

ASSESSMENT OF PRIORITIES FOR THE DEVELOPMENT OF LIBYA'S MIGRATION POLICY: A STRATEGIC VISION



International Organization for Migration (IOM)

EurAsylum

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Final Report to the
International Organization for Migration (IOM)
by
Eurasylum Ltd.

(November 2014)



International Organization for Migration (IOM)

EurAsylum

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EXECUTIVE SUMMARY

POLICY BACKGROUND, OBJECTIVES AND METHODOLOGY OF THE STUDY

Since time immemorial there have been migratory movements in the Saharan and Sahel regions of which Libya forms part, be it by nomads, economic migrants, or refugees fleeing persecution and violence, using traditional trade routes that have served trans-Saharan trade for centuries.

Since the mid-twentieth century, with the exploitation of Libya's rich oil and gas reserves, economic development and modernization, immigration to Libya has been on the rise, initially from the neighbouring countries and later from African countries further afield. These migrants were joined by others fleeing drought and famine, as well as refugees escaping persecution and violence, for example, in Chad, Darfur, Eritrea and Somalia and, most recently, the Syrian Arab Republic, and by migrants from a number of Asian countries.

In response to the need for foreign labour, following the launch of a pan-Arab policy in 1969, Libya adopted an open-door immigration policy, initially benefitting immigrants from Arab countries.

In the beginning of the 1990s, a pan-African policy was launched, which encouraged migrants from all over Africa to come to and work in Libya.

Since the beginning of the last decade, Libya has introduced measures intended to curb the inflow and presence of irregular migrants. Partly following European diplomatic efforts, the Libyan Government adopted a policy of expulsion and detention of irregular migrants, targeting primarily migrants from neighbouring sub-Saharan countries, such as Chad, Niger and Sudan.

During the 2011 conflict, a large number of foreign nationals left the country. However, a number of those who left Libya during the crisis have returned to the country and other migrants have joined them. A recent report by Altai Consulting estimates that the number of migrants in the country in May 2014 was around 2 million.¹

Since at least the early 2000s, Libya has been a main transit country for foreign nationals from Africa, the Middle East and Asia seeking to enter Europe illegally. According to a Frontex update in May 2014, some 40,000 migrants illegally crossed the Mediterranean into southern Italy in 2013.²

¹ For more details on the report, see Chapter 2.2.

² For more details on the Frontex update, see Chapter 2.2.1.

By far, the largest proportion of migrants in Libya is irregular. The overwhelming majority among them are Egyptians. Chadians and Nigeriens constitute two other large groups.

According to the Altai Consulting report, regular migrants in Libya are mainly Asian (Bangladeshi and Indians) and Arab (Tunisians and Moroccans).

Immigration to Libya also includes seasonal migrants, mainly from Chad, Niger and Sudan, as well as circular migrants who traditionally come to Libya at the end of the short agricultural season in their countries, returning at the beginning of the next season.

Although there have been no recent comprehensive assessments of current labour market gaps in Libya, it seems clear that current immigration into the country responds to the need for foreign labour. Based on available sources, current critical labour market gaps in Libya are believed to exist in the construction, agriculture and health sectors.

Faced with heavy migration pressures, the Libyan immigration authorities, especially the administration responsible for the management of irregular migration, including, in particular, the Ministry of Interior, have been overwhelmed, and their activities have been limited to “firefighting”. As a result, the assessment of the need for revision and of the development of new policies, strategies, legislation and other normative acts has had to take a back seat.

Faced with this situation, the Government of Libya in 2013, within the framework of the START Programme,³ and with the help of the International Organization for Migration (IOM), established a Policy/Legal Task Force mandated to assess and make suggestions for the revision of Libya’s policies and legislation relating to migration.

The present assessment is designed to provide support to the efforts of the Policy/ Legal Task Force to develop a migration policy for Libya. Its purpose is to analyse Libya’s current rules, institutional set-up and practices relating to migration management in areas considered as priorities for policy development, and to formulate, within these areas, various options for the future development of a migration policy in Libya, including the steps and measures that need to be taken to that effect.

The study was conducted on the basis of a policy literature review and a two-week mission to Tripoli in March–April 2014. Interviews were guided, in particular, by a semi-structured questionnaire which was administered as appropriate to various government representatives and other stakeholders. Annex A provides the list of entities and officials that were interviewed in the course of this mission.

³ “Stabilizing at-risk communities and enhancing migration management to enable smooth transitions in Egypt, Tunisia and Libya”.

As is clear from the above, Libyan authorities are faced with a number of difficult challenges relating to migration, some of which require urgent policy responses. Whereas policies on some of these issues could and should be developed in the short term, policy development on other aspects requires further consideration and, thus, can only be expected in the medium to long term. Therefore, the main part of this report is devoted to the migration challenges in Libya, which should and could be addressed in the short or medium term. As a result, policy issues that need to be considered and developed in the long term are only briefly described.

CONCLUSION AND RECOMMENDATIONS

Short- and medium-term challenges and policy options

LEGAL MIGRATION

Although Libya's Employment Offices have sections dedicated to labour migration, in practice the management of foreign labour lies mainly with employers who liaise directly with private providers of foreign labour abroad, thus giving employers a role in the management of regular legal labour migration, which, as this study suggests, is disproportionate. Accordingly, one of the recommendations of this study is to increase the role and responsibilities of the Ministry of Labour, in particular its Employment Offices, in the management of legal labour migration and reduce that of employers.

Another deficiency that needs to be rectified relates to what is believed to be too cumbersome procedures for legal migration to Libya. In particular, this seems to be the case in relation to seasonal migrants from border regions of neighbouring countries, for whom there may be practical, as well as legal, difficulties migrating to Libya in a regular fashion. Accordingly, this study makes a number of suggestions as to how this could be rectified, one of them being to facilitate visa regulations for seasonal migrants, for example by establishing seasonal migration programmes such as those that exist in a number of other countries. Another recommendation is to establish temporary migration programmes allowing migrants to stay and work in Libya for a limited period, or circular migration programmes for migrants who return year after year to perform the same or similar work.

With a view to facilitating legal migration, this study suggests a number of policy options that would increase Libya's capacity for international cooperation on labour migration, which is currently inadequate for a major immigration country such as Libya. These include making increased use of bilateral labour agreements with sending countries and creating a multilateral dialogue and cooperation forum on migration, which would include Libya's southern neighbouring States.

IRREGULAR MIGRATION

Expulsion, deportation and readmission

Gaps/needs

Libyan legislation relating to irregular migration provides that all aliens who fail to comply with requirements for entry and exit and/or regularization of their stay are considered irregular migrants and accordingly are subjected to relevant sanctions, including imprisonment, fines, deportation and immigration detention.

The combination of this legislation and the practice of making frequent use of deportation and immigration detention in cases of illegal entry or stay has resulted in placing Libya's deportation and immigration detention mechanisms and facilities under considerable stress, overstressing the capacities of the concerned authorities in a number of instances. One area where the Libyan migration management administration's capacities are clearly overstretched is immigration detention.

Insofar as the legislation allows for imprisonment of persons who have committed minor immigration violations, it not only leads to overburdening law enforcement mechanisms unnecessarily, but it is also at odds with international standards and best practices.

Further to noting that administrative mechanisms are under undue stress, this study concludes that Libya's rules and administrative practice relating to expulsion and deportation are sub-optimal in a number of respects, including:

- the exceptionally wide criteria determining when a foreign national can be expelled, which allow little room for alternatives to deportation for migrants who committed minor immigration offences;
- the apparent lack of rules allowing the Libyan administration to issue decisions obliging foreigners subject to deportation to leave the country voluntarily within a defined time period; and
- a lack of clarity on rules concerning the decision-making procedure for deportation of foreign nationals, for example regarding the form of deportation decisions, notification of decisions and relating to remedies against negative decisions.

Other gaps in Libya's rules and administrative practice relating to irregular migration identified by the study include:

- the imposition of sanctions, such as deportation and immigration detention, on asylum-seekers and persons found to be in need of international protection; and
- the lack of legislation guaranteeing that persons seeking or found to be in need of international protection are not, directly or indirectly, returned to countries where they may risk persecution or ill treatment.

Regarding international cooperation on irregular migration, the study concludes that Libya's current cooperation arrangements include only limited systematic and structured cooperation with the main countries of origin and transit countries from which migrants come. These do not appear to address fully Libya's current need for international cooperation in this area.

A case in point is the cooperation arrangements with receiving countries in connection with return and readmission, for example as regards obtaining their agreement prior to deportation. These arrangements are insufficient and have been criticized by some observers, as have conditions surrounding expulsion and deportation.

The absence of specific trafficking-related legislation that criminalizes the offence and protects the rights of the victims deprives Libyan authorities of an important tool for prevention and combating irregular immigration.

Policy options

With the aim of reducing the number of immigration violations, which are considered a cause for deportation and alleviating pressures on deportation mechanisms and the responsible authorities, the study suggests that there is reason to review and revise, as appropriate, the legislation prescribing sanctions for such violations. The study suggests that such a revision might include prescribing other measures, such as the obligation to leave the country without formal deportation action, in lieu of deportation in case of less serious violations, as well as making more frequent use of alternative sanctions to deportation.

Even more importantly, the study suggests that there is a need to revise the rules according to which all migrants who fail to comply with the requirements for entry or stay may be subject to a prison sentence. Further, deportation should not be implemented if there are compelling compassionate reasons not to do so; and deportation procedures should not be initiated against persons who, due to the situation in their countries of origin, cannot be deported without

risk to their lives or serious human rights violations, nor against asylum-seekers, unless their claims to asylum have been considered and rejected on the grounds that they are not founded.

The study furthermore proposes that clarification is required of the rules relating to the decision-making procedure on deportation of foreign nationals, for example, as regards the obligation to issue formal decisions on expulsion, the form of such decisions, and notification of decisions and remedies.

This study suggests that defining the notion and sanctions for trafficking in human beings would be an important step to support the Libyan authorities' efforts to combat irregular migration.

The study also suggests improvement in cooperation on return and readmission with receiving countries, including countries through which migrants transited on their way to Libya, and enhancement of assisted voluntary return programmes by strengthening the element of financial and in-kind reintegration assistance.

More generally, the study recommends that strengthened international cooperation on irregular migration be considered, in particular with two of Libya's southern neighbours, Chad and Niger, from where or through which a significant number of migrants in Libya traditionally come. The study also suggests that ideally issues relating to migration in Libya should be dealt with in the framework of a forum that would include countries of origin, transit and final destination, as well as international organizations, and bilateral and multilateral donors.

Detention

Gaps/needs

Conditions in immigration detention facilities in Libya have frequently been criticized by intergovernmental organizations and non-governmental organizations (NGOs) as being inadequate, including as regards physical structures, layout and equipment, and material assistance and services provided to detained migrants and their limited access to health services and legal and social counselling by lawyers, NGOs and international organizations.

Other gaps in Libya's immigration detention rules and practices identified in this study include: the possibility of indefinite detention of migrants, which is considered to violate international standards; the apparent absence of alternatives to immigration detention; and allowing decisions on detention to be made by an administrative authority without judicial power, thus not requiring ex-officio involvement of the judiciary.

Libya's practice of holding asylum-seekers, whose claims have not been determined and rejected, in closed detention centres together with other

migrants, as well as exerting additional pressure on those centres by detaining persons who should not be removed, is also at odds with international standards and best practices.

There is an apparent absence in Libyan legislation of alternatives to immigration detention and, if such possibilities exist, they are rarely or never implemented.

More generally, the very wide circumstances which may, according to Libyan legislation, justify immigration detention, with the result of putting undue pressure on Libya's overburdened immigration detention system and facilities, are believed to be at odds with international standards and best practices.

Policy options

This study suggests that consideration should be given to introducing a maximum detention period, through a revision of the legislation, or, until such a revision can be achieved, by way of administrative practice.

The study also proposes to limit the very wide circumstances which may, according to Libyan legislation, result in immigration detention. This would bring the country's detention practices in line with international standards and best practices. To this effect, the study suggests that the circumstances under which detention may be ordered, as well as those under which it is no longer permissible, should be clarified.

Involvement of the judiciary in decisions regarding immigration detention should be considered. As a minimum, the judiciary should be involved in reviewing the need to detain individuals in the case of prolonged detention periods.

In order for Libya to adhere to the principle that asylum-seekers should not be detained, the study suggests that consideration should be given to accommodating this group in open reception centres, rather than holding them with other foreign nationals in closed detention centres, a measure that would also contribute to reducing pressures on those centres.

With a view to improving conditions in immigration detention facilities, the study suggests a number of actions, including further development of rules regulating conditions in immigration detention centres and rules relating to treatment of migrants in immigration detention facilities and strengthening the role of intergovernmental organizations and NGOs in detention centres, for example, through the provision of legal and social counselling.

Moreover, the study proposes that there should be exploration of the legal possibilities of applying alternatives to immigration detention, such as bail or temporary release.

Regularization

Upon careful evaluation and weighing of factors in favour of and against regularization, including experiences with regularization exercises in Libya and other countries, the study concludes that the introduction of policies regularizing movement between Libya and key countries from which migrants come would arguably represent a positive shift towards a rational, coherent and regionally beneficial migration management approach.

