a*, or Islamic

²⁴⁷ *Al-Jarida al-Rasmiyya*, 1989-11, No. 24, pp. 633-648.

²⁴⁸ *Al-Jarida al-Rasmiyya*, 1989-10-09, No. 20, p. 521.

²⁴⁹ *Al-Jarida al-Rasmiyya*, 1989-10-19, No. 22, pp. 591-592. Additional Information from the ILO Natlex database, available at http://www.ilo.org/dyn/natlex/natlex_browse.home, as of May 7, 2006.

²⁵⁰ *Al-Jarida al-Rasmiyya*, 1989-11, No. 24, pp. 628-632.

law).²⁵¹ According to the government, every international treaty signed by Libya, ratified by the General People's Congress and published in the Official Gazette, "acquires binding force and takes legal precedence over the provisions of domestic legislation."²⁵² In the event of conflict between the provisions of an international treaty to which Libya is a party and domestic legislation, "the provisions of the international treaty prevail over those of domestic legislation."²⁵³

In practice, however, Human Rights Watch found no evidence that international treaties take precedence over Libyan law. Libyan lawyers, judges and prosecutors told Human Rights Watch that they never cited international law in court; some claimed that reference to it was unnecessary because all international obligations were mirrored in Libya's national laws.

Some of Libya's laws are currently under review by legal experts. Libya's Secretary of Justice told Human Rights Watch in April 2005 that there is an "ambitious plan to reform legislation to bring it into line with international human rights standards."²⁵⁴ As of May 2006, no notable changes had been made.

Libya's Human Rights Commitments to Refugees and Migrants

The International Covenant on Civil and Political Rights,²⁵⁵ in article 13, as elaborated by General Comment 15 of the U.N. Human Rights Committee,²⁵⁶ prohibits arbitrary expulsion and entitles every foreigner to an individual decision on his or her removal or expulsion. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (hereafter, the Migrant Workers Convention), which Libya ratified in 2004, also prohibits collective expulsion and requires that any expulsion of a migrant worker or a member of his/her family be examined and decided

²⁵¹ See Libya's reports to the U.N. treaty bodies, e.g. UN Doc CAT/C/44/Add.3, para.18. The Human Rights Committee has expressed concern that the way in which conflicts between the ICCPR and domestic law are resolved by the courts is unclear (see CCPR/C/79/Add.101).

²⁵² Libyan Arab Jamahiriya report to the Committee Against Torture, CAT/C/44/Add.3, January 28, 1999, available at [www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.44.Add.3.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CAT.C.44.Add.3.En?Opendocument), as of March 7, 2006. See also Libyan Arab Jamahiriya report to the Human Rights Committee, CCPR/C/102/Add.1, October 15, 1997, available at [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.102.Add.1.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.102.Add.1.En?Opendocument), as of March 7, 2006.

²⁵³ Ibid.

²⁵⁴ Human Rights Watch interview with `Ali `Umar Abu Bakr, Tripoli, April 28, 2005.

²⁵⁵ Libya ratified the ICCPR in 1976 and the ICCPR's first Optional Protocol in 1989.

²⁵⁶ ICCPR General Comment No.15: The position of aliens under the Covenant, U.N. Human Rights Committee, Twenty-seventh session, 1986.

individually (article 22).²⁵⁷ These rights apply irrespective of whether the migrant worker is classified as “documented” or “non-documented.”²⁵⁸

On the regional level, Libya was among the States that adopted the 1981 African Charter on Human and Peoples’ Rights (Banjul Charter)²⁵⁹ and so reaffirmed a wide range of fundamental human rights contained therein, including the right “when persecuted, to seek and obtain asylum in other countries...”, the right to be expelled from a State “only...by virtue of a decision taken in accordance with the law,” and the prohibition against mass expulsion of non-nationals “aimed at national, racial, ethnic or religious groups.”

Libya has not acceded to the U.N. Convention relating to the Status of Refugees of 1951, or its Protocol of 1967 (hereafter, the Refugee Convention). Libya is, however, a party to the OAU Convention governing the specific aspects of refugee problems in Africa of 1969 (African Refugee Convention), which expands upon the 1951 Refugee Convention definition of a refugee.²⁶⁰ Libya has assumed meaningful obligations under this Convention, and therefore the government should apply its provisions to all refugees, of any nationality, on its territory.

While maintaining the “well-founded fear of being persecuted” definition of a refugee from the Refugee Convention and Protocol, the African Refugee Convention widens the refugee definition by also including as refugees people who flee “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his country...” Article 1(6) unambiguously places the responsibility on the Contracting State to “determine whether an applicant is a refugee” (although in practice this responsibility is often executed with the help of UNHCR). As with the 1951

²⁵⁷ The government of Libya has stated that there are “no migrant workers per se [in Libya]; rather there are members of a foreign workforce who had contracts to do certain work in Libya.” U.N. Human Rights Committee, Third periodic report of the Libyan Arab Jamahiriya, Summary Record of the 1713rd meeting, October 27, 1998, CCPR/C/SR.1713, para. 60, available at <http://www.unhcr.ch/tbs/doc.nsf/0/b49d944de4149cdc802566b300425576?Opendocument>, as of March 7, 2006.

²⁵⁸ Article 5 of the Migrant Workers Convention states: “For the purposes of the present Convention, migrant workers and members of their families:

(a) Are considered as documented or in a regular situation if they are authorized to enter, to stay and to engage in a remunerated activity in the State of employment pursuant to the law of that State and to international agreements to which that State is a party;

(b) Are considered as non-documented or in an irregular situation if they do not comply with the conditions provided for in subparagraph (a) of the present article.”

²⁵⁹ OAU Doc. CAB/LEG/67/3 rev.5, 21 I.L.M. 58 (1982), entered into force October 21, 1986.

²⁶⁰ Convention Governing the Specific Aspects of Refugee Problems in Africa, September 10, 1969; entered into force June 20, 1974. Libya ratified the African Refugee Convention on April 25, 1981.

Refugee Convention, an important point of interpretation is that a person is inherently a refugee by virtue of fitting the definition, and this fact merely needs to be *recognized* by the host country. Thus, being a refugee and having the rights of a refugee is not something to be “granted,” and a state must meet its obligations towards refugees whether or not it calls them “refugees” within its domestic law.

One of the most striking advances of the African Refugee Convention over the Refugee Convention and Protocol is its espousal of the right of asylum (article 2).²⁶¹ On the other hand, the African Refugee Convention is comparatively silent on the rights of refugees once they are on the territory of a Contracting State. It contains only fifteen articles (as opposed to the forty-six of the Refugee Convention, which addresses the status of refugees in much greater detail) and therefore overlooks certain basic socio-economic and civil-political rights. While the African Refugee Convention guarantees non-discrimination (article 4) and travel documents (article 6), the absence of other obligations relating to the content of refugee status in the regional instrument makes it important that Libya accede to the global instrument as well.

Paragraph 9 of the preamble to the African Refugee Convention recognizes the 1951 Refugee Convention and its 1967 Protocol as “the basic and universal instrument relating to the status of refugees.” Article 8 of the African Refugee Convention requires contracting states to cooperate with UNHCR, and describes that Convention as the “effective regional complement” to the 1951 Refugee Convention. These references support the argument that contracting states to the African Refugee Convention should also accede to the global Refugee Convention, and at least cooperate constructively with UNHCR.²⁶² On the other hand, the African Refugee Convention does not contain any article that gives UNHCR a supervisory role in relation to the instrument, as in article 35 of the Refugee Convention. This role is instead, to some extent, afforded to the OAU Secretariat (now A.U.), which is supposed to receive information and statistical data relating to the condition of refugees in each contracting state.

The African Refugee Convention’s most important obligation in relation to Libyan law and practice is contained in article 2(3): namely, the obligation of non-refoulement. This is an absolute prohibition of “rejection at the frontier, return or expulsion, which would compel [the refugee] to return to or remain in a territory where his life, physical integrity or liberty would be threatened for the reasons set out [in the definitional article].”

²⁶¹ Article 2(1) of the African Refugee Convention speaks of Contracting States using “their best endeavours, consistent with their respective legislation...” to secure asylum/settlement of refugees on their territory.

²⁶² In addition, Libya is a member of the Arab League, which reached a collective agreement with UNHCR on July 27, 2000, concerning cooperation and consultation, including exchange of information and data.

Further, Libya ratified the U.N. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereafter, CAT) in May 1989.²⁶³ Article 3 of the CAT absolutely prohibits refoulement to the risk of torture; there are no grounds for exclusion from this protection.

Libya is party to the Convention on the Rights of the Child (CRC)²⁶⁴ which, inter alia, contains specific provisions relating to refugee children in article 22.²⁶⁵ Both the Committee on the Elimination of Racial Discrimination and the Committee of the Rights of the Child have recently invited Libya to ratify the Refugee Convention and expand its cooperation with UNHCR.²⁶⁶

In 2004 Libya ratified the U.N. Convention against Transnational Organized Crime, and its two protocols against migrant smuggling and human trafficking. Consequently, Libya is considering a new law, yet to be signed, which would provide higher penalties for people-smugglers.²⁶⁷

Equal Application of Human Rights Obligations to Non-Nationals

Libya is bound by a range of human rights obligations that apply equally to non-nationals.²⁶⁸

The Convention against Torture applies in its entirety equally to all non-nationals within a state party's jurisdiction, as do ICCPR articles 7 (absolute prohibition on torture, and cruel, inhuman or degrading treatment or punishment) and 10 (those denied their liberty

²⁶³ Libya ratified the CAT on May 16, 1989 but has not ratified the Optional Protocol.

²⁶⁴ Libya ratified the CRC on April 15, 1993.

²⁶⁵ In its concluding observations of June 6, 2003, the CRC recommended that Libya create an effective legal framework for the protection of the rights of refugee and asylum-seeking children, in accordance with both Article 22 CRC and also Article 2 CRC (non-discrimination).

²⁶⁶ See concluding observations of March 11, 2003, CERD/C/64/CO/4, and concluding observations of June 6, 2003, CRC/C/15/Add.209. The CERD Committee regretted that it had received from the reporting state party no information on non-nationals in Libya, including undocumented migrants and/or refugees.

²⁶⁷ United Nations Convention against Transnational Organized Crime, adopted by General Assembly resolution 55/25 of November 15, 2000; entered into force September 29, 2003. Libya ratified the Convention on June 18, 2004. Libya ratified the Protocol against the Smuggling of Migrants by Land, Sea and Air, and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children on September 24, 2004. The latter protocol contains obligations to protect and assist the victims of trafficking in persons in article 6, although there is no obligation for State Parties to grant victims permanent protection on their territory. Human Rights Watch research has not explored the issue of people-trafficking, particularly trafficking of women and children, to and through Libya, though several diplomatic sources have indicated that it is a large problem.

²⁶⁸ Libya is a party to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and its Optional Protocol.

to be treated with humanity and respect for human dignity). Another obligation with equal application is the prohibition of arbitrary detention in article 9 of the ICCPR, a prohibition that has also been incorporated into the 1981 African Charter on Human and People's Rights and the Convention on the Rights of the Child.²⁶⁹ The Migrant Workers Convention obliges state parties to respect on a non-discriminatory basis a range of human rights for migrants and their families, including the right not to be arbitrarily detained. It also protects migrants lawfully detained not to be subject to torture or ill-treatment.

Jurisprudence around the world and decisions of successive sessions of the U.N. Human Rights Committee clarify that the prohibition of arbitrary detention applies in immigration related cases.²⁷⁰ As outlined above, Libyan law foresees the need to detain an unauthorized migrant only with a view to removing that person from the territory. All use of immigration detention should therefore be necessary and proportionate to that end.

Libya is party to the Convention on the Elimination of Racial Discrimination (CERD)²⁷¹ which, *inter alia*, requires that the state party should provide effective protections and remedies against racial discrimination throughout its jurisdiction, including to non-nationals. In its concluding observations of March 2004, the Committee on the Elimination of Racial Discrimination pointed out that Libya has no comprehensive legislation to prevent, prohibit, or remedy racial discrimination.²⁷²

²⁶⁹ In addition, there are a number of texts that contain detailed safeguards elaborating upon this prohibition, such as the Standard Minimum Rules for the Treatment of Prisoners (adopted in 1955 and extended in 1977), the 1988 Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, and the 1990 Rules for Juveniles Deprived of their Liberty.

²⁷⁰ See, for example, CCPR finding in *A v. Australia*, Communication No.560/1993, U.N.Doc CCPR/C/59/D/560/1993 (30 April 1997). See also HCR General Opinion 15/27 regarding Article 2 ICCPR: "Aliens have the full right to liberty and freedom of the person. If lawfully deprived of their liberty, they shall be treated with humanity and with respect for the inherent dignity of the person."

²⁷¹ International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly resolution 2106 (XX) of December 21, 1965; entered into force January 4, 1969. Libya ratified the CERD on July 3, 1968, with a reservation with regard to article 22 (on referral of cases to the International Court of Justice).

²⁷² Concluding Observations of the Committee on the Elimination of Racial Discrimination: Libyan Arab Jamahiriya, March 12, 2004, CERD/C/64/CO/4.

X. Role of the European Union and Italy

The focus of this chapter is on the European – and specifically the Italian – dimension of migration and asylum in Libya. It looks at how the European Union has engaged Libya as a partner in the E.U.’s “externalization” agenda, through which the E.U. is seeking to prevent many asylum seekers from reaching European soil, or immediately returning those who succeed to come. It also examines how Italy is running ahead of the European Union in its bilateral cooperation with Libya, working to bolster Libya’s capabilities to intercept people who attempt to reach Italian shores.

The Italian government implements a mandatory detention policy for undocumented migrants and asylum seekers, and has engaged in collective expulsions back to Libya, in violation of Italy’s human rights and asylum obligations. Abuses at Italy’s detention facility on the island of Lampedusa include sub-standard conditions and episodes of mass expulsion to Libya without an asylum review.

