



ITALY/LIBYA

Pushed Back, Pushed Around

Italy's Forced Return of Boat Migrants and Asylum Seekers,
Libya's Mistreatment of Migrants and Asylum Seekers

HUMAN
RIGHTS
WATCH



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Libya's Mistreatment of Migrants and Asylum Seekers**

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Printed in the United States of America
ISBN: 1-56432-537-7
Cover design by Rafael Jimenez

Human Rights Watch
350 Fifth Avenue, 34th floor
New York, NY 10118-3299 USA
Tel: +1 212 290 4700, Fax: +1 212 736 1300
hrwnyc@hrw.org

Poststraße 4-5
10178 Berlin, Germany
Tel: +49 30 2593 06-10, Fax: +49 30 2593 0629
berlin@hrw.org

Avenue des Gaulois, 7
1040 Brussels, Belgium
Tel: + 32 (2) 732 2009, Fax: + 32 (2) 732 0471
hrwbe@hrw.org

64-66 Rue de Lausanne
1202 Geneva, Switzerland
Tel: +41 22 738 0481, Fax: +41 22 738 1791
hrwgva@hrw.org

2-12 Pentonville Road, 2nd Floor
London N1 9HF, UK
Tel: +44 20 7713 1995, Fax: +44 20 7713 1800
hrwuk@hrw.org

27 Rue de Lisbonne
75008 Paris, France
Tel: +33 (1)43 59 55 35, Fax: +33 (1) 43 59 55 22
paris@hrw.org

1630 Connecticut Avenue, N.W., Suite 500
Washington, DC 20009 USA
Tel: +1 202 612 4321, Fax: +1 202 612 4333
hrwdc@hrw.org

Web Site Address: <http://www.hrw.org>



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Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers

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I. SUMMARY

About 80 irregular boat migrants from various African countries pack into an inflatable rubber dinghy, attempting to cross over from Tripoli, Libya. They are short of food and water, and have run out of gas. They were drifting at sea for at least 48 hours before the *Bovienzo*, an Italian Guardia di Finanza patrol boat, intercepted them on the evening of Wednesday, May 6.

PUSHED BACK, PUSHED AROUND

Photographs by Enrico Dagnino



The crew of the *Bovienzo*, an Italian Guardia di Finanza patrol boat.

On May 6, 2009, for the first time in the post-World War II era, a European state ordered its coast guard and naval vessels to interdict and forcibly return boat migrants on the high seas without doing any screening whatsoever to determine whether any passengers needed protection or were particularly vulnerable. The interdicting state was Italy; the receiving state was Libya. Italian coast guard and finance guard patrol boats towed migrant boats from international waters without even a cursory screening to see whether some might be refugees or whether others might be sick or injured, pregnant women, unaccompanied children, or victims of trafficking or other forms of violence against women. The Italians disembarked the exhausted passengers on a dock in Tripoli where the Libyan authorities immediately apprehended and detained them.



This report examines the treatment of migrants, asylum seekers, and refugees in Libya through the eyes of those who have left that country and are now in Italy and Malta. These people, unlike their counterparts who are still in Libya, are

free to talk about their experiences without fear of retribution. The report has two purposes. First, it is intended to hold Libyan authorities accountable for their mistreatment of migrants, refugees, and asylum seekers. It therefore seeks to



improve the deplorable conditions of detention in Libya and to encourage Libya to establish asylum procedures in conformity with international refugee standards. Secondly, this report is intended to hold the Italian government, the

European Union (EU), and its external borders migration control agency, Frontex, accountable for any harm that befalls people who are returned to Libya without an assessment of their protection needs. It therefore is also intended to





The irregular migrants attempt to grab onto a ladder to climb aboard the *Bovienzo*.

convince EU institutions and member states to stop Italy and Frontex from forcibly returning migrants to Libya where they are routinely subjected to inhuman and degrading treatment and where potential refugees are not effectively protected.

Human Rights Watch was not able to see or interview those returned to Libya following the Italian interdictions, but bases this report on interviews with 91 migrants, asylum seekers and refugees in Italy and Malta conducted mostly in May 2009 and one telephone interview with a migrant detainee in Libya. Human Rights Watch visited Libya in April 2009 but the Libyan authorities would not permit us to interview anyone in public or private places without their express permission. The authorities also did not allow us to visit any of the many migrant detention centers in Libya, despite our repeated requests to do so.

This report looks at the burgeoning relationship between Italy and Libya, which has as one of its principal components an agreement to cooperate to stop the irregular flow of third country nationals through Libya and into Italy. Italy's interdiction regime came quickly on the heels of a new treaty with Libya, "The Treaty of Friendship, Partnership and Cooperation between the Italian Republic and Great Socialist People's Libyan Arab Jamahiriya" (the "Friendship Pact"), signed on August 30, 2008. The Friendship Pact called for "intensifying" cooperation in "fighting terrorism, organized crime, drug trafficking and illegal immigration." The two parties agreed to strengthen the border control system for Libyan land borders (50 percent funded by Italy with funding for the other 50 percent to be sought from the EU), and to use Italian companies in this endeavor.

The first tangible outcome of the Friendship Pact was Italy's transfer of three patrol boats to Libya on May 14, 2009 that were to be jointly operated by Libyan and Italian authorities. At the launch ceremony, the *Guardia di Finanza* commander, Cosimo D'Arrigo, said that the boats "will be used in joint patrols in Libyan territorial water and international waters in conjunction with Italian naval operations." He added that "members of the Libyan coast guard will also be stationed at our command station on the island of Lampedusa and will take part in patrols on our ships."

Italy violates the international legal principle of nonrefoulement when it interdicts boats on the high seas and pushes them back to Libya with no screening



The migrants include about a dozen women.





A man pours water over a dehydrated fellow migrant.

whatsoever. Various international conventions bar governments from committing *refoulement*—the forced return of people to places where their lives or freedom would be threatened or where they would face a risk of torture. The principle of *nonrefoulement* is a binding obligation in international human rights law and international refugee law, as well as European and Italian law, which also forbid Italy from returning people to places where they would face inhuman and degrading treatment.

Libya has no asylum law or procedures. There is no formal mechanism for individuals seeking protection in Libya. The authorities make no distinction between refugees, asylum seekers, and other migrants. Brigadier General Mohamed Bashir Al Shabbani, the director of the Office of Immigration at the General People's Committee for Public Security, told

Human Rights Watch, “There are no refugees in Libya.” He said, “They are people who sneak into the country illegally and they cannot be described as refugees.” He added, “Anyone who enters the country without formal documents and permission is arrested.”

During his first visit to Italy in June 2009, Libyan leader Mu`ammar al-Gaddafi said that the issue of asylum seekers “is a widespread lie.” He went on to say that Africans are “living in the desert, in the forests, having no identity at all, let alone a political identity. They feel that the North has all the wealth, the money, and so they try to reach it... Millions of people are attracted by Europe, and are trying to get here. Do we really think that millions of people are asylum seekers? It is really a laughable matter.”

Human Rights Watch does not suggest that all, or even most, of the migrants in Libya or seeking to enter the European Union via Italy or Malta, would qualify as refugees, though



Italy and Malta had asylum approval rates of 49 percent and 52.5 percent, respectively, for all nationalities in 2008; the Trapani district of Sicily, which includes Lampedusa, the entry point for most boat arrivals from Libya, had a 78 percent asylum approval rate from January through August 2008. Many of the boat migrants do, in fact, come from countries with poor human rights records and in some cases high levels of generalized violence. Some do indeed have credible claims for needing international protection. But beyond those with specific refugee claims, all migrants have human rights and should be treated with dignity, including those who do not have the right to enter or remain in Italy, Malta, or Libya.

In fact, few of the migrants interviewed by Human Rights Watch, including many who have since sought asylum in Italy or Malta or who have been recognized as refugees in those countries, said that they thought there was any possibility to seek asylum in Libya or knew that the United Nations High Commissioner for Refugees (UNHCR) had a presence there.

During the early morning hours of May 7, the *Bovienzo* heads back to Libya. The migrants are not informed of their destination.

Except for people detained at the Misrata detention center to which UNHCR and its nongovernmental organization (NGO) partners have access, none of the former detainees interviewed for this report said that they had seen or met with UNHCR while inside any of the other jails or migrant detention centers in Libya. Given the large number of former detainees who said they were beaten if they spoke to the guards to ask for anything, it is not surprising that only one told Human Rights Watch that he asked to see UNHCR while in custody.

Human Rights Watch understands that since Italy's interdiction and return policy went into effect in May 2009—bringing with it intensified scrutiny about the treatment of the returnees—that UNHCR and its NGO partners have had far more access to those returned by Italy to Libya than

previously. The Libyan authorities started granting more access to UNHCR in 2008 after the organization formalized a relationship with a Libyan NGO. Human Rights Watch welcomes increased access for UNHCR in seven migrant detention sites as well as the greater respect that the Libyan authorities appear to be according to UNHCR documents and interventions. But we note that Libya has made no formal guarantees regarding the treatment of returnees or UNHCR access to them, and that Libya has not yet formalized a memorandum of agreement for UNHCR's presence in Libya, a standard agreement in most places where UNHCR operates.

Despite its increased access to people returned to Libya by Italy, UNHCR, on July 14, 2009, expressed serious concerns that Italy's policy "in the absence of adequate safeguards, can prevent access to asylum and undermines the principle of non-refoulement." UNHCR's statement came after interviewing 82 people whom the Italian navy had returned to Libya on July 1. Many of them alleged that the Italian naval personnel did not offer food to people who had been at sea for four days, confiscated and did not return their documents and personal effects, and used force in transferring them to the Libyan vessel that resulted in the hospitalization of six of the boat passengers. Human Rights Watch learned from another source that Italian naval personnel used electric-shock batons and clubs to force the migrants off the boat, and that some of the passengers had to have lacerations on their heads stitched even before leaving the Italian vessel.

Although Human Rights Watch was not able to interview people inside Libya whom the Italians returned in the spring and summer of 2009, we believe that under the circumstances of detention in Libya and—at least under the terms of reference of Human Rights Watch's visit—that interviews conducted outside Libya in conditions of privacy and confidentiality provide a more accurate account of conditions and treatment in Libyan migration detention centers than assessments conducted from within Libya. In fact, the last time Human Rights Watch visited Libya in 2005, the first migrant our researchers interviewed on the street was arrested one hour later. This report, therefore, is based on interviews of migrants conducted in Malta and Italy about their experiences in Libya, including after having been apprehended following failed boat departures. Many of the migrants' allegations of ill treatment in this report are both serious and recent. We believe such allegations are directly relevant to the question whether Italy and the European Union ought to collaborate with Libya in the preventing third-country nationals—including potential refugees among them—from leaving Libya or in forcing people back to Libya who have succeeded in departing the country.

The most frequent abuses alleged by migrants in this report, and often the most serious, occur when they enter (or try to



enter) Libya, when they re-enter Libya after a failed boat departure, or when they are being expelled from the country. Abuses at the land borders occur on all sides: east, west, and south. Migrants are often not clear about the identity of the authorities committing the abuses, whether police or military.



In many cases, migrants traveling through Libya also do not know whether their abusers are police or criminals, but often express the belief that both groups are in league with each other as each exploits and abuses vulnerable migrants.

Thursday May 7, 7:00 am. The *Bovienzo* heads south to Tripoli, Libya.



On arrival in Tripoli, one of the migrants gets down on his knees to beg an Italian officer on the *Bovienco* not to send him back. The photographer reported that he said, “They are going to beat us up again, I do not want to go back to Libya.”

Migrants almost universally expressed to Human Rights Watch the belief that the smugglers have close relations with Libyan officials. From migrants’ accounts, the smugglers who organize the boat departures are sometimes linked to the very forces that are charged with preventing irregular maritime migration. Whether they are involved in larger smuggling operations or not, police on the roads, particularly roads leading from the borders, as well as the police guards in migrant detention centers, routinely profit by demanding and accepting bribes as the price for release from their custody. In the case of migrant detainees, this usually involves arranging contact with the families of detainees back in their countries of origin and making wire transfers of money; it often also involves the police arranging connections with smugglers for post-release travel.

Migrants who had been detained in Libya consistently told Human Rights Watch of having lived in fear during their time there. They said they feared being robbed, beaten, and extorted not only by common criminals, but also by the police.

Many told Human Rights Watch that they even feared children on the street, who often threw stones at them.

Some migrants told Human Rights Watch that they hid virtually the entire time they were living in Tripoli or Benghazi. In some cases this was because they were being held as virtual prisoners by the smugglers. But in other cases it was because they feared being arrested or being attacked on the street. As it turns out, they were safe neither on the street nor in the homes where they were hiding, as policemen or thugs would enter migrants’ homes to attack and extort, and, in the case of the police, to arrest them.

Women migrants making the journey through Libya are particularly vulnerable to smugglers and police who abuse them with impunity. Although Human Rights Watch was not able to document specific cases of rape and sexual assault, both men and women told Human Rights Watch that they frequently saw women separated from groups of migrants and that they believed the women were being taken away to be sexually assaulted.

There have not been clearly documented cases since 2004 of the Libyan authorities forcibly returning refugees to their countries of origin or to places from which they would be forcibly returned. Libya trucks migrants from the coastal areas to its land borders to deport them. Migrants from the Horn of

Africa, including Somalia and Eritrea, are sent by truck to Kufra in Libya's remote southeastern corner to be deported into Sudan. In some cases, however, they are not actually deported. Instead, according to testimony from migrants, they are left in the desert within Libyan territory. In practice, this means that such migrants have no choice but to put their lives in the hands, once again, of the smugglers who brought them from Kufra to Benghazi or Tripoli in the first place, usually abusing them along the way.

Kufra was the most frequently mentioned place of detention in Libya among the migrants Human Rights Watch interviewed in Italy and Malta. But "Kufra" does not mean a single detention center. Although there is a government-run migrant detention center at Kufra, smugglers also operate their own detention facilities there. Migrants are sometimes unclear about which is which: some describe the government-run center as "looking more like a house than a prison;" others describe the guards at the private facilities as sometimes wearing military uniforms. Most migrants regard the smugglers and the police as working together, so, in their understanding, the distinction between private and official detention facilities makes little difference. In both cases, migrants are held indefinitely, have minimal communication with their jailers (most of which takes the form of hitting and beating), and are not released until they pay bribes. All fear being dumped in the desert.

Some migrants told Human Rights that they were held in Kufra multiple times. They were detained both when they were apprehended entering Libya as well as when they were being deported. Often, however, the deportations are not actually carried out. Rather, migrants told Human Rights Watch that the managers of Kufra prison turn them over to smugglers, who "buy" them at one price, detain them in private detention facilities, and then "sell" them at a higher price by demanding money from their families to release them and take them once again to the cities along the coast.

This report also features migrant accounts of poor conditions and brutal treatment in other migrant detention centers throughout Libya. Although the names and locations vary, the description of conditions and treatment is remarkably similar and points to conditions that generally qualify as inhuman and degrading.

Libya must end the arbitrary detention of migrants and ensure that conditions of detention conform to international minimum standards. It must scrupulously protect detained migrants from physical abuse, including sexual and gender-based violence, and hold police and other officials accountable for any abuses, including extortion and collusion with smugglers. Libya also needs to sign and ratify the Refugee Convention and its 1967 Protocol and adopt an

implementing law on asylum which includes an absolute prohibition on refoulement. With the expert guidance of UNHCR, Libya should establish an effective, fair, and lawful asylum procedure. Libya should formally recognize UNHCR and support its efforts to provide international protection for refugees, asylum seekers, and other persons of concern on Libyan territory. It should grant UNHCR unfettered access to all places where non-nationals are detained.

Italy must immediately cease violating its nonrefoulement obligations and stop interdicting and summarily returning boat migrants to Libya. It should also stop cooperating with the Libyan authorities on the interdiction and interception of third-country nationals trying to leave Libya. Bilateral cooperation should be redirected into multilateral efforts, especially through UNHCR and the office of the High Commissioner for Human Rights, to ensure that fundamental human rights standards relating to the treatment of refugees, asylum seekers, and migrants in Libya are observed.

The European Union institutions and its member states should demand that Italy comply with article 3 of the European Convention on Human Rights and cease returning migrants to a place where they are subjected to inhuman and degrading treatment. They should also call upon other member states not to engage in Frontex operations that result in the return of migrants in violation of ECHR article 3. Frontex should ensure that its operational plans specifically prohibit refoulement.

The European Union, including Frontex and individual member states, should not regard Libya as a partner in migration control efforts until it has formally ratified the 1951 Refugee Convention and its 1967 Protocol, adopted a national asylum law, formally recognized UNHCR, and until its treatment of migrants and conditions of migrant detention are in conformity with international standards. The EU should ensure that the human rights clause in the upcoming the EU-Libya Framework Agreement and any agreements flowing from it contain explicit reference to the rights of asylum seekers and migrants as a prerequisite for any cooperation on migration-control schemes.

EU member states should respond quickly and positively to UNHCR requests to admit refugees in Libya, but neither member states nor the EU as a whole should embark on any schemes that would return asylum seekers to Libya for processing or otherwise turn Libya into a warehouse for people seeking asylum in the European Union.

Map of Southern Europe and North Africa



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II. RECOMMENDATIONS

TO THE GOVERNMENT OF LIBYA

ON STOPPING ABUSES AGAINST MIGRANTS

- Investigate allegations of abuse against migrants by police and by guards at facilities that detain migrants and prosecute officials responsible for abusing migrants in and out of detention.
- Ensure that all allegations of sexual abuse are fully investigated and that women are encouraged to report such abuse. Ensure that sufficient numbers of appropriately trained female officials are available to receive such reports.
- Arrest and prosecute smugglers who illegally detain, extort, and abuse migrants and provide firm protection for migrants who testify against them. Investigate and prosecute Libyan law enforcement officials who engage in corrupt relations with smugglers and who commit crimes against migrants, including demands for bribes.

ON IMPROVING CONDITIONS OF MIGRANT DETENTION

- End the arbitrary detention of migrants, asylum seekers and refugees. Detain them administratively only as necessary for the purpose of effecting their removal. Do not deprive them of their liberty without, at a minimum: a lawful order; informing them promptly in a language that they understand of the reasons for their arrest or detention; bringing them promptly before a judicial or other independent authority for a substantive decision on the need to detain them; and reviewing periodically the necessity of continued detention. Provide detainees access to legal assistance and interpreters.
- Improve conditions in all migration-related detention facilities; alleviate overcrowding and provide adequate food, sanitation, and health care. Protect women and children in these facilities while maintaining family unity. Detain children only as a measure of last resort and for the shortest time possible. Refrain from detaining unaccompanied migrant children jointly with adults. Do not detain migrants with suspected or convicted criminals.
- 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.

ON PROVIDING PROTECTION FOR REFUGEES

- Ratify the 1951 Refugee Convention and its 1967 Protocol, and enact the asylum law that has been in draft for several years; establish a fair and lawful asylum procedure in conformity with international standards and obligations, in particular, with the inclusion in national law of an absolute prohibition on refoulement.
- According to Libya's obligations as a party to the OAU (now AU) Convention Governing the Specific Aspects of Refugee Problems in Africa and the 1981 African Charter on Human and Peoples' Rights, respect in particular the AU Convention's guarantee that "no refugee shall be repatriated against his will" and the African Charter's assurance that all individuals have the right to seek asylum.
- 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, including the right to conduct interviews in private.

RECOMMENDATIONS

TO THE GOVERNMENT OF ITALY

- Immediately cease interdicting and summarily returning boat migrants to Libya.
- Investigate allegations that Italian naval personnel beat and used electric shocks to force interdicted boat migrants onto Libyan vessels and prosecute naval or coast guard officials who abused their authority, including those with command responsibility.
- Stop cooperating with the Libyan authorities on the interdiction and interception of third-country nationals trying to leave Libya.
- Make public all treaties and agreements between the governments of Italy and Libya.
- 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 access to full and fair asylum procedures, 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 interdicted or rescued at sea.

TO EUROPEAN UNION INSTITUTIONS AND EU MEMBER STATES

- Demand that Italy not violate article 3 of the European Convention on Human Rights by its interdiction and summary return of migrants to a place where they are subjected to inhuman and degrading treatment.
- Ensure access to full and fair asylum procedures, including the right to raise fear of treatment contrary to article 3 of the ECHR, for every person in the control of any EU member state, including those interdicted or rescued at sea.
- Adopt clear, consistent, and binding rules on EU member states establishing responsibility for disembarking migrants rescued at sea.
- Refrain from expelling third-country (non-Libyan) nationals to Libya, either directly or as partners in Frontex-coordinated operations, until Libya's treatment of migrants, asylum seekers and refugees fully meets European standards in relation to persecution or risk of treatment contrary to article 3 ECHR. Under current conditions, the return of third-country nationals breaches European nonrefoulement obligations not to return people to inhuman or degrading treatment.
- 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 the human rights clause in the Libya-EU Framework Agreement, being negotiated at the time of this writing, and in agreements flowing from it, contain explicit reference to the rights of asylum seekers and migrants as a prerequisite for any cooperation on migration-control schemes.
- Refrain from encouraging Libya from establishing any reception regime which falls below the European reception condition standards
- Quickly admit UNHCR-identified refugees in need of resettlement from Libya. Do so, however, only as a supplement rather than as a substitute for allowing spontaneous arrivals in EU territory to seek asylum.
- Direct development assistance to improve respect for human rights and human dignity in migrants' and asylum seekers' countries of origin to address the root causes of forced migration.

TO THE MANAGEMENT BOARD OF FRONTEX

- **Ensure that the multi-annual 2010-2013 plan does not endorse cooperation with third countries that could lead to refoulement to places where people would be at risk of being subjected to persecution or to inhuman or degrading treatment. Review all operational plans involving joint operations to ensure that they specifically prohibit refoulement.**
- **Direct that all Frontex training of border and migration enforcement officials shall include international refugee law, in cooperation with UNHCR.**

TO THE UN HIGH COMMISSIONER FOR REFUGEES (UNHCR)

- **Continue to protest the summary removal by Italy of boat migrants to Libya.**
- **Boost staffing capacity to enable UNHCR to regularly visit all migrant detention centers including in Kufra and other remote locations, as well as prisons and other facilities where potential refugees and asylum seekers are being held.**
- **Continue to issue strong protests whenever UNHCR learns that Libya is violating, or is about to violate, its nonrefoulement obligation.**

III. METHODOLOGY AND SCOPE

Human Rights Watch conducted research for this report in Libya from April 22 to April 30, 2009; in Malta from April 30 to May 5, 2009; in Sicily from October 24 to October 30, 2008 and from May 5 to May 13, 2009; in Lampedusa from May 13 to May 15; and in Rome from May 16 to May 21, 2009. We conducted 92 individual interviews with migrants, refugees, and asylum seekers, of which 48 took place in Malta and 43 in Italy, and one by telephone in Libya. We were not allowed to conduct interviews with refugees, migrants, or asylum seekers in Libya.