Regularizing irregular movement might also help the Libyan Government achieve a number of other goals by facilitating efforts to combat corruption, protect labour standards and fight crime. Moreover, regularization might facilitate migrants' return home rather than provide incentives to remain in Libya, as critics at times argue. This is because people can return to their home countries for short periods to test the stability and economic opportunities of the country without fearing loss of their ability to earn livelihoods in Libya.

The study argues that the lack of adequate options for legal entry and residence for migrants has led to costly and largely ineffective border control and policing efforts to enforce immigration laws and that regularizing the stay of irregular migrants could have positive impacts on security and law enforcement.

Perhaps the most important consideration for the recommendation for Libya to resort to regularization is the preference expressed by both Libyan officials and employers to accommodate the country's need for foreign labour through the employment of migrants already in the country, rather than bringing new migrants from their home countries. A number of possible variants of regularization exercises that Libya could consider are discussed in this study.

Parallel to a possible general regularization exercise, the study also recommends strengthening the role of competent Libyan authorities in assisting individual migrants in detention and in obtaining employment and subsequently regularizing their immigration status. Currently, regularization of migrants in detention who have found employers willing to hire them and, therefore, have been allowed to work is the responsibility of the employers, who are not always willing to undertake the steps required to this effect.

LONGER-TERM CHALLENGES AND POLICY OPTIONS

MIGRATION LEGISLATION

Due to the lack of clarity as to which laws and other legal norms relating to migration adopted before the regime change are still in force, the study found that there is a need to undertake an exercise of consolidation of the norms currently applicable in this area, with a particular focus on rules and other documents relating to expulsion, detention and deportation of migrants.

INSTITUTIONAL FRAMEWORK AND CAPACITIES FOR MIGRATION MANAGEMENT

The study suggests that due to the absence of a national dialogue on migration involving key stakeholders, consideration might be given to initiating a systematic dialogue between the different relevant ministries and local authorities.

Other capacity gaps identified in the study include: inadequate infrastructure, insufficient equipment, malfunctioning coordination and cooperation processes between the key Libyan actors in this area and between those actors and their counterparts in neighbouring countries; lack of an adequate knowledge base regarding migration data; and insufficient training.

LEGAL MIGRATION

The study suggests that the Libyan Government may wish to review, in the long term, its policies relating to entry and admission of foreigners, as well as those concerning stay and residence of foreigners.

IRREGULAR MIGRATION

In the long term, a number of policy issues relating to irregular migration should be considered, including: sanctions on migrants, smugglers and traffickers; the procedure for and the remedies against forced return, including the travel document requirements for the purpose of forced return; and issues relating to voluntary return, readmission agreements and the role of biometrics in enforcement issues.

DONOR COORDINATION

Since one of the study's conclusions is that the current coordination among donors involved in supporting Libya in managing migration is inadequate, the study recommends that the International Coordination Meeting on Border Management under the Border Management Working Group set up by the Prime Minister in June 2013 coordinate activities of the international community in this area.

I. INTRODUCTION

I.1 OBJECTIVES AND SCOPE OF THE PROJECT

In December 2013, IOM appointed Eurasyllum Ltd. to conduct an assessment of the key priorities for the development of Libya's migration policy. The purposes of this assessment, which was conducted by Mr Michael Petersen between January and end of May in 2014, are as follows:

- To analyse Libya's current rules, institutional set-up and practices relating to migration management in areas considered as priorities for policy development;
- To formulate, within these areas, various options for the future development of a migration policy in Libya, including the steps and measures that need to be taken to that effect.

The assessment covered a number of different policy components, in relation to both legal and irregular migration, and focused both on the policy and legal framework relating to current migration management practice in Libya and on the capacities of the relevant authorities.

I.2 METHODOLOGY

The study was conducted on the basis of a policy literature review and a two-week mission to Tripoli in March–April 2014. Interviews were guided, in particular, by a semi-structured questionnaire, which was administered as appropriate to various government representatives and other stakeholders.

Annex A provides a list of entities and officials that were interviewed in the course of this mission.

In developing the methodology, the terms of reference (see Annex B) were fully taken into account. However, due to security considerations, it has not proved possible to undertake the second visit to Tripoli, as foreseen by the terms of reference, to discuss the initial findings of the assessment.

In addition, the Consultant carried out a desk review of a wide range of documents, including legal texts, to which reference is made in footnotes to the report.

The Consultant also drew on his knowledge and experience of relevant legislation, policies and practices in Libya, gained during a previous project there in 2013, on behalf of the European Commission.

1.3 THE REPORT

Judging from the experience of other countries, the development of a full-fledged migration policy in Libya and a strategy and action plan for its implementation are a long-term undertaking, requiring dedicated work. There is also a need for consultation with a range of stakeholders, including within government, international organizations and NGOs.

What is clear is that Libyan authorities are faced with a number of difficult challenges relating to migration, some of which require urgent policy responses. The main migration management challenges being faced in Libya are set out in Chapters 2 and 3.

Whereas policies on some of these issues could and should be developed in the short term, policy development on other aspects requires further consideration and, thus, can only be expected in the medium to long term. The main focus of this study is therefore on the migration challenges in Libya, which should and could be addressed in the short or medium term. They are set out in Chapter 4, Section 1, together with some proposals for possible action in such a timeframe.

In Chapter 4, Section 2, a number of policy issues are briefly described. It is believed that that these need to be considered and developed in the longer term.

Both of the aforementioned sections are divided into two parts, relating respectively to legal and irregular migration.⁴

The issues covered by the study, first of all, concern Libya's policies on legal labour migration and on irregular migration, and accordingly the government agencies with direct responsibilities for these issues – primarily the Ministry of Interior and the Ministry of Labour. Chapter 3, Section 3, accordingly addresses issues of relevance to policy development on legal migration and irregular migration.

Only limited attention has been given to the question of border management and the agencies with responsibilities in this area. The reason for this is to avoid overlap with the functions of the EU Border Assistance Mission (EUBAM) in Libya, whose mandate is to support the country in developing an integrated border management (IBM) strategy. It should be noted, however, that because the mandates of Libya's border management agencies – the Border Guard, the Border Police, the Coast Guard and Customs – also include cross-border movements of people, it is not possible to separate entirely the issue of border management from those of legal and irregular migration. It is also a fact that

⁴ The term *irregular migrant* is used in this document to relate also to what are sometimes referred to as illegal migrants. It is used to cover migrants who have entered the country legally but no longer benefit from a legal immigration status and those who have entered illegally, whether by crossing the border without being detected or with falsified documents. Similarly, the term *legal migration* is intended to refer also to what is sometimes referred to as "regular migration".

border management policies will inevitably have an influence on after-entry policies and practices in relation to both legal and irregular migration.

It follows that the government agencies responsible for border management should also be able to have an input into the aspects of the country's migration policy which touch upon their mandates. These areas include, for example, smuggling and trafficking, investigation of cases of irregular migration and collection of information to inform such investigations, apprehension and, possibly, detention and return of irregular migrants apprehended on or close to the border. It should also consider vulnerable persons among them, and persons in need of international protection.

2. MIGRATION SITUATION IN LIBYA⁵

2.1 HISTORICAL OVERVIEW OF MIGRATION IN LIBYA

Since time immemorial there has been migratory movement in the Sahara and Sahel regions of which Libya forms part, be it undertaken by nomads, economic migrants, or refugees fleeing persecution and violence, using traditional trade routes that have served trans-Saharan trade for centuries.

Since the mid-twentieth century, with the exploitation of Libya's rich oil and gas reserves, economic development and modernization, immigration to Libya has been on the rise, initially from the neighbouring countries – Chad, Egypt, Niger and Tunisia – and later from African countries further afield. These migrants were joined by others fleeing drought and famine, as well as refugees escaping persecution and violence, for example, in Chad, Darfur, Eritrea and Somalia, and by migrants from a number of Asian countries, such as Bangladesh and Pakistan.

In response to the need for foreign labour, following the launch of a pan-Arab policy in 1969, Libya adopted an open-door immigration policy, initially benefitting immigrants from Arab countries. By way of conclusion of international conventions, first with Tunisia and later with Algeria and Morocco, Libya guaranteed immigrants from Arab countries a number of rights, such as to remit gains from employment to the countries of origin.

In the beginning of the 1990s, a pan-African policy was launched, which encouraged migrants from all over Africa to come to and work in Libya. The pan-African policy was reflected at an international level by the signature of a series of bilateral and multilateral cooperation agreements, for example, with Chad and Sudan, as well as in national legislation.

⁵ The information contained in this chapter has been drawn from the abundant literature on the subject, as well as the Consultant's own findings during missions to Libya. Further to the literature quoted in the footnotes in this report, the Consultant has, in particular, drawn on the following sources:

- International Centre for Migration Policy Development (ICMPD), *A Comprehensive Survey of Migration Flows and Institutional Capabilities in Libya* (Vienna, ICMPD, 2010). Available from <http://mawgeng.a.m.f.unblog.fr/files/2010/03/libyasurveyreporlectronicversionedited.pdf>.
- D. Perrin, *Fin de régime et migrations en Libye. Les enseignements juridiques d'un pays en feu*, VII | 2011 - *Dossier: Sahara en mouvement*, L'Année du Maghreb, ed. CNRS. Available from <http://anneemaghreb.revues.org/1259?lang=en>.
- S. Bredeloup and O. Pliez, *The Libyan Migration Corridor* (Fiesole, Florence, Italy, European University Institute, 2011). Available from <http://cadmus.eui.eu/bitstream/handle/1814/16213/EU-US%20Immigration%20Systems%202011%20-%202003.pdf?sequence=1>.
- Libye : en finir avec la traque des migrants, *fédération internationale des droits de l'homme* (Federación Internacional de los Derechos Humanos, 2012). Available from <http://www.fidh.org/fr/maghreb-moyen-orient/libye/Libye-en-finir-avec-la-traque-des-12251>.
- Integrated Border Management Needs Assessment for Libya, 2012 (the IBM report).
- Assessment of Transnational Criminal and Terrorist Threats to Libya produced in the framework the EU Project RELINC, June 2013.

Since the beginning of the last decade, Libya has introduced measures intended to curb the inflow and presence of irregular migrants. Partly following European diplomatic efforts, the Libyan Government adopted a policy of expulsion and detention of irregular migrants, targeting primarily migrants from neighbouring sub-Saharan countries, such as Chad, Niger and Sudan.

During the 2011 conflict, a large number of foreign nationals left the country. According to IOM, between February and November 2011, nearly 800,000 migrants left Libya,⁶ in what IOM has called one of the “largest migration crises in modern history”.

Since the end of the conflict, more foreign nationals have left the country, either voluntarily – including through IOM’s Assisted Voluntary Return and Reintegration (AVRR) programmes – or upon expulsion.

A number of those who left Libya during the crisis have returned to the country. For example, a study carried out by IOM and the African Development Bank in Tunisia in 2012⁷ found that 42.6 per cent of Tunisian returnees from Libya had since reemigrated back to Libya. The study also found that the majority of the returnees who were in Tunisia at the time of the research wished to emigrate again to Libya.

To some extent, the flow of migrants tends to be seasonal in nature. It has also been influenced by natural disasters elsewhere, for instance, the extensive flooding in Niger in 2010 prompted an increase in Nigeriens crossing into Libya and elsewhere.

2.2 CURRENT MIGRATION DYNAMICS IN LIBYA

Accurate current statistics on flows and stocks of migrants in the country are difficult to ascertain. As mentioned in a report prepared by Altai Consulting in 2013 (hereinafter referred to as the Altai report),⁸ there are a number of studies that have attempted in the past to assess the number of migrants in Libya. However, they have been inconsistent with one another, and their reliability is thus questionable. As pointed out in the Altai report, one reason for this is that the only reliable data are those that relate to arrivals in Europe, as well as those concerning the AVRR programmes managed by IOM.

⁶ Breakdowns per country of origin of the migrants returned can be found in the IOM publication “Two years after the crisis: Returnees from Libya revisited”, available from http://publications.iom.int/bookstore/free/Policy_in_Brief_Libya2013_5Mar2013_FINAL.pdf.

⁷ “Migration of Tunisians to Libya: Dynamics, challenges and prospects”, available from <http://www.migration4development.org/content/migration-tunisians-libya-dynamics-challenges-and-prospects>.

⁸ A. Malakooti/Altai Consulting, *Mixed Migration: Libya at a Crossroads* (Altai Consulting, 2013). Available from http://www.altaiconsulting.com/docs/migration/mixedmigrationlibya/Altai_Consulting-UNHCR-Mixed_Migration_Libya.pdf.

IOM estimated that there were 2.5 million migrants in Libya before the 2011 conflict.⁹ Based on its own assessment, the Altai report concludes that the figure from IOM is correct.

To estimate the number of migrants in Libya following the conflict, the Altai report:

- subtracts 800,000 (number of migrants who left Libya during the 2011 conflict) from the IOM estimate of 2.5 million;
- deducts the recorded outflows of 12,000 migrants across the Mediterranean and through IOM's AVRR programmes and other outflows, such as deportations and voluntary unassisted returns; and
- adds an estimate of 48,000 to 66,000 per year, since then, from sub-Saharan Africa, and another 80,000 to 100,000 migrants from Egypt and Tunisia (including the large influx of Syrian refugees).