The E.U.’s “Externalization” Agenda

Since the mid-1980s, some policy makers in Europe have pursued the idea of “externalizing” the hosting of asylum seekers who attempt to reach or already are on the territory of the European Union.²⁷³ The externalization idea has three basic versions which overlap:

1. “Safe third country” Asylum seekers are readmitted to supposedly safe non-E.U. countries through which they pass – increasingly with little concern as to whether they enjoy effective protection there. Those returned to allegedly safe countries are often subject to further deportations to countries with less capacity to adjudicate their claims fairly or meet basic needs. A number of E.U. member states have implemented the “safe third country” concept for some time, based on a web of bilateral and multilateral readmission agreements, most of which contain few safeguards for asylum seekers.²⁷⁴

²⁷³ See U.N. General Assembly, International procedures for the protection of refugees: draft resolution/Denmark, 12 November 1986, U.N. Doc. A/C.3/41/L.51. See also, Secretariat of the IGC, Working Paper on the Reception in Region of Origin, Geneva 1994.

²⁷⁴ Article 27 of the E.U. Council Directive on minimum standards on procedures for granting and withdrawing refugee status formalized this concept. Article 30 of the same directive directs the Council to adopt a common list of safe third countries. (Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status, Council of the European Union, doc. 12983/05 ASILE 24, Brussels, 17 November 2005.)

2. “Capacity building” Closely linked to the “safe third country” concept, “capacity building” utilizes development aid to create sufficient protection conditions in a third country so that E.U. states may conclude readmission agreements with that government. Asylum seekers would be returned to countries that meet their minimal protection needs. This version contains a positive element of preventive capacity building; fewer migrants and refugees would feel the need to take dangerous smuggling routes, and would better be able to find protection in the region. The bulk of the capacity-building assistance from E.U. countries to refugee host and transit countries, however, has gone to strengthening border controls and immigration enforcement.²⁷⁵

3. “Outsourcing” Under this version, all or most asylum seekers who arrive or apply in E.U. states would be sent to a country outside the E.U. for processing by E.U.-appointed officials. Asylum seekers would go to transit processing centers in countries outside the E.U. regardless of whether they passed through those countries. E.U. member states would not have binding legal obligations regarding refugee protection, but could pick and choose which and how many refugees to accept. Asylum seekers would almost certainly have substantially reduced procedural rights to appeal and to legal counsel. While successful applicants would then be resettled into an E.U. member state on a quota basis, it is less clear how long they might have to wait for a resettlement offer, how they would be treated if found to be refugees but no resettlement offers were available, or what would happen to claimants who do not succeed.

In March 2003 the United Kingdom proposed the creation of “transit processing centres” in various states surrounding the E.U., to which E.U. states might return asylum seekers for extraterritorial determination of their claims.²⁷⁶ This approach to

²⁷⁵ The E.U. has started work on two pilot “Regional Protection Programmes” to enhance protection capacity in areas close to regions of origin. The first two pilot programs are in the western Newly Independent States (Ukraine, Moldova, Belarus) and the African Great Lakes (focused principally on Tanzania). See draft Council Conclusions on the Communication from the Commission on regional protection programmes (doc. 11989/05 ASILE 14 RELEX 438 and doc. 12593/05 ASILE 18 RELEX 471). See also Communication from the Commission to the Council and the European Parliament on Regional Protection Programmes, COM (2005) 388 final, Brussels, 1 September 2005. See also, UNHCR Observations on Communication from the European Commission to the Council and the European Parliament on Regional Protection Programmes, U.N. High Commissioner for Refugees, October 10, 2005.

²⁷⁶ U.K. Prime Minister Tony Blair’s letter to Greek Prime Minister Costas Simitis is available at <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf>, as of April 29, 2006. See also Gregor Noll, “Visions of the Exceptional: Legal and Theoretical Issues Raised by Transit Processing Centres and Protection Zones,” *European Journal of Migration and Law*, 5:303-341, 2003.

“strengthen the E.U.’s external frontiers” would involve the transfer of asylum seekers regardless of their path of travel, as well as the readmission of those who are proven to have transited the buffer state in question. Denmark and the Netherlands welcomed the proposal, though governments such as France, Germany and Sweden showed less support. The proposal accepted diminished procedural safeguards (limited appeal rights, no access to legal counsel, etc.) and the necessity of detaining those returned. The U.K. proposal did acknowledge that asylum seekers could not be returned to the “transit processing centres” or “regional protection areas” if they would be exposed to cruel and inhuman treatment.

In summer 2004, the German and Italian Interior Ministers proposed that the E.U. set up refugee processing centers in North Africa. At a meeting of E.U. Justice and Home Affairs ministers in Holland on September 30-October 1, 2004, the proposal got a mixed response, with France, Sweden and Belgium rejecting the idea.²⁷⁷ At a meeting of Justice and Home Affairs ministers in the U.K on September 9, 2005, German Minister Otto Schily again presented the idea of screening asylum seekers at centers in North Africa and the ministers backed a European Commission plan with four main points: expedite the expulsions of illegal immigrants, better integrate legal migrants, improve asylum capacities of non-E.U. states and help developing nations manage their migratory flows.²⁷⁸

Transit countries like Libya rejected the idea of taking Europe’s asylum seekers without a substantial pay-off in return. This resistance, coupled with legal and moral objections from refugee advocates, the media and other E.U. governments, scrapped the idea.

Libya as Partner in E.U. “Externalized” Asylum Processing

At present, the E.U. relies on versions 1 and 2 of the externalization model – focusing on intercepting migrants before they reach E.U. states and immediately returning them if they do.²⁷⁹ In this regard, the European Union has been cultivating a partnership with the Libyan government.

The U.K. proposal was inspired by the Australian “Pacific Solution” – a deterrent policy composed of equivalents to externalization version 1 (push backs to Indonesia) and version 3 (transfers to Nauru and Papua New Guinea). See Human Rights Watch report, “‘By Invitation Only’: Australian Asylum Policy, 2002, available at <http://hrw.org/reports/2002/australia/>, as of May 7, 2006.

²⁷⁷ Constant Brand, “European Union Divided Over Whether to Set Up Refugee Processing Centers in Africa, Associated Press, October 1, 2004.

²⁷⁸ “EU/Africa: EU Interior Ministers Agree to Focus More on Migration,” Europa Information, September 10, 2005.

²⁷⁹ See David McKeever, Jessica Shultz and Sophia Swithern “Foreign Territory: The Internationalisation of EU Asylum Policy (Oxford: Oxfam. 2005).

This cooperation is taking place during a steady thaw in Libyan-E.U. relations over the past several years. In April 1999, the third Euro-Mediterranean Conference of Foreign Ministers decided that Libya could become a partner of the E.U.'s Barcelona Process²⁸⁰ so long as it accepted the full Barcelona *acquis*.²⁸¹ On October 11, 2004 the E.U. lifted economic sanctions, including an arms embargo, imposed on Libya since 1992.²⁸²

That same day, the Council of the European Union agreed to embark on a policy of engagement with Libya on migration matters, and decided to send a technical mission there “to examine arrangements for combating illegal migration.”²⁸³ The E.U. subsequently sent a mission to Libya in November-December 2004 “to examine arrangements for combating illegal migration,” and that mission’s findings are cited throughout this report.

Also in November 2004, the European Council adopted the Hague Programme, which called for a comprehensive approach on asylum and migration, including a request for a European Commission study on “the merits, appropriateness and feasibility of joint processing of asylum applications outside EU territory.” It also proposed establishing a European Neighborhood and Partnership instrument for “intensifying cooperation and dialogue on asylum and migration with neighboring countries amongst others around the Mediterranean basin.”²⁸⁴

The E.U.’s rhetoric on the importance of human rights standards as a condition for migration cooperation is not supported by the cooperation that is taking place. At a meeting on June 2-3, 2005, the E.U. Justice and Home Affairs Council endorsed a Council Conclusion on cooperation with Libya on migration issues, saying that any cooperation with Libya on migration will be “limited in scope and take place on a

²⁸⁰ The Barcelona Process is a wide framework of political, economic and social relations between the E.U. member states and partners of the Southern Mediterranean.

²⁸¹ This includes agreement to act in accordance with the UN Charter and the Universal Declaration of Human Rights, to develop the rule of law and democratic political systems, and to promote respect for diversity and pluralism and to combat manifestations of intolerance, racism, and xenophobia. Although Libya has yet to become a Barcelona partner, the European Council reaffirmed in June 2005 that “the full integration of Libya into the Barcelona Process is the overall objective of the E.U.’s policy of engagement in that country.” (“Presidency Conclusions,” Agence Europe, June 19, 2005.)

²⁸² “EU Lifts Sanctions against Libya,” Europa Newsletter, available at http://europa.eu.int/newsletter/archives2004/issue44/index_en.htm, as of March 7, 2006.

²⁸³ Cited in “Note from the Presidency to the Council. Subject: Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues,” Council of the European Union, Brussels, May 27, 2005. Doc no: 9413/1/05 REV 1.

²⁸⁴ The Hague Programme: Strengthening Freedom, Security and Justice in the European Union. Presidency Conclusions, doc. 14292/04 Annex 1, Brussels, 4-5 November 2004.

technical ad hoc basis” as long as Libya has not fully integrated into the Barcelona Process. At the same time, it indicated a willingness to move ahead on a series of ad hoc measures, even though Libya is far from meeting the standards of the Barcelona *acquis*.²⁸⁵ These measures included reinforcing “systematic operational co-operation between the respective national services responsible for sea borders,” and developing common Mediterranean Sea operations involving the temporary deployment of E.U. Member States’ vessels and aircraft.²⁸⁶ The ad hoc measures also included sending E.U. immigration liaison officers (ILOs) to Libyan seaports and Tripoli airport for interception purposes;²⁸⁷ and training Libyan officials on immigration controls, as well as on asylum issues, and on “best practices” for removal of illegal immigrants. Libyan officials welcomed international assistance with control of their land (entry) points,²⁸⁸ but the E.U.’s preference was to provide assistance on coastal (exit) control.

The Council Conclusion also calls for launching exploratory discussions between the E.U. and Libya to develop “concrete cooperation” to “tackle illegal migration in areas such as training, reinforcement of institution building, asylum issues, and public awareness of the dangers of illegal migration.”²⁸⁹ Included on the list of suggestions for these discussions in the short term is how to assist in the repatriation of failed asylum seekers “after an independent asylum procedure in accordance with international standards,” and intensified cooperation and capacity building for “migration management and protection of refugees” in cooperation with UNHCR.²⁹⁰

Spain, Italy, and Malta added a note to the list of medium-term discussion topics, expressing their wish to include “formalized cooperation in the field of return of illegal immigrants to Libya” (while respecting human rights and “ensuring the sustainability of

²⁸⁵ “Council of the European Union, 2664th Council Meeting, Justice and Home Affairs, Luxembourg, 2-3 June 2005,” 8849/05, press release, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/85255.pdf, as of March 7, 2006.

²⁸⁶ The E.U. hopes to define a search and rescue area for Libya, as one does not currently exist. The definition of Italian/international/Libyan territorial waters is also complex in the Sicily Channel.

²⁸⁷ The E.U. Justice and Home Affairs Council on February 19, 2004, adopted a regulation on the creation of an immigration liaison officers’ network. It refers to the “prevention and combating of illegal immigration, the return of illegal immigrants and the management of legal migration, but which contains no reference to the right to seek asylum. Council of the European Union, 2561st Council Meeting, Justice and Home Affairs, Brussels, 19 February 2004,” 5831/04, press release, available online at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/79117.pdf, as of March 1, 2006. The regulation contains no reference to the right to seek asylum.

²⁸⁸ Video on Illegal Immigration produced by the General People’s Committee for General Security, November 2004.

²⁸⁹ “Council of the European Union, 2664th Council Meeting, Justice and Home Affairs, Luxembourg, 2-3 June 2005,” 8849/05, press release, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/85255.pdf, as of March 1, 2006.

²⁹⁰ *Ibid.*

returns”), as well as technical and financial contributions for joint operational projects between Libya and its neighboring countries, such as Egypt and Niger.²⁹¹

The addition by these three states with Mediterranean coastlines reveals their desire for faster and more enforcement-oriented cooperation with Maghreb states. An indication that sub-regional groupings may move faster than the E.U. is the development of the “5+5” Migration Dialogue – a group of five European states (France, Italy, Malta, Portugal and Spain) and five African-Maghreb states (Algeria, Libya, Mauritania, Morocco and Tunisia) meeting regularly since 2001 to discuss strengthened management of migration issues. The conferences, organized with the assistance of the IOM, have focused predominantly on control of irregular migration.

Absence of Refugee Protection Preconditions

Despite rhetoric about making the “extent and development” of cooperation on migration matters contingent on Libya’s commitment to fundamental refugee and human rights, the E.U. is moving forward with Libya, particularly on migration enforcement. The E.U. did not set as a precondition for cooperation either that Libya sign and implement the Refugee Convention, that it cooperate with UNHCR, or that it implement the Migrant Workers Convention. In the absence of a clearly agreed role for UNHCR, the E.U. states’ interest in offering training on asylum issues and “best practices” for removal of illegal immigrants to Libya does not inspire confidence. Furthermore, Italy’s own unlawful expulsions to Libya and its denial of the right to seek asylum to some who arrived in Lampedusa have gone forward despite condemnation by UNHCR, the European Parliament and the European Court of Human Rights (see below, “The Italian Dimension”).

The E.U. member states which receive most transit migrants and asylum seekers from Libya – notably Italy – are unwilling to advocate for safeguards in relation to refugee protection or the detention and expulsion of migrants in Libya. Such safeguards would impede the speedy removal of persons whom they themselves have forcibly returned to Libya, or whom Libya has intercepted with their encouragement and assistance.