Human Rights Watch interviewed 29 Eritreans, 23 Somalis, 13 Nigerians, and 27 members of other nationality groups, including Ghanaians, Sudanese, Tunisians, Moroccans, and Gambians, among others. The interviewees generally were young and male, mostly traveling singly and not part of family groups. The largest contingent, 59, was in their twenties. There were 13 teenagers, of whom four were unaccompanied children under the age of 18. There were 13 in their thirties, six in their forties, and one in his fifties.

Only six of the interviewees were female; males were far more prevalent and visible among the migrant and asylum seeker populations that we saw, including in detention centers, and women were more reluctant to be interviewed. A female Human Rights Watch interviewer conducted group interviews with four groups of females—one group, representing women from a wide variety of nationalities, in detention in the Safi B Block Barracks in Malta, the second a group of families living in the family building in Hal Far open center in Malta, the third a group of Nigerian women in a safe house in Agrigento, Italy, and the fourth, a group of women in the center for asylum seekers in Caltanissetta, Italy.

Despite our repeated requests before and during our visit, we were not allowed to visit any migrant detention centers in Libya. We were able to visit with high officials from the ministries of interior and justice, and with mid-level officials from the ministry of foreign affairs. We also had the opportunity to discuss the situation of migrants, refugees, and asylum seekers with both the International Organization for Migration (IOM) and the United Nations High Commissioner for Refugees (UNHCR) in Libya, as well as in Italy.

In Malta, we had access to all of the detention centers that hold migrants—Ta’Kandja, both the old and new centers; the Hal Far open center; the Daril-Liedna shelter for unaccompanied minors (which was empty at the time of our visit); the Marsa open center; the Safi Barracks (Block B; Block C; Warehouse I and II); and Lyster Barracks. All interviews in Malta were conducted in complete privacy, including those in detention centers. Human Rights Watch picked subjects for individual interviews during walk-throughs at detention and accommodation centers by asking migrants to identify themselves if they had been detained in Libya. Some of the fifteen migrants and asylum seekers interviewed outside of detention and accommodation centers were identified with the assistance of local social and legal service providers, but were also interviewed in complete privacy and confidentiality. In Malta, we met with staff and guards at the detention centers. We also met with representatives of Jesuit Refugee Services and Mèdecins Sans Frontières.

In Italy, we had access to the three detention and reception centers at Caltanissetta, the two detention and reception centers at Trapani, and the two detention and reception centers at Lampedusa. Although we were allowed to interview detainees in Lampedusa in private, the time we were permitted to visit was limited, so that we were only able to interview four people, which was not enough to get an adequate understanding of conditions there. Because of the limited time available to us, we were not able to conduct individual interviews in the Trapani detention center, though we did tour the facility, speak informally with detainees in the presence of guards, and spoke with the administrators of the facility. In Rome, despite written requests weeks before the visit and repeated requests leading up to the visit, we were not able to meet with ministry of interior or foreign ministry officials.

Individual interviews averaged about 45 minutes, and some lasted well over one hour. In some cases, Human Rights Watch picked individual interview subjects in detention and reception centers from among those who indicated a willingness to be interviewed after we made a group presentation. At other times, Human Rights Watch chose detainees at random. Outside of detention centers, local service providers helped to identify interview subjects.

In all cases, Human Rights Watch told all interviewees that they would receive no personal service or benefit for their testimonies and that the interviews were completely voluntary and confidential. All names of migrant, refugee, and migrant interviewees are withheld for their protection and that of their families. The notation used in this report uses a letter and a number for each interview; the letter indicates the person who conducted the interview and the number refers to the person being interviewed. All interviews are on file with Human Rights Watch.

IV. TERMINOLOGY

The terms that are chosen to identify the people who are in the process of migrating as well as the people to whom they often come into contact are rarely neutral or noncontroversial. Certain terms, such as *refugee*, have clear meanings in international law, but others do not or their definitions are hard to match with the reality on the ground where the flows of people are often described as “mixed.”

Migrants

For purposes of this report, the term *migrant* will describe the wide range of people traveling in and through Libya and as passengers on boats traveling irregularly in the Mediterranean. It is intended as an inclusive rather than an exclusive term. In other words, to call someone a migrant in this report does not exclude the possibility that he or she may be an asylum seeker or refugee. A *refugee*, as defined under the 1951 Convention Relating to the Status of Refugees, is a person with a “well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion” who is outside his country of nationality and is unable or unwilling, because of that fear, to return.¹ An *asylum* seeker is a person who is seeking protection and, as such, is trying to be recognized as a refugee or to establish a claim for protection on other grounds.

Although international law defines *migrant workers*, it does not define migrants per se.² In the context of this report, *migrant* is simply the broadest, most inclusive term to describe the third-country nationals entering, residing in, and leaving Libya. It includes the subset of asylum seekers who are seeking protection outside Libya (Libya itself, as yet, does not have a refugee law and does not grant asylum) as well as the narrower subset of people who are actually refugees. Refugees, it should be remembered, are people who meet the refugee definition whether or not they have been formally recognized as such.

Smugglers

International law makes a distinction between *traffickers* and *smugglers*. The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, defines trafficking as the recruitment, transportation, transfer, harboring or receipt of persons through “the threat or use of force or other forms of coercion...or of the giving or receiving of payments or benefits to achieve the consent of a person having control of another person, for the purpose of exploitation.”³

By contrast, the Protocol against the Smuggling of Migrants by Land, Sea and Air defines smuggling of migrants as the procurement of “a financial or other benefit” in order to effect an illegal entry.⁴ The distinction is blurred in Libya, however, as is the distinction between criminals involved in illegal migration and the police tasked with enforcing the law.

While it is the case that almost all undocumented migrants are subjected to the threat or use of force by the people who are transporting them, it is not clear that they generally are being coerced for the purposes of exploitation, as defined in the Trafficking Protocol, such as, for prostitution, other forms of sexual exploitation or forced labor.⁵ Because it is unclear whether the criminals who are involved in transporting migrants in, through, and out of Libya consistently meet the definition of *trafficker*, Human Rights Watch will use the term *smuggler* to refer to these people. When quoting directly from migrants, we will use the terms that they or the interpreters used, even though they may not be technically correct.

¹ Convention relating to the Status of Refugees, 189 U.N.T.S 150, entered into force April 22, 1954. <http://www.unhcr.org/refworld/docid/3be01b964.html> (accessed July 14, 2009). (Hereafter, Refugee Convention).

² International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (Migrant Workers Convention), adopted December 18, 1990, G.A. Res. 45/158, annex, 45 U.N. GAOR Supp. (No. 49A) at 262, U.N. Doc. A/45/49 (1990), entered into force July 1, 2003.

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention on Transnational Organized Crime (Trafficking Protocol), adopted November 15, 2000, G.A. Res. 55/25, annex II, 55 U.N. GAOR Supp. (No. 49) at 60, U.N. Doc. A/45/49 (Vol. I) (2001), entered into force December 25, 2003.

⁴ Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention Against Transnational Crime (Smuggling Protocol), adopted November 15, 2000, G.A. Res. 55/25, annex III, U.N. GAOR, 55th Sess., Supp. No. 49, at 65, UN Doc. A/45/49 (Vol. I) (2001); 40 ILM 384 (2001), entered into force January 28, 2004.

⁵ According to the U.S. State Department’s Trafficking in Persons Report 2009, Libya is a “tier 2, Watch List” country for human trafficking. “Although precise figures are unavailable, foreign observers estimate that one-half to one percent of foreigners (i.e., up to 20,000 people) may be victims of trafficking. In some cases, smuggling debts and illegal status leave migrants vulnerable to coercion, resulting in cases of forced prostitution and forced labor; employers of irregular migrants sometimes withhold payment or travel documents.” U.S. Department of State, Trafficking in Persons Report, 2009, <http://www.state.gov/documents/organization/123357.pdf> (accessed July 6, 2009).

V. Italian-Libyan “Friendship” and the Return of Boat Migrants to Libya

In September 2006, Human Rights Watch published a report, “Libya: Stemming the Flow: Abuses against Migrants, Asylum Seekers and Refugees.”⁶ The present report could have had the exact same title with one addition: Italy’s name would be added next to Libya’s.

On May 6, 2009, Italy began unilaterally interdicting boat migrants on the high seas and returning them summarily to Libya.⁷ A week later, Libya and Italy announced the beginning of joint naval patrols in Libyan territorial waters, although it was unclear whether and how they were operating. At the May 14, 2009 launch ceremony for these patrols, the *Guardia di Finanza* commander,⁸ Cosimo D’Arrigo, said that the boats “will be used in joint patrols in Libyan territorial water and international waters in conjunction with Italian naval operations.”⁹ He added that “members of the Libyan coast guard will also be stationed at our command station on the island of Lampedusa and will take part in patrols on our ships.”¹⁰ The joint Italian-Libyan patrolling mission is due to last an initial three years.¹¹

In the first week after the interdiction program began, about 500 boat migrants were summarily returned to Libya, resulting in a dramatic curtailment in the number of boats attempting the journey from Libya.¹² Over the course of the next eight weeks, only 400 were

⁶ Human Rights Watch, *Libya – Stemming the Flow: Abuses Against Migrants, Asylum Seekers and Refugees*, Vol. 18, No. 5(E), September 2006, <http://www.hrw.org/en/node/11164/section/1>. (Hereafter, *Stemming the Flow*).

⁷ “UNHCR deeply concerned over returns from Italy to Libya,” UNHCR press release, May 7, 2009, <http://www.unhcr.org/4a02d4546.html> (accessed June 26, 2009).

⁸ The *Guardia di Finanza* (GdF) is a special police force of the Italian Ministry of Economy and Finance that carries out security, judicial and fiscal police activities in close cooperation with the Ministry of Defense, including control of terrestrial and coastal Italian borders. Italy’s coast guard is the *Corpo delle capitanerie di porto - Guardia Costiera* (commonly known as the *Guardia Costiera*), which operates as part of the Italian Navy corps under the Ministry of Defense. The *Guardia Costiera* is responsible for the safeguard of human life in sea.

⁹ “Consegnate alla Libia tre motovedette della Guardia di finanza per il pattugliamento nel mar Mediterraneo,” Ministero dell’Interno – Notizie, May 14, 2009, http://www.interno.it/mininterno/export/sites/default/it/sezioni/sala_stampa/notizie/immigrazione/0193_2009_05_14_ga_eta_consegna_motovedette.html_1084908904.html (accessed July 23, 2009). See also, “Italy gives Libya Three Patrol Boats,” ANSA, May 14, 2009, http://74.125.95.132/search?q=cache:AMgxc0jSgTAJ:www.ansa.it/notiziari/engmediaservice/2009-05-14_114357642.html+Italy+gives+Libya+Three+Patrol+Boats&cd=1&hl=it&ct=clnk&gl=it (accessed July 27, 2009). Italy agreed to transfer six *Guardia di Finanza* vessels (three “Bigliani” class coast guard cutters and three “V.5000” class patrol boats) to Libya to be manned by mixed Italian and Libyan crews.

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Nick Squires, “Concentration camps for immigrants’ admission by Silvio Berlusconi,” *Telegraph.co.uk*, May 20, 2009, <http://www.telegraph.co.uk/news/worldnews/europe/italy/5355280/Concentration-camps-for-immigrants-admission-by-Silvio-Berlusconi.html> (accessed July 17, 2009). See also, Herman Grech, “Where have all the immigrants gone?” *Times of*

interdicted and returned.¹³ Irregular boat migrants to Sicily (including Lampedusa) and Sardinia fell by 55 percent in the first six months of 2009 compared to the same period the previous year.¹⁴ The migrant detention centers of Lampedusa, the tiny Italian island just off the North African coast, vividly illustrate this: in January 2009, they were filled beyond capacity, holding nearly 2,000 people, and migrants were sleeping on the floors.¹⁵ For a time in early June, the Lampedusa detention centers were completely empty of migrants.¹⁶

Why the number of migrants attempting the Mediterranean voyage fell so dramatically is a matter of speculation. Certainly a new naval cordon was a strong deterrent to boat departures, as embarking on a dangerous journey is only worth the risk if there is some chance of success.¹⁷ But the fall in the number of departures could also be because Libyan authorities strengthened their efforts to prevent departures.

Libyan leader, Mu`ammar al-Gaddafi's incentive to stem the flow of migrants is a newfound partnership with Italy. After nearly a decade of negotiation, Italy and Libya signed *The Treaty of Friendship, Partnership and Cooperation between the Italian Republic and Great Socialist People's Libyan Arab Jamahiriya* (the 'Friendship Pact') on August 30, 2008.¹⁸ The real trade off for Libya's cooperation in stopping irregular migration appears to be Italian investments

Malta, June 28, 2009, <http://www.timesofmalta.com/articles/view/20090628/local/where-have-all-the-immigrants-gone?> (accessed June 29, 2009).

¹³ UNHCR Briefing Note, "UNHCR interviews asylum seekers pushed back to Libya," July 14, 2009, <http://www.unhcr.org/4a5c638b6.html> (accessed July 17, 2009).

¹⁴ "Immigration: Illegal Arrivals from Sea Halved in Italy," *ANSamed*, citing Frontex, July 9, 2009, <http://www.ansamed.info/en/news/ME03.@AM50679.html> (accessed July 17, 2009).

¹⁵ "UNHCR concerned over humanitarian situation in Lampedusa, Italy," UNHCR, press release, January 23, 2009, <http://www.unhcr.org/497991064.html> (accessed June 26, 2009).

¹⁶ *Migration News Sheet* reports Mr. Buccarello, councillor on immigration for the municipality of Lampedusa, as informing "the media that since May 6, 2009 when the Government began its new policy of returning to Libya those irregular migrants/asylum-seekers who departed from there, more than 170 more had arrived." "Irregular migrants/asylum seekers are still arriving on the Italian island of Lampedusa," *Migration News Sheet*, July, 2009.

¹⁷ According to the International Organization for Migration, "Many illegal immigrants have been discouraged from attempting the sea voyage because of Italy's new policy." Quoted in "'Outsourcing' asylum seekers the Italian way," *NRC Handelsblad*, July 24, 2009, http://www.nrc.nl/international/article2309813.ece/Outsourcing_asylum_seekers_the_Italian_way (accessed July 24, 2009).

¹⁸ "Gaddafi, Berlusconi sign accord worth billions," Reuters, August 30, 2008, <http://www.reuters.com/article/worldNews/idUSLU29214620080830> (accessed June 26, 2009). See also, "Firma per risarcimento Italia-Libia, 'Saremo uniti sull'immigrazione,'" *La Repubblica.it*, August 30, 2008, <http://www.repubblica.it/2008/05/sezioni/esteri/libia-italia/berlusconi-gheddafi/berlusconi-gheddafi.html> (accessed July 23, 2009). The Italian Senate ratified the agreement on February 3, 2009; Libya ratified it a month later. "Italy-Libya: Tripoli Ratifies Friendship Treaty" *ANSamed*, March 2, 2009, <http://www.ansamed.info/en/news/ME01.@AM49114.html> (accessed June 29, 2009). The treaty builds on a December 2000 bilateral agreement and a December 30, 2007 Protocol of Understanding in which the two countries agreed to collaborate to stop irregular migration, including through joint maritime patrols. See Ministry of Foreign Affairs, http://www.esteri.it/MAE/EN/Politica_Estera/Aree_Geografiche/Mediterr_MO/Rapporti%20bilateralil%20Paesi%20del%20Mghreb/Libia.htm?LANG=EN (accessed June 26, 2009).

in Libya: The Friendship Pact provides for \$5 billion in compensation for abuses committed during Italy's rule in Libya (from 1911 to 1943). The money will be invested by Italy over a 25-year period at the rate of \$200 million per year in infrastructure projects in Libya.¹⁹

The Friendship Pact calls for “intensifying” cooperation in “fighting terrorism, organized crime, drug trafficking and illegal immigration.”²⁰ The two parties agree to strengthen the border control system for Libyan land borders (50 percent funded by Italy and 50 percent to be sought from the EU), and to use Italian companies in this endeavor.²¹

Both Italy and Libya have incentives for stemming the flow of irregular migrants. Foreigners comprise 10.5 percent of Libya's population of 5.8 million²² and 87 percent of the 536,000 foreigners residing in the country in 2004 were undocumented.²³ Although for many years al-Gaddafi welcomed sub-Saharan Africans to Libya in the name of pan-African solidarity, present-day Libyan authorities seem to regard the influx from the south as more of a threat. Libyan foreign minister, Moussa Kusa, said the “real problem in Libya regarding illegal immigration” is the “uncontrollable” 4,000-kilometer southern border.²⁴

The number of irregular boat migrants arriving in Italy from North Africa rose from 19,900 in 2007 to 36,000 in 2008, an 89.4 percentage increase.²⁵ Italy also received 31,164 new asylum applications in 2008, an increase of 122 percent from the 14,053 asylum applicants in 2007.²⁶ In 2008, Italy ranked as the fourth highest asylum host country in the industrialized world, trailing only the United States, Canada, and France.²⁷

¹⁹ “Libya okays pact with Italy to boost investment,” *Reuters*, March 2, 2009, <http://uk.reuters.com/article/idUKL232117420090302> (accessed June 5, 2009).

²⁰ “Ecco il testo dell'accordo, Va ratificato dal Parlamento,” *La Repubblica.it*, October 23, 2008, <http://www.repubblica.it/2008/05/sezioni/esteri/libia-italia/testo-accordo/testo-accordo.html> (accessed July 16, 2009). See Article 19. Translated by Human Rights Watch.

²¹ *Ibid.*

²² United Nations, Department of Economic and Social Affairs, Population Division, “International Migration Report 2006: A Global Assessment,” 2006, http://www.un.org/esa/population/publications/2006_MigrationRep/Profiles_country.pdf (accessed July 16, 2009).

²³ There were 468,000 residents living illegally in Libya in 2004 out of a total foreigner population of 536,324, according to Omran Abdusalam Sofrani and Hussein Saleh Jwan, citing statistics from the General Department of Passports and Citizenship, ‘International Migration to Libya’, presented in Tripoli. Omran Abdusalam Sofrani and Hussein Saleh Jwan, “International Migration to Libya,” 2009. On file with Human Rights Watch.

²⁴ “Immigration: Libyan Minister, Southern Border Uncontrollable,” *ANSamed*, April 2, 2009, <http://www.ansamed.info/en/news/ME01.@AM50658.html> (accessed July 9, 2009).

²⁵ <http://www.unhcr.org/pages/4a1d406060.html> (accessed June 12, 2009).

²⁶ Email from UNHCR, June 25, 2009. See also, UNHCR Asylum Levels and Trends in Globalized Countries 2008, <http://www.unhcr.org/49c796572.html> (accessed August 27, 2009).

²⁷ *Ibid.*, page 6.

Italian Prime Minister Silvio Berlusconi, who draws some of his political support from anti-immigrant parties, has used the issue of undocumented migrants for political advantage and to attack the idea that Italy is a multiethnic and multicultural society.²⁸ “The Left’s idea,” he said, “is that of a multiethnic Italy. That’s not our idea.”²⁹ Berlusconi has said, “We don’t want Italy to become a multiethnic, multicultural country. We are proud of our culture and of our traditions.”³⁰

²⁸ The political manipulation of the issue became quite ugly. After UNHCR criticized Italy’s return of boat migrants in May, the Italian defense minister, Ignazio La Russa, said that UNHCR was “not worth a damn.” He accused UNHCR’s Italian spokesperson, Laura Boldrini, of being “a notable Communist party member and a criminal.” He went on, “I accuse her of being inhumane because she wants us to keep [illegal immigrants] in holding centers and then expel them. Or, since she wants them to escape once they’ve reached Italy, she’s a criminal who ignores the law.” “La Russa contro l’ Unhcr: ‘Non conta niente,’” Vincenzo Nigro, *La Repubblica*, May 22, 2009, p. 6, <http://ricerca.repubblica.it/repubblica/archivio/repubblica/2009/05/17/la-russa-contro-unhcr-non-counta.html> (accessed July 23, 2009). Minister of Foreign Affairs Franco Frattini rebuked La Russa, but only for being impolite, saying, “International organizations always merit respect even if they make mistakes in evaluating a government.” Quoted in “Migranti, Frattini frena La Russa: ‘L’Onu sbaglia, ma va rispettato,’” *La Repubblica.it*, May 17 2009, <http://www.repubblica.it/2009/05/sezioni/cronaca/immigrati-7/la-russa-boldrini/la-russa-boldrini.html> (accessed August 27, 2009). La Russa later apologized for his remarks.

²⁹ “Berlusconi: ‘Sì ai rimpatri, non apriremo le porte a tutti’” (“Berlusconi: ‘Yes to push-backs, we won’t open the doors to everyone’”), *Corriere della Sera*, May 9, 2009, http://www.corriere.it/Politica/09_maggio_09/maroni_immigrati_respinti_da84e542-3ca2-11de-a760-00144fo2aabc.shtml (accessed July 15, 2009). Translated by Human Rights Watch.

³⁰ “Non vogliamo un’Italia pluriculturale,” *Corriere della Sera*, March 28, 2006, http://www.corriere.it/Primo_Piano/Politica/2006/Notizie/Politiche2006/articoli/immigrati.shtml (accessed July 15, 2009). Original Italian: “Noi vogliamo un’Italia che non diventi un paese pluri-etnico, pluriculturale, siamo fieri della nostra cultura e delle nostre tradizioni.” Translated by Human Rights Watch.