By applying these figures, the Altai report estimates that as of June 2013 the total number of migrants in Libya was between 1.8 and 1.9 million.

Based on these figures and assuming that the magnitude of inflow and outflow of migrants in Libya has remained stable since then, the number of migrants in the country in May 2014 was between 1.9 and 2 million.

Even more difficult than determining the total number of migrants entering and staying in Libya is breaking down the numbers according to nationalities.

Based on various reports and consultations with government officials, intergovernmental organizations and NGOs, it is clear that Egyptians constitute by far the largest group (perhaps some 25%). In second place come three equally large groups (perhaps some 10% each): Chadians, Nigeriens and Sudanese.

2.2.1 LIBYA AS A TRANSIT COUNTRY FOR IRREGULAR MIGRATION TO THE EUROPEAN UNION

Since at least the early 2000s, Libya has been a main transit country for foreign nationals from Africa, the Middle East and Asia, seeking to enter the EU illegally. Whereas the main route taken by such intending irregular migrants has previously been from Tripoli to Lampedusa in Sicily, the point of departure in Libya, particularly for Syrians, seems increasingly to be from more western coastal areas like Zuwarah.

By 2006, there was clear evidence of people smugglers bringing large groups of migrants to Lampedusa. On arrival, most were transferred by the Italian

⁹ IOM, *Humanitarian Emergency Response to the Libyan Crisis* (Geneva, IOM, 2011).

Government to reception centres in mainland Italy, but many were subsequently released.

By 2009, the overcrowded conditions at Lampedusa's temporary immigrant reception centre had come under criticism by the Office of the United Nations High Commissioner for Refugees (UNHCR). However, irregular migrant traffic into Lampedusa was reduced substantially after the Italian Government signed a bilateral agreement with Libya in 2009.

Nevertheless, a Frontex update in May 2014,¹⁰ which is understood to contain the most recent statistical information on this issue, refers to an enormous increase in the number of migrants using this route in 2011, coinciding with the civil unrest in Tunisia and Libya.

The Frontex update also spells out the nature of the risks faced by intending migrants. It records that the vessels used are mainly wooden fishing boats that are frequently overcrowded and thus prone to sinking or capsizing in high-sea conditions, and are often ill-equipped with poor engines and navigation systems.

The Frontex update gives details on illegal border crossings on the Central Mediterranean route (including to Puglia and Calabria) as follows:

2008	2009	2010	2011	2012	2013
39,800	11,000	4,500	64,300	15,900	40,300

The overwhelming majority of those crossing the Mediterranean from Libya originate from countries considered as potential refugee-producing countries, for example Eritrea, Ethiopia, Somalia, Sudan and, recently, the Syrian Arab Republic, which, after Eritrea, saw the greatest increase of any nationality in 2013.

There are considerable push factors – for example, the conflict in the Syrian Arab Republic and the conditions in Eritrea and Somalia. There are also often intolerable conditions for migrants, particularly West Africans, living in Libya (which may well have increased due to the current unrest). As a result, some who come to Libya with the intention to work (particularly those from West Africa) are eventually induced to leave because of harsh racism and conditions.

There have been frequent media reports of tragic deaths, following failed attempts to enter the EU by crossing the Mediterranean, and even as the present report was being finalized there had been a recent incident in which some 300 people were feared to have died. Indeed, a press report in the United Kingdom

¹⁰ Frontex, *Annual Risk Analysis* (Warsaw, Frontex, 2014). Available from http://frontex.europa.eu/assets/Publications/Risk_Analysis/Annual_Risk_Analysis_2014.pdf.

(from the *Daily Telegraph*, on 19 August 2014) claims that at least 800 intending migrants have died in the Mediterranean in 2014 to date. This demonstrates that the serious risks posed by the crossing and the conditions faced on arrival have not persuaded intending irregular migrants to abandon attempts to enter the EU on this route.

In May 2014 alone, some 300 intending irregular migrants were rescued by the Italian Coast Guard Service, and in recent months many more have been rescued – up to thousands in one weekend – due to actions by the Coast Guard and by operatives of the Mare Nostrum Coastline Preservation Project. As previously indicated, there is cooperation between Libya, Italy and Malta regarding search and rescue operations, including the provision of logistical and technical support to Libyan Coast Guards. However, it is difficult to avoid the conclusion that the magnet of entry to the EU via Libya, and then Lampedusa, other points in Italy and in Malta, is contributing to the irregular migration problems faced not only by Libya but also by the EU.

2.2.2 STATUS OF MIGRANTS IN LIBYA

Irregular migrants

By far, the largest proportion of migrants in Libya is irregular.

As previously mentioned, the overwhelming majority among the irregular migrants in Libya are Egyptians. Chadians and Nigeriens constitute two other large groups.

Niger is both a sending and a transit country for migrants from the Economic Community of West African States (ECOWAS) region. As there is freedom of movement between Niger and other ECOWAS countries, a number of migrants from other African countries transit through Niger and enter Libya irregularly. The largest groups among them are believed to be Malians, followed by Nigerians and Ghanaians. Other migrants using this route come from Benin, Burkina Faso, Cameroon, Côte d'Ivoire, the Gambia, Guinea, Senegal and Sierra Leone.

The irregular migrants in Libya are generally unskilled and often lack passports and other documents establishing their identity.¹¹

However, it is not unusual for migrants to move between irregularity and regularity. Indeed, migrants entering or staying in Libya irregularly who find employers willing to hire them, may be able to regularize their status. This includes migrants in immigration detention.

¹¹ According to the 2013 Altai report *We Risk Our Lives for Our Daily Bread: Findings of the Danish Refugee Council Study of Mixed Migration in Libya*, most irregular migrants have some form of ID from their countries of origin.

Legal migrants

According to the Altai report, legal migrants are mainly Asians (Bangladeshi and Indians) or Arabs (Tunisians and Moroccans), with some sub-Saharan Africans among them, as well as Europeans and US nationals.

The last official figure on regular economic migrants resident in Libya is 360,000 (according to the Libyan Census of 2006).

Whereas some among this group came to Libya irregularly and then regularized their immigration status, most often after finding a job, others originally came legally but lost their status, for example after having overstayed the period allowed by their visas.

Seasonal migrants

The main groups of seasonal migrants in Libya are from Chad, Niger and Sudan.

Their number is believed to be somewhat lower than that of regular migrants admitted for longer periods.

Circular migrants

Circular migrants have traditionally come to Libya at the end of the short agricultural season in their countries, returning at the beginning of the next season.

Migration of these groups has also been influenced by natural disasters in their own countries, including drought, or extensive flooding, such as that which occurred in Niger in 2010, prompting an increase in Nigeriens crossing into Libya and elsewhere. They are most often undocumented but nevertheless easily manage to enter Libya due to connections established over the years, often with members of their own tribes in Libya.

Seasonal workers in Libya mostly work in agriculture near the border with their countries of origin.

2.2.3 OCCUPATIONS OF MIGRANTS IN LIBYA¹²

Construction workers/Artisans

A considerable number of (mainly) irregular migrants in Libya are employed in the construction sector. These migrants include masons, carpenters, plumbers, blacksmiths and painters, as well as unskilled workers. These migrants may also work outside the construction sector. As pointed out in the Altai report, such migrants are most often employed on a weekly, daily or even hourly basis, usually after having been selected at assembly points.

Agricultural workers

Another significant number of (mainly) irregular migrants are employed in the agriculture sector.

Called seasonal migrants or workers, they have traditionally come to Libya during the dry season in their countries and left when the wet season in their countries begins.

Domestic workers

Migrant domestic workers include maids, gardeners and doormen.

Whereas most of them are formally irregular migrants, they are normally well integrated, and Libyan nationals often do not consider them as irregular migrants.

Shop workers or owners and service providers

According to the Altai report, migrants also frequently work in supermarkets and other shops, mainly as menial workers. Some have their own shops, for example groceries.

Others own stores providing services such as hairdressing and tailoring. Again, the status of these migrants is mainly irregular.

Hospitality sector workers

Libyan restaurants and hotels traditionally employ foreign nationals. Many among them are Tunisians, but Asians and a range of other nationalities also work in the hospitality business.

The majority have been brought by their employers through legal channels.

¹² The main source for this section is the 2013 Altai report *We Risk Our Lives for Our Daily Bread: Findings of the Danish Refugee Council Study of Mixed Migration in Libya*.

Garbage collectors

As mentioned in the Altai report, both legal and irregular migrants are employed by municipalities in Libya as garbage collectors.

Some of them originally may not have had a legal immigration status, but once employed they have been regularized through their employers.

2.2.4 LABOUR MARKET GAPS IN LIBYA

As there have been no recent comprehensive assessments of current labour market gaps in Libya and few other reliable sources, assessing such gaps is a task fraught with difficulties.

Based on available sources,¹³ current critical labour market gaps are believed to exist mainly in the construction, agriculture and health sectors.¹⁴

Construction

Prior to the revolution in 2011, the construction sector relied heavily on foreign workers both for selected high-skilled positions (including architects and engineers) and in low-skilled occupations where the salaries and working conditions were considered undesirable by the majority of the Libyan population.

Provided private investment continues to be forthcoming and the Libyan Government continues to engage in reconstruction, large numbers of foreign workers are likely to continue to be required in this sector, including for the purpose of rebuilding the infrastructure damaged throughout the country as a result of the 2011 conflict.

Agriculture

Prior to the 2011 conflict, the agriculture sector was heavily dependent on foreign labour to fill many low-skilled positions. Foreigners within this sector were often employed irregularly, with most of the labour force originating from Chad and Niger,¹⁵ and their residence was mainly seasonal in nature. According

¹³ The assessment of Libya's labour market gaps is based mainly on the study "Rapid Assessment to Determine Essential Labour Market Gaps in Libya Critical to Re-development" undertaken by IOM in 2012.

¹⁴ Two other sectors, utilities and public administration, covered in the 2012 IOM assessment have not been included here. This is due to the fact that the number of foreigners required in the utilities sector would be limited to a few skilled workers and would depend on investments by the Government, which are not expected to continue in the short term. Furthermore, the need for foreign labour within public administration is expected to be for technical expertise, which is likely to be provided through donor-funded projects.

¹⁵ The Altai report (p. 99) indicates that most are now from Niger and Sudan, but on page 77 Chadians are also mentioned as seasonal workers.

to the IOM agricultural migrant workers' skills assessment report,¹⁶ after the conflict, most of the labour force in the agriculture sector originated from Egypt and Niger.

In addition to requiring foreign workers for technical support, the Libyan agriculture sector has also relied heavily on foreign workers to fill the majority of low-skilled occupations relating to planting and harvesting, among others. Due to low wages and prevailing social stigmas against agricultural labour, the sector simply did not generate the types of jobs that the majority of Libyans were willing to undertake.

There is also reason to believe that, in the future, Libya will have to rely on large numbers of foreign workers to maintain its agriculture industry. Indeed, according to a recent study commissioned by IOM,¹⁷ migrants "are more or less the exclusive source of labour in the production of agricultural outputs" and contribute approximately 1 per cent to Libya's GDP, and approximately 51 per cent to the total value added in the agriculture sector.¹⁸

According to the IOM study, covering this need is crucial in order to ensure stable earnings by employers and avoid lower agricultural output leading to price increases. That the need for foreign workers in the agriculture sector continues to exist is illustrated by the fact that currently employers even seek to recruit workers in immigration detention centres.

Health

Before the 2011 conflict, the health sector was heavily reliant on foreign labour, particularly to meet needs in specialist and nursing occupations. The exodus of foreign workers during the revolution has resulted in the near collapse of health-care services in some regions. Given the importance of health-care services to ensure the broader social and economic development of society, this sector represents a critical area of attention where it is believed foreign workers will be needed to meet both basic and emergency health-care needs within the country.

¹⁶ "Assessment of migrant labour skills in the agriculture sector", prepared by DIWAN for Market Research and Consultants Alliance LLC, January 2014 (hereinafter referred to as "agricultural migrant workers' skills assessment").

¹⁷ Ibid.

¹⁸ Ibid. 4.

3. MIGRATION MANAGEMENT IN LIBYA: KEY CHALLENGES

There are two key national institutions in Libya with responsibilities for migration management – the Ministry of Interior (Moi) and the Ministry of Labour (MoL).

The Ministry of Interior

The Moi has three local antennas, covering southern, eastern and central, respectively.

Within the Moi, the Department for Combating Illegal Migration (DCIM) is in charge of coordinating interventions to prevent and combat illegal migration. The DCIM is also responsible for overseeing migrant detention centres. The centres are headed by Directors who report to the DCIM.

The Police, whose responsibilities include detection and apprehension of irregular migrants, also report to the Moi.

Since the 2011 conflict, local militias (Katibas) have taken on the role of ensuring security in some parts of the country, including controlling migrants and running detention centres where migrants are held. Whereas a number of the facilities were previously run by militias, they are now under the control of the Moi, or under the joint control of the Moi and the Ministry of Defence, and agreements have been signed to this effect. However, some of the facilities that had come under Moi control have reverted to militia control.

The Ministry of Labour

The MoL is the key ministry responsible for management of legal migration for work. For details regarding the responsibilities, set-up and functioning of the MoL, see Chapter 3.1.