There are some hopeful signs. In tandem with seeking to strengthen Libya’s border controls, the E.U. has spoken about enhancing refugee protection in Libya. The European Commission’s Technical Mission to Libya in November-December 2004, for

²⁹¹ “Note from the Presidency to the Council. Subject: Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues,” Council of the European Union, Brussels, May 27, 2005. Doc. no: 9413/1/05 Rev. 1.

example, was frank in acknowledging problems, including the absence in Libya of an individual status determination prior to deportation of illegal immigrants. The mission report noted that a “comprehensive long-term global approach to migration is needed, which should also include... protection of refugees.” It concluded that “a full recognition of UNHCR status by Libya would constitute a first step in this respect.”²⁹² This conclusion was partly reflected in the Justice and Home Affairs Council Conclusion of June 2005, which called on the Libyan authorities “to demonstrate a genuine commitment to fulfill their obligations under the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa which recognizes that the Geneva Convention on Refugees constitutes the basic and universal instrument relating to the status of refugees and which requires effective cooperation with UNHCR and the respect of the principle of ‘non-refoulement.’”²⁹³

Transforming Libya into a safe country of first asylum is a laudable goal in terms of enhancing refugee protection, but not as a nominal goal pursued self-interestedly by E.U. states to make Libya a less inappropriate destination for readmissions. E.U. plans for “protection in the region” not only seek to improve protection in countries of transit, but are also based on the proposition that, even before such improvements take place, “intercontinental movements are seldom necessary for protection reasons alone.”²⁹⁴

As discussed in this report, a number of Libya’s treaty obligations imply that Libya should cooperate with UNHCR. On August 9, 2005, Libya signed a Memorandum of Understanding with the IOM to establish the presence of the migration agency in Libya, and the organization opened a Tripoli office in April 2006.²⁹⁵ IOM said the agreement included provisions on “the rights of migrants, international migration law, and technical assistance and capacity building for migration management.”²⁹⁶ The Italian government has agreed to fund pilot projects for IOM in Libya.²⁹⁷ Future projects, IOM said, would

²⁹² European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report.”

²⁹³ “Council of the European Union, 2664th Council Meeting, Justice and Home Affairs, Luxembourg, 2-3 June 2005,” 8849/05, press release, available at http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/85255.pdf, as of March 7, 2006.

²⁹⁴ “Draft resolution on manifestly unfounded applications for asylum,” Ad Hoc Group Migration for the U.K. Presidency of the Council of the European Communities, Brussels, July 1, 1992, cited in Edward Mortimer, “Behind closed doors – Governments are conspiring to restrict the right to political asylum in the EC,” *Financial Times* (London), October 28, 1992.

²⁹⁵ IOM Press Briefing Notes, “Libya—IOM Opens Office in Tripoli,” April 25, 2006, available at <http://www.iom.int/en/news/PBN250406.shtml#item2>, as of April 28, 2006.

²⁹⁶ IOM Press Briefing Notes, “IOM and Libya Sign Agreement,” August 9, 2005, available at <http://www.iom.int/en/news/PBN090805.shtml>, as of March 10, 2006.

²⁹⁷ According to the Italian government, its foreign ministry will implement a project to develop regional cooperation and institutional capacity-building in Libya (as well as Niger) on border management and the fight

include, among others, assisted voluntary return and sustainable reintegration programs for irregular migrants in Libya, information campaigns directed to potential irregular migrants, and income-generating projects for potential migrants in countries neighboring Libya.

In May 1997, IOM signed a Memorandum of Understanding with UNHCR, in which it agreed not to involve itself in measures conflicting with the humanitarian concerns of UNHCR.²⁹⁸ IOM, therefore, has a duty to identify and refer asylum seekers to UNHCR.

IOM has proposed a set of activities in Libya, called TRIM (Transit and Irregular Migration Management), which would involve projects to improve conditions at reception centers for irregular migrants, and IOM assistance in migrant returns to their countries of origin through its Assisted Voluntary Return and Reinsertion program. The international migration agency included \$3.59 million in its 2005 budget appeal for TRIM projects in Libya.²⁹⁹ IOM has already been involved in training at the police academy in Tripoli on border control, document fraud, and “assisted voluntary return of irregular migrants transiting Libya en route to southern Europe.”³⁰⁰

Notwithstanding their rhetorical or real commitments to promote the role of UNHCR in Libya, it appears that both the E.U. and IOM have initiated projects that run counter to this commitment. This is partly because several E.U. member states most affected by the arrival of transit migrants and asylum seekers via Libya are not eager to impede removal to countries of origin of those unlawfully returned by Italy. This includes a reluctance to have UNHCR screen such returnees to determine whether the Italian government denied individuals their right to seek asylum in Lampedusa.

Libya’s Reservations on Cooperation with the E.U.

The Libyan government considers the resources that the E.U. asks it to devote to migration control unreasonably large; the Italian contributions offered so far represent a fraction of the total costs involved. Libyan immigration officials told Human Rights Watch in mid-2005 that the E.U. had offered only €9 million to stop illegal immigration,

against illegal immigration, with co-financing from the European Commission. The project foresees professional training courses for police in Libya, including the fight against traffickers, assistance and protection of victims, identification of illegal immigrants, and an evaluation of international protection and respect for human rights. (Letter to Human Rights Watch from the Italian Foreign Ministry, May 30, 2006.)

²⁹⁸ See Gregor Noll, “Rejected Asylum Seekers: The Problem of Return,” *New Issues in Refugee Research*, Working Paper No. 4, UNHCR, Geneva, May 1999, p. 48.

²⁹⁹ *Migration Initiative Appeal 2005*, IOM, Geneva, December 2004, p. 26.

³⁰⁰ *World Migration 2005: Costs and Benefits of International Migration*, IOM, Geneva (2005) p. 79.

which they considered laughably small compared to the scale of the problem: “One or two million euros is barely enough to drill one well or build one shelter,” `Ali Mdorad scoffed.³⁰¹

Perhaps to coax more money out of the E.U., the Libyan government has focused on tackling the root causes of forced displacement and economic migration. “We want cooperation with the E.U. to help development in the countries of origin,” head of Libya’s deportation camps Hadi Khamis said.³⁰²

Consistent with this view, the General People’s Congress in 2004 called for an A.U.-E.U. summit meeting, hosted by Libya, to discuss how to give people a “settled and dignified life” in their home countries (the proposed summit has yet to take place). The Libyan government claims that it will spend U.S. \$3-4 billion over ten years on development in African source countries.³⁰³ The government also gives humanitarian aid: in October 2004 it sent eight truckloads of aid to the refugee camps of eastern Chad. Other food programs exist in Burkino Faso, Niger, Mali and Sudan.³⁰⁴

Regarding E.U. “offshore processing,” Shukri Ghanim answered candidly when asked by Human Rights Watch whether Libya would ever countenance such processing camps on its territory. “Why should we,” he said. “We don’t want to be the trashcan for Europe.”³⁰⁵

The Italian Dimension

Bilateral cooperation between Libya and Italy on migration and asylum is more developed than the cooperation arrangements negotiated so far between Libya and the E.U. Italy has wanted to bolster interception measures within Libya since 1999, and over the past three years this has evolved into a policy of detaining and expelling to Libya undocumented foreigners who via Libya reached Italian shores.

Italy’s cooperation with Libya stems from a general view among the public and some in government that asylum seekers are storming Italy’s shores, much as people feared an “invasion” from East Europe after 1989, and that the asylum and immigration system is

³⁰¹ Human Rights Watch interview with `Ali Mdorad, Tripoli, April 30, 2005.

³⁰² Human Rights Watch interview with Hadi Khamis, Tripoli, April 25, 2005.

³⁰³ Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

³⁰⁴ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

³⁰⁵ Human Rights Watch interview with Shukri Ghanim, Tripoli, April 28, 2005.

overstretched. The statistics, however, show that the alleged mass influx is less than commonly feared. In 2005, Italy ranked eighth among the twenty-five E.U. member states in the number of asylum applications it received (9,500), and eighteenth when that number is per 1,000 inhabitants (0.2).³⁰⁶ The number of asylum applicants has been falling steadily since 2002, when it peaked at 16,020.

In addition, a relatively small percentage of undocumented foreigners have entered Italy illegally by sea. According to an Italian government report, the majority of undocumented foreigners in Italy entered the country legally over a land border and became undocumented after their visas expired or they overstayed their residence permits. Only 10 percent of undocumented workers entered the country illegally by sea.³⁰⁷

One key cause of Italy's tough stance is the Dublin Convention, which since 1998 has resulted in other E.U. states returning to Italy asylum seekers who had transited through Italy.³⁰⁸ The Dublin Convention transformed Italy from a transit country to a destination country, and Italy has been trying to transform the next in line: Libya.

On December 13, 2000 Libya and Italy reached a general agreement to combat terrorism, organized crime, drug trafficking and illegal immigration.³⁰⁹ In February 2003 Italy established a permanent liaison with Libya on organized crime and irregular migration. The Italian Minister of Interior told the Italian parliament in June that "after long and complex negotiations, we have reached agreement with Libya on concrete initiatives for joint control of land borders, for counteractions at sea, and for the

³⁰⁶ UNHCR, *Asylum Levels and Trends in Industrialized Countries, 2005*, available at <http://www.unhcr.org/cgi-bin/texis/vtx/statistics/opendoc.pdf?tbl=STATISTICS&id=44153f592>, as of June 6, 2006.

³⁰⁷ "Controllo sull'Attuazione dell'Accordo Di Schengen," parliamentary committee presentation by Prefect Alessandro Pansa, Central Director for Immigration and Border Police, April 19, 2005. See also Rutvica Andrijasevic, "How to Balance Rights and Responsibilities on Asylum at the EU's Southern Border of Italy and Libya," Centre on Migration, Policy and Society, Working Paper No. 27, University of Oxford, 2006, pp. 15-16.

³⁰⁸ In 2004, E.U. member states sent 868 asylum seekers back to Italy; Italy, in turn, sent 106 people to other E.U. states. (European Council on Refugees and Exiles, 2004 Country Report, Italy, available at <http://www.ecre.org/country04/Italy%20-%20FINAL.pdf>, as of June 6, 2006.)

Italy is not the only European country to respond this way—Spain returned, expelled, or pushed back 119,169 non-nationals in 2004, a 21 percent increase from the previous year. (See European Council on Refugees and Exiles, 2004 Country Report, Spain, available at <http://www.ecre.org/country04/Spain%20-%20FINAL.pdf>, as of June 6, 2006.) Between 2002 and 2004, Malta apprehended and detained some 3,500 people who arrived from Libya. Italy, however, is the only country that has repeatedly organized collective expulsions from its territory.

³⁰⁹ Letter to Human Rights Watch from Giuseppe Panocchia, Minister Plenipotentiary in the General Department for Italians Abroad and Migration Policies, Italian Ministry of Foreign Affairs, May 30, 2006.

development of a common investigative activity on criminal organizations involved in trafficking of illegal immigrants.”³¹⁰

In 2003 alone, the Italian government spent more than 5.5 million euros on cooperation with Libya on immigration matters.³¹¹ Italy subsequently provided training and equipment to stem illegal immigration and financed the construction of a reception center for undocumented migrants in Libya.³¹² According to the European Commission, the camp, under construction since November 2004, will be “in line with European criteria” though which criteria remains unclear. Italy is planning to finance two more camps in the south, in Kufra and Sebha.³¹³

In August 2004, then-Italian Prime Minister Silvio Berlusconi visited Tripoli and had a well publicized five-hour meeting with al-Qadhafi,³¹⁴ Neither side emphasized immigration as the subject of the meeting, but Italy agreed to provide training, technology and equipment to help Libya curb irregular immigration (Interior Minister Pisanu had visited Libya the previous month). Once again, the deal ran ahead of any E.U. agreement that might have established preconditions to ensure proper treatment of those in need of international protection.

The details of the August 2004 bilateral agreement remain unknown. Italy has refused to make it public despite public requests from the European Parliament, the U.N. Human Rights Committee and non-governmental organizations, including Human Rights Watch. According to the European Parliament, the secret agreement is “thought to give the Libyan authorities the task of supervising migration and to commit them to readmitting people returned by Italy.”³¹⁵

³¹⁰ Intervention of then-Minister of the Interior Giuseppe Pisanu in the House of Deputies, June 25, 2003, available at <http://www.governo.it/sezioni/ministro/intervistadiscorso.php?idarticolo=157> as of March 7, 2006.

³¹¹ See Corte dei Conti, “Management of Resources Appropriated in Connection with the Phenomenon of Immigration,” Table 2, available at http://www.corteconti.it/Ricerca-e-1/Gli-Atti-d/Controllo-/Documenti/Sezione-ce1/Anno-2005/Adunanza-c/allegati-d3/Relazione.doc_cvt.htm, as of April 29, 2006.).

³¹² European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report,” p. 15.

³¹³ *Ibid.*, p. 59. The Italian government told Human Rights Watch that the three camps were “holding centers for illegal immigrants subject to expulsion procedures from Libyan territory.” As of May 2006, the construction of one camp was complete and handover to the Libyan authorities was imminent. (Letter to Human Rights Watch from the Italian Ministry of Foreign Affairs, May 30, 2006.)

³¹⁴ Prime Minister Berlusconi visited Libya three times in 2004 (February, August and October).

³¹⁵ European Parliament resolution on Lampedusa, April 14, 2005.