VI. Interdiction and the Principle of Nonrefoulement

When Prime Minister Berlusconi declared that he did not subscribe to the idea that Italy is or should be a multiethnic state, he acknowledged an exception for refugees at risk of persecution. He made it clear, however, that he regarded this as only a remote, almost a theoretical, exception. He said, “There’s hardly anyone on these boats who has the right to asylum, as the statistics show. Only in exceptional cases.”³¹

In fact, 75 percent of sea arrivals to Italy applied for asylum in 2008, of whom 50 percent were granted some form of protection.³²

Berlusconi said that the exceptional asylum cases would be limited to those for whom Italy was bound under international law not to return. The obligation, according to Berlusconi, “is to take in only those citizens who are able to apply for political asylum and that we have to take in, as stipulated by international treaties and agreements...those who put their feet down on our soil, in the sense also of entering into our territorial waters.”³³

Berlusconi’s reading of Italy’s nonrefoulement obligations as not applying aboard Italian-government vessels on the high seas is incorrect. The 1951 Refugee Convention, to which Italy is a party,³⁴ bars refoulement, the return of people “in any manner whatsoever” to

³¹ “Fini: ‘Prima verificare diritto d’asilo’; Berlusconi: ‘Su quei barconi non c’è’,” *La Repubblica.it*, May 11, 2009, <http://www.repubblica.it/2009/05/sezioni/cronaca/immigrati-7/fini-consiglio-europa/fini-consiglio-europa.html> (accessed July 15, 2009). Original Italian: “Su questi barconi, come dicono le statistiche, persone che hanno il diritto d’asilo non ce ne è praticamente nessuna. Solo casi eccezionalissimi.” Translated by Human Rights Watch.

³² “UNHCR Deeply Concerned over Returns from Italy to Libya,” UNHCR press release, May 7, 2009, <http://www.unhcr.org/4a02d4546.html> (accessed July 23, 2009). See also UNHCR, “2008 Global Trends: Refugees Asylum-seekers, Returnees, Internally Displaced and Stateless Persons,” Table 10, June 16, 2009, which gives an overall asylum approval rate of 49 percent for Italy in 2008, <http://www.unhcr.org/4a375c426.html> (accessed July 23, 2009). The Trapani Territorial Commission (which includes Lampedusa) examined 1,017 asylum requests from January through August 2008 with an approval rate of 78.35 percent for some form of international protection. Ministry of Interior, http://www.interno.it/mininterno/export/sites/default/it/assets/files/15/0336_domande_asilo_2008.pdf (accessed August 27, 2009).

³³ “Berlusconi: ‘La nostra idea dell’Italia non è multiethnica’” (“Berlusconi: ‘Our idea of Italy is not multiethnic’”), *Il Sole 24 Ore.com*, May 9, 2009, <http://www.ilsole24ore.com/art/SoleOnline4/Italia/2009/05/berlusconi-no-italia-multiethnica.shtml?uuid=f34356f2-3cbd-11de-9448-2a21b45d727f&DocRulesView=Libero> (accessed July 15, 2009). Complete original Italian: “La nostra idea è di accogliere solo quei cittadini che sono nelle condizioni per chiedere l’asilo politico e che dobbiamo accogliere qui come dicono gli accordi e i trattati internazionali” e cioè “coloro che mettono piede sul nostro suolo, intendendo come piede sul nostro suolo anche le entrate nelle acque territoriali.” Translated by Human Rights Watch.

³⁴ Italy ratified the Refugee Convention November 15, 1954 and its Protocol on January 26, 1972. It is also bound to the nonrefoulement principle under the EU Qualification Directive 2004/83/EC (article 21(1)), which states, “Member States shall respect the principle of non-refoulement in accordance with their international obligations.” <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32004L0083:EN:HTML> (accessed August 11, 2009). This provision of the Qualification Directive was transposed into Italian national law as Decreto Legislativo number 251 of

places where their lives or freedom would be threatened on account of their race, religion, nationality, membership of a particular social group or political opinion.³⁵ The idea that Italy can send its navy and coast guard out on the high seas to forcibly return potential refugees stands the purpose and the language of the Refugee Convention on its head. Its purpose is to protect refugees from being returned to persecution; its language instructs states not to “return.” The Convention makes no distinction—nor even addresses—*from where* refugees are being returned; the issue of concern is *to where*.

Berlusconi argues that nonrefoulement obligations do not apply on the high seas. The UN High Commissioner for Refugees (UNHCR),³⁶ its Executive Committee,³⁷ the Inter-American Commission on Human Rights,³⁸ as well as legal commentators and nongovernmental organizations (NGOs),³⁹ have found that nonrefoulement obligations are not limited by territorial boundaries and that the Refugee Convention prohibits states from returning refugees to persecution from outside their territories.⁴⁰

UNHCR, along with a wide body of other legal sources, has made it clear that the principle of nonrefoulement applies wherever a state exercises control or jurisdiction, including on the

November 19, 2007, and published in the Gazzetta Ufficiale no. 3 of January 4, 2008. The text of the law is available at <http://www.immigrazione.biz/legge.php?id=159> (accessed August 11, 2009).

³⁵ The bar on refoulement includes the return to places from which the refugee risks being returned to a place of persecution. UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,” January 26, 2007, paragraph 10, <http://www.unhcr.org/refworld/docid/45f17a1a4.html> (accessed July 16, 2009).

³⁶ UNHCR, “Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol,” January 26, 2007, paragraph 24; UNHCR “Background Note on the Protection of Asylum-Seekers and Refugees Rescued at Sea, March 18, 2002, paragraph 18; UNHCR, “The Principle of Non-Refoulement as a Norm of Customary International Law, Response to the Questions Posed to UNHCR by the Federal Constitutional Court of the Federal Republic of Germany in Cases 2 BvR 1938/93, 2 BvR 1953/93, 2 BvR 1954/93” January 31, 1944, paragraph 33; UNHCR “UN High Commissioner for Refugees responds to U.S. Supreme Court Decision in *Sale v Haitian Centers Council*,” *International Legal Materials*, 32, 1993, p. 1215. UNHCR, “Comments on the Communication from the Commission to the Council and the European Parliament on the Common Policy on Illegal Immigration” COM (2001) 672 Final, November 15, 2001, paragraph 12; UNHCR Amicus Curiae Brief in *Sale*, December 21, 1992.

³⁷ Executive Committee of the High Commissioner’s Programme, 18th Meeting of the Standing Committee “Interception of Asylum Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach,” EC/50/SC/CRP.17, June 9, 2000, paragraph 23; EXCOM Conclusion No. 82 (XLVIII) (1997); EXCOM Conclusion No. 85 (XLIX) (1988), EXCOM Conclusion No. 53 (XXXIX) (1981); EXCOM Conclusion No. 22 (XXXII) (1981).

³⁸ *The Haitian Center for Human Rights et al. v. United States*, Case 10.675, Report No. 51/96, Inter-AmCHR, OEA/Ser.L/V/II.95 Doc 7 rev. at 550, 1997.

³⁹ E. Lauterpacht & D. Bethlehem, “The Scope and the Content of the Principle of Non-Refoulement: Opinion,” *Refugee Protection in International Law*, 2003, p. 87; B. Frelick, “‘Abundantly Clear’ Refoulement,” *Georgetown Immigration Law Journal*, Vol. 19, No 2, 2005, 245; Human Rights Watch, *By Invitation only: Australian Asylum Policy*, Vol. 14, No. 10(c), December 2002, <http://www.hrw.org/legacy/reports/2002/australia/australia1202.pdf> (accessed August 11, 2009).

⁴⁰ Berlusconi’s view reflects that taken by the US Supreme Court in *Sale v. Haitian Centers Council*, 509 US 155, 156 (USSC 1993).

high seas or in another state's territory. In establishing an international framework regarding the interception of asylum seekers and refugees, the UN refugee agency declared:

The principle of *non-refoulement* does not imply any geographical limitation. In UNHCR's understanding, the resulting obligations extend to all government agents acting in an official capacity, within or outside national territory. Given the practice of States to intercept persons at great distance from their own territory, the international refugee protection regime would be rendered ineffective if States' agents abroad were free to act at variance with obligations under international refugee law and human rights law.⁴¹

For UNHCR this is not an abstract principle. After interviewing 82 people whom the Italian navy had forcibly returned to Libya on July 1, UNHCR issued a statement expressing its "serious concerns" that Italy's policy "in the absence of adequate safeguards, can prevent access to asylum and undermines the principle of non-refoulement."⁴²

UNHCR said that the group of 82 included 76 Eritreans, but that the Italian navy made no effort to identify nationalities or the reasons people were fleeing their countries. The refugee agency also said that the group included nine women and at least six children. Despite having been at sea for four days, the Italians did not offer food to the migrants during the 12-hour interdiction and return operation. The Italian officials also confiscated the migrants' personal possessions, including money, mobile phones, passports, and refugee certificates.⁴³ All of the migrants were detained upon arrival.⁴⁴

UNHCR gathered "disturbing accounts" that Italian personnel used force to transfer migrants from their ship to a Libyan vessel and that as a result six people had to be hospitalized.⁴⁵ Human Rights Watch learned from another source that Italian naval personnel used electric-

⁴¹ "Interception of Asylum-Seekers and Refugees: The International Framework and Recommendations for a Comprehensive Approach," Executive Committee of the High Commissioner's Programme, 18th Meeting of the Standing Committee (EC/50/SC/CPR.17) June 9, 2000, paragraph 23.

⁴² UNHCR Briefing Note, "UNHCR interviews asylum seekers pushed back to Libya," July 14, 2009, <http://www.unhcr.org/4a5c638b6.html> (accessed July 17, 2009).

⁴³ Email to Human Rights Watch from UNHCR, August 5, 2009. The Italian authorities say that the documents were handed over to Libyan officials on board the Libyan vessel, but the migrants say that the Libyan authorities never returned their possessions to them.

⁴⁴ UNHCR Briefing Note, "UNHCR interviews asylum seekers pushed back to Libya," July 14, 2009, <http://www.unhcr.org/4a5c638b6.html> (accessed July 17, 2009).

⁴⁵ *Ibid.*

shock batons and clubs to force the migrants off the boat, and that some of the passengers had to have lacerations on their heads stitched even before leaving the Italian vessel.⁴⁶

The nonrefoulement obligation applies not only in refugee law, but in human rights law as well, which bars sending people to places where they would be at real risk of being subjected to torture or cruel, inhuman, or degrading treatment (including through a risk of being sent on to a third country). This is set out explicitly in article 3 of the Convention against Torture.⁴⁷ Jurisprudence has made clear that states are required under article 3 of the European Convention on Human Rights (ECHR)⁴⁸ and article 7.1 of the International Covenant on Civil and Political Rights (ICCPR) to respect the principle of nonrefoulement.⁴⁹ The European Court of Human Rights has also made it clear that the ECHR is applicable to the actions of a member state in international waters.⁵⁰ In 2004, the Human Rights Committee, the body responsible for monitoring implementation of the ICCPR, issued Comment No. 31, to clarify that responsibility under the Covenant adheres to any situation where the state party exercises effective control:

States Parties are required by article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.⁵¹

⁴⁶ Human Rights Watch phone call to Libya, June 15, 2009. Source cannot be revealed.

⁴⁷ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Convention against Torture), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, <http://www2.ohchr.org/english/law/cat.htm> (accessed August 28, 2009).

⁴⁸ See *Soering v United Kingdom* 11 EHRR 439, judgment July 7, 1989, <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=695496&portal=hbkm&source=externalbydocnumbr&table=F69A27FD8FB86142BF01C1166DEA398649> (accessed August 11, 2009); *TI v UK (Application 43844/98)*, judgment March 7, 2000, found at *T.I. v United Kingdom* [2000] INLR 211 <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=669265&portal=hbkm&source=externalbydocnumbr&table=F69A27FD8FB86142BF01C1166DEA398649> (accessed August 11, 2009).

⁴⁹ International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S.171, entered into force March 23, 1976, ratified by Italy September 15, 1978, <http://www2.ohchr.org/english/law/ccpr.htm> (accessed August 27, 2009). The ICCPR prohibition on cruel, inhuman, or degrading treatment or punishment applies to all persons within a party's territory or jurisdiction, according to article 2.1.

⁵⁰ *Women on Waves and Others v Portugal* (Application 31276/05), Judgment of February 3, 2009.

⁵¹ Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, adopted 29 March 2004, <http://www2.ohchr.org/english/bodies/hrc/comments.htm> (accessed August 27, 2009).

VII. The Approach of the European Union Towards Libya

The EU long regarded Libya as a pariah state with whom cooperation was considered impossible. In fact, between 1992 and October 2004, Europe imposed economic sanctions and an arms embargo on Libya. On the very day that the embargo was lifted, however, the Council of the European Union agreed to engage with Libya on immigration matters.⁵² It sent a technical mission there in November-December 2004 “to examine arrangements for combating illegal migration.”⁵³

In June 2005, the EU Justice and Home Affairs Council adopted a Council Conclusion on cooperation with Libya on migration issues, which 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 EU Member States’ vessels and aircraft.⁵⁴ The ad hoc measures also included sending EU immigration liaison officers (ILOs) to Libyan seaports and Tripoli airport for interception purposes.⁵⁵ The EU committed to training Libyan officials on immigration controls and on “best practices” for removal of illegal immigrants.⁵⁶

The Council Conclusion also called for exploratory discussions with Libya to “tackle illegal migration in areas such as training, reinforcement of institution building, asylum issues, and

⁵² “2609th Council Meeting, General Affairs and External Relations, Luxembourg, October 11, 2004,” Council of the European Union, Press Release, PRES/04/276, October 11, 2004, <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/04/276&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed June 30, 2009).

⁵³ 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, Doc no: 9413/1/05 REV 1, May 27, 2005, <http://www.statewatch.org/news/2005/jun/eu-libya-draft-concl.pdf> (accessed August 27, 2009); “2609th Council Meeting, General Affairs and External Relations, Luxembourg, October 11, 2004,” Council of the European Union, Press Release, PRES/04/276, October 11, 2004, <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/04/276&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed June 30, 2009).

⁵⁴ “JHA Council adopts conclusions on the introduction of dialogue and cooperation with Libya on immigration issues,” Council of the European Union, Press Release, June 3, 2005.

⁵⁵ The EU 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 contains no reference to the right to seek asylum. “2561st Council Meeting, Justice and Home Affairs,” Council of European Union, Press Release, 58314/04 (Presse 37), February 19, 2004, http://ue.eu.int/ueDocs/cms_Data/docs/pressData/en/jha/79117.pdf, page 1, (accessed July 2, 2009).

⁵⁶ “Draft Council Conclusions on initiating dialogue and cooperation with Libya on migration issues,” 9413/1/05 REV 1, May 27, 2005, <http://www.statewatch.org/news/2005/jun/eu-libya-draft-concl.pdf> (accessed July 2, 2009).

public awareness of the dangers of illegal migration.”⁵⁷ Included on the list of suggestions for these discussions was 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.⁵⁸

In July 2007, EU Commissioner in charge of External Relations and European Neighborhood Policy, Benita Ferrero-Waldner, and Libyan Minister for European Affairs, Adbulati Elobeidi, signed a Memorandum of Understanding which highlighted migration as an area of common interest.⁵⁹ The following year, the European Commission and Libya launched negotiations for a broad agreement—the EU-Libya Framework Agreement—which called for political dialogue and cooperation on foreign policy, human rights, security issues and migration.

In July 2009, the vice president of the European Commission Responsible for Justice, Freedom and Security, Jacques Barrot, said that the EU would present a package for €80 million during his planned visit to Libya in September 2009, of which €20 million was to be for building accommodation centers for asylum seekers and €60 million for migration management projects on Libya’s southern frontier.⁶⁰ Al-Gaddafi is still reportedly insisting on a €300 million package from the EU to combat irregular migration in Libya.⁶¹ At the time of this writing, the EU-Libya Framework Agreement is still being negotiated.⁶²

⁵⁷ “2664th Council Meeting, Justice and Home Affairs, Luxembourg, June 2-3, 2005,” Council of the European Union, Press Release, 8849/05 (Presse 114), June 2, 2005, <http://europa.eu/rapid/pressReleasesAction.do?reference=PRES/05/114&format=HTML&aged=0&lg=da&guiLanguage=en> (accessed July 7, 2009).

⁵⁸ *Ibid.*

⁵⁹ “Commissioner Ferrero-Waldner visits Libya to reinforce EU-Libya relations,” European Commission, press release, IP/09/227, February 6, 2009, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/09/227&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed July 30, 2009). Ferrero-Waldner visited Libya in February 2009 to conduct a second round of negotiations. During the visit, she reportedly announced a package of €20 million for assistance on migration enforcement. See “Libya: EU agrees cash to combat illegal immigration,” *Euronews*, February 11, 2009, <http://www.euronews.net/2009/02/11/eu-agrees-cash-for-libya-to-combat-illegal-immigration/> (accessed July 16, 2009).

⁶⁰ “EU wants Libya to host asylum seekers,” *Afrique en Ligne*, July 22, 2009, <http://www.afriquejet.com/news/africa-news/eu-wants-libya-to-host-asylum-seekers-2009072332179.html> (accessed August 12, 2009).

⁶¹ “EU urges Libya to work to stop illegal immigration,” *Middle East Online*, April 8, 2009, <http://www.middle-east-online.com/english/libya/?id=31384> (accessed July 9, 2009).

⁶² According to the European Commission, the aim of the negotiations is, *inter alia*, to establish dialogue and cooperation on international security, development, and human rights, to further develop trade and economic relations, and to cooperate in areas of common interest, including migration and energy. “Libya: Commission proposes negotiating mandate for a Framework Agreement,” European Commission, press release IP/08/308, February 27, 2008, <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/308&format=HTML&aged=0&language=EN&guiLanguage=en> (accessed August 25, 2009).

Outsourcing EU migration and asylum policy

On May 27, 2009, after Italy and Libya's joint naval operations had been inaugurated, Barrot addressed a letter to the President of the European Council calling for a two-pronged EU approach on asylum and humanitarian protection. On the internal front, he suggested a "voluntary effort" among EU member states for "resettlement of persons under international protection."⁶³ On the external front, he proposed:

Establishment of relations between the UNHCR and Libya with a view to setting up a scheme there for the reception and protection of asylum seekers that will meet the highest international standards. In particular, the scheme would make it possible to determine the status of people sent back to Libya, who might then be offered resettlement.⁶⁴

At a time when UNHCR, the Commissioner of Human Rights of the Council of Europe, Thomas Hammerberg,⁶⁵ and NGOs, including Human Rights Watch,⁶⁶ were criticizing Italy for flouting international law and European standards, not a single EU member state criticized Italy publicly.⁶⁷ Barrot eventually expressed concern at the pushbacks, saying that they were "not the answer" and indicating that "rescuers, including Frontex, can save but cannot refuse entry."⁶⁸ But his policy proposal revives a deeply flawed concept for externalizing EU refugee processing that replaces legally enforceable asylum standards and procedures on European soil with a voluntary and discretionary scheme. It is essentially the same proposal that has circulated in EU debate, and been discredited, off and on for more than two decades.⁶⁹

⁶³ Letter from Jacques Barrot, Vice President of the European Commission, to Martin Pecina, Czech Minister of Interior and President of the European Council, May 27, 2009. Unpublished document on file with Human Rights Watch.

⁶⁴ *Ibid.*

⁶⁵ "I respingimenti in mare "Rendono impossibile l'accesso alla richiesta di asilo politico," Il Commissario del Consiglio d'Europa torna ad accusare il Governo italiano," *Immigrazione Oggi*, July 2, 2009, http://immigrazioneoggi.it/daily_news/2009/luglio/02_2.html (accessed August 27, 2009).

⁶⁶ "Italy: Berlusconi Misstates Refugee Obligations," Human Rights Watch news release, May 12, 2009, <http://www.hrw.org/en/news/2009/05/12/italy-berlusconi-misstates-refugee-obligations> (accessed August 27, 2009); and "Italy/Libya: Forced Return of Migrants Violates Rights," Human Rights Watch news release, May 7, 2009, <http://www.hrw.org/en/news/2009/05/07/italylibya-forced-return-migrants-violates-rights> (accessed August 27, 2009).

⁶⁷ Nor did the Justice and Home Affairs Council conclusions from its June 4-5, 2009 meeting contain any criticism of Italy. "2946th Council Meeting, Justice and Home Affairs," Council of the European Union, Press Release, 10551/09 (Presse 164) 4-5 June 2009, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/jha/108356.pdf (accessed July 16, 2009).

⁶⁸ European Council on Refugees and Exiles (ECRE), "Barrot wants reception points in Libya for asylum seekers," *Weekly Bulletin*, July 17, 2009, http://www.ecre.org/files/ECRE_Weekly_Bulletin_17_July_2009.pdf (accessed August 27, 2009).

⁶⁹ 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. See also Human Rights Watch, EU – Managing Migration Means Potential EU Complicity in Neighboring State's Abuse of Migrants and Refugees, Number 2, October 15, 2006, <http://www.hrw.org/legacy/backgrounder/eca/eu1006/eu1006web.pdf> (accessed August 27, 2009). See also "UK Asylum

At the beginning of the 2003 Iraq war, British Prime Minister Tony Blair proposed the idea of “transit processing centers” in countries outside the EU to which EU member states would return asylum seekers and where UNHCR would screen them for refugee status.⁷⁰ An EU summit in June 2003 called on the European Commission to report back within one year on measures for “more orderly and managed entry in the EU of persons in need of international protection.”⁷¹ A year later, the Commission rejected setting up an EU procedure to regulate the entry of asylum seekers but promoted the idea of an EU refugee resettlement program with UNHCR involvement.⁷² At an October 2004 meeting of interior ministers in the Netherlands, the ministers split over the Blair proposal.⁷³ That December, the EU Parliament’s Committee on Civil Liberties, Justice, and Home Affairs voted down the idea of “offshoring” EU’s responsibilities for asylum seekers.⁷⁴ Meanwhile, no North African governments offered to provide land for future EU reception centers. By January 2005, the EU interior ministers meeting in Luxembourg admitted the idea was dead.⁷⁵

What is particularly remarkable is not the concept itself, but the timing of Barrot’s letter at a historical moment when a European state for the first time openly breached its nonrefoulement obligations under both the Refugee Convention and the European Convention on Human Rights, among other conventions. Even Blair’s 2003 proposal had included the caveat that applicants under his scheme would not be exposed to inhuman or degrading treatment. “Both the processing centers and the decisions taken in them would clearly have to conform to this requirement as a matter of policy and to avoid a successful

Proposal Denounced,” Human Rights Watch, News Release, February 8, 2001, <http://www.hrw.org/en/news/2001/02/08/uk-asylum-proposal-denounced> (accessed August 27, 2009).

⁷⁰ Tony Blair, Prime Minister of the UK, letter to Costas Simitis, Prime Minister of Greece, March 10, 2003, <http://www.statewatch.org/news/2003/apr/blair-simitis-asile.pdf> (accessed July 16, 2009).

⁷¹ The Council of the European Union, Thessaloniki European Council 19 and 20 June 2003, Conclusion 26, Presidency Conclusions, 11638/03, October 1, 2003, <http://register.consilium.eu.int/pdf/en/03/st11/st11638en03.pdf> (accessed July 10, 2009).

