



Jesuit Refugee Service Malta
December 2009

DO THEY KNOW?

ASYLUM SEEKERS TESTIFY TO LIFE IN LIBYA



“The millions of people who risk their lives and safety in order to cross international boundaries in search of a better life present one of the most serious human rights problems in our world today.”

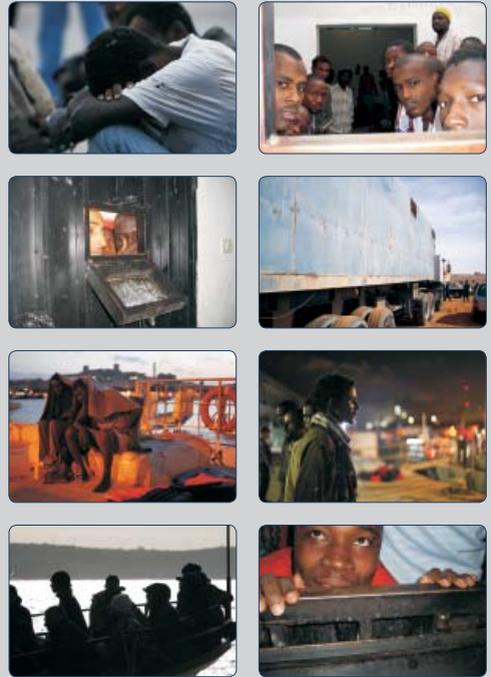
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*United Nations High Commissioner for Human Rights,
September 2009*



Arrivals in Malta 2009

Table of Contents



Introduction	2	A troubling trend
Life in Libya	4	“A cruel place”
Detention in Libya	6	Abandon hope all ye who enter here
	7	Physical conditions
	8	“Go back & die in your country”
	10	“They immediately hit”
	12	The high price of freedom
Surviving in the city	14	Living in fear
	16	You are nothing
Access to protection	18	“Meaningless”
	19	Grounding responses in reality
	21	Legally bound to help
The reality of forced return	22	“Leave us here to die”
Recommendations	23	
Glossary	24	

A troubling trend

Every year, thousands of people try to breach the walls of Fortress Europe, risking everything in a gamble for safety, for a life better than the war, poverty and repression they were born into. Too late they realise how high the stakes are, inflated by rigid, indiscriminate migration policies and by unscrupulous human smugglers who feed off their abundant misery and slim hope. As of October 2009, at least 14,860 people had been reported missing or killed trying to cross Europe's borders since 1988, most of them at sea.

Malta and Italy, in the heart of the Mediterranean, have been sucked into this tragedy, especially in recent years, when shifting migration patterns put them on smuggling routes between North Africa and Europe. In mid-2009, attempts to stem the flow of irregular migration took a dramatic turn. In early May, the Italian authorities rescued some 227 migrants in three boats stranded in open seas near Lampedusa. However, instead of allowing them to land, Italy returned the migrants to Libya, their point of departure.

These actions were widely condemned as a breach of international law by critics including the United Nations High Commissioner for Refugees (UNHCR), the Holy See and international and national non-

governmental organisations (NGOs). Deaf to criticism, Italy started to implement a policy of forced returns. As of November 2009, 1,409 migrants had been pushed back to Libya and ended up in detention.

The Malta Home Affairs Minister, Carmelo Mifsud Bonnici, reportedly described the Italian policy as “a very positive step which we support”. In July 2009, the Armed Forces of Malta (AFM) provided boats of migrants, who were not in obvious distress, with food, water, fuel and life-jackets and escorted them towards the Italian Search and Rescue area. There they were intercepted by the Italian authorities and promptly returned to Libya. In some cases, the AFM claimed that the migrants had refused to be rescued. This course of action was apparently in line with a ministerial decision dating from April 2009.

JRS Malta views these developments as extremely disturbing. Italy's actions amount to nothing less than a violation of the right to seek asylum because Libya simply doesn't have the mechanisms to grant protection to those who need it. What's more, we have no doubt that returning migrants from sub-Saharan Africa to Libya puts them in danger of severe abuses there and of summary deportation to their homeland, which many fled in fear of their lives.



Arrivals in Malta 2009

In *Do they know?*, we spell out these convictions by sharing the experiences of some Eritreans and Somalis in Malta, who passed through Libya between 2004 and 2009 during their harrowing odyssey to reach Europe. Some have protection; others await

the outcome of their application for asylum in detention. What we heard from them is strikingly consistent with what countless other migrants have told us time and again and with reports by credible journalists and NGOs, most notably Human Rights Watch (HRW).

In 2009 (until November), 17 boats with a total of 1,475 migrants were intercepted at sea or landed in Malta. Of these, 898 came from Somalia, 156 from Eritrea and the rest from other countries in Africa and Asia. In this publication, we use the word “migrants” to describe those who are smuggled clandestinely by boat from Libya to Malta and Italy. It is important to note that most of these migrants are in fact asylum seekers; at the first opportunity, they file a claim for international protection and at least half of the applicants are granted refuge. In Italy and Malta, Eritreans and Somalis constitute a significant proportion of those granted protection. However we opt to use the word “migrants” intentionally for we firmly believe that no one should be returned to a country where they face inhuman and degrading treatment and punishment.