Two months after the agreement, the E.U. agreed to lift its eighteen-year arms embargo on Libya because of the country's willingness to abandon its weapons of mass destruction program. Italy in particular had lobbied hard for the E.U. to lift the ban so that Libya could import equipment to better control its borders and limit the migration flow.³¹⁶

Since 2003, Italy has been funding charter flights to return undocumented immigrants in Libya back to their countries of origin. The report of the 2004 European Commission technical mission to Libya includes an annex with forty-seven charter flights that Italy financed to return 5,688 migrants to various countries, including Bangladesh, Egypt, Eritrea, Ghana, Mali, Niger, Nigeria, Pakistan, Sudan, and Syria. The report provided no figure but said the Italian charter flight program in Libya "implies a substantial economic contribution."³¹⁷

On February 6, 2005, the Italian Minister of the Interior announced "a verbal agreement" with Libya to control "clandestine immigration."³¹⁸ Media reports, citing unnamed sources at the Libyan Embassy in Rome, stated that the Italian Interior Ministry would provide €15 million over three years to local Libyan police forces for equipment to combat illegal immigration.³¹⁹ A January 17, 2006 press release by the Italian Ministry of the Interior, concerning a meeting between al-Qadhafi and Minister Pisanu, announced that the two governments were discussing "more concrete plans" for cooperation to stem irregular migration to Italy. It also said that in just over one year, Italian-Libyan cooperation had prevented 40,000 undocumented people from leaving Libya.³²⁰

³¹⁶ Three days before the E.U.'s public announcement, at a ceremony on October 8 in Mellita, Libya to open a new gas pipeline from Libya to Italy, al-Qadhafi praised Berlusconi for lobbying the E.U. The 540-kilometer gas pipeline runs from western Libya to Gela in Sicily and is projected to supply 10 percent of Italy's energy needs. ("New gas pipeline linking Libya to Italy opened," Alexander's Gas & Oil Connections, News & Trends: Europe, October 10, 2004, available at <http://www.gasandoil.com/goc/news/nte44584.htm>, as of April 29, 2006.)

³¹⁷ European Commission, "Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report," pp. 59 and 61-62.

³¹⁸ Italian Ministry of the Interior press release, February 6, 2005, available at <http://www.interno.it/news/articolo.php?idArticolo=20532>, as of March 7, 2006.

³¹⁹ See Fiorenza Sarzanini, "L'ira di Gheddafi con Berlusconi: 'Tratto solo con Pisanu,'" *Corriere della Sera* (Milan), 26 May 2005, available at http://www.corriere.it/Primo_Piano/Esteri/2005/05_Maggio/26/gheddafi.shtml, as of March 7, 2006.

³²⁰ Italian Ministry of the Interior press release, "Incontro a Sirte (Libia) tra il Ministro dell'Interno Giuseppe Pisanu e il leader della Rivoluzione Muhammad Gheddafi," January 17, 2006. See also "Italian, Libyan Interior Ministers Reaffirm Commitment to Fight Illegal Immigration," Associated Press, January 18, 2006.

Detention in Italy

Until 1998, Italian authorities gave those without authorization to stay in the country an order to leave within fifteen days. Since then, the government has implemented a mandatory detention policy for all those who attempt to enter or do enter Italian territory without authorization. The government has introduced facilities called Temporary Stay Centers (*Centro di Permanenza Temporanea*), or “CPTs”. Today the CPTs hold undocumented foreigners awaiting expulsion for up to sixty days. Immediately upon entry, new arrivals are housed in Primary Assistance Centers (*Centro di Prima Accoglienza*), or “CPAs.”

In addition, since 2005 under the “Bossi-Fini regulations,” the government holds asylum seekers in Identification Centers (*Centro di Identificazione*), known as “CDIs,” for up to twenty days while their asylum claims are examined. The government is also remodeling some CPAs as CDIs.³²¹ All are really detention centers, as detainees are not free to leave. A Temporary Stay and Assistance Center (*Centro de Permanenza Temporanea e Assistenza*), or “CPTA,” such as the one on Lampedusa island, is a center combining a CPT and a CPA. The Lampedusa CPTA, built in 1998, is described by the Italian government as having the main function of providing “initial assistance” and serving as a “clearing station.”³²²

The Lampedusa CPTA, located near the airport on a small island with 5,500 inhabitants known mostly for tourism, consists of barracks on a dirt plot near the port surrounded by barbed wire. Capacity is 190 detainees but the number of people at the center has frequently been much higher. When many people arrive at once, a boat transfers new arrivals to Sicily, or a plane takes them to Crotona in Calabria.

The Italian government denied Human Rights Watch access to the Lampedusa camp, but visitors have described the poor conditions inside.³²³ According to one witness, an

³²¹ Law No.189/2002, known as the “Bossi-Fini law,” was adopted on July 30, 2002 but only came into force in April 21, 2005 after Presidential Decree 303 (DPR 303). It states in article 1(4) that an asylum claim will be rejected when the person has already been granted refugee status elsewhere or when the person came immediately from a country that is a party to the Refugee Convention (though the non-refoulement obligation still applies under CAT and also if there is a risk that the person may be returned from the third country to another where they would face persecution).

³²² See Amnesty International, “Temporary Stay - Permanent Rights: The treatment of foreign nationals detained in ‘temporary stay and assistance centers’ (CPTAs),” AI Index: EUR 30/004/2005, June 20, 2005, available at <http://web.amnesty.org/library/Index/ENGEUR300042005?open&of=ENG-ITA>, as of October 6, 2005.

³²³ On May 13, 2005, Human Rights Watch requested permission to visit the camp on Lampedusa, as well as the Temporary Stay Centers in Crotona and Trapani. The Italian government did not reply. A follow-up request to enter the center in Crotona was refused in a fax from the Prefect of Crotona, dated May 23, 2005.

Italian journalist who spent time in the center posing as an asylum seeker, the guards subjected some detainees to physical and verbal abuse (see below).

On June 28, 2005, twelve members of the European Parliament who visited Lampedusa commented on the “suffocating” heat and poor ventilation in the four prefabricated containers used for sleeping accommodation, inadequate beds and bedding, widespread dermatitis among detainees caused by the use of salt water in the showers, and insufficient drinking water (one bottle per day for two people). According to detainees, the authorities cleaned the camp the night before the delegation arrived. In addition, more than 900 detainees were in the camp only four days before, more than four times the center’s capacity.³²⁴

Italian Senator Tana de Zulueta, who visited Lampedusa in October 2004, told Human Rights Watch that the detainees seemed terrified of return to Libya, especially to the hands of the Libyan police. They complained to her that they were unable to communicate with anyone outside the camp to tell their families they were alive. Many had not had access to a lawyer or judge.³²⁵

A delegation from the International Federation for Human Rights visited Lampedusa in December 2004. According to the organization’s report, the camp “is extremely rundown with very rustic living conditions.” The facilities at the time of the visit were relatively clean but “in an extremely bad state.” The toilet stalls had no doors and they opened onto the communal area with washbasins.³²⁶

The most detailed description comes from the Italian journalist Fabrizio Gatti, mentioned above, who spent one week in the center in September 2005 by posing as a Kurdish asylum seeker. In his article published in the Italian magazine *L’Espresso* on October 7, 2005, he described highly unsanitary conditions, including blocked sinks and toilets. At one point, Italian officers forced him to sit in sewage and kept him for hours in the scorching sun. On another day, Gatti reported, policemen forced a group of detainees to strip naked and made them and other detainees run a gauntlet. Gatti said he

³²⁴ Report on the visit of the GUE-NGL delegation to the Lampedusa detention centre, July 25, 2005, available at http://www.jrseurope.org/news_releases/25Julyreportonmep'svisit.htm, as of March 10, 2006. GUE-NGL stands for Union for Europe of the Nations Group-Nordic Green Left.

³²⁵ Human Rights Watch interview with Senator Tana de Zulueta, Rome, May 2005.

³²⁶ “Right to Asylum in Italy: Access to procedures and treatment of asylum seekers,” International Federation for Human Rights, June 2005, available at http://www.fidh.org/IMG/pdf/eu_asylum419a.pdf, as of March 7, 2006.

saw Italian police strike some of the detainees, and subject others to lewd and abusive behavior in front of children.³²⁷

As of March 2006, a cooperation agreement on Lampedusa between the Italian government, UNHCR, IOM, and the Italian Red Cross should help improve the conditions. Under the agreement, UNHCR is maintaining a presence on the island with a mandate to help identify asylum seekers and to provide “general information on asylum rights to persons landing in Lampedusa whilst assisting those most vulnerable.”³²⁸ The IOM and Italian Red Cross are present at the camp to deal with migration-related issues and unaccompanied minors, respectively. According to IOM, its presence “will be aimed not only at helping the authorities manage irregular migration flows, but also at helping to find solutions for migrants in accordance with international law and principles of human dignity.”³²⁹ By May 2006, the authorities had provided additional sanitary facilities, protection from the sun, and a new housing block for women, but conditions remained poor. In a speech to parliament in early July 2006, Interior Minister Giuliano Amato said the government had increased the number of staff at the Lampedusa center and had improved transfer services.³³⁰ Later that month he announced that, since January 1, 2006, roughly 9,500 foreigners had passed through facility.³³¹

Parties within Prime Minister Romano Prodi’s governing coalition and civil society organizations are exerting strong pressure on the government to close all temporary stay and assistance centers. On July 18, 2006, a group of parliamentarians presented a “White Paper on Temporary Stay and Assistance Centers in Italy” that documents rights violations in the centers and recommends their closure.³³² Interior Minister Amato has

³²⁷ Fabrizio Gatti, “Io, Clandestino a Lampedusa,” [“An Undercover Immigrant in the Hell of Lampedusa”] *L’Espresso* online, October 7, 2005, available at <http://www.espressonline.it/eol/free/jsp/detail.jsp?m1s=null&m2s=a&idCategory=4791&idContent=1129502>, as of March 7, 2006. Alberto di Luca, head of the Italian parliament’s immigration committee and a member of the ruling Forza Italia party, said Gatti’s claims were “as unfounded as they are defamatory.” His committee’s investigation at Lampedusa had not revealed the use of any violence, he said. (John Hooper, “Italian Journalist Posing as Migrant Reports Abuse at Detention Camp,” *The Guardian*, October 8, 2005.)

³²⁸ AGI press agency, “Immigration: UNHCR and Interior Ministry Asylum Agreement,” March 9, 2006, available at <http://www.agi.it/english/news.pl?doc=200603091715-1180-RT1-CRO-0-NF51&page=0&id=agionline-eng.arab>, as of April 25, 2006.

³²⁹ IOM Press Briefing Notes, “Italy—Migration Conference Opens in Sicily,” March 14, 2006, available at <http://www.iom.int/en/news/PBN140306.shtml>, as of April 27, 2006.

³³⁰ Intervention of Interior Minister Amato in House of Deputies, July 7, 2006, available at www.interno.it/news/articolo.php?idarticolo=22596, as of July 19, 2006.

³³¹ Constant Brand, “EU Ready to Launch Maritime Patrols to Stem Flow of Illegal Migrants from Africa,” Associated Press, July 24, 2006.

³³² The report is available in Italian at <http://www.comitatodirittiumani.org/default.htm>, as of July 25, 2006.

precluded closing the centers given “the need to provide for the detention of these people [undocumented migrants] until we can ascertain their identity and country of origin, and...the need to send [them] back to their countries of origin.”³³³ Amato has, however, instituted an ad hoc commission to evaluate conditions in the centers. The commission – led by Swedish Ambassador Staffan de Mistura and composed of Italian governmental and non-governmental representatives – is to visit all centers and produce a report with recommendations within six months. It conducted its first visit to Lampedusa on July 19, 2006, just as the center was overwhelmed by hundreds of new arrivals by sea.

Expulsions

Since at least 2004, the Italian government has expelled more than 2,800 migrants – and quite possibly refugees and others in need of international protection – from Lampedusa back to Libya, where the Libyan government then sent them on to their countries of origin. The Italian government claims these people had the opportunity to seek asylum while at Lampedusa but at times the authorities collectively expelled large groups without providing them an asylum review. Other individuals, while not returned to Libya, got expulsion orders from the Italian government and were allowed to stay in Italy for a limited time. Some of these people are refugees, fleeing violence in place such as Darfur, Ethiopia, and Eritrea.

According to the Italian government, cooperation between Italy and Libya on the “readmission of third-country nationals” is based on “informal agreements developed in the course of diverse bilateral meetings at the ministerial level.” A May 2006 letter to Human Rights Watch from the Italian Foreign Ministry elaborated:

The agreed-upon modality provides for the return to Libya of Egyptian citizens (and not of citizens of other third countries) who reached Italy illegally directly from the Libyan coast. The Italian authorities proceed with the return to Libya of these Egyptian citizens in full respect of domestic and international norms, following formal individual procedures, at the conclusion of an examination which includes a scrupulous evaluation of each individual’s situation. This procedure, obviously, has never been undertaken with respect to those who express, even informally, an intention to ask for political asylum.³³⁴

³³³ Intervention of Interior Minister Amato in House of Deputies, July 7, 2006.

³³⁴ Letter to Human Rights Watch from Giuseppe Panocchia, Minister Plenipotentiary in the General Department for Italians Abroad and Migration Policies, Italian Ministry of Foreign Affairs, May 30, 2006.

Despite this claim, some of the individuals returned to Libya came from countries other than Egypt, as shown below.

The first large-scale returns occurred in early October 2004, when the Italian authorities sent more than 1,100 persons to Libya – days before the E.U. lifted its eighteen-year arms embargo on Libya. The expulsions began on October 1, when the Italian government ordered the expulsion of ninety foreigners from Lampedusa.³³⁵ The next day three flights carried 300 more. The following day, four more planes removed some 400 persons and then, on October 7, four military planes returned still more. According to then-Italian Interior Minister Pisanu, the government expelled 1,153 foreigners in total on eleven planes (1,119 Egyptians, 11 Moroccans and 23 Bangladeshis).³³⁶ The expulsions “were absolutely necessary to block what appeared to be...an organized assault on our coasts,” he said.³³⁷

Italian officials told UNHCR that they were admitting people from Eritrea, Ethiopia and Somalia who had transited through Libya to the asylum process, but that they were sending other nationalities to Libya.³³⁸ According to the International Federation for Human Rights, however, the identification of nationality seemed to have been determined primarily by the intuition and snap judgments of two Arabic interpreters, and Italian officials did not make available the names of those expelled, despite repeated requests from Italian politicians.³³⁹

UNHCR, which the government denied entry into Lampedusa until October 6, expressed concern 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.” The Libyan government refused the UNHCR office in Tripoli access to the people who were returned, UNHCR said, raising concern that “some people who

³³⁵ For a detailed summary of the October 2004 expulsions, see a complaint that ten European NGOs filed with the European Commission Against Italy (“Complaint Against the Italian Government for Violation of European Community Law,” January 20, 2005, available at <http://www.gisti.org/doc/actions/2005/italie/complaint20-01-2005.pdf>, as of June 6, 2006.)