⁷² “Communication from the Commission to the Council and the European Parliament on the managed entry in the EU of persons in need of international protection and the enhancement of the protection capacity of the regions of origin. Improving access to durable solutions,” Brussels, com(2004) 410 final, June 4, 2004, <http://www.unhcr.org/refworld/pdfid/4156e4ee4.pdf> (accessed July 9, 2009).

⁷³ Germany and Italy supported the Blair proposal, but Sweden, France, and Belgium opposed it on legal and humanitarian grounds. Ambrose Evans-Pritchard, “EU to hold Asylum Seekers in North Africa,” *Telegraph.co.uk*, October 2, 2009, <http://www.telegraph.co.uk/news/1473177/EU-to-hold-asylum-seekers-in-N-Africa.html> (accessed July 17, 2009).

⁷⁴ See: <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A6-2004-0051&language=EN> (accessed July 17, 2004).

⁷⁵ “Determining an Approach for the External Dimension of the European Asylum Policy,” Informal Meeting of Justice and Home Affairs Ministers, January 27–29, 2005, http://www.eu2005.lu/en/actualites/documents_travail/2005/01/2701docstravailinfojai/infojaifr1.pdf (accessed July 17, 2009).

challenge in the courts,” he wrote. Barrot’s proposal in late May 2009 came in the face of reports of inhuman and degrading treatment of returnees in Libya.⁷⁶

Barrot’s proposal to enlist UNHCR in a “scheme” to make status determinations “of people sent back to Libya” who then “might” be offered resettlement, accepted Italy’s interdiction and summary return regime as a given. His proposal also would replace the EU’s current asylum system that creates binding obligations on EU member states with a voluntary and discretionary scheme that might or might not offer UNHCR-refugees recognized in Libya resettlement places in Europe.

The inevitable result of such a scheme would be the warehousing of refugees in Libya, assuming Libya would tolerate their presence. Refugees would be left to wait in Libya for European resettlement offers or, equally predictably, would become a residual population rejected for resettlement, but nevertheless still recognized as refugees by UNHCR.

This problem is illustrated by the current gap between the number of refugees UNHCR has identified as being in need of resettlement and the number of places potential countries of resettlement have made available. In 2008, resettlement countries admitted only about half of the refugees that UNHCR recommended for resettlement. Of 121,000 refugees UNHCR presented for resettlement, only 66,000 were admitted, of whom the United States admitted 49,000 and EU member states only 4,500.⁷⁷ The deficit can be clearly seen in refugees resettled from Turkey where UNHCR referred 7,500 refugees for resettlement in 2008 of whom about half, 3,800 were taken. EU countries took only 200 of those refugees.⁷⁸

The Role of Frontex

In October 2004 the European Council adopted a resolution to create an agency to coordinate the efforts of its member states to enforce the EU’s external borders. The agency, Frontex, became operational in October 2005 and has steadily expanded ever since.⁷⁹

⁷⁶ “Lacrime, spinte e manganelli così l’Italia respinge i disperati; Tripoli, ecco l’arrivo dei migranti rifiutati da Roma,” *La Repubblica*, May 15, 2009, p. 9. See also, “Save the Children Italia: “Minori tra i migranti rinviati in Libia,” June 22, 2009.

⁷⁷ Email to Human Rights Watch from UNHCR, July 14, 2009.

⁷⁸ Ibid.

⁷⁹ The agency’s full name is “The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union.” The name Frontex is a contraction of the French *Frontières extérieures*, for “external borders.” Frontex’s Management Board, comprised of one representative from each EU member state and two representatives from the European Commission, sets the agency’s program of work, among other functions.

Frontex has been actively working to stem the flow of irregular boat migrants from Africa to the EU by coordinating joint operations of its member states, but has been more successful in curtailing the number of arrivals to Spain than in reducing arrivals in the central Mediterranean. With the support of Frontex, the number of irregular boat arrivals to the Canary Islands, Spanish territory off Africa's western coast, dropped by 74 percent from 2006 to 2008.⁸⁰ Meanwhile, in Italy, boat arrivals increased by 64 percent from 2006 to 2008.⁸¹ It is difficult to weigh all the variables for shifts in irregular migration patterns, but the rapporteur for the Council of Europe Parliamentary Assembly's Committee on Migration, Refugees and Population in commenting on the shift away from Spain in 2007 noted that "increased sea controls, including by Frontex, ...almost certainly had an impact, in particular during the periods the operations have been in operation."⁸²

Off the coast of northwestern Africa, Frontex brought Mauritanian or Senegalese officers aboard the EU member states' vessels in 2008 as part of Operation Hera, which diverted 5,969 migrants back to the African coast that year.⁸³ Frontex maintains that the diversions were the responsibility of Mauritanian and Senegalese officials aboard the boats.⁸⁴

In the central Mediterranean, until June 2009, Frontex has been less successful in getting the EU member states to cooperate with each other, let alone with North African states. In 2008, Operation Nautilus focused on the flow of migration between North Africa and Italy and Malta but diverted no one back to North Africa. Its failure was attributed to "the difference of opinion concerning the responsibility of migrants saved at sea."⁸⁵ In 2009, the next phase of Operation Nautilus was delayed because Malta and Italy could not agree on the country responsible for disembarking persons rescued at sea.⁸⁶

⁸⁰ UNHCR, "Refugee Protection and international migration: A review of UNHCR's role in the Canary Islands, Spain," April 2009, para 22, <http://www.unhcr.org/4a1d2d7d6.pdf> (accessed July 17, 2009).

⁸¹ UNHCR, "All in the same boat: The challenges of mixed migration," <http://www.unhcr.org/pages/4a1d406060.html> (accessed June 12, 2009).

⁸² Morten Østergaard, "Europe's 'Boat people': Mixed Migration Flows by Sea into Southern Europe," report of the Rapporteur to the Committee on Migration, Refugees, and Population, Parliamentary Assembly, Council of Europe, July 11, 2008. ("Europe's 'Boat People'"), p. 8, para. 24.

⁸³ "Hera 2008 and Nautilus 2008 Statistics," Frontex, news release, February 17, 2009, http://www.frontex.europa.eu/newsroom/news_releases/art40.html (accessed July 10, 2009).

⁸⁴ Ibid.

⁸⁵ "Go ahead for Nautilus 2008," Frontex, news release, May 7, 2009, http://www.frontex.europa.eu/newsroom/news_releases/art36.html (accessed July 10, 2009).

⁸⁶ At the end of April 2009, they reportedly agreed to defer to the host country's (Malta) interpretation of the relevant law "Rescued Immigrants to disembark at 'closest safe port,'" *Times of Malta*, April 26, 2009, <http://www.timesofmalta.com/articles/view/20090426/local/rescued-immigrants-to-disembark-at-the-'closest-safe-port'> (accessed April 28, 2009).

On June 18, 2009, for the first time in its history, a Frontex operation resulted in the interdiction and push back of migrants in the central Mediterranean Sea to Libya. A German Puma helicopter operating as part of Operation Nautilus IV coordinated Italian coast guard interception of a boat carrying about 75 migrants 29 miles south of Lampedusa. The Italian Coast Guard reportedly handed the migrants over to a Libyan patrol boat, which took them to Tripoli where they were reported to have been “handed over to a Libyan military unit.”⁸⁷

Frontex vice-director, Gil Arias-Fernandez, commented favorably on this and other related operations: “Based on our statistics, we are able to say that the agreements [between Libya and Italy] have had a positive impact. On the humanitarian level, fewer lives have been put at risk, due to fewer departures. But our agency does not have the ability to confirm if the right to request asylum as well as other human rights are being respected in Libya.”⁸⁸

Aside from the obvious problem of saying that a return policy has had a positive impact without knowing whether returnees’ human rights are being violated, Arias-Fernandez expresses the flawed proposition that a potential humanitarian benefit (preventing the loss of life at sea) trumps a human right (the right to leave and the right to seek asylum). The Universal Declaration of Human Rights guarantees the right of any person to leave any country as well as the right to seek asylum from persecution in another country.⁸⁹ People have the right to choose to risk their lives in the exercise of their human rights. They often do so, tragically, because they are escaping an even worse danger than the risks that lie ahead. It may put the person’s life at risk, but their choice should not be frustrated either by a government that prevents them from leaving or by a smuggler who forces them on a boat.

Notwithstanding the rights to leave and the right to seek asylum, governments are still duty bound to require all ships flying their flag to rescue persons in distress at sea—thus fulfilling the humanitarian imperative.⁹⁰ Governments retain their rights under international law to control their borders, including their territorial waters, subject to their duties under international law, including refugee and human rights law.

⁸⁷ “Immigration: 76 Migrants Sent Back to Libya,” *ANSamed*, June 19, 2009, <http://www.ansamed.info/en/news/ME03.@AM45395.html> (accessed August 27, 2009). Also, Karl Stagno-Navarra, “Frontex Handover of Migrants to Italy Results in Forced Repatriation,” *Malta Today*, June 21, 2009, <http://www.maltatoday.com.mt/2009/06/21/t8.html> (accessed July 17, 2009).

⁸⁸ “Immigration: Illegal Arrivals from Sea Halved in Italy,” *ANSamed*, July 9, 2009, <http://www.ansamed.info/en/top/ME12.WAM40163.html> (accessed July 17, 2009).

⁸⁹ Universal Declaration of Human Rights articles 13.2 and 14.1. GA res. 217A (III), UN Doc A/810 at 71 (1948).

⁹⁰ United Nations Convention on the Law of the Sea, adopted December 10 1982, United Nations, Treaty Series, vol. 1833, p. 3, entered into force November 16, 1994, article 98, http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm (accessed August 11, 2009).

VIII. Maltese and Libyan Interdiction Prior to May 2009

Although the first open acts of interdiction and summary return as an Italian government policy and practice began in May 2009, migrants told Human Rights of other episodes of interdiction and summary return involving Maltese and Libyan navies and coast guards that pre-date the 2009 returns.

Daniel, a 26-year-old Eritrean, told Human Rights Watch how the Maltese coast guard towed his disabled boat to a Libyan fishing boat that took them back to Libya in July 2005. His account speaks not only about how interdictions were carried out prior to May 2009, but also about the brutality of the smugglers, the dangers of the journey, and the ill treatment at the hands of the Libyan authorities upon being returned. He starts by saying that the smugglers used force to put them on the boat:

The smugglers beat us with a stick to get us to board the boat. They crammed 264 of us onto the boat. There were pregnant women, babies, children. The captain of the boat said there were too many, but the smugglers wouldn't listen. After ten hours, the motor broke. We had no food or water. We drifted for five days. The battery ran out on our Thuraya [satellite phone]. We were waiting to die.

On the fifth day, a coast guard boat from Malta came. It gave us some water. An old woman said, "I will see my son in Malta." The boat nearly capsized because people stood up to get the water. Another Maltese boat came, a command ship, and took photos of us. The Maltese boat brought a rope. They tied it to our boat and towed us. After two hours as the sun was going down the Maltese boat changed direction and took us to Libya. We saw we were going in the wrong direction. Everyone said, "Please, no." We pleaded with the Maltese. The Maltese just waved their hands to say no.

We saw a green banner of Libya on a fishing boat. The Maltese gave them the rope. Everyone was crying. Water was coming inside the boat. There were high waves. Our boat was tipping. For 20 minutes it looked like it really was capsizing. Then the Maltese cut the rope and they were gone. The fishing boat took us to Libya.

We were really tired and dehydrated when we arrived in Libya. I thought, “If they beat me, I won’t feel a thing.” When we arrived, there were no doctors, nothing to help, just military police. They started punching us. They said, “You think you want to go to Italy.” They were mocking us. We were thirsty and they were hitting us with sticks and kicking us. For about one hour they beat everyone who was on the boat. Then they put us in a closed truck with only two little windows, not enough air to breathe. There was no food or water on the truck. It was 40 degrees Centigrade outside but it felt like 80 degrees inside the truck. I thought we would all die inside the truck, but somehow we all survived. They first took us to Al Fellah Prison, but it was full, so they took us to Misrata Prison.⁹¹

A Maltese boat forcibly returned Ezekiel, a 24-year-old Eritrean, to Tunisia in April 2006, and the Tunisian authorities, in turn, dumped him across the border into Libya:

Big waves came and capsized our boat. Twenty people died. I was one of five survivors who held onto the boat that was floating upside down. We had no food or water. We had life vests, but the water was cold.

A big ship came. I think it was Maltese. They took the five of us on their boat. The rest were dead. We were hardly conscious. They told us we were not in Maltese waters. The ship took us to Tunisia. The Tunisian police took us to the Libyan border and gave each of us five dinars for the taxi.⁹²

After the Tunisians dumped him across the border, the Libyan police caught Ezekiel, beat him severely, stole his money, and held him in a border police station for two months.⁹³

Evidence and testimonies suggest that Libyan coast guard forces have also been involved in interdicting and returning boats. Videos appear to have captured Libyan police and security forces interdicting clandestine boats at sea,⁹⁴ as well as stopping boats and arresting the

⁹¹ Human Rights Watch interview (name changed, B/H54), Palermo, Sicily, May 13, 2009. Daniel’s account of Misrata continues in the section on Misrata. A transcript of his full testimony is available on the Human Rights Watch Website at: <http://www.hrw.org/en/node/85530>. (Hereafter: Daniel Testimony).

⁹² Human Rights Watch interview (name changed, B/H12), Malta, May 2, 2009.

⁹³ For a continuation of Ezekiel’s story, see *Abuses in Libya’s Western Border Region*.

⁹⁴ http://tv.repubblica.it/home_page.php?playmode=player&cont_id=32868&ref=search (accessed August 27, 2009).

migrants as they attempt to leave the Libyan shore.⁹⁵ The latter video includes particularly disturbing footage of what appear to be Libyan police brandishing and firing Kalashnikov AKMS assault rifles as they arrest the migrants.

As is normally the case when migrants encounter Libyan police and military authorities in the country's interior and in the border region, migrants interdicted at sea were usually not able to identify for Human Rights Watch which Libyan authority was responsible for interdicting them. Pastor Paul, a 32-year-old Nigerian, related an incident that occurred on October 20, 2008:

We were in a wooden boat and Libyans in a [motorized inflatable] Zodiac started shooting at us. They told us to return to shore. They kept shooting until they hit our engine. One person was shot and killed. I don't know the men who did the shooting, but they were civilians, not in uniforms. Then a Libyan navy boat came and got us and started beating us. They collected our money and cell phones. I think the zodiac boat was working with the Libyan navy.

The Libyan navy took us back in their big ship and they sent us to Bin Gashir deportation camp. When we arrived there they immediately started beating me and the others. They beat some of the boys until they could not walk.⁹⁶

⁹⁵ A video of a failed clandestine boat departure shows what appear to be Libyan security forces brandishing weapons and also appears to show them firing shots: <http://tv.repubblica.it/copertina/cosi-i-libici-fermano-i-gommoni/32395?video> (accessed July 6, 2009).

⁹⁶ Human Rights Watch interview (name changed, B41), Caltanissetta, Sicily, May 8, 2009.

IX. Failure to Rescue Boats in Distress at Sea

Interdiction in the Mediterranean is often characterized as “rescue at sea.” In many cases, it is, indeed rescue, and many thousands of lives have been saved by the Italian and Maltese navies and coast guards, as well as by private ship captains. But vessels that are not in distress are also interdicted, and at other times vessels in distress are ignored or pushed away, according to migrants’ accounts.

The failure to rescue is confirmed by the pronouncements of Italian officials. In April 2009, Italian Interior Minister Roberto Maroni accused Malta of effectively sending 40,000 migrants to Italy by failing to participate in their rescue.⁹⁷ Indeed, migrants told Human Rights Watch that Maltese naval boats stopped drifting boats, gave them food and fuel, and then pointed them in the direction of Italy and disappeared. Abdi Hassan, a 23-year-old Somali, who speaks several languages, including English, described the lengths the Maltese navy went to avoid taking him and other passengers, and how they instead re-provisioned their boat and pushed them towards Italy:

By the second day of our journey we had no food or water. By the third day we had no fuel and by the fourth we were just drifting. We thought we would die. A fishing boat found us and radioed to the Maltese navy to tow us. On the fifth day, the Maltese marine ship came, but they told us that they couldn’t take us. They only took two pregnant women aboard their ship and me to translate. They gave the rest of the people on our boat food and fuel and told them to go to Sicily. Then, they told me that they couldn’t take me, just the two pregnant women, and they put me on a fast, small boat and took me to back to my boat to rejoin it. We then continued traveling to Sicily.⁹⁸

Eventually, their boat fell into distress again, and ultimately the Maltese navy did rescue them and take them to Malta. Abdi Hassan said that he was treated well by the Maltese navy, even though the detention place where he was taken, Hermes Block of Lyster Barracks was old, dirty, and so overcrowded that he had to sleep on the floor. (It had just closed shortly before the Human Rights Watch visit). He said, “After being in Libyan prisons, this

⁹⁷ “Maroni Claims Malta Sent 40,000 Migrants to Italy,” *Times of Malta*, April 21, 2009, <http://www.timesofmalta.com/articles/views/20090421/local/moroni-claims-malta-sent-40,000-migrants-to-italy> (accessed April 21, 2009).

⁹⁸ Human Rights Watch interview (name changed, B/H 32), Malta, May 4, 2009.

place seemed like paradise, but at the same time I had the feeling that I was missing rights that I should have had in Europe.”⁹⁹

Sometimes ships fail to respond quickly or at all to boat migrants in severely disabled boats whose lives appear to be in danger. Abassi, a 21-year-old Nigerian, was on an inflatable “zodiac” boat in August 2008 when he heard a popping sound:

It sounded like a gunshot, but it was not a gun. We had a problem. It was leaking. We were still in Libyan territorial waters, and everyone was crying because we knew we wouldn’t be rescued in Libyan waters. We thought we would die. We thought we would only get rescued in international waters.

We drifted, disabled for five days, and we thought we finally did get to international waters. We prayed and tried to stay calm. One side of the boat had sunk and the other was still floating. There were 85 of us clinging to it. There was nothing to eat and by the second day we had no water. People were drinking sea water and got sick. Three people died.

On the fourth day we saw a helicopter. The helicopter saw us and waved. The helicopter did not drop food or water, and no boat came to rescue us. Five hours later we saw a ship. It did not come to help. It stopped and spent a few hours standing there. The boat just watched.

The people on our boat started arguing and fighting. Finally around midnight we saw the light of another ship. It dropped a line and tried to drag us, but our boat was finished. They brought us onto that boat. It brought us directly to Malta. They fingerprinted us and checked us at the hospital just to check us, not for treatment. Then they brought us to the Safi detention center. We were surprised to be locked up in Europe.¹⁰⁰

Clearly, ship captains—sometimes representing navies—are engaged in making judgment calls about the severity of distress, often taking a minimalist intervention to prevent loss of life, but to avoid taking responsibility for migrants by actually rescuing them. Apart from the duty on states to ensure ships flying their flag rescue, the International Convention for the

⁹⁹ Human Rights Watch interview (name changed, B/H32), Malta, May 4, 2009.

¹⁰⁰ Human Rights Watch interview (name changed, B4), Ta’Kandja Old detention center, Malta, May 2, 2009.

Safety of Life at Sea specifically provides that “the master of a ship at sea which is in a position to be able to provide assistance, on receiving information from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance.”¹⁰¹

When boats are rescued, the migrants report that the rescuers often jockey with each other to see which can foist the responsibility upon another party. Jonas, 39-year-old Eritrean, was on a boat with about 300 passengers that had spent four days without food or water when their rescuers appeared on April 18, 2009:

A Maltese police boat stopped, but it did not give us food or water. When we met the Maltese boat, they told us they would help, but they left when they saw an Italian ship approach. The Italian ship gave us water and treated us kindly.¹⁰²

These testimonies add voice to a ghastly record of shame, underreported because the stories happen in the vast reaches of the high seas and because the drowned can no longer speak. Such voices arose from the dead on May 21, 2007 when a boat halfway between Libya and Malta filled with 53 Eritreans began to sink. Passengers with satellite phones desperately called relatives in Italy, Malta, and as far away as London begging for rescue. A Maltese military helicopter photographed the sinking boat that morning, but it took another nine hours before a naval vessel arrived, by which time the boat and all of its passengers had vanished into the sea.¹⁰³

Later that same month, a foundering migrant boat drifted for six days, as several boats passed it by before it sank. A Maltese tuna fishing boat came across the shipwrecked survivors, but would not take them aboard. Instead, 27 shipwrecked African men were left to cling to the boat’s tuna net for three days and nights while Libya, Malta, and Italy argued over who would be responsible for taking them. An Italian naval vessel finally took them.¹⁰⁴

¹⁰¹ International Convention for the Safety of Life at Sea (SOLAS), November 1, 1974, entered into force on May 25, 1980, 1184 *United Nations Treaties Series* 3. Regulation V/33.1.

¹⁰² Human Rights Watch interview (name changed, B39), Caltanissetta, Sicily, May 8, 2009.

¹⁰³ “Doomed to Drown: The desperate last calls of the migrants no one wanted to rescue,” *The Independent*, May 27, 2007, <http://www.independent.co.uk/news/world/europe/doomed-to-drown-the-desperate-last-calls-of-the-migrants-no-one-wanted-to-rescue-450300.html> (accessed July 24, 2009).

¹⁰⁴ “Europe’s Shame,” *The Independent*, May 28, 2007, <http://www.independent.co.uk/news/world/europe/europes-shame-450754.html> (accessed July 24, 2009).

Disputes over responsibility causing delayed rescues and added distress and danger are illustrated by the high profile dispute between Malta and Italy regarding responsibility for 140 migrants aboard the Turkish freighter *Pinar E* in April 2009. The passengers included at least one pregnant woman, children, and about 22 people who were too ill to be brought with the rest of the passengers to Sicily, but remained in Lampedusa. The captain of the *Pinar E* picked up the migrants in response to a distress call. Italy argued that as the migrants were intercepted in the search and rescue (SAR) zone administered by Malta they should be disembarked on Maltese territory and refused the ship permission to enter Italian waters. Malta maintained that international law required the migrants to be disembarked at the nearest safe port, which in this case was Lampedusa, Italy. After a four-day standoff and appeals by the President of the European Commission, Italy agreed to accept the migrants.