“A cruel place”

Situated at the tip of northern Africa on the doorstep of Europe, Libya is a natural base for smugglers who flourish thanks to the country’s weak rule of law as much as to its advantageous geographical position. Throughout the country, from the Sahara down to the Mediterranean, migrants face one abuse after the other at the hands of those who trade on their vulnerability and desperation.

When we asked migrants about Libya, theirs was consistently an unequivocal reply: Libya is a “bad” and a “cruel” place, without freedom, human rights or rule of law, at least for them. Mere mention of the country invokes deep dread when migrants remember how they were ruthlessly hounded and exploited by smugglers, by the forces of the law, by thugs and by ordinary Libyans. Worst of all are Libya’s detention centres and the constant fear of ending up there, for the first or the umpteenth time.

Mohammed,¹ a middle-aged Somali who fled his country because his human rights work put his life at risk, had this to say: “It is a journey of no mercy at all. I soon realised that there was no big difference between the horrors I saw in Somalia and what I witnessed in the Sahara and beyond. There people dead, here people dead.”

“When we reached the Sahara Desert, we were caught by the Libyan military² on the way to Kufra. The smugglers who were transporting us were Libyans and the military let them go but kept us in the desert for four days as a punishment. The only thing they told us in those days was to keep staring at the sun. We barely had any food; just two biscuits and a few drops of water in the morning and in the afternoon.”

Ahmad

Most of the migrants couldn’t find the words to explain just how bad their time in Libya was. “I can’t define,” said one after the other. Tigiste, a young woman from Eritrea, tried to articulate her distress: “You can’t stay for even one day in Libya, it’s totally bad. I can’t define it. No place can be safe for us there. Everywhere you find danger, problems and no freedom at all.” She leaned forward, dropping her head into her hands, adding: “And my husband is still there now.”

The going is invariably tough for people forced to leave their country to survive. They know and expect this but, all insist, Libya is something else. Nothing prepares the migrants for what they will find there, when they discover that they are just another piece of “livestock” in the “market of people” that is Libya.

¹ Names have been changed to protect confidentiality

² Terms used to describe the Libyan security forces are those used by our interviewees.



Zleitan detention centre

“I was arrested by police in Tripoli and sent to Ganfuda. I had many problems. The guards beat me with sticks, there was hardly any food, and we had practically no sunlight at all – no chance. We were nearly always in our cell.”

Tesfaye

Many detention centres and jails in Libya hold migrants. The ones we heard about, given our focus on Eritreans and Somalis, were:

- **Kufra**, situated in remote southeast Libya, in the Sahara Desert – many caught in the Sahara or facing deportation end up here;
- **Ganfuda**, 10km from Benghazi, holding some 500 people, mostly Somalis as well as Eritreans, Nigerians and others (September 09);
- **Zleitan**, situated in a port east of Tripoli, where some migrants who fail in their attempts to leave by boat are taken;
- **Misratah**, on the Mediterranean coast, held to be a showcase detention centre – there are usually some 600 migrants, mostly Eritreans;
- **Twaisha**, this appears to be the largest migration detention facility, near the airport in Tripoli, holding up to 900 people.



Zleitan detention centre

Abandon hope all ye who enter here

A pregnant woman, a young man suffering from asthma, another who falls seriously ill, die. A middle-aged man survives torture but is dumped and left for dead. They are casualties of the Libyan immigration detention system, which incarcerates hundreds of migrants in inhumane

conditions. Is there a way out? Yes, provided you have hundreds, even thousands, of dollars to buy your freedom, once if you're lucky, more if you're not.

Physical conditions

Severe overcrowding, very poor sanitation and hygiene facilities, little or no sunlight or healthcare, scarce food, salt water to drink, are part of a day in the life of the immigration detention centres we heard about. Most of these allegations are echoed by testimonies recorded by HRW.

Ahmad is a young man from Somalia. What he remembers most about Ganfuda is that there were no windows in the 5-by-6-metre cells, where 60 people were crammed in, “just a small square in the door where they would push food through”. The toilet was inside the room, “it wasn’t working well so the faeces spilled out.”

“You could get 80, 90 people in one room,” says Tesfaye from Eritrea, who spent nine months in three detention centres in Libya. “Like this,” he presses his palms to the floor close together to illustrate the congestion. “We used to wash perhaps once a week, not even. The water supply was only switched on for a short time. If you have force,” Tesfaye mimes a punch, “you could wash, or else you could forget it. Of course there were no sanitary supplies unless you bought them.” In Ganfuda, food, drink and soap were available, even milk, chocolate and biscuits, provided you had the money to buy from the staff selling them. Otherwise, “we used to get one bread roll in the morning, the same for lunch.”