³³⁶ Intervention of then-Interior Minister Pisanu in House of Deputies, October 8, 2004, available at <http://www.interno.it/sezioni/ministro/intervistadiscorso.php?idarticolo=296>.

³³⁷ *Ibid.*

³³⁸ UNHCR Press Release, “UNHCR deeply concerned over returns from Italy.” October 4, 2004, available at <http://www.unhcr.org/cgi-bin/txis/vtx/news/opendoc.htm?tbl=NEWS&id=4165521c4>, as of March 7, 2006.

³³⁹ International Federation for Human Rights, “Right to Asylum in Italy: Access to procedures and treatment of asylum seekers,” June 2005, and “Italy: Lampedusa, the island of Europe’s forgotten promises,” Francesco Messineo, Amnesty International Italian Section, July 6, 2005, AI Index: EUR 30/008/2005, available at <http://web.amnesty.org/library/print/ENGEUR300082005>, as of March 7, 2006.

may be in need of protection will be forcibly returned to their homeland without access to any asylum procedure.”³⁴⁰

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) also expressed deep concern about the collective expulsions. In a report published in April 2006, the committee noted serious failures to abide by established administrative procedures and to ensure respect for legally-stipulated judicial supervision of the detention and expulsion of foreigners. It observed that “no specific evaluation was made on an individual basis to ensure that among the 1,243 persons refouled to Libya, there were no persons who might possibly run the risk of persecution that would have prohibited their expulsion from Italian territory...whether to Libya or to another State where the Libyan authorities could be led to send them.”³⁴¹

The Committee recommended that “appropriate evaluations should be made in each individual case to ensure that...there are no persons who could run a real risk of being subjected to torture or ill-treatment, not only in Libya, but also in any other State where the Libyan authorities could be led to send them.”

More generally, the Committee noted that immigration officials and justices of the peace – who authorize expulsion orders under Italian law – did not have sufficient access to “independent and objective information about the human rights situation in the countries of origin/destination of the foreigners to be expelled.”

Between January 1, 2004 and November 25, 2004, immigration officials processed 10,468 immigrants in the Agrigento province of Sicily (the vast majority of whom had landed at Lampedusa or were intercepted at sea and subsequently taken there). Of these,

³⁴⁰ UNHCR Briefing Note, “Italy: UNHCR Rome granted access at Lampedusa centre, but not in Libya,” October 8, 2004, available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=416668e110>, as of March 10, 2006.

Italian Minister of the Interior Pisanu said the government had denied UNHCR access to Lampedusa due to security concerns. (Robin Pomeroy, “Italy Defends Tough Stance on Immigrants,” Reuters, October 8, 2004.) Italian law allows UNHCR unrestricted access to CPTAs such as on Lampedusa except for “prevailing security reasons and the regular functioning of the Centres.” (Bianco Directive, August 2000, “Regulation for the Implementation of the Unified Text no. 286/98,” as quoted in Italy’s reply to the U.N. Human Rights Committee, 85th Session, October 17-November 3, 2005, available at <http://www.migreurop.org/IMG/pdf/DH-ONU-replitalie.pdf>, as of June 6, 2006.)

³⁴¹ “Report to the Italian Government on the Visit to Italy Carried Out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 21 November to 3 December 2004,” CPT/Inf (2006) 16, available in French at: <http://www.cpt.coe.int/documents/ita/2006-16-inf-fra.htm>, as of April 28, 2006.

only seventy filed an application for asylum. This figure, in the Committee's view, "appears very low" given the nationalities represented in the total group. (e.g. 550 Eritreans, 477 Sudanese, 117 Ethiopians).

In March 2005, the second wave of mass expulsions from Italy to Libya took place. Again, the Italian government denied UNHCR access to Lampedusa during the process.

According to the Italian Ministry of Interior, the government transferred 421 of the 1,235 people who had landed in Lampedusa over the previous week to other Italian centers in which they claimed asylum. 101 people presented formal requests for asylum in Lampedusa. The government expelled 494 Egyptians to Libya (of whom 180 were on two charter flights that left on March 17) and seventy-six Egyptians directly to Egypt.³⁴² Then-Minister Pisanu said the government's actions "rigorously" complied with international laws and conventions.³⁴³

UNHCR expressed regret at the lack of transparency. At a press briefing on March 18, an agency spokesman said:

UNHCR is deeply concerned about yesterday's deportation of some 180 people aboard two flights from the Italian island of Lampedusa to Libya, with an Italian police escort. UNHCR, which has a senior staff member on the island, had requested access to the reception centre, in order to ensure that anyone who wishes to make an asylum claim has the possibility to do so, and that any claims that were made are properly and fairly assessed. That request, which was made in accordance with UNHCR's mandate to protect refugees – including access to asylum seekers and monitoring of asylum systems – has so far been refused by the Italian authorities.³⁴⁴

³⁴² "Italy Defends Immigration Policies in Wake of EP Rapping," ANSA, April 15, 2005. It is unclear why the Italian government returned seventy-six men directly to Egypt. Perhaps these people were able to prove that they had come directly from Egypt, or that they had not transited Libya. The Italian government told Human Rights Watch that it has an informal agreement with Egypt that addresses "the return of Egyptian citizens who have entered Italy illegally, which foresee expedited and facilitated procedures." (Letter to Human Rights Watch from the Italian Ministry of Foreign Affairs, May 30, 2006.)

³⁴³ "Govt Under Fire as Immigrants Airlifted Back to Libya," ANSA, March 17, 2005.

³⁴⁴ UNHCR Press release, "UNHCR Deeply Concerned over Lampedusa Deportations," March 18, 2005, available at <http://www.unhcr.org/cgi-bin/texis/vtx/news/opendoc.htm?tbl=NEWS&id=423b00a54>, as of May 7, 2006.

Pisanu responded to UNHCR by saying the agency should have “more respect for those who try to solve problems.”³⁴⁵

For the expulsions in October 2004 and March 2005, the Italian authorities blindfolded and handcuffed some of the deportees, prompting the Libyan government to criticize the physical conditions under which the expulsions took place. People arrived in Libya with no luggage, no possessions, some of them barefoot, with handcuffed wrists. One policeman escorted each deportee, a Libyan immigration official said. “We [the Libyans] bought them shoes and clothes,” `Ali Mdorad told Human Rights Watch. “Libya never shackles or handcuffs people during a deportation.”³⁴⁶ (See Chapter VII, “Forced Return,” for examples of mistreatment of detainees by the Libyan government during deportations.)

At the time of Human Rights Watch’s mission to Italy in late May 2005, another 400 people had recently arrived in Lampedusa. On May 14, 2005, Alitalia flight AZ8300 carried sixty-seven people from Lampedusa to al-Bayda in western Libya.³⁴⁷ On May 16 and 21, 2005, deportation flights to Libya took place with an unknown number of people,³⁴⁸ followed by the expulsion of at least forty-five people on June 22.³⁴⁹ The Italian government did not deny press reports about these deportations, or the protests of Italian nongovernmental organizations.³⁵⁰ Presumably, the Italian government does not want to deny reports that serve as a useful deterrent to those who may try to enter the country.

According to the Libyan government, the total returns from Italy to Libya in 2005 totaled 1,876. These people were “accepted and returned to their countries of origin.”³⁵¹

³⁴⁵ “UN Renews Protest as Italy Deports Immigrants to Libya,” ANSA, March 18, 2005.

³⁴⁶ Human Rights Watch interview with `Ali Mdorad, Tripoli April 30, 2005.

³⁴⁷ “Il governo italiano pratica espulsioni clandestine,” ANSA, March 20, 2005.

³⁴⁸ “Maggio 2005: ricominciano le espulsioni verso la Libia,” website of Italian Senator Tana de Zulueta, available at http://www.tanadezulueta.it/html/modules/xt_conteudo/index.php?id=28, as of March 9, 2006.

³⁴⁹ Amnesty International Urgent Action, AI Index: EUR 30/005/2005, June 27, 2005, available at <http://web.amnesty.org/library/Index/ENGEUR300052005?open&of=ENG-ITA>, as of March 9, 2006.

³⁵⁰ La Rete Antirazzista Siciliana (The Sicilian Antiracist Network) circulated a video of deportations from the camp, which they also posted at <http://ngvision.org/mediabase/487>, as of April 29, 2006. On April 2, the European Day for Freedom of Movement, activists held a protest at the offices of Blue Panorama Airlines, a charter company that was running the deportation flights. Blue Panorama reportedly withdrew from the contract, and the private Croatian company Air Adriatic took its place. (See Rutvica Andrijasevic, “Lampedusa in focus: migrants caught between the Libyan desert and the deep sea,” *Feminist Review*, No. 82, 2006, available at <http://www.palgrave-journals.com/fr/journal/v82/n1/pdf/9400274a.pdf>, as of April 29, 2006.

³⁵¹ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I.

Following the May 2005 expulsions, a commentary by the Italian Section of Amnesty International noted that in Lampedusa a written notice in a variety of languages informs detainees where they are and states: “You shall remain here until you are transferred to another centre to be properly identified, where you will have the opportunity to explain the reason for your arrival in Italy.” Amnesty asserted, however, that many of those deported in the recent waves of expulsions “were not even aware of the real destination of their flight and believed that that they were being sent to ‘another centre’ on mainland Italy to be ‘properly identified.’”³⁵²

The European Parliament delegation that visited Lampedusa in June 2005 identified an additional problem: consular authorities of some countries were regularly taking part in the procedure to determine a camp detainee’s nationality. According to a report from the delegation’s trip, the EP members told the camp directors that it “would be very dangerous for a potential asylum seeker to be identified by his own consular authorities.” The camp directors replied that recently nobody had claimed asylum. “This information is in itself incredible (it would be the first centre in Italy where this does not happen),” the report said. “And it conflicts with the documents shown to us by the migrants themselves.”³⁵³

While the Italian government denied entry at crucial moments to Lampedusa for UNHCR and Italian organizations, prior to at least one mass expulsion it allowed Libyan government officials to interview detainees in the camp. On March 16, 2005, three Libyan security officials held talks with Italian police and government officials and then questioned some of the 790 people held at the camp, trying to determine their countries of origin and route to Italy.³⁵⁴

The denial of the right to seek asylum on Lampedusa may be seasonal in nature, meaning that lawful procedures are more closely followed in the winter when arrivals are few, but less respected in the summer when many more people risk the dangerous trip across the Sicilian Channel. One Sudanese man interviewed by Human Rights Watch, for example, testified that when he arrived at Lampedusa in February 2004 he was able to apply for asylum that same day and the Italian authorities asked everyone there – including the Egyptians and other Arabs – if they wanted to claim asylum.³⁵⁵

³⁵² “Italy: Lampedusa, the island of Europe’s forgotten promises,” Francesco Messineo, Amnesty International Italian Section, July 6, 2005, AI Index: EUR 30/008/2005, available at <http://web.amnesty.org/library/print/ENGEUR300082005>, as of March 10, 2006.

³⁵³ Report on the visit of the GUE-NGL delegation to the Lampedusa detention centre, July 25, 2005.

³⁵⁴ “Libya Investigates Immigrant Landings on Sicilian Island,” ANSA, March 16, 2005.

³⁵⁵ Human Rights Watch interview with Sudanese asylum seeker Abdel M., Rome, May 27, 2005.

A few more hundred people reportedly arrived in Lampedusa in April 2006, and it remains unclear if the Italian government will provide those who request it with a proper asylum review.³⁵⁶ In a positive sign, on May 24 under secretary for immigration in the Ministry of Interior, Marcella Lucidi, said that “there will be no more expulsions of immigrants to those countries that have not signed the Geneva Convention, and among these Libya...”³⁵⁷ Other Italian officials have stressed continued cooperation with Libya, so it remains to be seen whether Lucidi’s comments will become policy.

Once the Italian government has expelled foreigners back to Libya, it also pays for charter flights for Libya to send the people home. According to the European Commission report, between August 2003 and December 2004, the Italian government paid for fifty charter flights that transported 5,668 people. The main nationalities were Nigerians (1,804), Ghanaians (1,580) and Egyptians (1,401).³⁵⁸

In July 2005, a group of thirty parliamentarians formally petitioned the prosecutor’s office in Rome to open a preliminary investigation into possible criminal liability of the Ministry of the Interior for events at Lampedusa in October 2004 and March 2005. The petition asked that the investigation determine whether the deprivation of liberty in the Lampedusa CPT and subsequent forced expulsions constituted criminal acts under national and international law, and determine whether the Interior Minister or other government officials are criminally liable. The petition also requested that the investigation identify and locate the individuals expelled to Libya from Lampedusa on the above-mentioned occasions to determine (a) whether each individual received notification of the expulsion decision or whether the measures constituted collective expulsions; (b) whether each individual was repatriated to his or her country of origin through an appropriate procedure without violations or degrading or inhuman treatment; and (c) whether any individuals died, disappeared or suffered serious harm as a result of their expulsion to Libya.

In mid-March 2006 the prosecutor in charge of the case forwarded the file to the Court for Ministerial Crimes of the Rome Tribunal (Collegio per i reati ministeriali del Tribunale di Roma), which determines whether accusations against ministers merit

³⁵⁶ As mentioned above, about 9,500 people arrived in Lampedusa between January 1 and July 20, 2006, according to the Italian government.

³⁵⁷ “«Sanatoria», lite su Rifondazione; Amato: resta chi ha già un lavoro,” *Corriere della Sera*, May 25, 2006, available at http://www.corriere.it/Primo_Piano/Politica/2006/05_Maggio/25/mart.shtml, as of June 6, 2006.