Other key authorities with responsibilities relating to irregular migration include:

- the Coast Guard, whose responsibilities include search and rescue, and which is increasingly involved in the detection of illegal migrants at sea;
- the Customs Administration, which has the overall responsibility for controlling movements outside the border crossing points;
- the Border Guard, a military institution responsible for patrolling the border area outside the border crossing points; and
- the Ministry of Defence, which is responsible for land border surveillance along Libya's land and sea borders.

Whereas proposals for revision of existing legislation and for new legislation are initiated by the respective line ministries, the Ministry of Justice is responsible for their finalization and for their submission to Parliament.

Another important stakeholder is the Judiciary, insofar as administrative decisions, including those relating to expulsion, deportation and detention can be appealed to the courts.

Other stakeholders

In the wake of the regime change in Libya, NGOs and other civil society organizations in the country have been mushrooming. Some relevant organizations are given in Chapter 3.2.

3.1 MANAGEMENT OF LEGAL LABOUR MIGRATION

3.1.1 GENERAL

Although the unemployment rate among Libyan nationals is high, the need for a foreign labour force is recognized nationally, in particular, by the relevant government officials and employers.

However, the management of this foreign labour force relates mainly to skilled posts and is well organized through the input of private companies and agencies. Once they have identified workers they would like to recruit, requests for work permits are submitted to the MoL. Thus, the MoL's role in such cases is mainly a supervisory, which includes inspection and delivery of permits.

The need for labour in low-skill categories is also recognized, but it lacks any management system. Most low-skilled migrants are employed in an informal/irregular way, leaving them more vulnerable to abuse of their situation.

Employers in need of low-skilled labour have no formal means to access available labour. It follows that the availability of this labour force is recognized only through informal networks, and no system to manage labour demand and supply at this level currently exists.

3.1.2 FOREIGN RECRUITMENT: THE ROLE OF EMPLOYERS VERSUS AUTHORITIES¹⁹

The role of the Ministry of Labour

The MoL is the main institution responsible for foreign labour management. The Minister of Labour is assisted by three Deputy Ministers, who are responsible for capacity-building, civil services and labour affairs.

Further to its central office in Tripoli, the MoL includes 72 Employment Offices throughout the country.

The Employment Offices are responsible for managing labour demand and offer, including in relation to foreign labour. Management is centralized, and the Employment Offices communicate only with the central ministerial departments. However, it is understood that the MoL would like to decentralize them and install a communication system that also includes communication between them.

The MoL also has 760 inspectors throughout the country. Their work, however, is recognized neither by the administration nor by the general public, and their resources are limited, including means to collect information and conduct training.

The responsibilities of the MoL include determining foreign labour needs, but neither its central office nor the Employment Offices have the capacity to undertake a systematic matching of Libya's foreign labour demand and supply. Similarly, no general assessment of the Libyan labour market and of the demand for foreign labour has yet been conducted.

The role of employers

Although the Employment Offices have sections dedicated to labour migration, in practice management of foreign labour lies mainly with the employers, who liaise directly with private providers of foreign labour abroad.

It is therefore the employers who present applications for work permits for foreign labour to the MoL. The MoL determines whether the conditions for granting the permit are fulfilled, including, for example whether the job for which the work permit is sought is within the sectors in which foreigners are allowed to work, or whether the employer has the necessary facilities and space to host the foreigner.

Through these limitations, the MoL seeks to reduce the possibility for employers to sell work permits, which seems to be a recurrent practice. Work permits are also sold, or obtained illegally, for sectors from which foreign labour is excluded.

¹⁹ The information contained in this section stems from interviews with the respective stakeholders, as well as from various reports, including, in particular the aforementioned ICMFD and IBM reports.

The work permits are managed by the MoL's central office when the demand concerns large companies.

The fee for a work permit (currently USD 500 per year) is paid by the employer, which is also responsible for health and social security benefits of the foreign workers they employ and for renewing their work permits on a yearly basis.

The contractual rights of a foreign worker (pay, work hours, leave, etc.) are stipulated in the work contract, which is submitted by the employer to the MoL for approval, together with the application for the work permit.

Another responsibility of the employers is to train unemployed Libyans for the positions typically filled by foreigners. Private companies employing foreign labour are therefore obliged to train a number of Libyan job-seekers, 15 to 20 per cent of the number of foreign workers they employ. In practice, however, because of the obligation for the company later to offer jobs occupied by foreigners to Libyans, companies train a higher number of Libyan job-seekers, close to 100 per cent for big companies. The companies are also obliged to hire the trainees and many big companies have, for years, conducted extensive training and even opened training centres.

Whereas some employers, mainly larger companies employing skilled workers, may be willing to assume these responsibilities, experience has shown that, in particular smaller companies employing unskilled workers are less willing and often prefer to employ migrants informally and illegally. Another reason, mentioned by some employers, for employing migrants illegally is that many of them are undocumented, making their legalization very difficult, if not impossible.

Libyan legislation accords foreign workers a number of rights, including family reunion and access to hospitals and courts. However, these rights are not implemented systematically and sometimes are not even known to workers or cannot be invoked by those employed illegally.

Whereas this system seems to work relatively well as regards skilled migrants, employers have difficulties in accessing the supply of foreign unskilled migrants.

Employers and migrants alike have expressed concern about what they believe to be cumbersome procedures and unduly complex documentary requirements for seeking legal entry for work in Libya.

According to interviews with the MoL staff, the MoL has recently concluded a memorandum of understanding with its Egyptian counterpart, which includes affording Libyan employers access to an electronic list of Egyptians seeking jobs in Libya and, thus, involving a government body in the process of identifying foreign labour.

Seasonal, temporary and circular migration

A significant number of migrants entering irregularly through Libya's southern borders seek temporary work.

For example, tribal communities, such as the Tebu and the Tuareg, whose members are scattered throughout Libya, its neighbouring countries Algeria, Chad and Niger, and countries further afield, such as Mali and Nigeria, have traditionally been crossing in and out of Libya, seeking work in agriculture or other temporary work – mostly on a seasonal basis – or conducting trade.

Other important groups of migrants, in particular from West Africa, come irregularly to Libya in order to work for one or a few years and then return to their countries of origin.

One reason for these migrants entering Libya irregularly is the absence of specific schemes for seasonal, temporary and circular migration.

3.2 MANAGEMENT OF IRREGULAR MIGRATION²⁰

3.2.1 ARREST, EXPULSION, DETENTION, RETURN AND READMISSION OF IRREGULAR MIGRANTS

Libyan legislation relating to irregular migration provides that aliens who fail to comply with requirements for entry and exit and/or regularization of their stay are considered illegal migrants and accordingly subjected to relevant sanctions, including fines, deportation and immigration detention.

Contrary to practice in some other countries, in Libya, the more severe among these sanctions, such as imprisonment, apply in principle also to migrants who have entered the country legally but are no longer authorized to stay, to persons who have been smuggled into the country, and to asylum-seekers.

As a result of these provisions, Libyan authorities feel obliged to impose sanctions, such as deportation and immigration detention, on a large number of persons, of whom many might, in other countries, only be subject to less severe administrative sanctions.

The combination of this legislation and the practice of making frequent use of deportation and immigration detention in cases of illegal entry or stay has resulted in putting Libya's deportation and immigration detention mechanisms and facilities under considerable stress.

²⁰ Further to his own observations during interviews with stakeholders in Libya, the Consultant has based the analysis in this section on the limited literature on the subject, including primarily the aforementioned ICMPD and IBM reports.

Sanctions such as deportation and immigration detention are, in principle, also imposed on persons in need of international protection. However, Libyan legislation does contain certain safeguards against the deportation of such persons, a number of whom benefit from de facto deportation bans that prohibit their return to countries where they would face persecution or ill treatment.

Of relevance in this connection is also that decisions on deportation and detention are not communicated in writing to the migrants, and no information on their rights to challenge such decisions is provided to them. Also, no established system seems to be in place for them to seek advice and assistance from lawyers, NGOs, civil society organizations or international organizations.

In principle, there is a possibility to appeal against administrative decisions to the courts, including decisions on expulsion and detention. In practice, however, because of lawyers' limited knowledge of applicable immigration law, and because criminal courts have not yet resumed judicial activities throughout Libya, such appeals are rarely brought and, even if they are, they are most often ineffective.

It must be assumed that a number of migrants who are currently served with expulsion, deportation and detention decisions would, if able to access proper remedies, seek to challenge those decisions, so that some of them would be overruled. As a result, fewer migrants would be detained and deported.

The heavy pressure that the large number of decisions on deportation and detention, in turn, puts on the Libyan administrative structures for management of irregular migration has, in a number of instances, resulted in overstressing the capacities of the concerned authorities. One area where the Libyan migration management administration's capacities are clearly overstretched is immigration detention. For example, because of the large number of migrants subjected to detention, the authorities have felt obliged to detain migrants in facilities that were not designed and are inappropriate for this purpose.

As resources for refurbishment and maintenance of these facilities are limited, they are generally of a very low standard and at times in significant disrepair. These are conditions that have frequently been criticized by intergovernmental organizations and NGOs and that a number of Libyan authorities with whom the Consultant spoke themselves deplore.

Frequent criticism of the treatment of migrants in detention centres has also been made, including the limited services extended to them, for example as regards medical treatment.

An added difficulty for Libyan authorities is that a number of the facilities used for the purpose of immigration detention are not under State control, albeit some

facilities previously under the control of non-State actors are now controlled by the MoI.

The problems surrounding immigration detention in Libya are further exacerbated by the fact that legislation does not provide for a maximum detention period, which, in principle, may therefore be indefinite.

Also, the inadequacy of mechanisms for return and readmission of irregular migrants result in protracted, if not indefinite, detention of migrants subject to removal. This contributes to putting additional stress on Libya's immigration detention facilities.

In the absence of adequate return and readmission mechanisms, Libyan authorities have been deporting irregular migrants on an ad hoc basis, frequently under conditions that have given rise to criticism.

Yet another factor that increases the pressure on immigration detention facilities is what seems to be the lack of alternatives to detention, as well as the absence of alternative accommodation for asylum-seekers and persons who, because they are deemed to be in need of international protection, should not, in principle, be detained.

While seriously regretting the situation described above, Libyan immigration detention authorities interviewed for this report have pointed to the lack of tools required to overcome many of the shortcomings of the immigration detention regime.

Thus, for example, there appears to be no rules prescribing conditions in immigration detention facilities, including matters such as the structure, layout and equipment of the buildings, nor regarding treatment of migrants accommodated in the facilities and their rights, for example as regards their access to health services and legal and social counselling by lawyers, NGOs and international organizations. Nor is training of staff working in detention centres conducted on a regular basis.

For a number of years, assisted voluntary return programmes have existed in Libya. Under these programmes implemented by IOM, irregular migrants wishing to return to their home countries are assisted with travel costs, medical and other needs screening, fingerprinting, issue of travel documents, and departure, arrival, transit and limited reintegration assistance.

Frequently, persons who have returned in the framework of these programmes have again migrated to Libya. For many of them, the Consultant believes the reason for remigration may be the impossibility of re-establishing their lives in their home countries and achieving social and professional reintegration there.

Finally, it may be relevant to mention in this connection that, contrary to practice in many other countries, NGOs and other civil society organizations are only sporadically involved in providing assistance to migrants in immigration detention facilities, and therefore are unable to contribute to alleviation of the heavy burden borne by the authorities in this regard. Further reference to this is made below.

Whereas a number of Libyan national NGOs are working with internally displaced persons,²¹ except for the Libyan Red Crescent and the Organization for International Cooperation and Emergency Aid (OICEA), which deliver non-food items to some detention centres, none seems as yet to be working directly with migrants, asylum-seekers and refugees.

However, a number of Libyan NGOs and civil society organizations have taken an interest in issues relating to migrants, asylum-seekers and refugees and some, such as the OICEA, have been lobbying in favour of these groups. One result of this activity has been the preparation of a draft of the Asylum Law, currently being considered by an Asylum Law Committee, including participants from the MoI, the Ministry of Justice and Libyan lawyers. It is hoped that this draft law will eventually be submitted to the Ministry of Justice for its review and subsequently to the concerned Libyan authorities.

Whereas certain data, such as names, date of birth, sex and, if known, nationality, of apprehended migrants and migrants in detention are recorded, Libyan authorities have until recently not been attempting to undertake a more systematic registration of irregular migrants, thus depriving themselves of an important migration management tool.

Early in 2014, IOM began rolling out a programme assisting the MoI in registering migrants in six immigration detention centres. It is planned to eventually extend the programme to more detention centres.

3.2.2 ACCESS TO EMPLOYMENT FOR DETAINED MIGRANTS

As mentioned, in Libya, all migrants considered to be irregular – which include asylum-seekers and even refugees who do not have a legal status – may be subject to immigration detention.

The policy of Libyan authorities with regard to employment of irregular migrants and asylum-seekers in immigration detention has been to allow them to work if an employer willing to hire them can be found. Contacts between detained migrants and potential employers are facilitated by Libyan authorities.

²¹ Examples are the Libyan Society for First Aid and Response; the Libyan Red Crescent; the Libyan Initiative for Peace and the governmental organization, Libyan Humanitarian Relief Agency (LibAid).