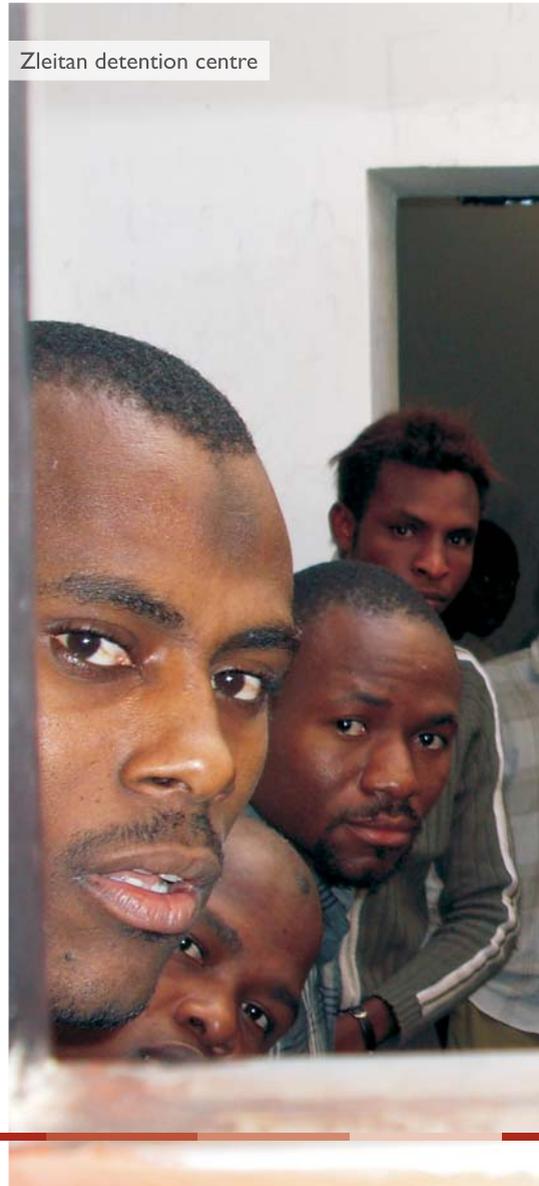
“Go back & die in your country”

Not least due to the congested and unhygienic conditions in the centres, many detainees fall ill. Common ailments include scabies, dermatitis and respiratory problems. Our interviewees said no healthcare was available and the guards did not take detainees to hospital, sometimes

mocking and beating those who asked. People who are somehow vulnerable – pregnant women, the elderly, those with a chronic illness – suffer terribly and, not surprisingly, some detainees die.

“If one of us was sick, they never did anything to help. When we arrived in the prison, we had just spent days in the Sahara Desert and one of my friends was sick, dehydrated. The guards refused to help him, telling us: *Here the hospital is not for black people, for non-Libyans, but only for Libyans. If you want, go back and die in your country.* While I was in Ganfuda, two people died in our section: an Eritrean woman who was pregnant and a Somali boy who had asthma. It was dusty and cold and the boy couldn’t breathe properly. When he got really ill, we lifted him by his arms and carried him to the door to call the guards. We started to bang on the door – usually the guards would come to beat us when we did this. When we pleaded for help for the boy, they told us: *This is not Africa or Somalia; it is Libya. If you come here on your own, you die on your own.* The boy died soon afterwards.”

Ahmad



“In Ganfuda, there was a Somali girl who was pregnant. She was not taken to hospital for check-ups or anything and her baby was born in Ganfuda. We collected money in prison to buy her some food because she had nothing and no relatives to call to send her money.”

Asad

“Many of us had scabies. Some of my friends, their genitals were swollen. When the guards saw this, they beat them hard with a stick, put them in solitary confinement and just left them there.”

Tesfaye



“They immediately hit”

The guards in Libya’s immigration prisons have earned a nasty reputation. Often their only communication with detainees is to mock or abuse them, according to those who shared their ordeal with us, and to testimonies collected by HRW; the latter also included allegations of sexual harassment of female detainees. Among the guards’ preferred

instruments of torture are electro-shock stun weapons, which cause severe pain and temporary incapacitation. The guards also indulge in brutal beatings, with sticks, with wires, with their fists, including hitting detainees on the soles of their feet. Solitary confinement is used. These punishments are meted out both randomly and to those who either try to escape or who are