Innocent painted this picture depicting his rescue on a piece of torn sheet. To the right of the *E Pinar*, he has written: "God Bless the Turkey People". © 2009 Human Rights Watch/Bill Frelick

Innocent, a 19-year-old Nigerian youth who was rescued by the *Pinar E*, whose painting of his experience appears here, told Human Rights Watch how his disabled, overcrowded rubber

Zodiac boat was first ignored by passing ships and then how the sick passengers had to wait while Italy and Malta argued over where they would be disembarked.¹⁰⁵

We only brought water, no food, no life jackets. We got lost and the water and fuel were finished. We were calling for people to rescue us. We waved our shirts to passing ships. Some passed us. Others gave us food and water, but did not rescue us. We had no fuel and the waves were carrying us. People were crying. We prayed to God to save us. We saw a dolphin hit the boat and it caused a leak inside our boat. We were bailing water out of the boat. No one died, but we were sick and people were fainting. After four days a big Turkish ship came and threw a rope to us. We climbed into the big boat. They gave us water to drink. They gave us food, even though it wasn't enough. We spent three more days on the Turkish boat [sic—it was actually four].¹⁰⁶

While Innocent expressed heartfelt appreciation to Italy, the Italians nevertheless prolonged his suffering by four days while they argued with the Maltese to avoid taking him.

These disputes between Malta and Italy reveal a major weakness in the international maritime legal regime. The practical ramifications of the dispute are that commercial ships rescuing distressed migrants in the Malta-controlled SAR off Lampedusa are given conflicting instructions about where to disembark the survivors. The 2004 International Convention on Maritime Search and Rescue (SAR) and the International Convention for the Safety of Life at Sea (SOLAS) amendments appear to support Italy's position, stating that the responsibility to provide a place of safety falls on the state responsible for the SAR region in which the survivors were recovered.¹⁰⁷ The International Maritime Organization has also issued a draft circular on the issue, explaining: if "disembarkation from the rescuing ship cannot be arranged swiftly elsewhere, the Government responsible for the SAR area should accept the disembarkation of the persons rescued into a place of safety under its control."¹⁰⁸

¹⁰⁵ Frances D'Emilio, "Italy will let Stranded Migrants Land," *guardian.co.uk*, April 19, 2009, <http://www.guardian.co.uk/world/feedarticle/8463000> (accessed July 14, 2009).

¹⁰⁶ Human Rights Watch interview (name changed, B58), Lampedusa, May 14, 2009.

¹⁰⁷ International Maritime Organization (IMO), Maritime Safety Committee, 78th Session, Consideration and Adoption of Amendments to Mandatory Instruments, Amendments to the 1974 SOLAS Convention, October 10, 2003.

¹⁰⁸ IMO, Facilitation Committee, 35th Session, Formalities Connected with the Arrival, Stay and Departure of Persons, January 14, 2009.

However, Malta has formally objected to the 2004 SAR and SOLAS amendments, as well as the IMO's draft circular, and is therefore not bound by them.¹⁰⁹ Malta continues to argue that disembarkation should occur at the nearest safe port to the site of the rescue, which, in the Malta-controlled SAR, is often a port in Italy. Legally, both states are in the right, because Malta has not consented to be bound to the 2004 SAR and SOLAS amendments that bind Italy. More legal reforms are needed to achieve a uniform legal standard for disembarkation of survivors.

¹⁰⁹ IMO, Report of the Facilitation Committee on its 35th Session, January 16, 2009.

X. Libya: Lack of Access to Asylum

Libya has no domestic asylum law or asylum procedures.¹¹⁰ Although Libya is a party to the 1969 OAU Refugee Convention, which espouses the right of asylum,¹¹¹ and has adopted the 1981 African Charter on Human and Peoples' Rights, which says that all people "shall have the right when persecuted to seek and obtain asylum in other countries,"¹¹² it has, as yet, no formal mechanism to protect individuals fleeing persecution.

Brigadier General Mohamed Bashir Al Shabbani, director of the Office of Immigration, told Human Rights Watch, "There are no refugees in Libya. They are people who sneak into the country illegally and they cannot be described as refugees. Anyone who enters the country without formal documents and permission is arrested."¹¹³ When Human Rights Watch asked Al Shabbani how he knew that none of them were refugees, whether there might be one or two people among them who were refugees, and how he would be able to distinguish them from the others, he answered, "I have not come across such a case."

His response is consistent with expressions on the subject by Libyan leader Mu`ammar al-Gaddafi, who flatly denies that migrants in Libya, or heading through Libya to Europe, are seeking asylum. He called the issue of asylum "a widespread lie." During his first visit to Italy on June 11, 2009, he said, "Do we really think that millions of people are asylum seekers? It is really a laughable matter." He characterized the African migrants as "living in the desert, in the forests, having no identity at all. Let alone a political identity. They feel that the North has all the wealth, the money, and so they try to reach it."¹¹⁴

Prior to heading off to Italy in July 2009, al-Gaddafi responded to a question whether migrants pushed back to Libya from Italy could be granted asylum. He answered, "It's absolutely not a question of asylum. Asylum concerns a limited number of people for

¹¹⁰ For a lengthy discussion of Libyan immigration law, see Human Rights Watch, *Stemming the Flow*, pp. 78-90.

¹¹¹ Convention Governing the Specific Aspects of Refugee Problems in Africa (African Refugee Convention), 1001 UNTS 45, entered into force June 20, 1974, <http://www.unhcr.org/refworld/docid/3ae6b36018.html> (accessed July 15, 2009).

¹¹² African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986.

¹¹³ Human Rights Watch interview with Brigadier General Mohamed Bashir Al Shabbani, Director of the Office of Immigration, General People's Committee for Public Security, Tripoli, April 22, 2009.

¹¹⁴ "Immigration: Gaddafi says tide is difficult to stem" *ANSA*, June 11, 2009, <http://www.ansamed.info/en/news/ME01.@AM48071.html> (accessed July 14, 2009).

political reasons, or after a war or natural disasters. But we're faced with successive waves of immigration towards Europe because of the poverty which reigns in Africa."¹¹⁵

In fact, few of the migrants interviewed by Human Rights Watch, including many who have since sought asylum in Italy or Malta or been recognized as refugees in those countries, expressed any belief that there was any possibility to seek asylum in Libya. Except for people detained at the Misrata detention center to which UNHCR and its NGO partners have regular access, none of the former detainees interviewed for this report said that they had seen or met with UNHCR while inside any of the many other jails or migrant detention centers in Libya. Given the large number of former detainees who said they were beaten if they spoke to the guards to ask for anything, it is not surprising that only one told Human Rights Watch that he asked to see UNHCR while in custody.

Libya's 1969 Constitutional Proclamation says, "The extradition of political refugees is prohibited."¹¹⁶ In addition, Law 20 of 1991, "On Enhancing Freedom," says, "The Jamahiriya supports the oppressed and...should not abandon the refugees and their protection."¹¹⁷

Secretary of Justice Mostafa Abdeljalil of the General People's Committee for Justice told Human Rights Watch that people could apply for asylum by presenting papers to the Ministry of Foreign Affairs,¹¹⁸ but we could find no law that establishes such a procedure. Brigadier General Al Shabbani told Human Rights Watch that a "new refugee law will be presented to the Basic People's Congress soon."¹¹⁹ Human Rights Watch requested copies of the draft asylum law both during our visit in 2005, in preparation for our 2006 *Stemming the Flow* report, and again during our April 2009 visit and in subsequent communications with the government in preparation for this report. No copy of the draft law has been provided.

¹¹⁵ "According to Gaddafi, Africans working in Europe are taking back what's theirs," *Euronews*, July 7, 2009, <http://www.euronews.net/2009/07/07/according-to-gaddafi-africans-working-in-europe-are-taking-back-whats-theirs/> (accessed July 9, 2009).

¹¹⁶ Constitutional Proclamation of December 11, 1969, article 11, <http://www.unhcr.org/refworld/docid/3ae6b5a24.html> (accessed July 15, 2009).

¹¹⁷ Law 20 (1991), article 21, <http://www.unhcr.org/refworld/pdfid/3dda542d4.pdf> (accessed July 15, 2009).

¹¹⁸ Human Rights Watch interview with Secretary of Justice Mostafa Abdeljalil the General People's Committee for Justice, Tripoli, April 26, 2009. When pressed, he was vague about what papers actually needed to be filed to lodge a claim.

¹¹⁹ Human Rights Watch interview with Brigadier General Mohamed Bashir Al Shabbani, Director of the Office of Immigration, General People's Committee for Public Security, Tripoli, April 22, 2009. Libyan officials gave Human Rights Watch the same assurances at the time of our visit on May 4, 2005. See *Stemming the Flow*, p. 23.

Libya has signed neither the 1951 Refugee Convention nor its 1967 Protocol,¹²⁰ but both the Convention against Torture and the African Refugee Convention¹²¹ forbid Libya from sending individuals to countries where they face a serious risk of persecution or torture. Libya is also a state party to the International Covenant on Civil and Political Rights (ICCPR), which, under article 13, prohibits arbitrary expulsion and entitles foreigners to an individual decision on their removal/expulsion. The Human Rights Committee has interpreted Article 7 of the ICCPR to forbid refoulement of persons to places where they would be at risk of torture or cruel, inhuman or degrading treatment or punishment.¹²² Under customary international law, Libya is also obliged not to return any people to places where they may face persecution or their lives or freedom are at risk.¹²³

Secretary of Justice Abdeljalil implied de facto recognition of the principle of nonrefoulement when he told Human Rights Watch that Libya cannot deport Eritreans or Somalis.¹²⁴ While informally suspending deportations to Somalia and Eritrea is welcome, that is no substitute for a legal procedure to identify refugees from any nationality who cannot be returned.

¹²⁰ Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967, <http://www.unhcr.org/refworld/docid/3ae6b3ae4.html> (accessed July 14, 2009).

¹²¹ Libya ratified the African Refugee Convention on April 25, 1981.

¹²² In General Comment 20, the Human Rights Committee interpreted Article 7's prohibition on torture and cruel, inhuman or degrading treatment or punishment to include their extradition, expulsion, or refoulement to another country. Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

¹²³ See UN Executive Committee (ExCom) Conclusion No. 25, *General Conclusion on International Protection*, October 20, 1982, para b, <http://www.unhcr.org/3ae68c434c.html> (accessed July 15, 2009); article 5 of the Cartagena Declaration on Refugees, 1984, <http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RSDLEGAL&id=3ae6b36ec> (accessed March 6, 2006); and Article V of the Revised Bangkok Principles on Status and Treatment of Refugees of 2001, <http://www.aalco.int/Final%20Text%20of%20Bangkok%20Principles.htm> (accessed August 28, 2009). 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).

¹²⁴ Human Rights Watch interview with Secretary of Justice Mostafa Abdeljalil, Tripoli, April 26, 2009. His comment could also mean that Somalis and Eritreans cannot be deported because of lack of cooperation with the authorities in those countries.

XI. UNHCR in Libya

The presence of a UNHCR office in Libya dates back to 1991, but in the ensuing years there have been many times that the Libyan government did not honor letters of attestation UNHCR issued on behalf of people it recognized as refugees under its mandate.¹²⁵ Although relations with UNHCR have improved in recent years, Libya has still declined to sign a Memorandum of Understanding with the agency, which is standard procedure in most countries where UNHCR maintains offices. Since Libya does not officially differentiate between refugees, asylum seekers, and irregular migrants, Libyan officials still do not recognize UNHCR-issued refugee certificates and letters of attestation.

In July 2008, UNHCR signed an agreement with a Libyan NGO, the International Organization for Peace, Care and Relief (IOPCR), the International Center for Migration Policy Development (a Vienna-based NGO), and the Italian Council for Refugees.¹²⁶

Since the publication of our last report on migrants and asylum seekers in Libya when UNHCR only had access to one migrant detention facility in Tripoli, the Libyan government has granted UNHCR access to seven migrant detention centers in different parts of the country.¹²⁷ However, at the time of Human Rights Watch's visit, UNHCR's caseload of recognized refugees in detention was clustered in the Misrata detention facility.¹²⁸ The long distances to cover to reach the numerous detention centers in Libya make it difficult for UNHCR's staff to visit them regularly, including the Misrata camp, which is about 280 kilometers from the UNHCR office in Tripoli. UNHCR began conducting refugee status determinations for Eritreans detained at Misrata in 2007 when there were about 400 held there. UNHCR's interventions, including some third country resettlement, helped to reduce the Misrata detainee population to about 200 by the end of 2008.¹²⁹

¹²⁵ Around 2004, the Libyan government ceased to recognize the letters of attestation that UNHCR gives refugees and asylum seekers. See *Stemming the Flow*, pp. 23-29.

¹²⁶ Under the agreement, the organizations will support the Libyan authorities in "designing and implementing comprehensive and protection-sensitive asylum management strategies with full respect for international and regional refugee and human rights principles." See "UNHCR signs agreement aimed at ensuring refugee protection in Libya," UNHCR, news stories, July 4, 2008, <http://www.unhcr.org/486e48534.html> (accessed July 30, 2009).

¹²⁷ UNHCR has access to Misrata, Zleitan, Al-Zawiya, Garabulli, Surman, Towisha, and Zuwara.

¹²⁸ UNHCR email to Human Rights Watch, August 12, 2009.

¹²⁹ *Ibid.*

UNHCR is able to provide assistance from its Tripoli office to 3,000 refugees, including some financial aid, vocational training, and medical assistance. Despite the lack of a formal agreement, the agency communicated regularly with the government and succeeded in freeing detainees with UNHCR letters of attestation, thereby preventing their expulsion. In July 2008, UNHCR successfully intervened to prevent the refoulement of 230 Eritreans.¹³⁰ It says that it has not documented a case of refoulement from Libya since 2007.¹³¹

In 2009, the UNHCR office in Tripoli consisted of 28 staff of whom 12 are authorized to conduct refugee status determinations. Without proper legal status, their powers are limited. Despite this, the agency continues to conduct refugee status determinations for the 40 to 50 asylum seekers, on average, who were approaching the office every week in 2009.¹³²

Despite restrictions on its work, as of July 31, 2009, UNHCR Tripoli had registered 8,506 mandate refugees, of whom 3,635 were Palestinian long-term residents in Libya and 2,653 were Iraqis. The rest included 781 Sudanese, 597 Somalis, 451 Eritreans, 144 Liberians, and 245 others. UNHCR has seen a steady growth in asylum seekers during the past five years (676 refugee claims lodged in 2005, 1,058 in 2006, 2,779 in 2007, 4,825 in 2008, and 2,256 in the first six months of 2009). During 2008, UNHCR referred 227 refugees from Libya for resettlement. Of these, 145—mostly Eritreans—were admitted to other countries.¹³³

Following Italy's return of migrants to Libya in May 2009, UNHCR appealed to the Italian and Maltese authorities to "continue to ensure that people rescued at sea and in need of international protection receive full access to territory and asylum procedures."¹³⁴ UNHCR stressed that "there is no assurance that persons in need of international protection would find that in Libya."

While petitioning the Italian Government to respect the principle of nonrefoulement, UNHCR also endeavored to provide humanitarian assistance and basic protection to those returned to and detained in Libya. Between May and July 2009, UNHCR screened 632 boat returnees

¹³⁰ Amnesty International, "Libya: Amnesty warns against deportation of Eritreans," July 11, 2008, <http://www.amnesty.org/en/library/asset/MDE19/007/2008/en/a18438b2-4f5e-11dd-a2of-af4976c1087c/mde190072008eng.html> (accessed August 28, 2009).

¹³¹ UNHCR email to Human Rights Watch, August 12, 2009.

¹³² *Ibid.*

¹³³ *Ibid.*, for the entire paragraph.

¹³⁴ UNHCR, "UNHCR deeply concerned over returns from Italy to Libya," press release, May 7, 2009, <http://www.unhcr.org/4ao2d4546.html> (accessed July 15, 2009).

and found 97 to be seeking international protection.¹³⁵ UNHCR asked the Italian government to readmit those persons seeking international protection and to determine their claims in accordance with Italian law.¹³⁶

¹³⁵ UNHCR email to Human Rights Watch, August 12, 2009.

¹³⁶ UNHCR, "Follow-up from UNHCR on Italy's push-backs," press release, May 12, 2009, <http://www.unhcr.org/4a0966936.html> (accessed July 15, 2009). Italy's EU Affairs Minister, Andrea Ronchi, responded to UNHCR's criticism by saying that UNHCR "should be ashamed of itself" and should "apologize to Italy." See "Italy in Migrant Mistreatment Row," ANSA, July 14, 2009, http://www.ansa.it/notiziari/engmediaservice/2009-07-14_114385912.html (accessed July 15, 2009).

XII. Linkages between Smugglers and Security and Law Enforcement Officials

In many cases, migrants traveling through Libya do not know whether their abusers are police or criminals, but often express the belief that both groups are in league with each other as each exploits and abuses vulnerable migrants. Migrants' perceptions about the police and the smugglers are colored by their understanding of the control that the regime exercises throughout Libyan society and about the attitudes of Libyans towards foreigners, and sub-Saharan Africans in particular. Habtom, a 28-year-old Eritrean man, who arrived in Libya in June 2008, explained:

The police know everything that happens in Libya. They know what is going on with the boats. They get their own share of the money. The only problem comes when the police don't get their share of the money or too little of it. If the government didn't like [the migrant smuggling] they wouldn't do it.¹³⁷

Migrants almost universally expressed to Human Rights Watch the belief that the smugglers have close relations with some Libyan officials. From migrants' accounts, the smugglers who organize the boat departures are sometimes linked to the very forces that are charged with preventing irregular maritime migration. Tomas, a 24-year-old Eritrean, was part of a group of 108 migrants who balked at boarding an obviously unseaworthy vessel in October 2006. After the migrants began resisting the smugglers, navy officials intervened, but directed their efforts not at the Libyan criminals organizing the life-threatening journey, but at the migrants who were refusing to board the boat:

Once I saw that boat, I knew I would die if I went on it. They forced two people on the boat and the rest of us began fighting them. Many military men came and caught us at the boat.

The smugglers had an agreement with the navy forces to take our money. They put us directly into the navy port office. The people who demanded money from us were wearing navy uniforms. They had an athletic build. They were clearly navy, not coast guard. A high-level naval officer spoke to us.

¹³⁷ Human Rights Watch interview (name changed, B60), Rome, May 9, 2009.

What surprises me is that the person who told us he would take us to Italy is the same person who arrested us. The ones who arrested us were in civilian clothes. Those who said they were going to take us were in uniforms. But they all arrested us together.¹³⁸

Tomas's group tried to scatter, but most, including Tomas, were caught and detained. Tomas made four attempts to leave Libya by boat. He was arrested and detained multiple times in various detention centers, and sent back to the border region purportedly for the purpose of being deported. His extensive experience with smugglers and security and police forces left him no doubt about their connections:

I think the smugglers were 100 percent connected to the police and the military. I saw the officers in uniform with stars on their shoulders talking to the transporters. And the drivers said, "There is no problem," when we saw the police or military. The smugglers also told us if we didn't pay them that we would go to prison.¹³⁹

Somali migrants also told Human Rights Watch about the involvement of the Somali embassy in smuggling operations. Abdi Hassan, a 23-year-old Somali, said that he went to the Somali embassy to pay for his boat to Europe, and that he was transported directly from the embassy to Garabulli, the point of disembarkation:

The head of the trafficking, [name withheld], works in the Somali embassy in Tripoli. He has a big office in the embassy and controls 90 percent of the boats. His office is well equipped with computers and everything. We paid our money to this man inside the Somali embassy. They take Western Union money transfers there. My aunt sent him \$500. He has good connections with the Libyan government. Everything is connected from Khartoum to Kufra to Benghazi and Tripoli and the boats. It is all connected. They took us from the embassy to Garabulli, a trip of about one and a half hours, where we waited for the boat.¹⁴⁰

¹³⁸ Human Rights Watch interview (name changed, B68), Rome, May 20, 2009. A full transcript of Tomas's testimony appears on the Human Rights Watch web page at: <http://www.hrw.org/en/news/2009/06/08/full-transcript-statement-tomas-24-year-old-eritrean>. (Hereafter: Tomas Interview).

¹³⁹ Ibid.

¹⁴⁰ Human Rights Watch interview (name changed, B/H 32), Malta, May 4, 2009.

Police and Smugglers: Bribes, Extortion, and Robbery

Whether they are involved in larger smuggling operations or not, police on the roads, particularly roads leading from the borders, as well as the police guards in migrant detention centers routinely profit by demanding and accepting bribes as the price for release from their custody.¹⁴¹ In the case of migrant detainees, this usually involves arranging contact with the families of detainees back in their countries of origin and making wire transfers of money; it often also involves the police arranging connections with smugglers for post-release travel.

Aron, a 36-year-old Eritrean who was detained at the airport jail in Tripoli in 2007 said that the cost for a bribe was either \$500 in cash or about \$800 for a wire transfer. After he paid the bribe, Aron said that a policeman in uniform took him from the jail in the police car and put him on the street in Tripoli. He later made an appointment with the policeman and “gave him money to release my friends.” Aron said, “It’s a rotating business. They take people out in the city, get money, and replace the prisoners with other Africans.”¹⁴²

Smugglers also rarely perform their service for the fee agreed upon at the beginning of the journey. On the contrary, their usual approach is to demand more money mid-way through the journey, holding migrants against their will for ransom and threatening their lives.

Habtom, the Eritrean man quoted above, traveled through the Sahara desert with a group of 95, of whom 19 lost their lives during the journey. He said that the smugglers held him against his will in a closed house in Misrata—not at the detention center—and threatened him with being sent to the official detention center if he and his fellow migrants did not pay more:

The men guarding us in the house carried sticks and knives. They demanded that our families send money. The Libyans [the smugglers] said if we didn’t pay them the money they would send us to prison. They were interconnected, the smugglers and the police. When they took us from city to city, the police met us and let us pass. They knew the transporters.¹⁴³

¹⁴¹ In addition to the findings of this report, our 2006 report, *Stemming the Flow*, also documents this phenomenon. It found, “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.” *Stemming the Flow*, p. 38.

¹⁴² Human Rights Watch interview (name changed, R/L5), Caltanissetta, Sicily, October 28, 2008.

¹⁴³ Human Rights Watch interview (name changed, B67), Rome, May 20, 2009.

Another Eritrean, Iggi, paid smugglers \$700 to take him from Khartoum to Tripoli. Instead, they took him only as far as Kufra, where they held him and 78 other people in a closed 10x20 meter room with no windows for ten days and demanded more money:

A Somali man died in that room. I don't know his name. We couldn't communicate with him, but we did everything we could to save him. During our 13 days traveling in the desert the transporters had mixed benzene with our water so we would drink less, and he got sick. The guards knew he was sick, but they wouldn't take him to the hospital or do anything to help him.