Once a work permit has been issued, the migrant would be able to regularize his/her immigration status and, hence, leave the detention centre. Whether or not this actually happens depends on the willingness of the employer to take the steps and undertake the commitments required to this effect, which – experience has shown – is often not the case. Indeed, many employers have chosen to employ migrants in detention informally (i.e. illegally).

One reason for this situation would appear to be the limited role of the Libyan authorities, including, in particular, the MoL and its Employment Offices and the MoI, in the process of finding employment for and subsequently regularizing migrants. This includes conformity with Libyan laws and regulations of the action taken by employers.

Thus, consideration might be given to strengthening the role of Libyan authorities in regularizing the situation of migrants in detention by facilitating their access to employment and monitoring respect for their rights in accordance with Libyan legal norms and administrative practice.

3.2.3 REGULARIZATION OF IRREGULAR MIGRANTS

As mentioned, the majority of migrants currently in Libya have entered the country or are staying there irregularly, in spite of considerable efforts of Libyan authorities to prevent and combat irregular immigration.

Because Libya is unable to satisfy its demand for labour through the national labour force, the question arises whether it would be desirable to assist in meeting the country's demand for foreign labour by regularizing the status of irregular migrants already in the country.

Libya has, on a number of occasions in the past, carried out exercises aimed at regularizing irregular migrants; for example in 2007 and 2009,²² and, more recently, in 2013²³ and in May to August 2014.

Various forms of regularization exercises have been used in the past by a number of countries around the world as a basis for providing irregular migrants with a legal immigration status.

Arguments in favour of regularization suggest such programmes contribute to creating a “clean slate” for future law enforcement, and reduce irregular immigration and, accordingly, corruption, criminality and abuse of the situation of irregular migrants. Regularization can also improve labour standards and reduce the high costs involved in combating irregular migration, both in terms of financial costs and the human rights abuses that can occur through attempts

²² See ICMPD report, pp. 131–133.

²³ According to a staff in the MoL.

to reduce irregular migration. Experience has shown it is very difficult, if not impossible, to stop or substantially curtail such abuse.²⁴

Arguments against regularization have included that such action may attract yet greater numbers of irregular migrants, who may believe that if they can avoid detection they will, in due course, benefit from regularization, allowing them to remain and perhaps to bring family members to join them.

More detailed consideration to regularization is set out in Chapter 4.

3.2.4 TRAFFICKING

The absence of a definition of and provisions criminalizing human trafficking deprives Libyan authorities of another important tool for combating irregular migration.

3.3 CROSS-CUTTING ISSUES

3.3.1 LIBYAN NATIONAL LEGAL FRAMEWORK RELATING TO IMMIGRATION

A serious challenge for the Libyan administration, including the authorities with responsibilities for migration management, is caused by the lack of clarity as to which laws and other legal norms adopted before the 2011 conflict are still in force.

Other difficulties are caused by the absence of regulation in certain areas and the lack of clarity of some existing norms, or contradictions between them.

Yet another difficulty is due to the incompatibility of some Libyan national provisions with international law to which Libya has subscribed, including, in some instances, international human rights law, which, since Libya is a monist country, are directly applicable and thus do not require transformation into national law.

3.3.2 SET-UP AND CAPACITIES OF LIBYAN INSTITUTIONS WITH RESPONSIBILITIES FOR MIGRATION MANAGEMENT

One of the legacies of the previous Libyan regime is a fragmented and underdeveloped administration with unclear structures and reporting lines. This includes the administration responsible for migration management, whose institutional set-up and capacities are clearly inadequate to respond to the

²⁴ Partly inspired from *Migration Policy Institute* paper "Why countries continue to consider regularization", by Amanda Levinson, 1 September 2005. Available from <http://www.migrationpolicy.org/article/why-countries-continue-consider-regularization>.

serious challenges currently confronting the country. An added difficulty is caused by the involvement in migration management of non-State actors, some of whom are outside government control.

Whereas prevention and combat of irregular migration is, in principle, high on the agenda of the Libyan Government, only scant attention is paid to the issue of migration management and limited resources are allocated for this purpose. As a result, the Libyan authorities with responsibilities for migration management suffer from under-development of their infrastructure and equipment, inadequate staffing, weak management structures, malfunctioning internal and external coordination and cooperation processes and lack of an adequate knowledge base and systems for collection of data and other information required for proper performance of their duties.

These problems should be seen against the background of Libya's lack of a proper migration policy, strategy and action plan.

3.3.3 INTERNATIONAL COOPERATION

Legal migration

Between the 1990s and 2011, with a view to attracting foreign manpower and satisfying the requirements of the legislation in force, Libya concluded a number of labour agreements with neighbouring and other countries. These agreements provide that citizens of the contracting States are exempted from obtaining a visa.

Agreements have been reached with the following countries, among others, for workers in the following areas of expertise:

- Morocco, for domestic workers and workers in the tourism sector;
- Tunisia and Egypt, for construction, transport, catering and retail sales;
- Chad, Niger and Sudan for agriculture manpower;
- Bangladesh and the Philippines, for construction and oil; and
- Philippines and Ukraine, for paramedics.²⁵

It is not clear, however, to what extent these agreements have been implemented, or indeed whether they are still in force. Currently, it would appear that Libya's intake of labour migrants takes place on an ad hoc basis, rather than according to the stipulations of bilateral agreements.

²⁵ The list stems from the IBM report. See also the bilateral labour agreements listed in the *Migration Policy Centre: Migration Profile for Libya*, June 2013, available from http://www.migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf.

Currently, Libya is a participant in the following multilateral migration dialogue processes:

- Euro-African Migration and Development Process (Rabat Process);
- Africa-EU Partnership on Migration, Mobility and Employment;
- 5+5 Dialogue on Migration in the Western Mediterranean;
- Mediterranean Transit Migration Dialogue (MTM), and within the MTM: Strengthening African and Middle Eastern Diaspora Policy through South-South Exchange (AMEDIP); and
- EUROMED Migration III.

Also, Libya played a fundamental role in establishing the Community of Sahel-Saharan States (CEN-SAD), which has been reactivated and has established its secretariat in Tripoli. According to its founding treaty, as revised in 2013, the key fields of CEN-SAD actions are regional security and sustainable development, and the organization's most recent strategy includes the issue of migration.

With a view, in particular, to reducing irregular migration, CEN-SAD is currently looking into the development of border areas. The organization is also planning activities relating to migration of women, which constitute the majority of migrants, for example, from Ethiopia. It foresees holding regular ministerial meetings on migration issues and, more generally, aims at contributing to improving migration management between neighbouring countries. CEN-SAD also has a project on illegal migration and border security, including biometric registration.

Irregular migration

Libya's current bilateral cooperation relating to irregular migration is mainly with neighbouring countries, namely, Algeria, Chad, Egypt, Niger, Sudan and Tunisia.

According to the IBM mission report, the following security cooperation agreements were signed by Libya between February and April in 2012:

- 28 February 2012: tripartite agreement with Chad and Sudan on border security, joint monitoring and surveillance (under the Ministry of Defence);
- 28 March 2012: bipartite agreement with Algeria (under the MoI);
- 30 March 2012: bipartite agreement with Tunisia (under the MoI);
- 16 April 2012: bipartite agreement with Algeria on common security

issues and issues related to neighbourhood and coastline (as well as ensuring continued coordination between both countries when dealing with international organizations).

The IBM mission had tried but could not obtain any written documentation on these agreements.

It is not known whether the tripartite agreement with Chad and Sudan contains provisions relating to illegal immigration or readmission. It must be assumed, however, that it does include some such provisions.

Whereas the agreement between Algeria and Libya likely includes issues relating to illegal immigration, it is not clear whether the agreement with Tunisia does as well – although, again, this must be assumed.

Reportedly, in what appears to be partly a response to the number of Egyptians who entered Libya illegally in 2013, a military cooperation agreement was concluded with Egypt in early 2013, which included cooperation on fighting illegal immigration.²⁶

Libya is also cooperating to combat irregular migration and improve border control with a number of European countries, including in particular Malta and Italy. This includes cooperation regarding search rescue operations, including the provision of logistical and technical support to Libyan Coast Guard. The implementation of arrangements with Malta and Italy regarding readmission by Libya of migrants who transited the country prior to their arrival in Europe is currently suspended.

In its report, the IBM mission pointed out that despite the existence of bilateral agreements on border issues there seems to be little systematic and structured cooperation between Libya and other countries, especially its direct neighbours, and when there is, this cooperation varies from one partner country to another, especially at land borders.

A case in point is what seems to be the current absence of readmission agreements with sending countries and, therefore, of standardized procedures and criteria for return of irregular migrants to neighbouring countries, whether citizens of those countries or third-country nationals.

The lack of a regular dialogue on migration issues with Libya's southern neighbouring sending countries has also been pointed out on a number of occasions, including by representatives of those countries. In particular, the desire has been expressed to establish such a dialogue between Libya and its three southern neighbours – Chad, Niger and Sudan.

²⁶ Information from <http://www.dailynewsegypt.com/2013/04/28/mfa-over-4000-egyptians-entered-libya-illegally-this-year/>.

3.3.4 CAPACITIES OF NON-GOVERNMENTAL ORGANIZATIONS AND CIVIL SOCIETY ORGANIZATIONS

As previously mentioned, a number of Libyan NGOs and civil society organizations have taken an interest in issues relating to migrants, asylum-seekers and refugees, and have been involved in lobbying activities in favour of these groups. Such activities have included work on an asylum law.

The interest and activities of Libyan civil society organizations in this area appear to be based on a particular organization's empathy towards the people that they have seen coming to their country for a number of years rather than on an internationally accepted understanding of migration, mixed flows, migrants' rights, and a desire to see Libya apply international standards. As a result, albeit well intentioned, their efforts tend to address the immediate needs of migrants and asylum-seekers but do little to influence Libya's broader adherence to international standards about migrants' rights and, more generally, an internationally accepted understanding of migration, its benefits and drawbacks.

4. PROPOSALS FOR PRIORITY POLICY DEVELOPMENT

As has been described, irregular immigration to Libya currently exceeds by far legal immigration. A number of reasons explaining this phenomenon have been pointed out, such as the following:

- The absence of a formal migration policy instrument and a strategy for its implementation;
- The lack of clarity of the applicable migration rules that do exist, including which rules adopted prior to the 2011 conflict are still in force;
- The limited knowledge of many officials of the applicable legislation, regulations and administrative practice;
- The strong focus of Libyan authorities on prevention and combat of irregular migration rather than on management of legal migration;
- The unduly strong role of employers in management of legal migration;
- The complexity of procedures and requirements for entry and stay – including documentation – of legal labour migrants, and delays in securing visas for entry;
- The limited capacities of the authorities tasked with management of legal migration;
- The absence of a formal system for legal entry and stay of persons in need of international protection; and
- Limited cooperation and coordination with migrants' countries of origin.

Clearly, strengthening of the Libyan migration management system which will be required in order to achieve necessary changes will be time-consuming in a number of instances – in particular if involving revision of legislation. In other instances, however, remedial action could be taken in the short to medium term.

The ultimate objective of the proposals for priority policy development made in this study is to assist the Libyan Government in securing policy improvements – including, in particular, by identifying means of remedying the weaknesses set out in the bulleted list at the beginning of this chapter – thus increasing its ability to control and steer immigration in accordance with pre-established desired goals.

Achieving this aim requires a balanced approach that, on the one hand, renders irregular immigration less attractive while, on the other hand, increases the attraction of legal immigration, be it in the eyes of migrants, employers or Libyan authorities.

In Chapter 2, a number of challenges faced by Libyan authorities responsible for migration management, which require development of policy responses, were identified. In this chapter, some options for responses that Libya may wish to adopt are suggested.

In Section 1 of this chapter, options for responses to challenges, which should and could be addressed in the short or medium term, are outlined, while Section 2 considers responses to challenges which require more time to be developed.

The proposals in this study focus as much on enhancing the management of legal migration as on the combat of irregular migration. They are therefore somewhat different from the approach to migration management by the Government of Libya and that of the international community in recent years. Indeed, the latter has focused mainly on the security aspects of immigration issues, including border control and combat of illegal immigration, with little attention being given to issues relating to legal migration. The focus in Libya has overwhelmingly been on prevention and combat of Mediterranean transit migration from Libya.

As the study includes proposals for policy on legal and irregular migration, it is of critical importance that any follow-up on policy development by the Libyan Government should involve all relevant government agencies. These are, first of all, the MoI and the MoL as well as the Ministry of Justice, the Ministry of Defence and the Ministry of Foreign Affairs. However, other ministries must also be involved since they have responsibilities relating to migrants. These include the Ministry of Health, the Ministry of Education, the Ministry of Social Affairs, the Ministry of Finance, the Ministry of Economy, the Ministry of Local Government and the Ministry of Planning. It would be desirable for the Prime Minister's Office to preside over whatever forum would be developing policy in this area.

In this connection, it should be mentioned that, by Decree issued by the Prime Minister's Office, the Government of Libya, with support from IOM, has established the Legislation/Policy Task Force (L/PTF) to review the existing migration policy and identify the gaps and mismatch with the international norms and best practices. The L/PTF launched its activities and meetings in March 2014, with clear objective and agenda for each meeting presented during an interministerial workshop organized in November 2013. The first draft of the policy was prepared by the L/PTF in eight meetings between March and May in 2014. Another six meetings will aim to review the draft policy developed by the L/PTF and prepare recommendations regarding the revision of relevant legislation which may be required.