Misratah detention centre

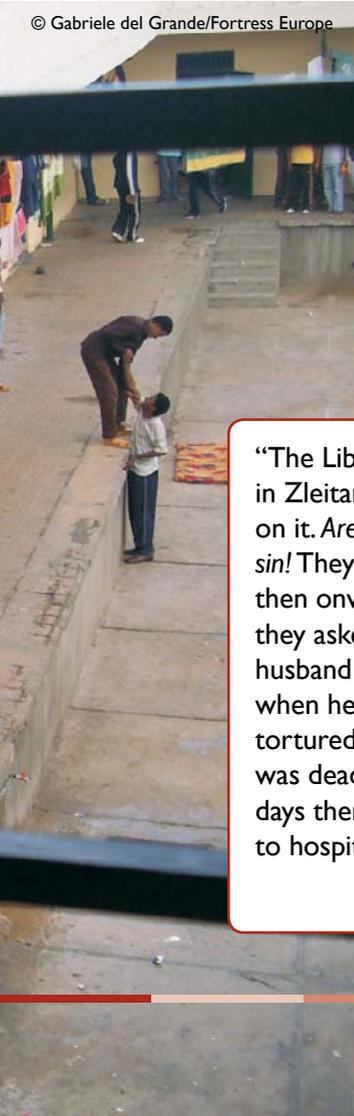


deemed to be causing a disturbance, for example, by talking to the guards or knocking on cell doors to call for attention. In one example of brutality, according to the Fortress Europe website, on 9 August 2009, at least six people were killed and dozens of others injured when Libyan police quelled an outbreak of 300 detainees, mostly Somalis, from Gafuda.

“In Gafuda, we went on hunger strike to leave the prison and they used electric prods to make us stop, jabbing us again and again on our muscles, I can never forget that.”

Asad

© Gabriele del Grande/Fortress Europe



“In Twaisha, the managers don’t know or care what is happening. The guards smoke hashish and get high and then they hit anyone. When they do the head count, they count each person by slapping or boxing him.”

Anday

“The Libyan police caught my husband and me and put us in prison, first in Zleitan and then in Misratah. The guards took my Bible and stamped on it. *Are you Christian or Muslim?* I pointed to my cross. *That’s a big sin!* They shouted and beat me with their hands and with sticks. From then onwards, I hid my cross. Anyhow, the guards often struck me; if they asked me something and I said no, they would immediately hit. My husband spent time in Twaisha too. He was so disoriented and unwell when he left this prison; it is very bad. My uncle is still in Twaisha. He was tortured with electric shocks and beaten by the guards. They thought he was dead so they threw his body in the garbage. He was there for two days then someone went and tapped him and he stirred. He was taken to hospital, treated for four days and returned to Twaisha.”

Tigiste

“In Ganfuda, we were told that the money had to be sent to the Western Union and when the time came to pick it up, two guards would accompany the detainee and take a cut, up to half of what had been sent. The only time to get freedom was when new people came in; within one month, the price rose from \$400 to \$1500. The agents of the Captain would come into the cells and ask: *Who wants to leave?* Those who raised their hands would be taken to meet the Captain, to negotiate. He would say: *The price is now so much.* I paid the Captain – actually I had paid three months before being released but he must have forgotten. Once he was drunk and I was begging for my freedom and he told me I could leave. I used to wash his car and clean his office and every day I used to beg him to let me go.”

Ahmad

The high price of freedom

“If you pay, you leave, or else you die there.” For most people, we were told, the only way to get out of the migration detention centres is to buy your freedom. Otherwise, “you stay there forever, forever!” Tigiste recalls: “In Misratah, the guards ask if you have money or not. If not, you stay there for years because you cannot pay your way out. I paid \$500 and they allowed me to leave.”

In Ganfuda, the system to allow the desperate detainees to raise and collect money from relatives abroad – if they exist and can afford to help – is efficiently worked out. Paying the high ransoms is merely a means of getting out of prison, not a guarantee

of freedom. “You get no receipt or anything,” explains Anday. “If the police see you outside, they’ll take you again.” Ahmad adds: “Sometimes those who paid for their freedom were re-arrested a few minutes after leaving prison.”



Containers used to ferry detained migrants from one place to another.

“Most people depend on their relatives. One of my friends has been stuck in Libya for around three years. He has no money and no one to help him. This happens a lot. I could pay for my freedom because my family in Somalia sold half the land of our farm. They sent me \$1200. I paid the Captain of Ganfuda and he let me go.”

Asad

Living in fear

Two short taps, three long, one short. As long as he lives, Mohammed will never forget those furtive taps, the signal that whoever was outside the door was “one of us” sharing the rented accommodation in Tripoli where he was hiding. “When someone knocked, we wouldn’t open the door unless we heard the special knock we had agreed about,” he recalls. “When you are in Tripoli, you live in fear. You meet someone just released from prison and you hear what could happen to you anytime: if not today, tomorrow, you can never have peace of mind.”

Tigiste agrees. “If anyone knocked at the door, we got a fright. We always slept with shoes, fully dressed, because you never knew when the police could come. We stayed indoors nearly all the time. Whenever I went out shopping for food, I was always on the lookout.”

“The police act like chiefs. You pay them for your freedom one day and they take you off the street again the next day. They tell you, *if you pay, you leave, if not, you stay*. There is no human rights, no rule of law, in Libya. The police won’t take you to court; you are not produced before a judge or anything; no one will know where you are, what has become of you.”

Nasih



“When we reached Tripoli, we made our way to the Somali embassy but it was closed. The security guard told us he knew of a place we could go, where other Somalis stayed. But when we went, we found it had been raided by police the night before. There were holes in the roof where people had tried to escape; blood on the floor, it was terrible. We asked to be taken to a safer place but in the end we had to stay there because we had nowhere else to go.”