³⁵⁸ European Commission, “Technical Mission to Libya on Illegal Immigration, 27 Nov – 6 Dec 2004, Report,” Annex 2.

investigation.³⁵⁹ Ten days later, the prosecutor filed a motion to close the investigation into Pisanu but, as of June 6, 2006, the court had not decided if the investigation should commence.³⁶⁰

Push-backs

On July 14, 2003, the Italian Ministry of Interior issued a decree that enabled the Italian navy to intercept ships carrying asylum seekers and migrants and, if possible, force the vessels back to the territorial waters of the countries from which they came.³⁶¹ The decree included no consideration for identifying asylum seekers, and its terms violated the principle that the state in whose territorial waters a vessel is intercepted has the primary responsibility for addressing any protection needs of persons on board.³⁶²

Human Rights Watch does not know how many times the Italian navy has implemented this decree, but one recorded instance was on October 4, 2004, when an Italian warship intercepted a wooden boat with some 150 people in international waters off Lampedusa and summoned the Tunisian navy to escort it back to the North African coast.³⁶³

³⁵⁹ "Sbarchi clandestini, Pisanu indagato" ("Illegal Landings, Pisanu Investigated"), *La Repubblica*, March 15, 2006, available at <http://www.repubblica.it/2006/c/sezioni/cronaca/immigrati/legapisanu/legapisanu.html>, as of April 28, 2006.

³⁶⁰ "Immigrazione, procura chiede archiviazione per Pisanu" ("Immigration, Prosecutor Requests Closing File on Pisanu"), *La Repubblica*, March 25, 2006, available at <http://www.repubblica.it/2006/c/sezioni/cronaca/immigrati/archipisanu/archipisanu.html>, as of April 28, 2006; Cinzia Gubbino, "Espulsioni in Libia: resta indagato il ministro Pisanu," *Il Manifesto*, April 21, 2006, available at <http://www.anarcotico.net/index.php?name=News&file=article&sid=7020>, as of April 28, 2006.

The three judges on the court can rule in four ways: 1) continue the investigation into Pisanu; 2) broaden the investigation to include additional charges or individuals; 3) close the investigation into Pisanu and transfer the case against local officials to Agrigento (which has jurisdiction over Lampedusa); or 4) close the entire case.

³⁶¹ In Italy, the Guardia di Finanza (customs police) is in charge of the interception and rescue of vessels coming from Libya (aided by the naval coastguard and the carabinieri). The agency's order of priority is first to tackle smuggling and secondly to rescue, whereas the coastguard's first duty is to save lives. The Italian authorities are careful to avoid excessive force, ever since the sinking of an intercepted boat coming from Albania in 1997, the *Kater i Radës*, which killed fifty-seven people. Asylum seekers interviewed in Italy told Human Rights Watch that Italian authorities had not used force to intercept their boats, apparently following orders to bring passengers to Italy rather than push crowded vessels back to Libya, and had provided people with food, water, medical treatment and blankets. Push-backs also do not occur because the Libyan authorities reportedly refuse to accept boats without evidence that Libya was its point of embarkation.

³⁶² See UNHCR Excom Conclusion No.97 (2003) on protection safeguards during interception measures, available at <http://www.unhcr.org/cgi-bin/texis/vtx/excom/opendoc.htm?tbl=EXCOM&id=3f93b2894>, as of May 7, 2006.

³⁶³ "UN seeks access to Italy migrants," BBC News, October 4, 2004, available at <http://news.bbc.co.uk/1/low/world/europe/3714922.stm>, as of March 9, 2006.

Italy in Breach of its Human Rights Obligations

Italy has the same legal obligations as Libya under the universal human rights instruments (in particular, not to arbitrarily detain, collectively expel or refole), but it also has obligations under European human rights law. Italy's non-refoulement obligations³⁶⁴ under both the Refugee Convention and the European Convention on Human Rights (ECHR) are triggered the moment an individual enters Italian waters or is interdicted on the high seas by the Italian navy.³⁶⁵ Italy therefore shares responsibility for any refoulement resulting from expulsions and for any torture or inhuman or degrading treatment that the expelled individual may suffer in Libya (or if returned by Libya to their country of origin or any other place).

Article 13 of the ICCPR, article 4 of Protocol 4 of the European Convention on Human Rights and article 19(1) of the E.U. Charter of Fundamental Rights each prohibit collective expulsion.³⁶⁶ The European Court of Human Rights has interpreted "collective expulsion" to mean "any measure by which foreigners are forced, as a result of belonging to a group, to leave a country, apart from cases in which this measure is adopted following and based on a reasonable and objective assessment of the specific situation of each of the foreigners who compose the group."³⁶⁷ For an expulsion to be non-discriminatory according to international and regional human rights standards, the differentiation on grounds of nationality must be both legitimate and proportionate. In every case, there must be an individual determination of risk on return.

Italian legislation and regulations require that for an expulsion to be carried out, certain safeguards must be met, such as access to UNHCR, legal counsel, competent interpreters and a judge who will confirm the order. Each person must receive written information in a language which he or she understands that they are about to be expelled and must be told of their right to appeal against such an order. Many of the expulsions from Lampedusa do not seem to have complied with these requirements. It appears that in many cases, the Italian authorities sorted people by nationality, mostly expelling the Maghreb nationals and transferring the sub-Saharan Africans to other detention centers

³⁶⁴ The non-refoulement obligation is repeated in the Single European Act of 1986; the right to seek asylum is included as Article 18 of the Charter of Fundamental Rights, Article 6 TEU and Article 63 ECT; therefore these are cornerstone E.U. human rights commitments.

³⁶⁵ See Sir Elihu Lauterpacht and Daniel Bethlehem, "The Scope and Content of the Principle of Non-refoulement," *Refugee Protection in International Law: UNHCR's Global Consultations on International Protection* (UNHCR 2003). Italian territorial waters start twelve miles from any of its coasts, but boats of migrants/refugees are rescued even if beyond this point and any vessel of the Italian authorities is also "Italian territory" under law.

³⁶⁶ Italy is not a signatory to the Migrant Workers' Convention, which, as noted above, also prohibits collective expulsion.

³⁶⁷ See *Andric v Sweden*, ECHR 45917/99 and *Conka v Belgium*, ECHR 51564/99.

in Italy, where they could request asylum. Such sorting by nationality denies the right to seek asylum as an individual right, and ignores the possibility that certain Egyptian nationals, for example, may have grounds to seek asylum.³⁶⁸ A representative of CARITAS told Human Rights Watch: “When we hear that people have been sent back immediately, after two days, then it is clear that they were sent back based on how they look.”³⁶⁹

To avoid the Italian term for expulsion (“*espulsione*”), which would trigger the national legal obligation that a district judge validate every expulsion,³⁷⁰ the Italian government uses the term “*respingimento*,” which translates as “pushing back” or “stopping at the border.”³⁷¹ The government apparently hopes to put what is happening in Lampedusa into the same category as the French “*zones d’attente*” (international zones in which persons are detained in airports).

The European Court of Human Rights has responded with grave concern over the expulsions to Libya after two Italian lawyers filed an application to the court on April 1, 2005, on behalf of seventy-nine men held at Lampedusa and facing expulsion, and who had authorized one of the lawyers to represent them.³⁷² On April 6, the court posed four questions to the Italian government:

- 1) What identification procedures are being applied [in Lampedusa];
- 2) Whether any asylum requests have been presented and, if so, how the procedure is progressing;
- 3) Whether an expulsion procedure is actually in progress; and
- 4) To supply copies of the relevant documents.³⁷³

³⁶⁸ See, for example, Human Rights Watch reports, “In A Time Of Torture: The Assault On Justice In Egypt’s Crackdown On Homosexual Conduct,” March 2004; “Black Hole: The Fate of Islamists Rendered to Egypt,” May 2005; “Reading between the ‘Red Lines’: The Repression of Academic Freedom in Egyptian Universities,” June 2005, all available at http://www.hrw.org/doc?t=mideast&c=egypt&document_limit=0,20, as of March 7, 2006.

³⁶⁹ Human Rights Watch interview with Ngo Dinh, Caritas Italiana, May 26, 2005.

³⁷⁰ Each person who received an expulsion order must appear before a district judge, but this may be a non-professional judge working within the detention center. FIDH, “Right to Asylum in Italy: Access to procedures and treatment of asylum seekers,” June 2005, p.18.

³⁷¹ See for example, address by Minister of the Interior Giuseppe Pisanu to the Italian Chamber of Deputies, October 8, 2004, available at <http://www.interno.it/stampa.php?sezione=10&id=295>, as of March 7, 2006.

³⁷² Hamood, p. 69. The lawyer had briefly visited the Lampedusa CPTA.

³⁷³ Letter from the European Court for Human Rights, regarding application no.11593/05 - Strasbourg, April 6, 2005.

The Italian government responded by the May 6 deadline but the court considered the response inadequate. According to article 39 of the procedural rules, on May 10 the court ordered the suspension of any removal action related to eleven of the seventy-nine applicants.³⁷⁴ On May 12, lawyers submitted a new application to the court regarding another man facing expulsion. The next day the court again posed the same series of questions to the Italian government. In addition, the court asked whether the applicant had been placed in a “*centre de retention*” and to see the relevant documents for this order, and also asked the Italian government to explain the concrete possibilities for the applicant to challenge the expulsion procedure and the order to be “retained” (i.e. whether there is an effective domestic remedy).³⁷⁵

Following the court’s lead, the European Parliament passed a resolution expressing deep concern over Italy’s illegal expulsion of third country nationals to Libya.³⁷⁶ The European Parliament sent a follow-up delegation to Libya in early December 2005, which was informed that the Libyan government had sent most of the people returned from Italy in 2004 and 2005 to their countries of origin.³⁷⁷

At the time of Human Rights Watch’s research in Italy, the Italian government had not expelled any of the individuals identified in the court applications. The government still detained one of the first eleven applicants, whose expulsion the court had suspended, in the Crotona CPT. As his expulsion was not possible due to the court suspension, his lawyer said, by law the government should have released him from detention.³⁷⁸

The Italian government does not argue that Libya is a “safe third country,” although it does stress that Libya signed the African Refugee Convention and was president of the U.N. Commission on Human Rights in 2002.³⁷⁹ Rather, the Italian authorities argue that

³⁷⁴ Letter from ECHR, regarding application no.11593/05 - Strasbourg, May 10, 2005. Copy (in French, and with applicants names deleted), on file with Human Rights Watch.

³⁷⁵ Letter from ECHR, regarding application no.17165/05 - Strasbourg, May 13, 2005. Copy (in French) on file with Human Rights Watch.

³⁷⁶ PROV(2005) 0138.

³⁷⁷ European Parliament press release, “EP Delegation to Libya: ‘Our Goal is to Repatriate All Illegal Immigrants We Receive From Italy’, Say Libyan Authorities,” Brussels, December 7, 2005, available at http://www.europarl.eu.int/news/expert/infopress_page/029-3243-339-12-49-903-20051206IPR03242-05-12-2005-2005-false/default_da.htm, as of May 7, 2006.

³⁷⁸ Human Rights Watch interview with Anton Giulio Lana, Rome, May 23, 2005.

³⁷⁹ See speech by Minister Pisanu to the Italian House of Deputies, October 8, 2004, available at <http://www.interno.it/stampa.php?sezione=10&id=295>, as of March 7, 2006. Human Rights Watch and other NGOs protested Libya’s leadership of the commission. (See Human Rights Watch, “Libya Should Not Chair U.N. Commission, August 9, 2002, available at <http://hrw.org/press/2002/08/libya080902.htm>, as of June 6, 2006.)

those they expel never attempted to claim asylum. Like the Libyans, they give the impression that there are no refugees among the migrants whom they detain and expel. More generally, the Italians argue that the overwhelming majority of asylum seekers in the country do not qualify for asylum. In 2004, for example, Italy classified over 91 percent of asylum seekers as “rejected,” although the government granted more than one quarter of those a subsidiary form of protection. UNHCR challenged the statistics – which were presented in the Italian media as meaning that only 8 percent of asylum seekers in Italy were genuine – as a “serious distortion of the true picture.”³⁸⁰

Lack of Legal Basis for Returns to Libya

According to Libyan immigration officials, the Italians are mostly sending back Egyptians. Libya then returns them directly by bus to Egypt within a matter of days. Given that they are not Libyan nationals, it remains unclear why Italy has returned them to Libya rather than directly to Egypt.³⁸¹

Libya has signed no formal readmission agreement with Italy,³⁸² a fact confirmed to Human Rights Watch by the Libyan government.³⁸³ The returns – like the preferential oil deals between the two countries – are apparently based only on verbal agreement. One Libyan official told Human Rights Watch that the Italians and Egyptians also reached a verbal agreement in November 2004 allowing Italy to return 100 people per month.³⁸⁴ Italy has no formal readmission agreement with Egypt either but, like Libya, Egypt has accepted informal readmissions from Italy of third country nationals (e.g. Sri Lankans) known to have transited through Egypt.³⁸⁵

³⁸⁰ Official 2004 statistics from the Italian Central Eligibility Commission, quoted in UNHCR Briefing Notes, May 27, 2005. According to UNHCR, the figure of 7,921 “rejected” claims included 2,352 people to whom Italy granted a subsidiary form of protection because they were in a refugee-like situation (fleeing war or generalized violence). Therefore Italy granted some form of international protection to 36 percent of those who lodged asylum claims. These figures represent only first instance decisions, not including successful appeals. Furthermore, the government classified the 2,627 (over 30 percent) asylum seekers who did not complete the first instance procedure for one reason or another (perhaps because they moved on to seek asylum in a country where they had friends or family) as “rejected.” If this group is discounted, the Italians granted some form of protection to 51.5 percent of all the claims they examined.

³⁸¹ A possible reason is that Italy thereby avoids direct refoulement, and the screening processes it might feel compelled to use if returning people directly to their home countries. In addition, returning Egyptians via Libya may be cheaper—avoiding asylum and detention costs, as well as flights to Cairo.

³⁸² See speech by Minister Pisanu to the Italian House of Deputies, October 8, 2004, available at <http://www.interno.it/stampa.php?sezione=10&id=295>, as of March 7, 2006.