4.1 SHORT- AND MEDIUM-TERM OPTIONS

As explained previously, the main focus of this study is on short- and medium-term priorities for migration policy development, which Libya may wish to pursue.

4.1.1 LEGAL MIGRATION FOR WORK

As mentioned, the ultimate objective of the proposals for policy development made in this study is to reverse the current migration situation in Libya. This is currently characterized by the position of an overwhelming majority of irregular migrants, whether from irregular entry or stay, eventually leading to improvement in the treatment of migrants and other migration-related challenges described in this report, which migrants in Libya and the country face.

In this section, some measures that would contribute to increasing the efficiency and effectiveness of the country's management of legal migration and reduce the attractiveness of irregular migration are explored.

Foreign recruitment: Role of employers versus authorities

In view of the situation described above, a useful step could be to strengthen the role of the MoL, including its Employment Offices, in the management of legal labour migration, by assuming the role currently played by employers.

The aim of this change in roles would be:

- to provide a better match of Libyan demand for foreign labour with the availability of workers from outside Libya, based on proper assessments of the Libyan labour market and the need for foreign labour;
- to step up government oversight regarding employment of foreigners, with a view to reducing illegal employment, improving working conditions and reducing abuse of foreign workers; and
- to include more unskilled migrants in the “official” system for labour migration.

Recognizing the various types of migration and managing them through specific schemes for seasonal, temporary and circular migrants would contribute to a significant decrease in irregular migration in Libya and, as a consequence, reduce the smuggling of migrants.

Gaps/needs identified

Role of State authorities in Libya

As was made clear in Chapter 3, employers are playing a disproportionate role in the management of legal labour migration in Libya and the role of Libyan authorities in this regard should be strengthened.

Currently, it is frequently the employers who, through providers of labour in migrants' countries of origin,²⁷ bring migrants to Libya, while the role of Libyan authorities (i.e. the MoL and its Employment Offices) consists mainly of considering requests for work permits submitted by employers and, in this connection, determining that certain conditions (e.g. the job in question being one which foreigners are allowed to occupy) are fulfilled. Upon approval of the work permit, it is the task of the employer to undertake the paperwork required for the employee to be granted a stay permit and to guarantee respect for the employee's contractual rights and safety standards, among other things, with little oversight by the authorities. These obligations can involve employers in financial costs and in bureaucratic delays; as a result, they may opt to employ workers informally, thus exposing them to the risks inherent in illegal employment.

It follows that it is the employers who actually but not officially determine Libya's need for foreign labour, without any meaningful matching of the country's need for labour by State authorities.

Policy options

One way to remedy the situation described previously would be to increase the role and responsibilities of the MoL, in particular its Employment Offices, in the management of legal labour migration, and reduce those of the employers. To achieve this, the Employment Offices could be made responsible for officially receiving offers of foreign labour, for example, through their counterparts or through approved providers of labour (including employment agencies) in migrants' countries of origin. The Employment Offices would then undertake to match the offers received with Libyan demand, based on pre-established labour market assessments, and would share offers retained with Libyan employers and facilitate the recruitment process with employers. The Employment Offices could also be responsible for follow-up on job placements they have been involved in facilitating, to ensure that employers fulfil their obligations, including as regards providing employees with stay permits and ensuring respect for their other rights.

²⁷ These providers include employment and recruitment agencies and government authorities.

Achieving these results would require, inter alia:

- building the capacities of staff of the central MoL, Employment Offices and labour inspectors, including through training and increase in material resources;
- undertaking regular labour market assessments, including the need for foreign labour;
- creating a labour market information system;
- establishing communication systems between Employment Offices and with their counterparts (and any approved providers of labour) in migrants' countries of origin; and
- expanding cooperation between Libyan authorities and their counterparts in migrants' countries of origin.

It would be desirable to select a few among the 70 Employment Offices that currently exist in Libya to be in charge of the management of foreign offers. In this way, training of their staff, for example, in matching foreign labour offers with local demands, would also be facilitated.

More generally, consideration should be given to strengthening the capacities of the MoL, Employment Offices and labour inspectors, including by increasing their human and material resources and stepping up training and learning activities.

Libyan authorities may wish to consider establishing vocational training programmes, aimed at upgrading the skills of foreigners to match Libyan requirements. Further to development of skills (including language skills), these training measures could address Libyan sociocultural issues, business creation, employment systems, and the roles and responsibilities of employees and employers. Skills training aimed at preparing migrants for return could also be envisaged. Such training could take place in Libya, through the auspices of the Employment Offices and, provided these offices cooperate with their counterparts in migrants' countries of origin, also in those countries. Such vocational training conducted in Libya might usefully include also Libyan job-seekers.

Until recently there were no private employment agencies in Libya. Such a system was only established in March 2014 through Regulation No. 227.²⁸ This would be likely to reduce the number of informal private promoters of employment in the country, thus increasing the protection of migrants against exploitation and

²⁸ A suggestion to establish a licensing scheme for labour recruitment companies was made in the assessment of migrant labour skills in the agricultural sector, prepared for IOM by DIWAN for Market Research and Consultants Alliance LLC, January 2014, p. 7.

abuse, and providing greater assurance that workers will not enter or remain in breach of the immigration laws.

Hopefully, the increased role of Libyan authorities in management of labour migration will result in reducing the incentives for employers to hire illegally. This will depend on what specific deterrents are stopping employers from going through the existing system.

In order to establish what modifications could be made to reduce these to the greatest degree, it may be worthwhile to undertake a study to determine what these deterrents are.

Procedures and documentation relating to legal migration for work

Gaps/needs identified

Migrants, employers and employment agencies have expressed concern that procedures for legal migration to Libya and requirements for documentation are cumbersome.²⁹

This seems, in particular, to be the case in relation to seasonal migrants from neighbouring countries.

One example is the seasonal agricultural workers from Niger, most of whom come from areas bordering Libya. The only way for them to obtain passport and visa for Libya is through the Nigerien authorities responsible for issuing passports and the Libyan embassy in Niger, both of which are located in the capital city Niamey. This is situated far from the border, and as a result their inclination is to make use of irregular migration channels rather than seek to obtain work visas before migrating to Libya.

Policy options

With a view to facilitating legal migration, consideration might be given to creating possibilities for potential migrants to submit applications for visa not only in the capital city of the country of origin, but also at locations closer to the Libyan border from where migrants traditionally emigrate to Libya.

One option would be to establish Libyan consular offices in some such locations, which would receive and process visa applications. Alternatively, the role of local labour offices might be expanded to facilitate the application process. This would assist migrants in migrating legally to Libya and assist employers through the provision of the required labour.

²⁹ See, for example, the assessment of migrant labour skills in the agricultural sector, prepared for IOM by DIWAN for Market Research and Consultants Alliance LLC, January 2014.

The advantage of this option would be that it could be coupled with programmes for training prior to the departure of migrants who need to develop their skills to match requirements in Libya.

These consular offices should establish cooperation with a selected number of Employment Offices in key locations in Libya, which would, as suggested, specialize in labour immigration.

Cooperation between the selected Employment Offices in Libya and their counterparts in the neighbouring countries would include matching labour demand in Libya with labour supply in neighbouring countries, establishing possible training needs and developing training programmes, and determining to which extent training should be conducted in the country of origin prior to departure or upon arrival in Libya. It would also facilitate enquiries aimed at ensuring that prospective workers indeed have the necessary skills to undertake the work in which they are to be engaged. Linked to this, it would be desirable to create standardized training programmes for each of the main sectors in which migrants in Libya are employed.³⁰

Another measure that would contribute to facilitating legal migration to Libya is the creation of a website containing – in relevant languages – information about the procedures to be followed and the documents required in order to enter Libya legally.

In parallel, consideration might be given to reviewing the current procedures and documentary requirements relating to legal immigration to Libya, with a view to suggesting possible simplifications, including the possibility of other identification documents than passports sufficing for legal entry into Libya. This could be of particular importance for migrants from border areas, who might wish to make regular visits home and who could be facilitated in this respect by the use of border passes approved by Libyan authorities.

Seasonal, temporary and circular migration

Gaps/needs identified

As mentioned previously, a significant number of migrants from Libya's neighbouring countries – mainly Chad, Niger and Sudan – enter Libya irregularly through the southern borders in order to seek temporary work, for example, in agriculture, mostly on a seasonal basis.

One main reason for them choosing irregular channels is the complexity of the current legal immigration regime, which does not appear to include specific schemes for seasonal, temporary and circular migration.

³⁰ See also recommendations in the section on agricultural migrant workers' skills assessment.

Policy options

One possible simplification could be the facilitation of visa regulations for seasonal migrants,³¹ for example, by establishing seasonal migration programmes such as those existing in a number of other countries.³²

Consideration might also be given to establishing temporary migration programmes allowing migrants to stay and work in Libya during a limited period – for example one or two years – or circular migration programmes for migrants who return year after year to perform the same or similar work. The possibility of a border pass system could also be important in addressing this issue.

Such programmes may be related to specific sectors, for instance, agriculture, construction and tourism, which traditionally employ migrants on a temporary basis.

These programmes could be linked with training schemes, tailored to the needs of specific sectors.

³¹ The agricultural migrant workers' skills assessment suggests considering introducing a special visa for seasonal workers such as the H-2A visa in the United States. For details regarding the H-2A visa, see: A. Bruno, *Immigration of Temporary Lower-Skilled Workers: Current Policy and Related Issues* (Washington, D.C., Congressional Research Service, 2012); available from http://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1912&context=key_workplace.

³² Examples of seasonal migration programmes include the bilateral seasonal migration programmes between France, Morocco and Tunisia. Under these programmes, employers can request to recruit Polish, Moroccan and Tunisian seasonal workers only if national workers with the appropriate skills sets are unavailable. Employers must advertise the employment offer with the National Agency for Employment (Agence Nationale pour l'Emploi (ANPE)) or another similar agency. If no suitable candidate is found, the ANPE provides the employer with an attestation permitting the latter to request to recruit a foreign worker. The Departmental Directorate of Labour, Employment and Vocational Training (Direction Départementale du Travail, de l'Emploi et de la Formation Professionnelle (DDTEFP)) then determines the needed number and skills of migrant workers. The employer can also individually send a recruitment request to the French Office for Immigration and Integration (Office Français de l'Immigration et de l'Intégration (OFII)). The recruitment agency then identifies the proper candidates in partnership with the local OFII missions in each of the three countries and the representative agencies of the local Ministry of Labour in each of the sending countries. The duration of the seasonal contract cannot exceed six months per year, and must be a minimum of four months for Tunisian and Moroccan migrant workers. Contracts for particular jobs in agriculture can be made for eight months. The recruitment fees – from EUR 158 to EUR 473 depending on the duration of the contract – are paid by the employers to the OFII. Migrant workers recruited for this programme are not charged any fees. The local OFII missions arrange the travel, including visa procedures, purchase the airplane tickets, and schedule the mandatory medical check-up for Moroccan and Tunisian workers. Seasonal workers from Morocco and Tunisia must sign a document stating their commitment to return at the end of their contract, and must present themselves at the mission office upon their return. Foreign seasonal workers are entitled to the same employment conditions, the minimum remuneration and housing required by other employees. In case of violation, the DDTEFP can request an investigation. This information is from "Bilateral seasonal migration programmes between France and Tunisia, Morocco, and Poland", available from http://www.ilo.org/dyn/migpractice/migmain.showPractice?p_lang=en&p_practice_id=24.

Other examples of seasonal migration schemes for temporary migration are those that have existed for a number of years between Morocco and Spain. See: C. González Enríquez, "Temporary migration between Morocco and Spain (ARI)", *Elcano Royal Institute Analyses Series*, 2011 (111); available from <http://www.isn.ethz.ch/Digital-Library/Publications/Detail/?ots591=0c54e3b3-1e9c-be1e-2c24-a6a8c7060233&lng=en&id=143288>.

Training could be conducted in Libya as well as in migrants' countries of origin. Such training schemes would benefit Libya and the countries of origin, as returning migrants would have improved their skills, thus facilitating their reintegration.

International cooperation on labour migration

Gaps/needs identified

As mentioned, in the course of the two decades before the 2011 conflict, with a view to attracting foreign manpower satisfying the requirements of the legislation in force, Libya concluded a number of labour agreements with neighbouring and other countries of origin of migrants coming to the country.³³ Whereas it is not clear to what extent these agreements have been implemented or whether they are still in force, it would appear that currently Libya's intake of labour migrants mainly takes place on an ad hoc basis rather than through bilateral agreements.

Libya is, moreover, a participant in a number of multilateral migration dialogue and cooperation processes, such as the 5+5 Dialogue on Migration in the Western Mediterranean and the Rabat Process, which focus mainly on migration between Libya and Europe rather than on relations between Libya and the migrants' countries of origin.

For a major immigration country such as Libya, current international cooperation on migration does not appear to be adequate. This is the case with regard to bilateral and multilateral cooperation.

Policy options

In order to ensure that the inflow of migrants in Libya is driven by the country's need for foreign labour rather than by employers and migratory pressures, closer cooperation with countries of origin would seem desirable.