Mohammed



The view from a truck used to transport migrants

“When we left Ganfuda, my friend and I went to the bus station and started for Tripoli, an overnight journey. We ate nothing during the trip; we were afraid to get down when the bus stopped because we feared re-arrest. Then police boarded the bus. They said our documents were illegal, took us down, put us in a small room and demanded money: *Are you from Ganfuda? If you don't pay 40 dinars [circa \$40] we will take you back to Ganfuda.* They checked our pockets and took our money. When we arrived in Tripoli, we had nothing; we were so tired and hungry. We found a place to stay with other Somalis. At night, we heard a knock on the door. My friend and I peeped out and were shocked to see uniforms – Libyan soldiers! We kicked off our shoes, shinned up a drainpipe onto the roof and leapt over the wall to escape. The others were arrested when the soldiers kicked the door open.”

Asad



© Gabriele del Grande/Forpress Europe

Tripoli

You are nothing

Little children in particular are to be avoided. With good reason: some are dispatched by their elders to rob migrants, who dare not lift a finger to

stop them for fear of being reported to the police. From an incredibly young age, many children absorb from their parents the knowledge that sub-Saharan Africans are easy money.

“When you get to Libya, people treat you like livestock. They exchange you for money.”
Asad

Migrants do not feel safe on the streets of Libyan cities. Thugs prey on them, knowing full well that they wouldn't dare go to the police station to file a report. “Libyan criminals attack you

“I spent three months alone in Tripoli. I didn’t go out of the house because everyone would approach me and ask for money, even little babies who couldn’t talk, they would stretch out their hand, palm upturned, because this is what they have learned from their parents.”

Tigiste

in groups, they wait for black people and if you are alone, they strip you of everything,” said Asad.

For Mohammed, not even staying indoors all day was safe enough. The thugs could break into your place; even ordinary people “may come to the house and say, *I need money and if you don’t give me, you know what will happen, you go to prison.*”

Quite apart from security concerns, sub-Saharan Africans say many Libyans make them feel totally unwelcome. Asad gives an example that typifies the treatment they get: “If a bus is full and a Libyan comes up, he looks around and if he sees a black man, he will say roughly *eya qum* and you must stand.”

In a nutshell, migrants feel they live a right-less existence in Libya, devoid of freedom, dignity and humanity.

“The one year I spent in Tripoli was so difficult: the likelihood of being attacked by young thugs with knives; no chance to work. One day I went to the shops and the thugs got me. They automatically put their hands in my pocket and took my money and my mobile; they slashed my trousers with knives. Sometimes they break into our homes. The only solution is to run away. We have no freedom to go to the police station.”

Anday

“If you are released from prison, you should remain indoors. You can’t do anything; you are nothing. Children are the worst; a little boy will come up to you and search for your money – if you refuse, he will hit you, spit at you and report you to the police. You just put up your hands and allow him to check your pockets, to take your money, your mobile phone, anything you have of value. You are nothing, he is Libyan. You wouldn’t even dare try to stop him, to raise your head.”

Ahmad

“Meaningless”

“Meaningless,” Nasih said, shaking his head sadly when we asked him about protection in Libya. In fact, asylum seekers, especially those from sub-Saharan Africa, have little chance of accessing protection there.

Many are unaware that there is a UNHCR office in Tripoli (opened in 1991). Those who do know about it say they are reluctant to approach the office because it is guarded by security forces. “You feel fear even as you are stepping inside,” Asad assured us.

UNHCR has access to some detention centres although its caseload is mostly concentrated in Misratah. It is fair to say that it is virtually impossible for UNHCR to function effectively in Libya because it is not legally recognised there. Libya is not a state party to the 1951 Geneva Convention but it has signed the 1969 OAU (Organisation of African Unity) Convention, which obliges states to protect those falling under its broad refugee definition. However Libya still does not have a national asylum law or formal mechanism to protect individuals fleeing persecution.

Despite these limitations, UNHCR does conduct refugee status determinations, which have led in some cases to the prevention of *refoulement* and to resettlement. Most of those registered

as refugees by UNHCR in Libya are Palestinians or Iraqis (July 09). These efforts do not change the stark reality that the vast majority of asylum seekers in Libya will not find international protection there. Over the years, there have been many times when Libyan officials did not honour UNHCR-issued refugee certificates.

Far from finding refuge, asylum seekers face real danger of deportation as the Libyan government continues to forcibly return migrants who lack proper documentation, without assessing their protection needs. Between 2003 and 2006, Libya deported roughly 200,000 individuals to their home countries, including asylum seekers with very real reason to fear return.

“I was working for a human rights NGO in Mogadishu. The Al Shabab militia threatened and assaulted me. Because of this, and because I saw friends of mine killed by the militia, I decided to leave.”

Mohammed

“In Libya, the overall necessary conditions to guarantee the protection of refugees do not exist.”

