

I. Summary

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Methodology

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

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

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

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

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

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

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

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

II. Key Recommendations

Detailed recommendations are presented at the end of this report.

To the Government of Libya

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

To the European Union

To E.U. Member States

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

To E.U. Institutions and Member States

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

To the Government of Italy¹

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

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