Such cooperation could take place in a number of ways, for example, as suggested, through arrangements in which Libyan Employment Offices would

³³ An overview of bilateral labour agreements can be found in *Migration for Employment: Bilateral Agreements at a Crossroads* (Paris, Organisation for Economic Co-operation and Development, 2004); available from http://books.google.at/books?id=gB_JHDfBgoC&pg=PA11&lpg=PA11&dq=labour+migration+agreements+libya&source=bl&ots=5wFNGmb6s3&sig=NfEwhxmMd2okvM-liNtRfGDK-nk&hl=en&sa=X&ei=NKQYU4rEEKj-U4QTM6YDoCw&ved=0CEMQ6AEwBTgK#v=onepage&q=labour%20migration%20agreements%20libya&f=false. See also: S. Bakrania, *Libya: Border Security and Regional Cooperation (Rapid Literature Review)* (Birmingham, United Kingdom, GSDRC, University of Birmingham, 2014), available from http://www.gsdrc.org/docs/open/GSDRC_Libya.pdf; and *Migration Policy Centre: Migration Profile for Libya* (June 2013), available from http://www.migrationpolicycentre.eu/docs/migration_profiles/Libya.pdf, where the following bilateral agreements, among others, are listed: agreements on agriculture manpower (1971) and circulation of persons and establishment (1988) with Niger; convention of establishment with Tunisia (1973); labour agreement with Morocco (1983); convention in the field of work and the use of human resources with Algeria (1987); labour agreement with Jordan (1998); convention for cooperation in the field of employment with Ukraine (2004); and Libya–Yemen agreement (2013) to form a joint committee to develop procedures for the exchange of labour.

cooperate with their counterparts in the migrants' countries of origin on matching Libya's demand for labour with foreign supply. Such an arrangement might, as mentioned, include skills training schemes for migrants in Libya and in migrants' countries of origin.

Another way of strengthening cooperation between Libya and migrants' countries of origin, which has been suggested in the course of this project, is to involve those countries' consular services in Libya in facilitating Libyan employers' search for foreign labour.

The need for strengthening cooperation with Libya's southern neighbours, namely, Chad, Niger and Sudan, from where a significant number of migrants come, is believed to be particularly acute and has been pointed out on a number of occasions, including by representatives of those countries. Strengthening cooperation with Libya's southern neighbours could most appropriately be done by creating a multilateral forum that would include those countries. Other countries could be invited to attend, on a regular or ad hoc basis, as observers or as permanent participants.

Another possibility might be for such cooperation to take place within the framework of the CEN-SAD.³⁴

More generally, it would be desirable to manage labour migration in Libya within the framework of bilateral labour agreements with sending countries, rather than through ad hoc and case-by-case approaches.

The use of labour agreements would increase the Libyan Government's control over the intake of labour migrants and, thus, reduce that of other stakeholders, including employers and the migrants themselves. It would also contribute to increasing legal migration and to reducing irregular movements. Moreover, it would increase security and predictability for the migrants, as their rights and obligations would be stipulated in the agreement, the implementation of which would be overseen by the authorities. This would be likely to increase migrants' interest in using legal immigration channels.

Prior to increasing the use of bilateral agreements for labour migration, there might be merit in reviewing similar agreements concluded in the past, with a view to determining whether they respond to current needs and could be of use if modified, or whether they would need to be replaced or supplemented by new agreements.

The report "Integrated Border Management Needs Assessment for Libya" (referred to in this publication as the IBM report), prepared in 2012 following a mission to the country by a team of EU experts, pointed out that, in spite

³⁴ For more details on this possibility, see the section on cooperation with other countries on irregular migration in the chapter on irregular migration.

of the existence of bilateral agreements on border issues, there seems to be little systematic and structured cooperation between Libya and other countries, especially its direct neighbours, and when there is, it varies from one to another, especially at land borders.

Libyan authorities have, moreover, stressed the need to harmonize Libyan immigration legislation with that of neighbouring North African countries.

4.1.2 IRREGULAR MIGRATION

In the section relating to regular migration for work, some examples have been suggested of measures that would enhance Libya's handling of regular migration while at the same time increasing the attractiveness of regular rather than irregular migration channels.

In this section, some measures that would contribute to increasing the efficiency and effectiveness of the country's management of irregular migration and that would, in turn, decrease the attractiveness of irregular versus regular migration channels are explored.

Arrest, expulsion, deportation, detention, return and readmission of irregular migrants

Legislation

According to the IBM report, there is a commonly shared opinion among Libyan officials on the applicability of the following immigration-relevant legislation adopted prior to the 2011 conflict:

- Law 6/1987 on entry, residence and exit of foreigners (as amended by Law 2/2004);
- Regulation 125/2005, implementing the procedures of Law 6/1987 (repealing Ordinances 247/1987 and 49/1990);
- Law 24/ 2010 on Libyan nationality (repealing Law 17/1954 and Law 18/1980);
- Law 19/2010 on illegal migration; and
- Labour Relations Act, Act No. 12 of 2010 (the Labor Law).

Law 6/1987 (Concerning the Regulation of Aliens Entry, Residence and Exit in Libya), states in Article 17 that: “An alien shall be deported in the following cases:

- If he enters the country without a proper visa;
- If he refuses to leave the country despite expiry of his authorized residence period and the competent authorities refuse renewal thereof;
- If the residence visa granted to him is revoked for any reasons as specified in Article 16 of this Law;
- If a judicial decision is issued for his deportation.”

Article 9 of Regulation 125/2005 provides that if the date and place of departure are not specified in the deportation decision, the foreign national is given a deadline of no more than 15 days, by which he/she must leave the country.

Deportation shall be subject to a substantiated decision by the MoI. However, no administrative instructions or guidelines setting out the procedure regarding deportation of aliens seem to exist in Libya and, as mentioned in the section on administrative practice, in practice formal decisions are the exception rather than the rule.

According to Article 18 of Law 6/1987, a foreign national may be detained pending deportation, “until his departure,”³⁵ a possibility that is frequently applied. The duration of detention period depends upon whether or not a migrant’s country of origin has diplomatic representation in Libya and, if it does, whether it is willing and able to cooperate in identifying its nationals and facilitating their return, as well as on whether the situation in the country of origin allows for deporting detainees without risks to their lives or integrity.³⁶ The length of detention is, therefore, theoretically indefinite, and in practice detention periods range from a few weeks to indefinite.

In the legal framework put in place by Law 6/1987, the MoI is responsible for evaluating and deciding on whether to impose measures for limitation of personal freedom in the period preceding deportation, such as to place the migrant in detention pending deportation. No supervision of immigration detention by a judicial authority seems to be foreseen by Libyan law.

No rules relating to conditions in detention centres are known to exist in Libya, apart from a general provision in Article 10 of Law 19/2010, according to which

³⁵ The law does not say under which circumstances detention is allowed and the English translation of this provision differs from the French: “A foreigner, who is to be deported can be asked to report to the authorities or imprisoned until his departure.” “Le Directeur General des passeports et de nationalité peut sursoir a l’expulsion de l’étranger ‘et l’assigner a un bureau de sécurité. La detention dure jusqu’à la date d’expulsion.” IOM might wish to improve the translation of Law 6/1987 and Law 19/2010, which it seems the Organization has prepared.

³⁶ See ICMPD report, p. 106.

irregular migrants are to be treated humanely with respect for their dignity and rights.

Although Article 18 of Law 6/1987 provides, as an alternative to detention, for the possibility of requiring a foreign national subject to deportation to report to the authorities, neither this possibility nor any other alternatives to immigration detention seems to be applied in Libya.

Whereas there is, in principle, a possibility to appeal administrative decisions to the courts, including decisions on expulsion and detention, in practice, due to lawyers' limited knowledge of applicable law, the inability of migrants to access legal advice and courts and because criminal courts have not yet resumed judicial activities throughout Libya, such appeals are rarely brought, and even if they are, they tend to be ineffective.

In 2006, through Decision 10/2006, Libya established a court and a prosecution office for irregular migration with the authority to rule on violations of Law 6/1987. However, according to Libyan officials to whom the Consultant spoke, the court has heard only a few cases to date and is currently not functional. Also not currently functional is a committee to monitor arrest, detention and expulsion of migrants, which was introduced by Decision 67/2004.

According to Law 19/2010, Article 1, foreign nationals who fail to comply with the requirements for entry and/or regularization of their stay are considered irregular migrants and accordingly subjected to relevant penalties, including fines, imprisonment and deportation.

Article 6 of Law 19/2010 on Illegal immigration (smuggling) introduced a punishment on irregular migrants smuggled into the territory of either a sentence of "confinement" or a fine that does not exceed 1,000 Libyan dinars. Punishments according to this provision can only be imposed by a court and prison sentences must be served in ordinary prisons.

According to the DCIM, in practice, irregular migrants are not brought before courts and this provision accordingly is not applied.

Human trafficking is neither defined nor criminalized at present. However, work on elaboration of legislation relating to trafficking, including penal sanctions – in the form of a draft law – is ongoing.³⁷

According to Article 2 of Law 19/2010, "bringing illegal migrants into the country or taking them out by any means" is considered an unlawful act, which, according to Article 4 of the same law, if intentional and committed in order "to obtain direct or indirect material or non-material benefits for himself or others," shall be penalized with not more than one year confinement and a fine of between 5,000 and 10,000 Libyan dinars.

³⁷ Interview with a Legal Consultant from the Ministry of Justice on 10 April 2014.

Administrative practice

When irregular migrants are apprehended, whether on the border, inside the country or on the high seas, they are moved to an immigration detention centre.

According to the MoI, the names, date of birth, sex and nationality, if known, of apprehended migrants and migrants in detention are recorded, but no systematic record, including, information on the place of origin, travel routes, reasons for leaving and other circumstances relating to illegal entry or stay, nor on educational or professional background of irregular migrants, is undertaken.

As mentioned, no alternative options to immigration detention (such as bail or temporary release) are known to be applied in Libya.

According to the DCIM, in practice, the majority of apprehensions are undertaken by the Coast Guard (some 50%), followed by the MoI (the Police) and the militia (some 25% each). According to the DCIM, in 2013, there were 12,960 apprehensions by the MoI, whereas the Coast Guard and the militia, combined, apprehended 24,921 irregular migrants. Of these, some 900 migrants were subsequently released, mainly for humanitarian reasons, while the remainder (36,514 persons) were deported.

Once the migrants have been brought to the detention centre, the process of expulsion/deportation, which must be authorized by the MoI, begins.

According to the DCIM, no formal expulsion/deportation decisions are taken by the MoI, and the return of the migrant is considered an assisted voluntary return, with the exception of persons suffering from communicable diseases and those carrying falsified documentation, who receive a stamp in their travel documents, indicating that they are to be expelled. Whereas persons suffering from communicable diseases and those carrying forged documents are served with an expulsion/deportation decision, they are not punished for illegal entry or stay as foreseen by the legislation and, accordingly, are also detained in immigration detention facilities rather than ordinary prisons.

According to the DCIM, in practice, apprehended migrants are not brought before the courts. Accordingly, the punishments for illegal entry or stay foreseen by Article 6 of Law 19/2010, and prison sentences are not applied to irregular migrants who are detained in immigration detention facilities rather than in ordinary prisons.

Once travel documents have been obtained, the migrants to be deported by road are handed over to a transportation company, which is responsible for bringing them to the south of Libya.

Decisions on expulsion/deportation and detention are not communicated in writing and no information on their rights is provided to migrants. There is also

no established system in place for them to contact lawyers, NGOs or international organizations.

The only record of removal kept by Libyan authorities is a list of persons to be returned, which is handed over to the transportation companies responsible for bringing them to the south of Libya. These companies are also responsible for providing food during the transportation. In the south of Libya, the migrants are handed over to another transportation company, which is responsible for taking them to the border and handing them over to the authorities on the other side. These companies receive payment once they produce proof of removal by way of a stamp from the authorities, certifying that the migrants have been handed over to them.

Persons who cannot be deported, either because their identities were not established immediately or because their (presumed) countries of origin do not accept them, usually remain in the detention centres.

One of the main obstacles faced by Libyan authorities in the forced return process is obtaining confirmation of the identities and/or nationalities/citizenships of undocumented migrants from countries of origin.

Criticism has frequently been made of conditions and treatment in detention facilities, which in some respects have been found by observers to violate human rights.³⁸

³⁸ According to some reports, the infrastructure of migrant detention facilities is particularly critical, with a number of those facilities offering substandard conditions. The latest of such reports, *Scapagoats of Fear: Rights of Refugees, Asylum-seekers and Migrants Abused in Libya*, was published by Amnesty International on 20 June 2013. Other Amnesty International reports that include chapters on immigration detention in Libya were released in December 2010, June 2012 and November 2012. See also: Fédération internationale des Ligues des Droits de l'Homme, « Libye en finir avec la traque des migrants ». The following are the main deficiencies in detention conditions highlighted by a number of observers:

- Infrastructure: Many authorities have been forced to utilize centres that were not designed to confine people and have, in some instances, been improvised to act in this capacity. The infrastructure in most detention centres in Libya is generally of low standard and at times in significant disrepair.
- Hygiene: The level of hygiene varies depending on the detention centre. In many detention centres, there are attempts by authorities to clean up accumulated garbage and scrub bathroom and cell floors and walls with disinfectant and cleaning products. Observers have witnessed, on numerous occasions, guards employing detained individuals to carry out this labour, most believed to be unpaid and working by force. Due to overcrowding in cells, coupled with the inadequacy and disrepair of the bathrooms, the level of hygiene in a number of centres falls short of established standards.
- Health care: In a number of centres, detainees have been found to suffer from various illnesses, including HIV, tuberculosis, hepatitis, dysentery, skin conditions and other diseases. The fact that those who suffer from illnesses are often placed in overcrowded cells together with healthy individuals, with little ventilation and limited access to sanitation tools, contributes to spreading those diseases in the centres. Other health issues relate to those who require surgery or emergency hospital treatment, including males with severe fractures which could lead to paralysis and females in advanced stages of pregnancy and early labour. In terms of access to healthcare, local public hospitals are sometimes reluctant to receive, in particular, sub-Saharan Africans with diseases. Psychological treatment is not provided to detainees in detention centres across Libya. There have been instances in certain detention centres of negligence and denial of medical care. Reportedly, on some occasions, medical treatment has not been provided to vulnerable cases.
- Women, unaccompanied migrant children and other vulnerable persons are regularly detained.