Antonio Guterres, UN High Commissioner for Refugees



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“While recognising the serious challenges that large migratory flows present to state mechanisms, the Commissioner wishes to reiterate that legislative and other measures adopted by Council of Europe member states in order to deal effectively with such pressures should fully abide by international and European human rights law and standards... the Commissioner wishes to reiterate his disapproval of bilateral or multilateral agreements for the forced returns of irregular migrants with countries with long-standing, proven records of torture.”

Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following a visit to Italy in January 2009

Grounding responses in reality

Rationalisations abounded in the aftermath of the first returns from Italy to Libya in May. One voiced by leaders of both countries was that there are no ‘genuine’ asylum seekers in Libya nor among the boat people, or too few to bother about. This is simply untrue. More than half of those who apply for asylum in Malta are granted some form of protection because it is not safe for them to return to their country of origin. The same is true, according to UNHCR, of many who applied for asylum in Italy in 2008: an estimated 75% of immigrants who arrived in Italy by boat applied for asylum and at least 50% of the applicants received it.

This is a clear indication that rather than being simply an irregular migration route, the Libya-Malta/Italy route is an asylum route. Many migrants making the crossing are deserving of protection and must be given the chance to ask for it instead of being turned back.

That they are travelling in an irregular manner should not be held against them: in practice it is often impossible for asylum seekers to gain legal access to a territory where they can apply for protection. Denying them this access is a violation of their rights.

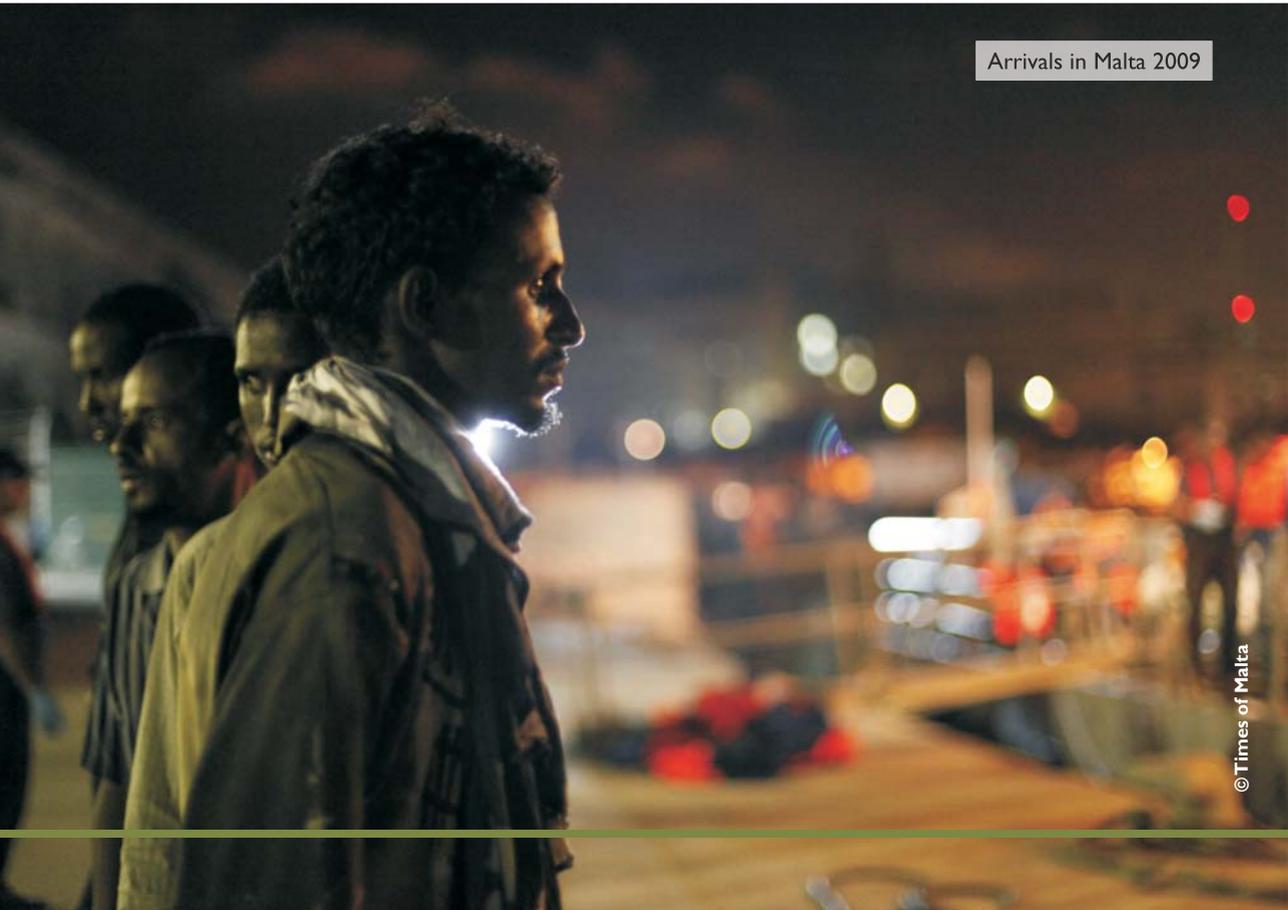
Malta came up with another rationalisation, ostensibly to defend the rights of asylum seekers: the UNHCR office in Libya could be strengthened, even given an EU (European Union) component, to process applications there. However, Libya's long-term proven track record on human rights, which is poor, reveals that this proposal is not grounded in reality either.