There was no communication with the [smuggler] guards. They only knew to ask us for money. They didn't give a damn if our arms and legs were broken or if we were sick. They hit me many times. They beat you for urinating without permission or for no reason, just for walking by, whenever they wanted. They hit you on the eyes, the legs, anywhere.¹⁴⁴

Iggi said that the police and the smugglers were closely connected:

The transporters who kept us in the room in Kufra told us they had a connection to the government. We saw it ourselves. Two police cars stopped us in the Sahara. One of the drivers got out and talked to the police, and they let us pass. When we first entered the city of Kufra we were all caught by the police. We spent two days with the police and they told us we could go. But the driver for the police also worked for the transporters and took us back to the transporters and turned us over to them, where we spent 13 days in the closed room.¹⁴⁵

Mahmoud, a 20-year-old Tunisian, spent three months in a smuggler's house in Tripoli where he was held against his will in poor conditions. He believed that the smuggler who controlled him was connected with the police:

When we moved from Al-Zawiya to Tripoli we could see that the smugglers were friends with the police. The police were helping the smugglers organize the trip. After we got to the house where they kept us in Tripoli we could not

¹⁴⁴ Human Rights Watch interview (name changed, B66), Rome, May 20, 2009.

¹⁴⁵ Ibid.

leave. Not only was the food and water bad, but also they beat us. We were not allowed to talk. I asked for my money back, but they refused.¹⁴⁶

Ghedi, a 27-year-old Somali, encountered problems with smugglers as soon as he entered Libya in February 2009. He named the head of the smuggling operation and said that members of the police force worked for him. They threatened his life and held him against his will for ransom:

[Name withheld] is one of the big smugglers. He is not part of the police himself but some of the police work for him. [Name withheld] hijacked me, tortured and beat me. He said, “If you do not pay me this money, I will kill you.” He required that my family send him \$700. The circumstances compelled me to call my father and have my father send him the money or I would be killed. My father sold our home and paid the money so they wouldn’t kill me.

They took me to a house in Ajdabiya. It was like a jail. It had four guards and four guard dogs. There were 24 people imprisoned there. We stayed there for six days. The smugglers beat me every day. They took me in a separate room and beat me. They hit me with a club all over my body, saying if you don’t pay \$700 we will kill you. The beating lasted for ten minutes. The next day they beat me for 12 minutes.

The man who beat me was connected to the police. He was not wearing a police uniform, but he showed me his police ID card. He said if I didn’t obey, he would take me to jail.¹⁴⁷

The smugglers not only treat migrants with brutality in the places where they detain them against their will, but also the way they transport the migrants is often unspeakably cruel. A video published by *La Repubblica* on June 26, 2009 provides shocking images, apparently of a large group of migrants being pulled out of a completely closed cylindrical container of a tanker truck normally used for transporting liquids, such as fuel.¹⁴⁸

¹⁴⁶ Human Rights Watch interview (name changed, B57), Lampedusa, May 14, 2009.

¹⁴⁷ Human Rights Watch interview (name changed B45), Trapani, Sicily, May 9, 2009.

¹⁴⁸ “Illegal immigrants in tankers: A new video of shame from Libya: traffickers keep on working,” *La Repubblica*, online version, June 26, 2009, http://tv.repubblica.it/home_page.php?playmode=player&cont_id=34356&ref=search (accessed July 16, 2009).

XIII. Abuses against Vulnerable Migrant Groups

Migrants who resided in or traveled through Libya consistently told Human Rights Watch of living in fear of arrest or of being robbed, beaten, and extorted by police officials and criminals. They also said that they feared xenophobic and discriminatory treatment in the work place and other walks of life, including the frequent occurrence of children throwing stones at them. These experiences make migrants wary of walking on the street.

Many migrants told Human Rights Watch that they hid virtually the entire time they were living in Tripoli or Benghazi. In some cases this was because they were being held as virtual prisoners by the smugglers. But in other cases it was because they feared being attacked on the street. As it turns out, they were safe neither on the street nor in the homes where they were hiding, as policemen and thugs would also enter migrants' homes to attack and extort.

Being mugged is a common experience for migrants, particularly for sub-Saharan Africans, in Tripoli and other cities, as is having children throw stones at them. Ermi, a 25-year-old Eritrean, expressed experiences and feelings shared by other migrants in interviews with Human Rights Watch:

Even children took money from me. Libyans could beat me and I couldn't defend myself. Even their parents didn't stop them. The police back them up. Most of them don't know that we are human beings. I lived in Tripoli for one month. If I was taking coffee, the police would come and search me. They would take my money or if I didn't have money take me to jail. I escaped from the jail after one week, but they took a lot of my friends to Kufra, to the border with Sudan.¹⁴⁹

Though all migrants are at risk in Libya, certain groups are particularly vulnerable.

Abuse of Women Migrants

Women migrants making the journey through Libya are particularly vulnerable to smugglers and police who abuse them with impunity. Although Human Rights Watch was not able to document specific cases of rape and sexual assault, both men and women told Human Rights Watch that they frequently saw smugglers and police separate or try to separate

¹⁴⁹ Human Rights Watch interview (name changed, B63), Rome, May 19, 2009.

women from groups of migrants. They told Human Rights Watch that they believed the women were being taken away to be sexually assaulted. In addition to sexual abuse, women interviewed by Human Rights Watch also described other violations, including beatings, lack of adequate sanitation, and extortion.

Sexual abuse may occur not only at the hands of smugglers but also for women migrants in police custody. Madihah, a 24-year-old Eritrean woman who was detained in both the Al Fellah and Misrata migrant detention facilities, told Human Rights Watch that although men and women were separated at Al Fellah, they were not separated at Misrata. At Misrata, she said, “All of the women had problems from the police. The police came at night and chose ladies to violate.”¹⁵⁰ According to UNHCR, men and women have been separated at Misrata since 2007 and there have been no reports of rape there since that time.¹⁵¹

The smugglers held Nadifa, a 19-year-old Somali woman, for ransom for 20 days in Kufra. She described the room that she shared with 25 other women as very narrow and dirty in a rough, broken building with only one toilet for all to share. Nadifa told Human Rights Watch about how the guards treated her and her fellow detainees:

They beat us. They beat everyone, men and women. They usually beat us in the same room where we were kept. But they took some people out of the room. Not me, but they took other women out of the room.¹⁵²

Amina, another 19-year-old Somali woman and a friend of Nadifa, was held together with Nadifa in the same place in Kufra, and described it similarly. She also spoke about physical, but not sexual, mistreatment:

They held us for ransom. They hit me and the others too. They hit us with a special stick for hitting people. Every time the smuggler guard entered the room he beat us. He said that we needed to pay them money. We stayed in the same room for ten days. The women stayed together, we refused to be taken alone out of the room.

¹⁵⁰ Human Rights Watch interview (name changed, R/L1), Rome, October 23, 2008. The Human Rights Watch interviewers were a male and a female.

¹⁵¹ UNHCR email to Human Rights Watch, August 12, 2009.

¹⁵² Human Rights Watch interview (name changed, B50), Salina Grande center for asylum seekers, Trapani, Sicily, May 9, 2009. The Human Rights Watch interviewer and interpreter were both male.

The smugglers used police handcuffs, so we thought they were with the police, but they did not wear police uniforms. They handcuffed two or three people to frighten us. The smuggler used to say, "I'll kill you if you do not pay the money." He also said, "I will take you to prison." I paid the \$800.

He handed us to another smuggler who took us to Ajdabiya, where we were held for one month and where they again held us for ransom and demanded more money. The beatings there were even more severe because we couldn't pay the money. They took some of the boys out and beat them with clubs and electric shocks. The women were not taken out.¹⁵³

Although no woman interviewed by Human Rights Watch said that she had been raped, the accounts of some of the men leave little doubt about what occurs to female migrants in Libya. A 20-year-old Somali man told Human Rights Watch about a "special house" outside of Tripoli where migrants are held and where women are raped:

The traffickers were involved with the soldiers. They work with the government to keep the special house outside Tripoli. There were 32 of us held in this house, 25 men and 7 women. They didn't respect the women. They saw one girl and admired her. They forced her into a room. She said to me three times, "Why didn't you save me?" I answered, "What could I do?" She said, "They forced me." I cried. I couldn't do anything.¹⁵⁴

Daniel, a 26-year-old Eritrean man, witnessed a girl falling victim to smugglers in Kufra:

There was a beautiful girl in our group, about 16 years old. When we arrived in Kufra they put us into a house. They told us to call our families to send them money. They held us for two days in the house. They beat us if we spoke to them. They took the underage girl outside. We then made a problem for them. We were able to help her the first day. On the second day, the girl did not have money to go with us. The Libyans made her stay behind. There were 68 people in two cars, and she was the only woman left behind. The Libyans were always trying to get to the women.¹⁵⁵

¹⁵³ Human Rights Watch interview (name changed, B49), Salina Grande center for asylum seekers, Trapani, Sicily, May 9, 2009. The Human Rights Watch interviewer and interpreter were both male.

¹⁵⁴ Human Rights Watch interview (name changed, B11), New Ta'Kandja detention center, Malta, May 2, 2009.

¹⁵⁵ Daniel Testimony, <http://www.hrw.org/en/node/85530>.

Later, Daniel was held in a smuggler's house in Tripoli where women were preyed upon:

They took us to a big house that held a lot of Eritreans and Somalis, about 190 people. The doors were locked. We couldn't go out. We spent one week in that room. Every day, the Libyans came and took women to do whatever they wanted with them. No one slept well. We were worried that they would turn us over to the police. No one had the right to ask any questions.¹⁵⁶

Problems for migrant women are not limited to when they are traveling and actually in the custody of smugglers; those who spend time living in Libya encounter problems on the street and in the workplace where their lack of status makes them vulnerable. Iskinder, a 40-year-old Ethiopian man who is now in Malta, spoke to Human Rights Watch about his wife who is still in Libya. UNHCR has recognized her as a refugee, he said, and Iskinder had a UNHCR refugee status determination interview in Libya, but left the country before getting the result. The interview also indicates the reticence people have about talking about the treatment of migrant women in Libya in detention:

My wife was caught in June 2006 when our boat didn't succeed. She was pregnant and couldn't run and the police caught her. I was not caught. She was arrested three more times, always when she was alone. I stayed with our son and she worked outside. Most of the problems happened to her. She was held after each arrest for about two months. I never went to the police to check on her. She never said anything to me about how she was treated in prison. But I was also in detention. I know what happens to women.¹⁵⁷

Abuse of Unaccompanied Children

Libyan detention authorities appear not to make any distinction between adults and unaccompanied children. They usually do not hold unaccompanied children in separate facilities and their detention jointly with adults puts them at risk of abuse and violence. Unaccompanied children are also vulnerable to other forms of violence during their migration journey. One unaccompanied child, Kofi, an orphan from Ghana, was 16 years old while in Libya for one year in 2007. Kofi spoke of being detained and pressed into forced labor, and, finally, of being forced onto the boat that took him to Europe. As is usually the case, the line between police authorities and smugglers is blurred:

¹⁵⁶ Ibid.

¹⁵⁷ Human Rights Watch interview (name changed, B13), Malta, May 3, 2009.

I was the only boy traveling with a group of 24 adults. We were caught and taken to Janzur prison for 12 days. We only ate bread, macaroni, and water the whole time we were there. I got sick and asked for medical help, but they refused. Once they pushed my face against the wall.

The guards gathered us at 4:30 am every day to be counted. I don't know the difference between police and military. It was a very big prison with Libyan prisoners and Palestinians, Afghans, Bangladeshis. The men and boys were in one area and the women in a separate area.

The guard took me out to work on his house. I worked all the time every day for four months, but he never paid me. Then he gave me to an Egyptian woman. I worked on her farm for seven months. She also didn't pay me, but she at least gave me food and clothes.

After seven months the guard from before came back and took me. He put me with a large group of 200 people that was just released from the prison. He controlled us. His men shouted and used force and put us on a boat. I was afraid. I was crying. They told me to be quiet. They controlled me.¹⁵⁸

Jonatan, an 18-year-old Eritrean, traveled through Libya as an unaccompanied child and spent two months in a regular Libyan prison with criminals because Misrata, the migrant detention center which holds a large number of Eritreans, was full:

Misrata was full, so I was put in another prison with criminals and drug addicts. They didn't differentiate between underage and adults. Prison was terrible and the Libyan police are racists. If they knew you were a Christian, they did bad things like hitting you. When we were first caught they punched us like animals. One guy tried to escape because the beating was so bad. He ran and was hit by a car. There was no inquiry. No one took responsibility for his death.¹⁵⁹

¹⁵⁸ Human Rights Watch interview (name changed, B53), Agrigento, Sicily, May 11, 2009.

¹⁵⁹ Human Rights Watch interview (name changed, L4), Sciacca, Sicily, October 27, 2008.

XIV. Abuses Entering Libya

The most frequent abuses, and often the most severe, occur when entering (or trying to enter) Libya or when re-entering Libya after a failed boat departure or when being expelled from the country. Abuses at the land borders occur on all sides, east, west, and south. The identity of the authorities committing the abuses—whether police or military—is not clear and there is also a strong element of engagement between security officials and the smugglers involved in transporting people.¹⁶⁰ Migrants often said that they had no problems crossing into Libya, that they saw their drivers and handlers talking with the police. However, if the price was not right, problems usually ensued.

In some cases, the problems at the border happen because the migrants are abandoned by the smugglers, so no one is negotiating their passage and bribing the appropriate officials. Fethawi, a 30-year-old Eritrean, who had spent a year and a half as a political prisoner in Eritrea, entered Libya in 2007 in a mixed group of 59 Somalis, Eritreans, and Sudanese. The tradeoff between Sudanese and Libyan smugglers in the desert failed and the Libyan smugglers left the group stranded in the desert for three days, during which time six people died. A truck driver gave them a ride to Kufra:

We left the dead people behind. The truck driver gave us a ride and dropped us near Kufra. Soldiers stopped us. Those with money paid them bribes, but those without money, including me, were beaten. Three soldiers beat me with their weapons. They searched me for money, my mobile phone. They took one of the Somali men. They demanded money from him, and when he didn't pay, they put him on the ground and beat him with the metal crowbar from the car. I saw this. I was afraid for my life. His head was bleeding. They hit him on his ribs. We took him with us. We had to carry him because he couldn't walk. We took him to Ajdabiya and left him there. They beat me, but I can't complain because the Somali guy was so much worse off than me.¹⁶¹

While some people, such as Fethawi, reported that the police or soldiers beat and robbed them in the border region, others, such as Tomas, a 24-year-old Eritrean, said that the smugglers were the main perpetrators of these types of abuses near the border. His smugglers abandoned Tomas in the desert after he entered Libya in July 2006. He had spent

¹⁶⁰ See *Linkages between Smugglers and Security and Law Enforcement Officials*

¹⁶¹ Human Rights Watch interview (name changed, B38), Caltanissetta, Sicily, May 8, 2009.

the previous 21 days crossing the desert from Khartoum. After they paid more money, the smugglers held them up outside Kufra where they demanded more money and threatened their lives:

The smugglers were drug addicts. They didn't bring spare parts for the vehicle. We were left stranded in the desert with no food or water. The original agreement was to pay them \$250 to go from Khartoum to Kufra. But in the middle of the desert the Sudanese turned us over to the Libyans and they told us we had to pay another \$300 or they would abandon us in the Sahara before we reached Libya. About 75 percent of us were able to pay. We paid for the other 25 percent, so no one was left.

From Kufra we had to pay another \$300 to go to Benghazi. They used force and threatened us with knives. They beat us...The agreement was to take us directly but they held us for two days in a house outside Kufra where they demanded the money and forced us to pay.¹⁶²

Others saw the bodies of migrants who had been left in the desert to perish. Madihah, a 24-year-old Eritrean woman, was left in the desert by smugglers, and saw what happened to others who had been similarly abandoned:

I walked to Libya after being dropped in the desert. I saw the bodies of Eritreans and their ID cards there in the desert—two ladies and a boy who looked Eritrean. It took 24 days to get through the desert. You go in an old model Toyota land cruiser and normally they put benzene in the water so you don't drink too much. You get out and walk up the hills when it's too sandy. There are armed bandits in the desert asking for money. Soldiers collect bribes at the border.¹⁶³

Abuses in Libya's Western Border Region

West Africans describe similar problems when they enter Libya's southwestern frontier. Migrants said that border police would shoot at them. Innocent, a 19-year-old Nigerian, said,

¹⁶² Tomas Interview, <https://admin.hrw.org/en/news/2009/06/08/full-transcript-statement-tomas-24-year-old-eritrean>.

¹⁶³ Human Rights Watch interview (name changed, R/L1), Rome, October 23, 2008.

“The police stopped us at the Libya border. We escaped, we ran. They were shooting guns.”¹⁶⁴

In other cases, the border police robbed the migrants outright, acting little different than criminals. Abassi, a 19-year-old Nigerian, described his first encounter with the Libyan police after a ten-day journey crossing the desert to get into Libya from the west:

When I got to Libya, the police stopped me and collected all the money in my pockets. They tore up the passports of the people in my group. They beat us with sticks and kicked us, but did not send us to jail.¹⁶⁵

In reality, there seems to be little difference between the police and robbers. Samuel, a 21-year-old Nigerian, told Human Rights Watch that he was robbed both by civilians and by the police when he entered Libya at Tummo in December 2007:

As soon as I crossed the border, Libyan youths caught me. They threatened me with a knife. They told me to give them my money or they would stab me. This happened just as I arrived in Libya. I was walking along the road. They beat me.

Then the police caught me in Gharyan. They asked for my documents. Then they emptied my pockets to take whatever money or valuables they could. They took my money and pushed me away. They did not put me in detention. It was not like a bribe, it was more like a robbery.

As a black man, you hide yourself. If they catch you, they beat you, search you, rob you. You need to keep your money hidden. If you don't give them money, they will search you for it.¹⁶⁶

Emmanuel, a 34-year-old Togolese man, encountered a series of problems from both civilians and officials as soon as he entered Libya's western border:

¹⁶⁴ Human Rights Watch interview (name changed, B58), Lampedusa, May 14, 2009.

¹⁶⁵ Human Rights Watch interview (name changed, B35), Agrigento, Sicily, May 6, 2009.

¹⁶⁶ Human Rights Watch interview (name changed, B4), Old Ta'Kandya detention center, Malta, May 2, 2009.

Robbers attacked us when we first entered Libya. It was in the desert on the border with Algeria. These were robbers, not police. They killed people, took our money and left 32 of us in the desert without food or water. Six more died of thirst. A car picked us up and took us to Al-Qatrun. After a week there, we went in another car to Sabha. There were checkpoints on the road. They check you for money. If you don't have money they beat you and threaten to send you back in the desert to die. People lost their souls, left without food or water.

They arrested me on the road from Al-Qatrun. It was November 22, 2005. They put me in Hun Prison. It was terrible. We only had a little bread and beans once a day. We didn't know when they would release us. I worked for the prison chief on his farm. We had no rights. No one will speak to you, even if you are sick. We had no contact with the guards. All of us were kept in one room. There were three toilets in the same room. There were many, many people in the room. No one was let out. Some were there for more than a year.¹⁶⁷

Gowon, a 21-year-old Nigerian, entered Libya from Niger in 2007. He was arrested and spent three months in a detention center in western Libya. Human Rights Watch interviewed him in the C Block of the Safi detention center in Malta. He said, "It was a prison like this, only worse." He continued:

The food and water were bad. Five people had to share one bowl of food. They beat us every day. They would come to check on us and would punish us. They would take us one at a time and use sticks to beat us and their legs to kick us.¹⁶⁸

Kwesi, a 28-year-old Ghanaian, entered Libya in 2007 from the southwest. He was arrested in Sabha and kept in a prison there for two months:

It was not good. We slept in the same place we went to the toilet. The food was beans and bread. They beat us every day. It mostly happened when the chief was not around. They hit us with sticks, usually two guards beating one person. They would throw you on the ground and beat you. The beating was

¹⁶⁷ Human Rights Watch interview (name changed, B14), Malta, May 3, 2009.

¹⁶⁸ Human Rights Watch interview (name changed, B32), Safi detention center, C block, Malta, May 4, 2009.

for no reason. They put all of us in the same room, about 50 or 70 people with one toilet. There were no mattresses. We slept on the floor. There was no soap, no shower. Some people went crazy in that prison. Some people were kept there for a long time. My brother sent money to get me out.¹⁶⁹

Migrants sometimes enter Libya, unwillingly, when the Tunisian authorities dump them across Libya's northwestern border. The Tunisians took Ezekiel, a 24-year-old Eritrean, to the Libyan border in April 2006 and dumped him into Libya, leaving him with taxi fare so he could disappear into Libya. But he had no such luck:

The Libyan police caught us on the road to get the taxi. The Libyan soldiers beat us. They hit us with their fists and kicked us with their boots. The beating lasted for a long time. They hit my head against a wall. They took our money. They took us to the police station at An Nuqat Al Hums. We spent two months in that police station along with other foreigners who were being held there.

I speak Arabic and I spoke to [name withheld], the man in charge of that police station. I told him that this was unkind, that we had suffered greatly at sea and that the soldiers shouldn't have taken our money. He demanded to know which soldier had taken the money. When I pointed him out, [name withheld] then had the soldier share the money with him.¹⁷⁰

¹⁶⁹ Human Rights Watch interview (name changed B44), Tapani, Sicily, May 9, 2009.

¹⁷⁰ Human Rights Watch interview (name changed, B/H12), Malta, May 2, 2009.

XV. Refoulement from Libya and Dumping People in the Desert near the Border

Although the practice of dumping migrants in the border region appears not to be uncommon, there have not been clearly documented cases since 2007 of refugees or asylum seekers being forcibly returned to their countries of origin or to places from which they would be forcibly returned.¹⁷¹ Human Rights Watch had the opportunity to interview two of the refugees, Milli and Aron, who the Libyan authorities forcibly returned to Eritrea in 2004. They have since fled from Eritrea again, traveled back to Libya, and this time succeeded in leaving Libya and going to Malta, where they are now living. Human Rights Watch reported the facts of the refoulement in our 2006 report, *Stemming the Flow*, but, of course, was not able to interview the returnees at that time, who were imprisoned upon arrival in Eritrea. Eritreans continue to be refouled from other countries in the region.¹⁷²

The refoulement ordeal began on May 21, 2004 when the boat that Milli and Aron were on sank off the coast of Libya. Seven of their fellow passengers drowned. The rest were caught on the coast near the village of Kums.