³⁸³ Human Rights Watch interview with `Ali Mdorad, Tripoli April 30, 2005.

³⁸⁴ Human Rights Watch group interview with the Visa and Consular Affairs Department, Tripoli, April, 21, 2005.

³⁸⁵ International Federation for Human Rights, “Right to Asylum in Italy: Access to procedures and treatment of asylum seekers,” June 2005, p.20.

The lack of formal readmission agreements is important because, in Italy, all international agreements, including readmission agreements, must go before parliament.³⁸⁶ Returns under such agreements also have to comply with certain procedures, such as the need for the government to produce travel documents and evidence of nationality. A formal readmission agreement with Libya would thus slow the expulsion process and make it substantially more expensive.

³⁸⁶ Italy has such readmission agreements with Tunisia and Morocco; in total it has about thirty such agreements, which are standard public texts.

XI. Detailed Recommendations

To the Government of Libya

Access to Asylum

- Adopt and implement legislation to fulfill Libya's existing asylum obligations under the Constitutional Proclamation, the African Refugee Convention, the Convention against Torture (CAT), the Convention on the Rights of the Child (CRC), and the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. Above all, introduce laws to respect the absolute prohibition on refoulement and, with the expert guidance of UNHCR, establish an effective, fair and lawful asylum procedure.
- Ratify the 1951 Refugee Convention and its 1967 Protocol, and bring new national asylum law and practice into line accordingly.
- Implement the OAU (now AU) Convention Governing the Specific Aspects of Refugee Problems in Africa, to which Libya is a signatory, respecting in particular the Convention's definition of a refugee and its article V on the "essentially voluntary character of repatriation" so that "no refugee shall be repatriated against his will."
- Establish effective and accessible mechanisms by which detainees and other non-nationals facing expulsion may challenge both their detention and expulsion on human rights as well as immigration grounds. Until such mechanisms are in place, and until the conditions in which such detentions and expulsions occur conform to international human rights standards, suspend all deportations and expulsions.
- Improve conditions in all immigration-related detention facilities to alleviate over-crowding and provide adequate health care. Protect women and children in these facilities while maintaining family unity.
- Formally recognize UNHCR and support its efforts to provide international protection for refugees, asylum seekers and other persons of concern on Libyan

territory. In particular, grant UNHCR full and unfettered access to all places where non-nationals are detained in Libya.

- Instruct all law enforcement officers and other officials to respect the letters of attestation that UNHCR currently gives to those it determines to be persons of concern under its mandate and so protect those persons from arrest or harassment.

Mistreatment and Abuse of Detainees

- End the arbitrary detention of migrants, asylum seekers and refugees. Do not deprive anyone of his/her liberty without, at a minimum: a lawful order; being informed promptly in a language that he/she understands of the reasons for the arrest or detention; being brought before a judicial or other independent authority within a reasonable period for a substantive decision on the need to detain him/her; and having the necessity of continued detention reviewed by that same authority periodically. In addition, provide those who are detained access to legal and medical assistance, and interpreters wherever necessary, and ensure that conditions in detention conform to international minimum standards. Use detention for the purpose of effecting removal only as a last resort.
- Hold non-nationals detained for non-immigration-related offences in conditions that conform to international minimum standards, and guarantee them a fair trial, including access to legal assistance and to interpreters whenever necessary.
- Maintain confidentiality with any asylum claims that do take place and prevent consular access without the prior consent of those detained.
- When foreign detainees or prisoners request that their governments be notified, promptly inform embassies of the arrest, detention, or imprisonment of their nationals, and give diplomats access to visit or telephone these detainees and prisoners upon request. Inform embassies of every death in custody involving a national of their country, whether resulting from natural or other causes.
- Grant the request dating from 2003 of the U.N. Working Group on Arbitrary Detention to visit Libya and, when they visit, grant them unhindered and unscheduled access to all places where foreigners are gathered and detained.

Justice System Reform

- Make more easily accessible to an international audience the full texts of Libya's domestic legislation and regulations, as published in the official gazette, so as to facilitate exchanges with U.N. treaty bodies and others about how Libyan legislation complies with international obligations.
- Adopt implementing legislation to fulfill existing obligations under the Convention on the Elimination of Racial Discrimination in order to prevent, prohibit and remedy racial discrimination in all its forms, including against non-nationals.
- Take steps to bring the practices of law enforcement officials (police, judiciary officials, and any persons involved in supervising detention or penitentiary custody, including military personnel) toward non-nationals fully into conformity with relevant international standards as well as principles of non-discrimination. Cease xenophobic profiling of sub-Saharan Africans and collective accusations of criminality.

To the African Union

- Encourage all African Union member states to ratify the U.N. Convention relating to the Status of Refugees of 1951, and its 1967 Protocol.
- Call upon Libya to – with the consent of the individual involved – inform embassies promptly of the arrest, detention or imprisonment of any of their nationals on criminal charges, and allow them to visit or telephone these detainees and prisoners upon request. In particular, call upon Libya to inform embassies of every death in custody involving a national of their country, regardless of the cause of death.

To the U.N. High Commissioner for Refugees (UNHCR)

- Appeal to member states of UNHCR's Executive Committee (ExCom) to broach the issue of UNHCR's current status in Libya with the Libyan government. Call on ExCom member states to insist that the European Union and the International Organization for Migration make Libyan cooperation with UNHCR inside Libya, and at sea, a precondition for future cooperation on other matters.

- Continue to issue strong protests in the media whenever the Office learns that Libya is violating, or is about to violate, its obligation of non-refoulement.
- Given the lack of effective protection and integration prospects for refugees in Libya at the present time, make a concerted effort to offer more third-country resettlement opportunities for refugees who meet the criteria for resettlement in UNHCR's Resettlement Handbook, rather than limiting referrals to emergency cases.

To the U.N. High Commissioner for Human Rights (OHCHR)

- Organize and participate in workshops to discuss the rights of migrants and refugees, involving Libyan judges, prosecutors, private lawyers and public defenders, police, civil servants, immigration officers, coast and other border guards, the judicial police, and officers involved in the management and security of detention or "voluntary repatriation" facilities.

To the International Organization for Migration (IOM)

- Make improvement of material and legal conditions for migrants and, where appropriate, facilitation of third-country resettlement the sole objectives of any future IOM projects in Libya. Do not promote or facilitate interception or return. Vigorously encourage Libya, as a member of IOM's Governing Council, to respect the human rights of migrants and to implement laws and procedures that effectively do so.
- Act with greater transparency in negotiations with Libya on all matters relating to migration and border control.
- Apply strict human rights conditionality to any joint projects with the Libyan government in the migration field. Do not cooperate on strengthening Libyan border or internal immigration controls unless human rights, and refugee and migrant rights in particular, are dramatically improved.
- Avoid using language such as "transit migrants" or "stranded migrants" when speaking of the entire population of those held, for example, in Libyan detention centers. In the absence of an effective asylum regime in Libya (at present Libya has no asylum law, let alone effective enforcement of the law), such labels are

misleading and lend credence to those who argue erroneously that Libya has no refugees on its territory.

- Avoid setting targets for the “voluntary repatriation” of migrants as a measure of success in IOM projects, as this creates undue pressure to achieve returns without the necessary safeguards. Increasing Libyan capacity to effect returns of foreign nationals is not a safe objective so long as so many returns are coerced, and so long as there is not a functioning asylum system in the country.
- Rather than expanding immigration detention or camp infrastructure in Libya, focus on providing detainees with greater access to basic necessities such as nutritious food, clean water, bedding, sanitation and medical care within existing facilities. In accordance with IOM’s Memorandum of Understanding with UNHCR, refer to UNHCR Tripoli any person expressing a desire for asylum or a fear of return, and insist upon UNHCR’s access to “transit migrants.” Refrain from any further work in Libya if the Libyan authorities do not accept this condition.
- With the consent of the alleged victim, refer any cases that IOM staff finds of suspected torture or police abuse to the Human Rights Program at the Qadhafi Foundation for Development and to the Libyan authorities responsible for investigating and prosecuting such crimes.

To the European Union

To all E.U. Member States

- Refrain from expelling third-country (non-Libyan) nationals to Libya until Libya’s treatment of migrants, asylum seekers and refugees fully meets European standards in relation to non-refoulement to persecution or risk of treatment contrary to article 3 ECHR. Under current conditions, the return of third-country nationals breaches European human rights obligations not to return people to inhuman or degrading treatment. The return of any asylum seeker to Libya who is rejected on procedural or so-called “safe third country” grounds and who is not first given an opportunity for a full and fair hearing on the merits of his or her claim also violates European non-refoulement obligations.

To the European Parliament

- Denounce any further mass expulsions of foreigners from Italy to Libya, which are in breach of the principle of non-refoulement and in violation of the right to protection from collective expulsion.

To European Union Institutions and E.U. Member States

- Encourage Libya to 1) ratify the 1951 Refugee Convention and its 1967 Protocol; 2) adopt a national asylum law; and 3) formally recognize UNHCR.
- Display greater transparency in negotiations with Libya on all matters relating to migration and border controls.
- Ensure that no E.U. joint actions, or actions by single E.U. states, undermine the conditionality already in place relating to the principles of the Barcelona Process.³⁸⁷
- Apply strict human rights conditionality to any cooperation with the Libyan government in the migration field (including any cooperation on border controls), such that the observance of human rights, and the rights of refugees and migrants in particular, are dramatically improved.
- Immediately implement “protected entry procedures” through embassies in Tripoli and resettle refugees identified by UNHCR as being in need of resettlement. Do so, however, only as a supplement rather than as a substitute for allowing spontaneous asylum seekers to gain access to E.U. territory and to asylum procedures upon arrival.

³⁸⁷ The Barcelona Process is a partnership among twenty-seven Euro-Mediterranean governments, the Council of the European Union and the European Commission for peace, stability, and prosperity based on the following principles:

- to act in accordance with the UN Charter and the Universal Declaration of Human Rights;
- to develop the rule of law and democracy in their political systems;
- to respect human rights and fundamental freedoms and guarantee the effective legitimate exercise of such rights and freedoms, including freedom of expression and freedom of association;
- to respect and ensure diversity and pluralism in their societies, promote tolerance between different groups in society and combat manifestations of intolerance, racism and xenophobia.

- Address the migration issue in its wider African context through the Cotonou Agreement,³⁸⁸ but in full consultation with those setting development priorities in Africa. At the same time, recognize that the root causes of migration to and through Libya are not solely economic and must be addressed by resolving the causes of forced displacement that are driven by conflict, political repression and human rights violations in countries of origin.

To the Government of Italy

- Make public the August 2004 bilateral agreement between the governments of Italy and Libya.
- In addition to funding the construction of three detention centers for foreigners in Libya, assist the country to develop an asylum law and procedures that meet international standards, and encourage the Libyan government to cooperate with UNHCR.
- Cease to fund or provide other bilateral support to Libya aimed at increasing that country's effectiveness at intercepting asylum seekers and migrants before they take to the sea or before they reach Italian waters. Redirect such support into multilateral efforts, especially through UNHCR and OHCHR, to ensure that fundamental human rights standards relating to the treatment of such persons in Libya are observed.
- Ensure there are no more mass expulsions of third-country nationals to Libya, which – in view of the absence of effective protection for refugees and others in need of international protection, and the violations of migrants' human rights that occur in Libya – are in blatant violation of Italy's own human rights obligations.
- Grant UNHCR, human rights and legal advocacy NGOs, lawyers, journalists and other independent observers full and unfettered access to all reception, identification and detention centers in Italy. Ensure full cooperation with

³⁸⁸ The Cotonou agreement is a partnership agreement between the ACP (African, Caribbean and Pacific) group of States and the E.U., signed in Benin in June 2000. Libya is not among the ACP group States, but most of the countries that are the source of the migrants and refugees entering Libya are members of the group, and therefore may be assisted by the E.U. through the Cotonou framework. See, in particular, article 13 of the agreement on (inter alia) poverty reduction strategies which may "contribute to normalizing migratory flows," available at http://europa.eu.int/comm/development/body/cotonou/index_en.htm, as of May 7, 2006.

UNHCR, IOM and the Italian Red Cross under the 2006 agreement to monitor the center at Lampedusa.

- Ensure access to full and fair asylum procedure, including the right to raise fear of treatment contrary to article 3 of the ECHR, for every person in the control of the Italian authorities, including those detained at sea.
- Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families.

XII. Acknowledgements

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Appendix I

(original submitted in Arabic)

Comments of the General People's Committee (GPC) for Foreign Liaison and International Cooperation on the third part of the Human Rights Watch report titled "Violations Against Migrants and Refugees," based on their delegation's visit to the Libyan Jamahiriya between 4/20 and 5/11/2005

Introduction

The GPC for Foreign Liaison and International Cooperation asserts that the Libyan government is aware of the serious social, economic, and security repercussions based on illegal immigration, and on more than one occasion has called for the urgent study of the causes and solutions in a comprehensive and balanced way.

In his letter to the leaders of the E.U. dated 6/22/2002 during their meeting in Seville, Spain, the Leader of the Revolution offered the ideal solution to address this phenomenon, whereby he asserts:

- The need for an African-European summit based on the Cairo summit in 2000 to cure the immigration phenomenon.
- Distributing investments, initiating projects, and identifying a market for employment, services, and manufacturing in Africa.

The Leader of the Revolution's initiative related to Youth, Women and the African Child project, which aims at nationalizing development projects, fighting unemployment and poverty, and reserving job opportunities for this important sector of the children of Africa, results from the Libyan Jamahiriya's contributions to solve the immigration problem.

The Libyan Jamahiriya participates in efforts to fight poverty and hunger in Africa via bilateral agreements. With respect to international organizations we would like to mention, as an example, the great Libyan Jamahiriya's involvement by managing five food security programs in Burkino Faso, Chad, Niger, Mali, Sudan, and members of the Mediterranean and desert countries through the Food and Agriculture Organization (FAO).