Effective protection goes beyond the presence of a UNHCR office or the mere establishment of asylum procedures; it demands a culture of respect for human rights – which is lacking in Libya despite this country's

recently redeemed international status. The news that UNHCR was able to interview 900 of those pushed back, granting refugee status to over 200, who now await resettlement, is far from an assurance of protection.

It is amply clear that sending migrants back to Libya is in no way a victory or positive development but only a sad defeat of human rights. It is a failure by states to abide by their moral and legal responsibilities to defend those in need of international protection and not to return people to *any other state* where they will face inhuman and degrading treatment or punishment.

Arrivals in Malta 2009



Legally bound to help

National and international law oblige states to provide protection to all asylum seekers within their jurisdiction who qualify for it. In order to obtain protection it is clear that asylum seekers must have access to a territory where they can make an application. Intercepting migrants at sea and returning them to Libya, where there is a risk that they will face serious harm and no real chance of effective protection, constitutes a serious violation of these laws.

The 1951 Convention on the Status of Refugees obliges states not to return asylum seekers, “in any manner whatsoever”, to a country where their life or freedom will be threatened on account of who they are or what they believe. This fundamental rule of refugee protection, known as the principle of *non refoulement*, is also found in international human rights law, which prohibits states from returning anyone (not only refugees) to a country where there is a real risk of torture or cruel, inhuman and degrading treatment or punishment – Article 3 of the UN Convention against Torture and Article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

States, including Italy and Malta, have often argued that this obligation does not apply outside of national territory, for example, on the high seas. However, UNHCR has repeatedly stated that this

“Everyone has the right to seek and enjoy in another country asylum from persecution.”

Article 14(1), *Universal Declaration of Human Rights*

principle does not imply any geographical limitation and applies wherever a state exercises control or jurisdiction, not just within its territory. In June 2000, the UNHCR Executive Committee said: “Given the practice of States to intercept persons at a 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.”

This view is shared by many scholars of repute and has also been upheld by judgments passed down by the European Court of Human Rights (ECHR) and the UN Committee against Torture. Deciding the case of a group of Somali asylum seekers detained in the “international zone” of a Paris airport, the ECHR held that they were in fact subject to French law, and said: “Contracting States have the undeniable sovereign right to control aliens’ entry into and residence in their territory... States’ legitimate concern to foil the increasingly frequent attempts to circumvent immigration restrictions must not deprive asylum-seekers of the protection afforded by these conventions.”

“Leave us here to die”

I left Somalia in July 2003, after losing my family in the ongoing civil war. I went to Ethiopia, then Sudan and finally through the Sahara Desert to Libya. In the Sahara, I was one of 30 people packed into a four-wheel drive. Some of those who fell out were crushed to death by the tyres. I used to call the desert the valley of the dead – I’ve never seen so many corpses in my life. Often I thought I had found wood, to make a fire, only to discover that I was holding the bones of fingers.

After two months, we reached Kufra in Libya. I stayed in Tripoli for almost a year – scary and dangerous. Clearly, I couldn’t stay in Libya nor could I return to Somalia where the situation was deteriorating. On 24 September 2004, I crossed the Mediterranean on a tiny boat with 24 others. After three days at sea, we saw land, but our fuel finished and the waves began to drag us outwards. We drifted until we were rescued by the AFM.

Once on land, we were taken into detention. After 20 days, the police told six of us to pack our belongings. Handcuffed and put on a police bus, we were eventually informed that we were being deported to Libya. We insisted on speaking to a UNHCR representative; in detention, we had never been informed that we could apply for asylum. The police officer called his superiors but was ordered to put us on the plane.

In Tripoli, the Libyan authorities took us into custody, to an unknown location. Asked to face the wall, we were hit with a thick wooden stick. I was beaten unconscious. We were thrashed individually every night; I was beaten on my fingers and if I even twitched I was hit on the head. I was asked to fill my mouth with air and then hit sharply on my ears. I didn’t see the others but I could hear them cry. After three months, we were taken to court and sentenced to a year in prison for entering, leaving and re-entering the country illegally. During this year, we were tortured several times – we were beaten, doused in cold water, jabbed with electric prods.

In November 2005, we deportees from Malta were put on a jeep, taken to the Sahara and thrown out in the middle of nowhere. After a week of wandering without food or water, Sadak and Mohammed said they could go no further, to leave them there to die. We stayed with them to encourage them but they soon died. A few days later, Hashi and Abdishukur had no energy to continue either. After 14 days in the desert, Abdul and I met some Berbers who helped us. We reached Tripoli and tried again to leave Libya by boat. We reached Malta in June 2006.