Milli told Human Rights Watch what happened when they returned to the Libyan shore (Aron separately told essentially the same story). It is a story of almost continuous beatings from the time they were apprehended upon landing until the time their plane took off to deport them to Eritrea two months later, at which point they were immediately jailed by their home government:

The police were there and almost everyone was caught and arrested. The one who caught me threatened me with a knife. We were tired. The police beat us with their sticks and put us in the boot of the police car. They put us in a normal house, not a police station, and kept us there one night.

The next day, they took us to Misrata. There were 172 people, all from the same boat, taken there. Misrata was a big prison. There were also other African prisoners there. I was held there for one month. I was beaten daily.

¹⁷¹ *Stemming the Flow*, p. 57

¹⁷² See Human Rights Watch, *Service for Life: State Repression and Indefinite Conscriptioin in Eritrea*, April 2009, <http://www.hrw.org/en/reports/2009/04/16/service-life-o> (accessed September 9, 2009).

I tried to escape by bribing a guard. I paid him \$150. I gave him the money, but other soldiers were waiting outside and caught me. I had a friend with me. We were both taken to a room. They beat us so much that I became sick. They used electricity. They then beat me on the inside of my foot. My foot is still injured and I still have trouble walking. Four or five guards beat me. I wasn't able to walk for three weeks. My foot was too wounded.

The first day after I was caught trying to escape was the worst beating. After that, the beatings were normal beatings for three days in the small room with my friend, and then they returned us to the big room. The next day they sent us to Jawazat Prison where there were many nationalities. I was there almost one month. This prison was not as bad as Misrata. The beating was normal when they counted people in the morning and at night; that was when they beat people. I was transferred from there to Al Fellah prison, where I spent two days. From there we were taken to a plane. The Eritrean ambassador was there at the airport. It was July 22, 2004. There were 79 men and 30 women on the plane.

After we landed in Eritrea I was arrested and spent the next nine months in prison and the next six months after that in a special military training for prisoners. It was more like another prison, not normal military training. After the military training, they sent me back to prison again. I escaped from the prison and went to Sudan on May 1, 2007. I only spent a couple of days there and came to Libya a second time.¹⁷³

Libya sent off another charter deportation flight with 75 Eritreans in August 2004, but the passengers hijacked the plane en route and diverted it to Khartoum, where UNHCR recognized 60 as refugees.¹⁷⁴ After that incident, Libya is not known to have chartered other deportation flights to Eritrea, although there was an attempt to charter a flight in July 2008 to return 230 Eritreans.¹⁷⁵ UNHCR was able to intervene with the authorities inside Libya and prevent their deportation.¹⁷⁶

¹⁷³ Human Rights Watch interview (name changed, B/H2), Malta, May 1, 2009.

¹⁷⁴ See *Stemming the Flow*, pp. 56-57.

¹⁷⁵ Amnesty International, "Libya: Amnesty warns against deportation of Eritreans," July 11, 2008, <http://www.amnesty.org/en/library/asset/MDE19/007/2008/en/a18438b2-4f5e-11dd-a20f-af4976c1087c/mde190072008eng.html> (accessed August 28, 2009).

¹⁷⁶ UNHCR email to Human Rights Watch, August 12, 2009.

There is still a belief expressed by some Eritreans that Libya still sends Eritreans back to Eritrea. Gabriel, a 28-year-old Eritrean who spent a month in Libya in 2008, was convinced that if he was caught he would be sent back to face his persecutors in Eritrea:

If you are caught on the way by the Libyan police, then you are afraid they will return you to Eritrea. There are so many people arrested in Libya, so many prisons. If you are returned to Eritrea, it is known what kind of punishment you will face. You can be arrested for two or three months, or you can even be killed. I knew some people who were returned but I don't know where they are. Even their families don't know.¹⁷⁷

In the years 2003 through 2006, Libya deported roughly 200,000 individuals to their home countries.¹⁷⁸ While the majority of these people were economic migrants who had entered the country irregularly, some of them were asylum seekers and refugees who faced the risk of persecution or maltreatment back home.

The Libyan government contends that most of the people it repatriates go home willingly,¹⁷⁹ but under the circumstances of detention described in this report, the lack of alternatives, and the absence of transparent deportation procedures, the line between voluntary and coerced returns is not at all clear.

Dumping in the Desert

Libyan authorities in the coastal area put migrants (particularly from the Horn of Africa) in trucks and send them to Kufra purportedly to deport them across the land border with Sudan, but often they are not actually deported, rather simply left in the Libyan desert. Perhaps this is because Sudanese border guards are not willing to accept them (the migrants come not only from Sudan, but from Somalia, Eritrea, and elsewhere). Instead, according to testimony from migrants, they are left in the desert within Libyan territory. In practice, this means that the migrants have no choice but to put their lives in the hands,

¹⁷⁷ Human Rights Watch interview (name changed, L2), Sciacca, Sicily, October 26, 2008.

¹⁷⁸ 43,000 deported in 2003; 54,000 in 2004; 48,000 in 2005, and 54,000 in 2006. These statistics are cited as “the official” data in “Escape from Tripoli: Reports on the Conditions of Migrants in Transit in Libya,” *Fortress Europe*, p. 6, citing 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.

¹⁷⁹ Libyan government memo to Human Rights Watch, April 18, 2006. See Appendix I, *Stemming the Flow*.

once again, of the smugglers who brought them from Kufra to Benghazi or Tripoli in the first place.

The truck journeys themselves are extremely dangerous and degrading. Migrants told Human Rights about being crammed into closed vehicles with almost no air. They would remain standing for a two-day journey, not allowed out even to urinate and defecate. Daniel, the 26-year-old Eritrean whom we also quote telling about his boat being interdicted by the Maltese Coast Guard and about his experiences in Misrata,¹⁸⁰ told us what happened after he left Misrata. It starts with the harrowing truck ride to the detention center at Kufra and follows with the camp manager ordering that he be thrown into the desert to die:

After three months [of detention at Misrata], the Libyans brought a truck and said they would take us back to our home countries. I said I was Sudanese. The truck took us to Kufra. It was overcrowded with 200 people and there was no air. It was very hot inside the truck. It was made of metal. If we had to urinate or defecate we had to do it in the truck where we stood. When the truck stopped, the drivers wouldn't let us out. We arrived in Kufra. It was a very bad prison. I had a cross on my neck, which they ripped off. We had to line up with our faces against a wall. They hit us with a stick.

They didn't take our names or fingerprints. They just herded 78 of us into one small room. There were maybe eight rooms like this. The room had no beds, and just one toilet right in the room itself, and it didn't work. There were no windows. We couldn't breathe. It was very dirty. There was no soap, no water, no chance to bathe. We slept on the floor body to body. There was no space. If I lifted my leg, another person would fill the space. For food, they gave us a handful of rice for seven people. Just rice and a little water.

If you made noise, the police would hit you with a metal stick. They would beat you everywhere. Some people had their arms broken and the guards did not take them to the hospital.

There was no doctor. At one point I felt very sick; I had a fever. The people started hitting the door to get the attention of the guards because I was very

¹⁸⁰ See Migrant Detention Centers: Conditions and Abuses.

sick. The guards took me outside. The camp manager came and said, “Take him and throw him in the desert.”

A policeman took me, but he took pity on me and took me to the hospital instead. He bought medicine with his own money and they gave me an injection. He asked permission to let me sleep outside. Finally, when I got better, the police let me inside.

Every two or three days, the manager of Kufra camp took 25 or 30 persons at night and sold them to Libyan transporters so he could get money from us. Other people were just thrown in the desert. Sometimes they would take people in the desert and run over their legs with a car and just leave them. He sold me with a group of 25 or 30 people to a Libyan man who put us in a big house in Kufra and told us we needed to have our families send \$200 to pay for our release from Kufra and to take us to Benghazi. It was too much, too much desert and some people lost hope after three, four, or five tries. I heard that a lot of people killed themselves.¹⁸¹

Being “deported” to Kufra often follows the traumatic experiences of a failed boat attempt, arrest, and detention in northern jails. Although the authorities transport migrants to Kufra for the supposed purpose of expelling them overland to Egypt or Sudan, in fact the Kufra authorities sometimes do not actually take them to the border but rather leave them in the desert outside Kufra or make deals with smugglers who pick them up to start the process again. Tomas, a 24-year-old Eritrean, quoted above, was sent to Kufra after a failed boat attempt and two months in the Jawazat Prison in Tripoli:

After two months, they put us with another group of Eritreans—150 people in all. They put us in a big truck packed with people. There wasn’t room for anyone to sit down...The only air was from some open holes in the roof of the truck; otherwise it was completely closed. The truck drove us from Tripoli to Kufra. We started at 6 am and traveled all day and all the next night. The truck was closed the entire trip. There were cracks in the floor and people urinated on the floor, but my eyes were in pain from the smell.

¹⁸¹ Human Rights Watch interview (name changed, B/H54), Palermo, May 13, 2009.

We begged for air. The truck would stop for the drivers to take a break and eat, but they would not open the door for us. They were afraid we would run away. The worst was when we arrived in Kufra. At least the air circulated when we were moving. In Kufra, we stopped for two hours in 45 degree [centigrade] weather and we could hardly breathe. The truck was made of metal. They kept us in there for two hours as punishment because we were shouting during the journey. God is great; we all survived.

When they let us out of the truck, we were in Kufra Prison. We spent one week there. They fed us food only once a day. Only rice. Ramadan was over. I had already experienced two months of hunger in prison. We were now 800 prisoners crowded in different rooms. We slept on pieces of cardboard. There were no mattresses. It was dirty. The guards had no communication with us. They just opened and closed the doors.

Kufra is the border place for deportation. They just let you go from there because there is no place to go. There are always three nationalities there: Sudanese, Eritreans, and Ethiopians. They cast you back to your country at Kufra. They don't actually take you to the border, they just let you go.

But the smugglers have an agreement with the prison commander. When they let us go, we are ready for market. The drivers wait for us outside the Kufra prison and make deals to take us to Tripoli. The drivers say that they have paid money to get us out of prison. They then take us out of the city to a place in the open bush.

The drivers told us we had to pay them money since they had paid to get us released from prison. We had either to pay the 40 dinar bribe to get us out of prison or \$400 to get to Tripoli. The only way to do that is to call your family to have them send money. My family sent money and I went back to Tripoli.¹⁸²

¹⁸² Tomas Interview, <https://admin.hrw.org/en/news/2009/06/08/full-transcript-statement-tomas-24-year-old-eritrean>.

XVI. Migrant Detention Centers: Conditions and Abuses

Former detainees from all migrant detention centers in Libya told Human Rights Watch that conditions of detention were poor. The detention centers are overcrowded and dirty, the food is inadequate and health care is virtually nonexistent. There is almost no communication with the authorities and it is hopeless even to contemplate challenging one's detention in court. There is little to no contact with lawyers or information about the reasons for and length of detention. Treatment by guards ranges from negligent to brutal, and corruption is endemic.

There is no limit to the time the authorities can detain irregular migrants administratively for the supposed purpose of arranging their deportation, even if there are no foreseeable prospects for effectuating their removal. A diplomatic source in Libya told Human Rights Watch that migrants can be detained "from a few weeks to 20 years."¹⁸³ He said that the decision to release is based mostly on overcrowding and that people are released at the point at which detention centers become too full to hold any more.

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.¹⁸⁴

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

¹⁸³ The source requested anonymity.

¹⁸⁴ 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," <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0811fcbdb9f6bd58025667300306dea/39bc3afe4eb9c8b480256890003e77c2?OpenDocument#annexII> (accessed March 6, 2006).

requires that a “maximum period should be set by law and the custody may in no case be unlimited or of excessive length.”¹⁸⁵

Many detention centers and jails hold migrants in Libya.¹⁸⁶ What follows are accounts of the detention centers most commonly mentioned by former detainees now in Malta and Italy.

Kufra

Kufra, located in remote southeastern Libya, was the most frequently mentioned place of detention in Libya among the migrants Human Rights Watch interviewed in Italy and Malta. It is a place where people were detained upon entering the country as well as when they were about to be deported across the land borders with Sudan and Egypt. But “Kufra” does not mean a single detention center. Although there is a government-run migrant detention center at Kufra, smugglers also operate their own detention facilities there. Migrants are sometimes unclear about which is which: some describe the government-run center as “looking more like a house than a prison;”¹⁸⁷ others describe the guards at the private facilities as sometimes wearing military uniforms. Most migrants regard the smugglers and the police as working together, so, in their understanding, there is little distinction between private and official detention facilities. In both, migrants are held indefinitely, have minimal communication with their jailers (most of which takes the form of hitting and beating) and are not released until they pay bribes. All fear being dumped in the desert.

Although this section of the report focuses on Kufra, these accounts should be read as a snapshot of a continuous, traumatic journey. The descriptions of abuse in Kufra should not be read in isolation but as part of a continuum of hardship and abuse. It also should be noted that a number of migrants told Human Rights that they were held in Kufra multiple times—upon entering Libya as well as in the course of being deported, although, at least among the people interviewed by Human Rights Watch, the deportations were not fully carried out. Rather, migrants would be released from Kufra prison—often directly into the hands of smugglers who would take them into custody, demand more money from their families, and take them once again to the cities along the coast.

¹⁸⁵ *Ibid.*

¹⁸⁶ Migrant detention centers in Libya include Misrata, Zleitan, Al-Zawiya, Garabulli, Surman, Towisha, Zuwara, Kufra, Ganfuda (Benghazi), Al-Qatrun, Ajdabiya, Sirte, Sabratha, and Bani Walid. We also heard frequent mention of Sabratha and Jawazat (featured in this chapter), and Bin Gashir.

¹⁸⁷ Human Rights Watch interview (name changed, B/H 32), Malta, May 4, 2009.

Kufra Detention Center

The location of the official detention center at Kufra raises fears among migrants of deportation or abandonment in the desert. The detention center has a central courtyard and six large detention rooms, each of which can hold more than 100 people. Depending on the number of people being held, some of the rooms at times stand empty, even though this can create unnecessarily overcrowded conditions in the occupied rooms. The facility is surrounded by high walls with only air holes near the ceiling so the detainees cannot see anything outside. There is no doctor or nurse on site or available. Everyone sleeps on the floor either with shared mattresses or no mattresses at all. At most, people are allowed outside once per day when the guards conduct their count of detainees. Although this is the one chance to breathe fresh air, it is also the time when the most beatings occur.

Ghedi, a 29-year-old Somali, described his time in the Kufra detention center in April 2008:

I was caught when I entered the country and the police took us to Kufra prison. It was a very bad prison. There were about 600 people being held there. We all slept on the floor. There were no mattresses. There was one toilet for every 100 people. They gave us soap once a week.

The guards beat us for no reason. They would slap us all the time. Once I was beaten with the butt of a rifle. The guards especially came to beat us at night when they were high from smoking hashish. Some guards kicked with their boots, others hit with their hands or with a weapon. We would just be sleeping before the beatings. We didn't make any demands. We did nothing. I was beaten all over my body.

The first time I paid \$300 and was not released. Then I paid another \$500 and was released. It was at night. The smugglers and the police—or the army—were the same. They were all the same.¹⁸⁸

Abdul, a 22-year-old Somali man who left Somalia in 2006 because of political violence, spent two months in Kufra in March and April 2008 where he stayed in a windowless room with 45 people. Abdul estimated that the Kufra detention center held a total of 300 people. He said that the center operated under the authority of the police in Kufra. He said that there was never enough food and that six people would have to share a handful of rice. He said

¹⁸⁸ Human Rights Watch interview (name changed, B27), Lyster Barracks, Malta, May 4, 2009.

that he shared a dirty mattress on the floor with others. Abdul also shared one toilet with the 45 people in the same room where they slept and ate. “It was very dirty and the toilet smelled when you were eating.” He was part of a family group, one of whom was a woman:

The guards wanted to force themselves sexually on her. I tried to stop them. They hit me. They punched me in the eye and hit me with sticks. They took me into a separate room and used electric shocks on me. They put my legs up and my head down and hung me upside down for 15 to 20 minutes and put electric shocks on my arms and stomach.¹⁸⁹

Abdul also said that he saw the guards at Kufra put a hot metal poker through the ear of a detainee who was caught trying to escape. “They made the metal very hot and melted his ear,” he said.

Iskinder, a 40-year-old Ethiopian man said that he was arrested by the Libyan police and spent one month in the Kufra detention center where he said beating was common:

We couldn’t understand the guards or them us. They communicated with a stick. If I wanted to open the door, the guard would kick me to get me to move away. I saw some people get their legs broken from beatings.

The police said they would deport us, but then they took us to pay money to smugglers to take us to Tripoli. Those without money stayed in Kufra. I paid. Everything depends on money.¹⁹⁰

Abdi Hassan, a 23-year-old Somali, was arrested on January 22, 2008, as soon as he entered Kufra town, and spent the next three months in the Kufra detention center. He described the “normal” level of beating and abuse:

They hit us randomly every day with police sticks. Sometimes they hit us with their fists or kicked us with their boots. The beatings mostly happened during counts at the 6 am and 6 pm shift changes, but the beatings could happen any time during the day or night. There were ten guards in all, five for each shift, and there were a couple of guards who did most of the beating.

¹⁸⁹ Human Rights Watch interview (name changed, B37), Caltanissetta, Sicily, May 8, 2009.

¹⁹⁰ Human Rights Watch interview (name changed, B13), Malta, May 3, 2009.

People would complain of a lack of food and get beaten. There was a lot of conflict. There were a large number of people in a small room and there was a lack of food. We went for two days once with no food. Usually we would eat once or twice every two days. There was never enough food. The bathrooms leaked and the sewage water would leak into the dormitory room. The conditions were very bad.¹⁹¹

Kufra Private Detention Centers

Although some of the buildings where migrants are held against their will are clearly owned and operated by Libyan civilian smugglers, in many cases the smugglers acted like police or military, including by flashing law enforcement credentials or using equipment that looked official, so that migrants were often left with the distinct impression that the smugglers were connected with the authorities.

Among the migrants, the private centers are known by various names: “The Project,” “The Farm,” or “the place of [Name withheld].” In some locations, people are kept in closed rooms; elsewhere, the places are desert compounds where detainees sleep in the open.

The fear engendered by the Kufra detention centers was not only because of the poor conditions and mistreatment, but also because the fate of the migrants was completely in the hands of their captors, and all feared that they would be left in the desert to die. Berihu, a 32-year-old Eritrean man, described how after 18 days crossing the Sahara desert his group of 65 people were locked in a house in Kufra for two weeks, where the smugglers demanded that the detainees have their families wire them money:

We had nothing. We suffered from the Sahara trip. We were ready to die. Everything was dark, the future was dark. We didn’t expect anything. If you tried to exit the door, they would beat you with a stick. They acted like police. They wore military clothing and used black police batons. They said they were military and told us we had arrived illegally in their country. But they were not real military.

I saw them take women away. They took a woman with her husband. They made them exit together, but then when they got outside the room, they separated them. They took the wife from the husband and raped her.

¹⁹¹ Human Rights Watch interview (name changed, B/H 32), Malta, May 4, 2009.

I speak a little Arabic, so I tried to talk to them, but they responded by beating me, so I was obliged to remain silent.

Everybody had to pay money to exit the place. When we paid, they turned us over to another criminal who took us to Benghazi.¹⁹²

Tripoli Area Migrant Detention Facilities

Migrants told Human Rights Watch about being held in detention centers in and around Tripoli but usually did not know the actual names and specific locations of the places they were held, sometimes for months. Especially since one of the most utilized detention facilities, Al Fellah, has been closed, it is not certain that the migrants are actually describing the same place. Nevertheless, the description of conditions and treatment is important to document even if the exact locations cannot be specified with certainty.

Zula, a 28-year-old Eritrean interviewed by Human Rights Watch in Rome, spent three months in a jail in Tripoli in 2006. He did not know or remember the name of the place, but was able to recall what it was like:

It was very overcrowded. There was no space. We all had skin diseases. We were not able to wash or keep clean. It was very hot. There were just small windows at the top of the room. There was no air. We were not allowed to go outside.¹⁹³

Ermi, a 25-year-old Eritrean, similarly described the overcrowded conditions in the Tripoli detention center in 2006, but went on to talk about the brutality of the guards:

The guards said nothing to us. The only contact was when they counted us once a day. If you said anything, they would hit you with a black police club. I saw them hit a lot of people. The beating was not just to move people; it was to hurt people. They broke arms. They injured people. It was normal. Violence against women was also common. They threatened to take women into another room for sex. We were all afraid they would take us to Kufra. I escaped after one week. One of my best friends broke his leg climbing the

¹⁹² Human Rights Watch interview (name changed, B64), Rome, May 19, 2009.

¹⁹³ Human Rights Watch interview (name changed, B62), Rome, May 19, 2009.

wall. They took a lot of my friends to Kufra to take them to the border of Sudan and Libya.¹⁹⁴

The Airport

There is a new detention center at Towisha near the Tripoli airport that appears now to be the largest migrant detention center in Libya, holding on any given day about 900 people, some who have been there for two years, even though it is supposedly for short-term detention. The detainees are rarely allowed out of their windowless, high-walled rooms, and when they do leave the rooms it is only to enter a small courtyard that has no views outside except straight up to see the sky. Ironically, Towisha has a well maintained garden outside its walls, which the detainees never see. Towisha is used mostly for migrants who are in the process of being deported by air from Libya, which is the way most people are deported.

Human Rights Watch was not able to interview any former detainees from Towisha, perhaps because it is relatively new or perhaps because most of the people held there are returned to their home countries. We did, however, interview Aron, a 36-year-old Eritrean man who said that he was detained for one month at the airport in 2007, though he wasn't certain whether it was a proper, legal detention facility or not:

I was held in the airport jail for one month and beaten regularly. I'm not sure if it was a legal place. It was metal and during the day it was hot and cold at night. I paid a \$500 bribe to get out. They are thieves. They just keep people to make money. They are doing business...They put them in bad conditions so the people will communicate with their families and get money.¹⁹⁵

Jawazat Detention Center

Aman, a 26-year-old Eritrean, described the Jawazat center in Tripoli as a prison:

There were no mattresses, no blankets, no sheets. There were 32 nationalities and 75 people in one room, about 300 in all. The food was not adequate. For 300 people there was one single toilet. It was very dirty. There was no medical care.

¹⁹⁴ Human Rights Watch interview (name changed, B63), Rome, May 19, 2009.

¹⁹⁵ Human Rights Watch interview (name changed, R/L5), Caltanissetta, Sicily, October 28, 2008.