Libya has been and continues to be open along its African and Arab borders such that there are approximately 1.5 million foreign workers in the country. More than 90% are self employed or work for the local or public sectors, and legislation exists to organize their rights and duties, just as they must comply with the legal conditions for practicing their trade or profession, adherence to the rules of public health, and taxes by which citizens must comply without exception.

The problem is not with those who enter the country legitimately and stay after the expiration of their entry visa in order to work, or those who violate the terms of the entry visa by practicing a different trade or profession. In these cases, matters are most likely settled in accordance with the legislation currently in force. Even those who enter the country illegally can resolve their problems if they have authentic valid documentation.

The real problem is with individuals who enter the country illegally without documentation. They pose a threat to public security, the issue that necessitates taking legal steps with regards to them.

Also, another problem is those individuals who enter the country with the intention of migrating to other countries. The Libyan Jamahiriya is committed to its international and bilateral agreements to fight illegal immigration by taking steps to prevent the smuggling of persons, the trafficking of them, and their falling victim to blackmail and fraud at the hands of organized crime. During 2005, forty-nine criminal organizations were arrested for smuggling illegal immigrants, and 40,000 foreigners were arrested for attempting illegal immigration by sea, and 1,876 illegal immigrants—returned from Italy after reaching there by way of the Libyan coast—were accepted and returned to their countries of origin.

Thousands of illegal immigrants were willingly returned home in the past period at their request, and financial aid was paid to them to help them quickly arrange their affairs when they reached their country. During 2005, the number of those returned was 35,627 individuals, and 12,364 illegal immigrants were deported after consulting with their country's authorities.

The Libyan Jamahiriya is one of the countries directly affected by illegal immigration in that it carries consequences on the national economy, security, social infrastructure, and public health. The report released by the E.U. delegation after its visit to the Libyan Jamahiriya between 11/27 and 12/6/2004 confirmed that Libya hosts immigrants of all nationalities, as it is considered a destination country and a country of passage, and it

illustrated its understanding of the Libyan Jamahiriya's concern over the effects of illegal immigration.

The Libyan Jamahiriya remains among the pioneering countries in fighting discrimination in all its forms and causes, and one will not find any discriminatory practices against foreigners whatever their origin, language, religion, or any other reason.

For every person (citizen or foreigner), in accordance with the Great Green Charter for Human Rights and the Law on Enhancing Freedom, the right to a fair trial guarantees him the right to a defense by a lawyer of his choosing.

Bodily integrity is the right of every person and torture is among the prohibited acts in the Libyan Jamahiriya, punishable in accordance with the rulings of the penal code.

The Libyan Jamahiriya is a refuge for the persecuted and oppressed for the sake of freedom, and enforced legislation prohibits handing over refugees for protection to any party.

Mistreatment During Arrest, Detention and Deportation

The report claims that migrants and refugees are subject to violations during their arrest, detention, and deportation, that these operations occur at random, and that people are deported to countries where they face dangers of prosecution without being given any chance to obtain or seek international protection. The report also claims that the detention facilities suffer from overcrowding, malnourishment, lack of hygiene and healthcare.

The GPC for Foreign Liaison and International Cooperation asserts that a large number of foreigners enter the country illegally and, in many instances, they deliberately conceal or destroy documents that indicate their profession. Some of these persons do not have any documentation, making it difficult for the specialized branch to deport them.

The case of illegal entry or arrival without valid documents creates a threat to public security in any country, and the appropriate mechanisms must act in such a way to limit the dangers posed by these cases. The investigations carried out by the specialized branches with regards to many of the foreigners in the case of the aforementioned illegality have proven their involvement in serious crimes. Some of them have criminal records in their own country and during their stay in the Libyan Jamahiriya they created

gangs for organized crime with the help of some citizens who are experts in crime to commit crimes such as: obtaining and trafficking drugs, counterfeiting currency and documents, burglary and theft.

The steps taken by the specialized branches to eliminate the aforementioned illegal activities occur within the law. Law 6/1987 and its amendment by law 2/2004 on the Entry, Residence and Exit of Foreign Nationals enables the specialized branches to arrest a foreigner who enters the country—or is found in it—illegally, and to detain him in a place designated for that purpose to take legal action against him.

The Great Green Charter for Human Rights in the Jamahiriyan Era and the Law on Enhancing Freedom guarantees the right to bodily integrity, and that one is not to be treated harshly or humiliated or to have his human dignity impinged. The law also prohibits a public sector employee from using violence against persons. Article 431 of the penal code punishes an employee who uses violence against people with imprisonment and a fine, which can reach up to 10 years in the case of torture in accordance with article 435 of the penal code. Some individuals in the police overindulge in the use of force to overcome resistance by an arrested individual, just as some use their authority inappropriately, but the failings in these cases are nothing more than the isolated acts of individuals unrelated to methodology. This is rejected and cannot receive support from any party. Previously, the details of such overuse of force and inappropriate use of authority against arrested foreigners by some of the members of the police force were recorded and legal action was taken. No matter what, the level of bodily harm could never reach the point of death, critical condition or gross bodily harm, rape, or violation of physical integrity. What the report states in particular is nothing more than a repetition of statements provide [to HRW] by people who feel depressed because their path of migration to countries they perceive to be heaven has been blocked. Relying on such statements without investigating them and supporting them with evidence violates the organization's stated methodology to present realities that are supported by documentation and evidence.

With regards to the claims about overcrowding in the deportation centers and malnourishment, and the views related to cleanliness and public health, the deportation of many of the illegal migrants takes a very long time, and the deportation process last so long sometimes due to the lack of a quick response by the relevant embassies and consulates of the migrants to be deported. That puts pressure on the deportation centers, which explains the overcrowding phenomenon, despite the fact that this problem is the least serious by far after major improvements to the deportation centers were introduced. It is difficult to find a quick solution to the question of overcrowding due to the large numbers of illegal migrants who enter the Libyan Jamahiriya. In the

scope of the cooperation agreement on fighting organized crime, the illegal drug and contraband trade, and illegal immigration, signed on 12/18/2000 between the Libyan Jamahiriya and Italy, three new deportation centers were established. With regards to the problems relating to the claims of lack of adequate food, cleanliness, and public health, the branch responsible for supervision of the deportation centers undertakes efforts to ensure that the centers meet appropriate food requirements and an environment of cleanliness and health.

The GPC for Foreign Liaison and International Cooperation asserts that the consequences of illegal immigration require a large amount of funds not within the Libyan Jamahiriya's capability, as well as radical solutions to illegal immigration in terms of developing locations for deportation facilities and achieving security and stability.

The report's claims that the deportation of illegal immigrants and those found in Libya involves illegally transporting them to border regions are incorrect. Deportations to other countries occur by air or land, and are coordinated with embassies and consulates. During 2005, deportation operations cost 3,678,756 dinars.

Regarding the claim that asylum seekers are detained and deported, the GPC for Foreign Liaison and International Cooperation asserts that the Libyan Jamahiriya is not party to the 1951 Geneva Convention on Refugees and its appended protocol but that, in accordance with domestic legislation—in the first place, the Great Green Charter for Human Rights in the Jamahiriyan Era and the Law on Enhancing Freedom—Libya provides a haven for those struggling for freedom and the law prohibits the transfer of refugees to any other party for their protection. The GPC for Foreign Liaison and International Cooperation clarifies that the report greatly confuses illegal migrants whose goal is to stay or migrate to other countries with those who enter the country legally and declare their intent to stay, requesting freedom for which Libya will accept them as guests. As for those deported, they are the ones who either entered the country illegally or legally entered but were caught trying to sneak away to other countries, and they were turned away only after the appropriate legal steps were taken against them.

The GPC for Foreign Liaison and International Cooperation asserts that Libya would not turn a person over to a country or turn him away at a time when there exists evidence that he may be exposed to torture or that he would not receive fair judgment in the country to which he would be deported, based on domestic law and the agreements that Libya has signed, among them the Convention Against Torture. On that basis, the agreements with other countries which the Libyan Jamahiriya has signed, under which migrants are transferred, does not allow transfer in the case of political crimes.

With regards to the report's claims that arrests occur arbitrarily, it is incorrect in that these operations occur in an organized fashion. They involve discussion with the authority responsible for the legal procedures that deal with the crime of illegal entry or stay and the crime of smuggling migrants in order to protect personal dignity and legal rights, to support legal procedures followed in the past, and to commence training for members of that authority to raise their standards and ensure that employee practices adhere to national and international human rights standards.

In relation to the claim accusing some members of the police of accepting bribes from illegal migrants to release them, bribery is among those criminal acts punishable under law 2/1979 on economic crimes and. In the case of an employee or police officer committing this crime, he is subject to judgment for an appropriate punishment, and it is assured that the specialized branches will undertake a legal proceeding for any specific case that is reported.

The Absence of any Laws or Regulations to Govern the Asylum Process

The GPC for Foreign Liaison and International Cooperation asserts that the legal organization for asylum is the concern of many different parties, and these parties work to issue laws that organize the question of asylum and the determination of asylum status, rights and obligations. It is hoped that the efforts of these parties lead to producing a law in the Basic People's Congress—the body authorized to issue laws in the Great Jamahiriya—governing asylum.

It also renews the assertion that the Libyan Jamahiriya is committed to its obligations in national legislation to prohibit the transfer of political refugees more so than its international obligations enshrined in CAT and other agreements to prevent cruel, degrading, and inhumane treatment, and the African Union convention that regulates the phenomena specific to refugee problems in Africa.

With regards to the claims about the High Commissioner for Refugees, there is no UNHCR office in the Libyan Jamahiriya but a representative was appointed in 2001 as part of UNDP and he came to solve problems with some Somali refugees who were rejected from other countries. UNHCR offered a memorandum of understanding to open an office which is a topic of importance and study for the involved parties. The Libyan Jamahiriya signed a cooperation agreement with the International Organization for Migration on 8/9/2005 and the general director will visit the Libyan Jamahiriya on 4/25/2006 to open an office for the organization and to conduct discussions with officials.

Other Mistreatment of Migrants and Refugees

The report claims that there is discrimination against foreigners.

The GPC for Foreign Liaison and International Cooperation asserts that there is no discrimination in the Libyan Jamahiriya on the basis of race, origin, color, religion, language, class, or any other reason produced as an explanation for the occurrence of a discrimination phenomenon. The Libyan Jamahiriya was and remains prominent in its role in fighting discrimination as witnessed by the entire world, and clarifies that the problems occur between foreigners themselves and citizens themselves and are not born of any discriminatory practices.

In relation to what are referred to as the Zawiyaa incidents, the reason for such incidents is that a number of illegal immigrants stepped forward to commit crimes of armed robbery, rape, robbery and other crimes, a case in point recorded under 368/2000, in which judgments against the accused resulted in convictions with different punishments. The number of dead in the incidents was 7 Libyans and foreigners, not 51 people as presented in the report, thus confirming the information's lack of accuracy, which rebuffs the organization and the lack of credibility of its sources.

The General People's Committee for Foreign Liaison and International Cooperation asserts that the foreigner is on equal ground with the citizen for the right to achieve justice, as well as the right to a trial in which there are the basic elements and guarantees for fair trial. In accordance with national and international standards, the most important right to a defense is guaranteed to all so that each individual has the right to a lawyer of his choosing by his own free will who will defend him in front of courts at his expense. If he is unable to do so, the court will appoint a lawyer for him that he is content with free of charge to guarantee his sacred right to defend himself. He will be tried of illegally immigrating in front of the court according to the law.

With regards to what the report reiterates about the practice of alleged torture with bodily harm, each individual has rights under the Great Green Charter for Human Rights in the Jamahiriyan Era and the Law on Enhancing Freedom, which assert that torture is prohibited and is punishable by imprisonment for up to ten years according to the penal code. Confessions extracted by bodily or psychological harm have no legal power in terms of evidence in court, and every defendant has the right to state in front of the judicial investigative authority or court that his confession was extracted by force. In this case, the two authorities are obliged to investigate this issue in all aspects including the forensic medical report. In the event that they prove that the confession was taken by force, the confession will be annulled and will have no legal validity and the

official who took the confession will be subject to punishment of up to ten years in prison. And the members of the police force who have been taken to the criminal court or the review board because of accusations of acts of torture, have been tried and given criminal punishment in addition to the punishment of the review board, which has reached up to termination of their jobs. It is also worth mentioning that not all claims of torture are true; in some cases those claims were made in order to escape judgment.

The General People's Committee for Foreign Liaison and International Cooperation asserts that the law determines the period of detention prior to the transfer to the judicial investigative authority allowed to legal mechanisms. In the event that this period is surpassed, this will lead to the annulment of all the proceedings taken against the accused before the illegal detention, in addition to the prosecution of officials for the illegal detention. Nevertheless, the time of the detention that takes place with the knowledge of the judicial investigative authority is clearly defined, and it cannot surpass this period of time. However, if the authority finds it important to extend the detention of the accused in order to continue the investigation, the authority must present its case to extend this period to the court. The legal procedures of the criminal investigation will handle the issue of the extension of the detention period.

And in regards to translation, Article 22 of the Law on the Organization of the Judiciary states that the court will listen to the testimony of opposing parties or witnesses who do not have knowledge of the Arabic language by means of a qualified interpreter. According to this article, it is not possible from any legal point of view to investigate or try anyone in the absence of an interpreter if he does not speak Arabic.

Anything that the report states regarding so called illegalities is nothing but unsubstantiated talk or inconclusive assumptions, and the organization does not provide any proof or specific cases by name or date when these illegalities occurred. Based on that, the organization did not stand by its commitment to present facts and information supported by evidence.

The General People's Committee for Foreign Liaison and International Cooperation emphasizes the role of the Libyan Jamahiriya in applying the commitment for the campaign against illegal immigration according to bilateral and international agreements in a time when a great number of illegal immigrants are passing through its vast borders. By the same token, it applies its commitment to humanitarian issues. This issue costs tremendous expenses that no country can bare by itself, thus calling for the importance to find a basic and comprehensive solution to illegal immigration with global cooperation.