JRS Malta calls upon the government to:

- Ensure that all asylum seekers within Malta's effective jurisdiction are allowed to apply for protection
- Rescue migrants intercepted by the AFM if they have requested assistance, as otherwise their safety cannot be guaranteed
- Ensure that all those rescued within Malta's Search and Rescue Area are disembarked at a safe port, where those in search of protection can seek asylum
- Refrain from actions that will result, directly or indirectly, in the return of migrants to a country where they risk suffering serious violations of their fundamental human rights

Arrivals in Malta 2009



Asylum: the protection granted by a state to people from another state fleeing persecution.

Asylum seeker: Maltese law defines an asylum seeker as someone who has lodged an application for international protection. In this booklet the term is used more broadly to include all who are in search of protection, even if they have not yet applied because they did not have the opportunity to do so.

Geneva Convention / 1951 Convention / Refugee Convention: the 1951 Convention relating to the Status of Refugees adopted by the UN in July 1951. This is a key legal document for the protection of refugees, defining who is a refugee, laying down their rights and the obligations of states. To date there are 144 state parties to the Convention.

International protection: refugee status and subsidiary protection are both forms of international protection.

Irregular immigrant: used to describe a foreign national entering, travelling through or residing in a country without the necessary documents. This term is often criticized for blurring the distinction between the person and his/her status; the preferred term would be ‘migrant with irregular status’.

Jurisdiction: a legal term used to describe the extent of a state’s authority and/or control.

Non-refoulement: a core principle of international law that prohibits states from returning people, in any manner whatsoever, to a country where their lives or freedoms may be threatened.

Refugee: according to the 1951 Convention and Maltese law a refugee is a person who, owing to a well-founded fear of persecution, for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside his country of origin and is unable or, owing to such fear, is unwilling to return to it.

Refugee status: given by a state to a foreign national who has been recognised as a refugee.

Subsidiary protection: a legal form of protection given to those whose application for refugee status has been dismissed but who, it has been shown, will face real risk of serious harm if returned to their country of origin. ‘Serious harm’ is defined as: death penalty or execution; torture or inhuman or degrading treatment or punishment; threats to life by indiscriminate violence in international or internal armed conflicts.

UNHCR: the United Nations High Commissioner for Refugees, a UN agency set up in 1950 to protect and assist refugees.

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Cases

Amuur v. France, case number 17/1995/523/609, application number 19776/92, Council of Europe: European Court of Human Rights, 25 June 1996

J.H.A. v. Spain, CAT/C/41/D/323/2007, UN Committee Against Torture (CAT), 21 November 2008

Sources

Berlusconi: Sent back migrants don't qualify for asylum, Africa News

<http://www.africa-news.eu/news/africa-news/berlusconi-sent-back-migrants-dont-qualify-for-asylum.html>

Don't send back refugees to Libya, UNHCR boss says, Reuters, 2 October 2009

<http://www.reuters.com/article/idUSL2289206>

Fortress Europe: l'osservatorio sulle vittime dell'emigrazione

<http://fortresseurope.blogspot.com/>

Herman Grech, *Malta to propose checkpoint in Libya*, Times of Malta.com, 10 May 2009

<http://www.timesofmalta.com/articles/view/20090510/local/malta-to-propose-checkpoint-in-libya>

Interception of asylum seekers and refugees: the international framework and recommendations for a comprehensive approach, UNHCR Executive Committee, 9 June 2000

<http://www.unhcr.org/refworld/docid/49997afa1a.html>

Navanethem Pillay, United Nations High Commissioner for Human Rights (UNHCHR), Statement before 12th session of the Human Rights Council, 15 September 2009

New immigration policy under fire, Ansa.it, 11 May 2009

http://www.ansa.it/web/notizie/collection/rubriche/english/2009/05/11/visualizza_new.html_845579273.html

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 (HRW), September 2009

<http://www.hrw.org/en/node/85582/section/1>

Thomas Hammarberg, Commissioner for Human Rights for the Council of Europe, *Report following a visit to Italy on 13–15 January 2009*, 16 April 2009

<http://wcd.coe.int/ViewDoc.jsp?id=1428427>

UNHCR chief and Libyan partner discuss protection for refugees in mixed migration flows, 30 November 2009

<http://www.unhcr.org/4ad73aa16.html>

UNHCR interviews asylum seekers pushed back to Libya, UNHCR Briefing Notes, 14 July 2009

<http://www.unhcr.org/4a5c638b6.html>

Weekly Bulletin, European Council on Refugees and Exiles (ECRE), 28 August 2009

http://www.ecre.org/files/ECRE_Weekly_Update_28_August_2009_o.pdf

“Does the international community know about this, what is happening here? This is what we used to ask each other when we were in prison in Libya.”

Asad

Arrivals in Malta 2009

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