The guards were the same as at Misrata. It was normal for them to beat us. They would beat us near the big boss's office. They used electric shocks, but did not do the beating on the bottom of the foot.¹⁹⁶

Tomas, an Eritrean quoted above, was held at Jawazat for two months at the end of 2006:

We were in the same room with 160 others—all in one room. It was like a parking garage with only small holes for windows at the top. We had to urinate in plastic bottles to throw away in the evening. We were only allowed to use the toilet once a day. Many people had skin problems. There was no soap. They gave us water in a jar to drink. Many of us had stomach problems. We had to beg the guards to take sick people to the toilet.

The guards were cruel. They were drug addicts. We watched them smoking hashish every day. They would joke, “Where are the Christians who are not fasting?” [It was Ramadan.] You could see how they would separate and speak to us that they did not like Christians.

One day we were singing songs. The guards came and said, “Who is making this noise?” The others said, “The Christians.” They took out the six of us and beat us. They beat the bottom of our feet with a wooden stick. They hit the soles of both of our feet for 5 to 10 minutes. Two guards put a wood plank under our legs. They then tied our legs to the wood. We fell down on our backs, and then they beat our feet. They did this to all six of us. They just beat our feet. They know if you are beaten that you are unable to walk afterwards, but they made us run around the courtyard after beating our feet. This took place at midnight.

The manager of the camp was not there when this happened, but all of the guards knew what was happening.

¹⁹⁶ Human Rights Watch interview (name changed, B/H1), Malta, May 1, 2009. By contrast, two other former detainee accounts of conditions in Jawazat describe beatings on the sole of the foot. The following testimony on this page, by Tomas, describes being beaten on the sole of the foot. Another source, *Fortress Europe*, includes a former Jawazat detainee saying, “One of the practices used in this prison was the one of truncheon blows to the sole of the foot, a point that is particularly sensitive to pain.” “Escape from Tripoli: Report on the Conditions of Migrants in Transit in Libya,” *Fortress Europe*, October 25, 2007, p. 18.

I'm okay now. There was no permanent damage, but the prison was very severe for me. It goes to your identity of who you are. They see you as inferior and you feel inferior to them, physically and spiritually.¹⁹⁷

Detention Centers along Libya's Northwestern Coast (outside Tripoli)

Al-Zawiya

Al-Zawiya, a town to the southwest of Tripoli, has one of Libya's biggest migrant detention centers. It is commonly used for failed boat migrants who are returned to Libya, including most of the women who have been interdicted since the start of Italy's push-back policy in May 2009. Al-Zawiya is a notoriously dirty and overcrowded facility. The accounts received by Human Rights Watch describe the detention rooms as being about 8x8 meters and there are often as many as 150 men in them at a time. The rooms for women are not as crowded simply because there are fewer of them in a comparable space.

Abdul, the 22-year-old Somali who also is quoted in describing his two months in Kufra detention center, was arrested and taken to Al-Zawiya after his boat was interdicted by the Libyan navy. "It was not a good prison," he said. "It was like Kufra. It was very dirty. It was run by the police, not the military." Abdul said that he bribed a guard to escape Zawiya.¹⁹⁸

Adeban, a 27-year-old Ghanaian, who was detained at Al-Zawiya for three months, said that he was beaten every morning with ten lashes during the count. He finally was released after paying a \$200 bribe.¹⁹⁹

Innocent, a 19-year-old Nigerian, was detained in Al-Zawiya in 2007. He said that it was a deportation camp, but for him deportation did not necessarily mean return to Nigeria; it could just as well mean death in the desert:

People were beaten there every day. They were knocked hard with wooden clubs. If you said you were a Christian, they would beat you and throw you in the desert. I forget the names of the people who died. They said "Allah gali," God's blessings, so we knew they were dead.²⁰⁰

¹⁹⁷ Tomas Interview, <https://admin.hrw.org/en/news/2009/06/08/full-transcript-statement-tomas-24-year-old-eritrean>.

¹⁹⁸ Human Rights Watch interview (name changed, B37), Caltanissetta, Sicily, May 8, 2009.

¹⁹⁹ Human Rights Watch interview (name changed, B55), Palermo, May 13, 2009.

²⁰⁰ Human Rights Watch interview (name changed, B58), Lampedusa, May 14, 2009.

Misrata

Misrata, a detention facility on the coast about 200 kilometers east of Tripoli, became in recent years, in effect, a specialized center mostly for Eritrean refugees and asylum seekers and other people of concern to UNHCR. It usually held about 600 to 700 people, some for two or three years.

Because of the involvement of UNHCR at Misrata and the presence of its NGO partners who provide services there, Misrata is considered as Libya's showcase migrant detention center, and it has been relatively open to journalists and NGOs. Nevertheless, migrants told Human Rights Watch they were routinely beaten at Misrata. Sometimes the beating started upon arrival. After arriving exhausted, dehydrated, and frightened, Libyan security and police officials greet them, at best, with uncaring callousness and, at worst, with outright brutality. According to UNHCR, such beatings and other abuses stopped in 2007 with the presence of UNHCR and its NGO partners.²⁰¹

Daniel, a 26-year-old Eritrean, who was previously quoted about being interdicted and returned by the Maltese coast guard in July 2005,²⁰² was beaten on the docks upon return to Tripoli, crammed with many other people into a closed truck, and transported to Misrata. His story continues:

When we arrived at Misrata, they opened the doors of the truck. As soon as the doors opened, the guards were waiting and they started beating us right away. They beat us with sticks to get us out of the truck.

We were treated badly at Misrata. We were Eritreans, Ethiopians, Sudanese, and a few Somalis. The rooms were not clean. We were only given a half hour a day to take air outside and the only reason they let us out at all was to count us. We sat in the sun. Anyone who spoke would be hit. I was beaten with a black plastic hose.

There was no UNHCR. No one came to see us. Even the police never questioned us. They never talked to us. They never told us anything. There was another room for women and children. Every night the guards took

²⁰¹ UNHCR email to Human Rights Watch, August 12, 2009.

²⁰² See Maltese and Libyan Interdiction Prior to May 2009.

women for their pleasure. I met one pregnant woman who was ready to give birth. She gave birth there in the prison with us.²⁰³

Daniel said that some people were detained in Misrata for nine months. Aman, a 26-year-old Eritrean man, who spent a month at Misrata after his disabled boat carrying 172 people returned to Libya on May 21, 2004, told how beatings were more frequent on Fridays when supervision of guards was more lax and they took drugs:

I was arrested trying to leave Libya. When we started the boat, the steering wheel and compass broke, so we turned back after one hour. The police were there as soon as the boat landed. They beat me on the hands and arms. They first took us to the Kumas police station near the sea, where we spent a day. From there, they took us to Misrata where we spent one month. At Misrata, everyone was beaten. We were not treated well.

At night time, beatings were normal. On Fridays, the beatings were the worst. The guards took drugs especially on Fridays and beat the prisoners. The bosses left on Fridays, so we were just with the guards. They beat everyone. They would take us into a small room for bigger beatings. Sometimes they hit us with a stick, a police baton, but sometimes with a metal stick. They would mostly hit us inside the foot. Sometimes they used electric shocks. The electric power was inside a wire that they would touch to the skin. Sometimes they whipped us with an electric wire without the electricity.

We did not have enough food at Misrata. The breakdown of detainees was about 80 percent Eritrean and 20 percent Ethiopian.²⁰⁴

Others were brought to Misrata after being apprehended on the road between Kufra and the coast. Jonas, a 39-year-old Eritrean, was arrested shortly after his arrival in Libya on October 12, 2008:

We were arrested on the road to Tripoli and taken to Misrata. It was so bad there. There was no respect for rights. Nobody knows how many months you will be held there. I stayed the whole time in a closed room with 25 other

²⁰³ Daniel's Testimony, <http://www.hrw.org/en/node/85530>. Daniel's story about his transport to the border to be deported continues in the section on Refoulement and Border Dumping.

²⁰⁴ Human Rights Watch interview (name changed, B/H1), Malta, May 1. 2009.

people. It was dirty. We slept in the same room as the toilet. The guards beat us. They beat us every time we tried to talk to them. They beat us with police sticks. Three or four of them would beat one person. We had no communication with them at all. After three months I escaped.²⁰⁵

Some former detainees mentioned the presence of UNHCR at Misrata, but spoke of abuse that continued at the facility despite greater international oversight than other locations. Teame, a 28-year-old Eritrean spent ten months detained in Misrata in the summer of 2007. He said that everyone there was Eritrean and that UNHCR came every couple of months and took some refugees away, but that did not make him feel any more secure with the guards:

The treatment was very bad there, there was beating though not as bad as I'd experienced in other places. I was hit with a stick and with the back of the gun. There were many of us and we were all hit. Every day there was beating. The language they communicated with us with was beating. When you ask for food they would hit us.

The women were usually treated slightly better than us, but I know that one woman was beaten until her leg was paralyzed. There was another girl who was beaten on her kidney and she was in great pain. There was no respect for women.

Two of our group died in Misrata – they were sick and got no care. We didn't know what illness they had. One was 26 and one 20 years old. No doctors came to Misrata.

The guards were not human. They would count us one by one and make us stand in the blazing sun for hours. If anyone objected or talked they would beat us. The beating can't be explained because I was beaten everywhere. If any of the guards had a personal problem at home he would take it out on us by beating us.

I paid 700 dinars [approximately \$360] to the guards to release me after 10 months of detention. I paid the bribe to two guards: one to operate the gate,

²⁰⁵ Human Rights Watch interview (name changed, B39), Caltanissetta, Sicily, May 8, 2009.

the other to wait on the other side to let me out. We were a group of 50-60 who got out this way.²⁰⁶

Although UNHCR and its NGO partner, IOPCR, have recently established a health clinic in Misrata with three full-time doctors, former detainees said that medical care was not available even for seriously ill detainees as recently as 2007. Madihah, a 24-year-old Eritrean woman, described the lack of medical conditions:

There was no treatment for prisoners, no medical attention. Some went mad, some had babies in jail. Everyone was suffering from allergies. I heard a man died there two months ago because of his lack of medical care. You could see the insects around the wounds.²⁰⁷

Although Misrata has been more open to outsiders than other migrant detention centers in Libya, visits that NGOs and journalists have paid there have revealed an undercurrent of threat and intimidation. Italian journalist Gabriele del Grande and Roman Herzog, a German broadcast journalist, were permitted to visit Misrata on November 20, 2008 but not allowed to interview detainees privately. The camp director, Colonel 'Ali Abu 'Ud, hovered nearby listening to the detainee complaints until he could bear it no longer. Del Grande reports:

Colonel Abu 'Ud follows the conversation with the help of an interpreter. He can't stand it anymore: "Do you want to return to Eritrea?" he asks J., interrupting the interview. "I'd rather die," he replied, "as would everyone here." The director became angry. He starts to threaten. "If you want to go to Eritrea, we will repatriate you in a single day."

"They forbid us to talk with you," J. says to Roman. The director is furious. He screams, "Tell them that they will all be returned." Then he comes closer to Roman and orders: "Finished." Roman tries to protest. "We're finished," Abu 'Ud repeats, while two agents pull us toward the exit. Before leaving the courtyard, the Colonel speaks loudly to all the refugees: "If you feel mistreated here, we'll organize your return immediately. You have already refused to go to your country. That is why you are here. But each of you is free to return to Eritrea. Who wants to go to Eritrea?" "None!" answers the crowd.

²⁰⁶ Human Rights Watch interview (name changed, H21), Lister Barracks, Malta, May 4, 2009.

²⁰⁷ Human Rights Watch interview (name changed, R/L1), Rome, October 23, 2008.

“Have you seen?” the director says again to Roman. “Now we are really finished.”²⁰⁸

Zuwara

From the outside Zuwara looks more like a house than a detention center, but inside the doors are bricked over and closed. The detainees sleep on the floor. Former detainees say they were provided with food and water and nothing more. It is one of the places where many of the boat migrants returned by the Italians since May 2009 have been taken.

Abdikarim, a 21-year-old Somali, was on a boat the Libyan navy interdicted in March 2008. They brought him back to Libya and sent him to the Zuwara detention center, where he spent the next three months:

The conditions were terrible but I had no personal problems with any of the guards, so nothing happened to me. If a guard told you to do something and you didn't do it immediately, they would hit you. There were 20 of us. We slept on the floor. They let us out for around ten minutes a day.²⁰⁹

Abdikarim said that the guards told the detainees that they could pay their way out. He paid \$700 to win his release.

Zleitan

Some migrants who fail in their attempts to leave by boat are taken to a detention center in Zleitan, a port city east of Tripoli. Mohammed Hassan, a 27-year-old Somali man with bruises on his chest and legs, spoke to Human Rights Watch about his recent experiences in the Zleitan detention center after his boat failed:

The motor did not work. We were on the boat for four days with no food or water. Three people died. When we got back to the shore, the police were waiting for us on the beach. They tried to take bribes but only one of our group of 56 had enough money to bribe them. They took the rest of us to the Zleitan jail, where we spent the next 24 days.

²⁰⁸ “Libya: Inside the Immigrants’ Detention Center of Misrata,” *Fortress Europe*, November 20, 2008, <http://fortresseurope.blogspot.com/2006/01/libya-reportage-from-refugees-detention.html> (accessed July 15, 2009).

²⁰⁹ Human Rights Watch interview (name changed, H25), Agrigento, Sicily, May 6, 2009.

There was not enough food. We had rice with soup. It was full of salt and hurt my stomach. Everyone there had scabies and skin diseases. I became sick. I had a carbuncle on my chest. There was no medicine. Forget medicine.

When I told them I was sick, they took me outside and beat me. They hit me for about a half hour with metal sticks and electric wires. I was beaten more than five times at Zleitan. The manager of the jail did not beat the people, just the guards. I still have bruises on my chest and legs from the beatings.

They transferred me to another jail, Garabulli. It was better than Zleitan because I was not beaten there. The manager at Garabulli takes bribes. I wrote to my mother and she sent me money. She sent serial numbers for \$800 signed over to him. When he got the money, he sent me free. I spent four months in detention.²¹⁰

Many of the migrants who have been interdicted and returned to Libya by the Italians have also been taken to Garabulli.

Abdi Hassan, a 23-year-old Somali, was on a boat that sunk and was rescued by a private boat that brought him to Zleitan. Upon arrival, soldiers apprehended him, put him and 25 others in a closed car, and transported them to what he described as the Zleitan “coast guard prison.” There he was held with the other 25 of his fellow passengers in a 10x10 meter room where, he said, “The young Libyan soldiers played with us by beating and mistreating us.” He was held in this room for a month.

Abdi Hassan was released from Zleitan on July 7, 2008. He described his release:

The head of the prison used me to translate an announcement to all the prisoners. He said, “It’s time for business. Everyone has to pay us \$1,000 for rescuing them at sea. Those who pay will be sent to the smugglers to help them go to Europe.” Most of us paid the money. We were all released and taken by police car to the Abu Salim neighborhood and put at the door of the smuggler’s house, back where we had started before our boat sank.²¹¹

²¹⁰ Human Rights Watch interview (name changed, B10), New Ta’Kandja detention center, Malta, May 2, 2009.

²¹¹ Human Rights Watch interview (name changed, B/H32), Malta, May 4, 2009.

Sabratha

Another migrant center where migrants report abusive treatment by guards is the Sabratha migrant detention center located on the coast, west of Tripoli, midway to Zuwara. Tomas, a 24-year-old Eritrean, told Human Rights Watch about being tortured by the guards there in June 2007 as punishment for an attempted escape:

At the doors of the prison we all started running. About 32 people ran in all directions; 18 were caught. I was one of those who was caught. When they caught me the commanders knew that I was the one leading the escape. I earned the punishment for all those who got away.

I was beaten by wood and metal sticks by three guards. They beat me for more than 10 minutes. They called me “nigger” as they beat me. When I fell to the ground, they kicked me. They beat me with a metal stick on my head. I have scars and pain inside my head. I still have pains in my shoulder. The metal sticks were thin, but they did not bend.

They beat me as soon as they caught me. Those of us who ran away they tied up in a special way. For two days they kept us separated from the others. They splashed us with water. I could not walk from the pain in my groin. I was really afraid of internal bleeding in my head. We couldn’t even think about seeing a doctor or a nurse.

I was held in Sabratha for two weeks. Sabratha held about 100 people. There were Eritreans, West Africans, Ethiopians. It was a very dirty place. We had to urinate in plastic bottles. Some of the people who beat me at the beginning were my guards for the next two weeks. They continued to treat me harshly. They continued to beat me up.

When the prison administrator was there the treatment was better. They don’t beat you up in front of the administrator. Of course, the guards take drugs. When they are high they feel much superior and treat us like dogs. That’s when they physically kick us like dogs.²¹²

²¹² Human Rights Watch interview (name changed, B68), Rome, May 20, 2009.

Ganfuda

Ganfuda is a migrant detention center outside Benghazi, which as of this writing holds about 450 detainees, mostly Somalis and Eritreans. Some of the detainees have been in Ganfuda for as long as five years, according to migrants' accounts. Migrants describe it as looking like a prison. Abdi Hassan, the Somali man who was quoted in his description of the Kufra detention center, was held for six months at Ganfuda. Unlike most migrant detention centers where contact between guards and detainees is minimal, at Ganfuda, according to Abdi Hassan, each detainee was individually questioned (and beaten):

About 100 Somali prisoners were there. Each of us was called out for interrogation in a separate room. When I got into the room, the son of the chief of the prison questioned and beat me. Other guards stood by, but he beat me with a wooden club. He spent three or four minutes beating the sole of my foot. He hit each foot about five or six times.²¹³

Abukar, a 25-year-old Somali, had been in Ganfuda for more than one year at the time Human Rights Watch interviewed him. He was being kept in a room with 70 other Somalis. He said, "The guards just keep us locked up here. They humiliate us. They beat us. If we talk to them, they punish us very hard. They hurt us with electricity."²¹⁴ Abukar told Human Rights Watch about an incident that occurred on August 10, 2009:

Last night a group of Somalis and Nigerians saw the external gate was open and tried to escape. The guards opened fire on them. There were around 30 guards, but five did the shooting. I could see most of my friends were injured, and some fell to the ground. I could see someone shot by three bullets. I don't know whether any of them were killed. Around 30 to 50 managed to escape, but guards brought some of them back, including some who were unconscious. One hour later, extra guards came and they started beating us.²¹⁵

²¹³ Human Rights Watch interview (name changed, B/H32), Malta, May 4, 2009.

²¹⁴ Human Rights Watch interview (name changed, H92), Ganfuda, August 11, 2009.

²¹⁵ Ibid.

The Voice of America reported on the incident, including a denial by the Libyan ambassador to Somalia that there had been a prison escape or anyone killed.²¹⁶ Somali news sources reported 20 detainees as having been shot and killed.²¹⁷

²¹⁶ “Libya Denies Somali Prisoners Killed in Jailbreak,” *VOA News*, August 11, 2009.

²¹⁷ “Libya: Prison Guards Kill More Than 20 Somalis, Injure 50 Others,” *Mareeg*, August 11, 2009, <http://www.mareeg.com/fidsan.php?sid=13298&tirsan=3> (accessed August 12, 2009).

Acknowledgements

This report was researched and written by Bill Frelick, refugee policy director at Human Rights Watch. The report was also researched and edited by Heba Morayef, Middle East and North Africa researcher. Leslie Lefkow and Ben Rawlence, researchers in Human Rights Watch's Africa Division, provided additional field research. Helen Butcher provided legal research and editorial assistance. The report was edited by Iain Levine, director of the Program Office. Clive Baldwin, senior legal advisor, conducted the legal review. Ben Ward, associate director of the Europe and Central Asia Division, Jude Sunderland, researcher in the Europe and Central Asia Division, Liesl Gertholtz, director of the Women's Rights Division, Simone Troller, researcher in the Children Rights Division, and Lefkow of the Africa Division, provided comments, as did UNHCR and NGO representatives and legal service providers in Libya, Italy, and Malta. Editorial assistance was provided by Valerie Kirkpatrick of the Refugee Program. Grace Choi and Anna Lopriore provided production assistance. Interpreting services in the field were provided by Adil Mohammed Ahmed and Muhammed Ismail in Malta, and Manfred Bergmann and Michael Ghebregherghis in Italy. Tino Camarda of the Middle East and North Africa Division provided additional research and translations. Janna Rearick provided additional legal research.

Human Rights Watch thanks the legal and social service providers and advocates in Libya, Italy, and Malta, particularly the staffs of the Gaddafi Foundation, Jesuit Refugee Services, Mèdecins Sans Frontières, the Italian Refugee Council, Save the Children, the International Organization for Migration, and the UN High Commissioner for Refugees. We are particularly grateful to the Italian and Maltese governments for granting us access to migration detention centers in Malta, Sicily, and Lampedusa.

Pushed Back, Pushed Around

Italy's Forced Return of Boat Migrants and Asylum Seekers, Libya's Mistreatment of Migrants and Asylum Seekers

This report examines the treatment of migrants, asylum seekers, and refugees in Libya through the eyes of those who have left that country and are now in Italy and Malta; it also documents Italy's practice of interdicting boats full of migrants on the high seas and pushing them back to Libya with no screening whatsoever. Migrants who had been detained in Libya consistently told Human Rights Watch of overcrowded and unsanitary conditions and brutal treatment. They said that they lived in fear during their time in Libya, fear of being robbed, beaten, and extorted not only by common criminals, but also by the police, and fear of being returned to their home countries or dumped in the desert.

Though various international conventions bar governments from committing refoulement—the forced return of people to places where their lives or freedom would be threatened or where they would face a risk of torture or inhuman and degrading treatment—the Italian government flouts such standards consistently and regularly.

Libyan authorities should be held accountable for their mistreatment of migrants, refugees, and asylum seekers. The report therefore urges the Libyan government to improve the deplorable conditions of detention in Libya and to establish asylum procedures in conformity with international refugee standards. But the Italian government, the European Union, and its external borders migration control agency, Frontex, should be held accountable for any harm that befalls people who are returned to Libya without an assessment of their protection needs. The report calls on EU institutions and member states to stop Italy and Frontex from forcibly returning migrants to Libya where they are routinely subjected to inhuman and degrading treatment and where potential refugees are not effectively protected.

The crew of the *Bovienzo*, an Italian Guardia di Finanza patrol boat, carries an irregular migrant off board and onto the dock in Tripoli. The migrants, whose nationalities were not established prior to being disembarked, were interdicted 30 miles east of the island of Lampedusa, Italy. The return operation followed a new Friendship Treaty between Italy and Libya.

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