Upon creation in 2012 of the DCIM within the MoI, detention facilities, many of which were controlled by militias, are gradually coming under the control of the authorities. It is understood that 19 detention centres are currently under the DCIM control, of which a few are administered jointly with militias, and one of which is reserved for women.

The detention centres controlled by the MoI are headed by a Director, who reports to the DCIM.

As mentioned earlier in this report, according to the DCIM, at any given moment there are currently between 5,000 and 6,000 persons held in immigration detention facilities in Libya, with some centres accommodating more than 1,000 persons, whereas in others there are no more than a few dozen.

Detainees who manage to find employers willing to hire them may be released from the centre. In a number of instances, contacts between detainees and potential employers have been facilitated by detention centre staff.

Also, vulnerable asylum-seekers and refugees have occasionally been released, upon request by UNHCR.

A number of observers have drawn attention to deficiencies in Libya's deportation practice.³⁹

As mentioned earlier, for a number of years, assisted voluntary return programmes have existed in Libya as a humanitarian alternative to deportation. Under these programmes, implemented by IOM, irregular migrants wishing to return to their home countries (including those already detained) are assisted with travel costs, medical and other needs screening, finger printing, issue of travel documents, and departure, arrival, transit and limited reintegration assistance.

Gaps/needs identified

The following are examples of gaps/needs in Libya's rules and practices relating to expulsion, deportation, readmission and detention to be addressed in the short to medium term, including to ensure conformity with international standards:

Expulsion, deportation and readmission

- The wide criteria determining when a foreign national can be expelled, allowing little room for alternatives to deportation for migrants who committed minor immigration offences (see Law 6/1987, Article 17).

³⁹ IOM, for example, in March 2013, publicly expressed concern about the well-being of undocumented Chadian migrants deported to Chad in growing numbers. According to IOM: "Road convoys carrying Chadian migrants are increasingly arriving at the northern Chadian town of Faya and many of the migrants are in a dire physical and mental state. The majority have travelled for up to two weeks across the desert without enough food, water or protection from the burning sun during the day and freezing temperatures at night."

- Arguably, this is not a legislative gap, *but there is a need for published criteria, indicating when removal would not be appropriate, for example, when a person liable to be removed has close family ties in Libya, health reasons, or when there are other compelling compassionate reasons for allowing the individual to remain.*
- The exceptionally wide provisions according to which all foreign nationals who fail to comply with the requirements for entry and exit and/or regularization of their stay are considered irregular migrants and accordingly subjected to relevant penalties, including fines, imprisonment and deportation (see Law 19/2010, Article 6).⁴⁰ *Again, there is a need for published criteria, indicating when removal would not be appropriate, for example, when a person liable to be removed has close family ties in Libya, health reasons or when there are other compelling compassionate reasons for allowing the individual to remain.*
 - Insofar as these provisions allow for imprisonment of persons who have committed minor immigration violations, they not only lead to unnecessarily overburdening law enforcement mechanisms *but are also at odds with international standards and best practices.*⁴¹
 - The position of asylum-seekers differs fundamentally from that of other classes of migrants in irregular situation. *This element should be taken into account in determining any measures of punishment based on illegal presence or entry and asylum-seekers should, in principle, not be punished on those grounds.*⁴²
 - Under administrative practice, only persons who are suffering from communicable diseases or were carrying falsified documents receive a formal deportation decision. Others are considered voluntary returnees. *This administrative practice should be reviewed.*
 - There appears to be a lack of rules that authorize the Libyan administration to issue decisions *allowing foreigners subject to deportation to leave the country voluntarily within a defined time period, thus avoiding detention.*

⁴⁰ Mol officials have expressed frustration with the obligation to detain and deport all these categories of migrants. Clearly, if there was no such obligation, the dimension of the issue of deportation and detention of migrants would be entirely different.

⁴¹ See, for example: UN Working Group on Arbitrary Detention, A/HRC/7/4, paragraph 53: "In the view of the Working Group, criminalizing illegal entry into a country exceeds the legitimate interest of States to control and regulate illegal immigration and leads to unnecessary detention."

⁴² See Article 14 of the Universal Declaration of Human Rights, which grants all individuals the right to seek and enjoy asylum, and Article 31 of the 1951 Convention relating to the Status of Refugees, which exempts refugees from penalties for illegal presence or entry when "coming directly" from a territory where their life or freedom was threatened. There is consensus that Article 31 should not be applied restrictively. See also: Council of Europe, 2005 Twenty Guidelines on Forced Return, Guideline 9 (hereinafter referred to as Twenty Guidelines on Forced Return).

- There appears to be an absence of clear guidelines and training for implementing authorities on the applicable rules and administrative practices relating to deportation.
- There appears to be a lack of clarity on rules concerning the decision-making procedure for deportation of foreign nationals, for example, relating to the form of deportation decisions, notification of decisions, and remedies, including judicial appeal possibilities, and any right introduced to make administrative representations.⁴³ Whereas there is, as mentioned in the section on legislation, in principle, a possibility to appeal administrative decisions to courts, including decisions on deportation, for a number of reasons – including the absence of communication of such decisions to the migrants concerned, difficulties faced by migrants to access legal advice and courts, and the current limited functionality of the Libyan court system – that possibility is not effective. *This study suggests that this is due, at least in part, to the absence of clear written reasons for deportation and that an achievable first step may be to issue clear written justification for deportation.*
- Conditions surrounding expulsion and deportation, which, as mentioned earlier in the section on administrative practice, have been criticized by a number of observers, for example, because of inadequate physical conditions during transportation. *This study suggests that there is a case for developing regulations on such conditions that are in accordance with international standards, thus ensuring their proper implementation.*
- The inadequacy of cooperation arrangements with receiving countries in connection with return and readmission (including countries through which migrants transited on their way to Libya), for example, as regards obtaining their agreement prior to deportation. One reason for this may be the absence of a specialized travel document unit.

The lack of legislation guaranteeing that persons seeking or found to be in need of international protection are not, directly or indirectly, returned to countries where they may risk persecution or ill treatment *constitutes a violation not only of customary international law but also of a number of international treaties containing the principle of non-refoulement by which Libya is bound.*

- *The limited size of assisted voluntary return programmes, which are unable to respond to the potential demand for voluntary return.*
- *The insufficiency of reintegration elements in assisted voluntary return programmes, including, for example, assistance to returnees in obtaining*

⁴³ It is understood that Law 19/2010 is currently being reviewed with a view, inter alia, to adding the currently lacking provisions relating to its implementation, as well as the rules on migrants' rights (interview with Legal Consultant to the Ministry of Justice, 10 April 2014).

gainful employment, thus facilitating their sustainable professional and social reintegration and reducing incentives for remigration. This should also be a matter of concern for IOM, which implement these programmes.

- *The absence of specific trafficking-related legislation that criminalizes the offence and protects the rights of victims.*
- Difficulties regarding the identification of irregular migrants, many of whom are undocumented, create a serious obstacle to return (see also the point regarding the lack of a specialized travel document unit).
- *The absence of a system for registration of irregular migrants.*

Detention

- The possibility of indefinite detention of migrants, which violates international standards and is not in conformity with best practices on immigration detention, *also results in undue pressure being put on Libya's overburdened immigration detention system and facilities.*
- *Additional strain on the system is caused by the absence of provisions determining when detention may be ordered and when it ceases to be legal, resulting in wide discretionary powers being granted to the authorities responsible for ordering detention.* Thus, for example, the definition allows for asylum-seekers to be held in immigration detention, even if the Government has adopted a deportation ban for the group in question, which is currently the case for Eritreans, Somalis and Sudanese, while it is well established that, as a general rule, they should not be detained. Therefore, holding asylum-seekers, whose claims have not been determined and rejected, in closed detention centres together with other migrants, as well as exerting additional pressure on those centres by detaining persons who should not be removed, is also at odds with international standards and best practices.
- According to international standards accepted by Libya, foreign nationals who are deprived of their liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of their detention and order their release if the detention is not lawful. When they attend such proceedings, they shall have the assistance, if necessary without cost to them, of an interpreter, if they cannot understand or speak the language used.⁴⁴ However, as mentioned in the section on legislation, whereas administrative decisions, including decisions regarding immigration detention, may – according to Libyan law – be challenged, *the exercise of the right to challenge decisions on deportation is not effective.* The reasons for this include: the lack of

⁴⁴ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Article 16 (8).

communication of decisions on detention to the migrants concerned (the absence of written notification); the lack of an established set-up for NGOs, lawyers and intergovernmental organizations to provide legal counselling and assistance to migrants in detention facilities; and the limited functioning of the judiciary.

- It appears that *there is an absence of clear guidelines for implementing authorities on the applicable rules and administrative practices relating to criteria for immigration detention.*
- There is an *apparent absence in Libyan legislation of alternatives to immigration detention or, if such possibilities exist, they are rarely or never implemented.*
- The lack of an institutional set-up for NGOs and civil society organizations and intergovernmental organizations for provision of other forms of assistance, such as social counselling and medical assistance, in immigration detention facilities is also a deficiency. *This means that such assistance has to be provided by the already overstretched authorities responsible for immigration detention and thus many gaps in assistance exist.*
- *Inadequate standards for conditions in immigration detention facilities, including as regards physical structures, layout and equipment of the facilities, and material assistance and services provided to detained migrants.* Such conditions might be specified by the MoI in published format.
- The apparent absence of rules regulating conditions in immigration detention centres (including matters such as minimum space, recreation, access to lawyers and other advisers – such as NGOs, UNHCR and the International Committee of the Red Cross (ICRC) – family visits, separation of men and women, and special conditions for families and vulnerable groups). *Again, these might be specified by the MoI in published format.*
- The apparent absence of rules relating to treatment of migrants in immigration detention facilities, including standard operating procedures and house rules for the facilities. *Once more, these might be specified by the MoI in published format.*
- Decisions on detention should be made by an administrative authority without any involvement or oversight by the judiciary.
- More generally, immigration legislation needs to be harmonized with international and regional human rights and refugee law and, once Libyan legislation on asylum has been adopted, with that legislation.

Clearly, filling gaps that require revision of legislation, or the adoption of new legislation, which requires involvement of the Parliament, can only be achieved in the longer term.

In the short term, however, a number of gaps could be filled by issuance of administrative instructions, guidelines or the like, which do not require parliamentary approval.

Perhaps, even more serious general problems are caused by:

- *insufficient knowledge of many Libyan officials with responsibilities for migration issues of applicable national law and relevant international – including human rights – norms, standards and best practices;*
- *the current limited functionality of the judiciary;*
- *doubts as to which norms adopted prior to 2011 are currently applicable; and*
- *contradictions between different national provisions.*

Regularization

In the article “Regularising Zimbabwean migration to South Africa”, the case was made for South Africa to adopt a scheme for regularization of Zimbabwean migrants in South Africa.⁴⁵

Many of the considerations that led the authors of the article to conclude that South Africa should regularize migration of Zimbabweans are believed to apply to Libya. These include the following:

- It is likely that the push and the pull factors underlying the irregular movement of migrants to Libya will continue to exist in the foreseeable future and that it will not be possible to stop or substantially curtail this movement without very high financial costs and rights abuses.
- The experience of a number of countries, including the United States, shows that even massive financial investment and draconian measures cannot significantly reduce migration volumes, and the current approach to migration in Libya, including widespread arrest, detention and deportation of migrants, has not addressed effectively the nature or scale of the movement. The result has been high levels of irregular migration and rights abuses, conveying a negative image of the country’s human rights record.

⁴⁵ See <http://www.cormsa.org.za/wp-content/uploads/MigrationPolicyBrief/Migration%20Policy%20Brief%201%20-%20Zim%20Special%20Permits.pdf>.

Therefore, the only policy options regarding migration to Libya are either continued large-scale irregular migration with limited State control, or regulated and legal migration with the ability to manage movements in the interests of the country.

The introduction of policies regularizing movement between Libya and key countries from which migrants come would arguably represent a positive shift towards a rational, coherent and regionally beneficial migration management approach.

The introduction of special temporary permits to manage complex mixed migration is increasingly observed internationally. Libya is likely to receive significant international recognition and support for adopting this policy, given widespread interest internationally in supporting regional stability and reconstruction.

Regularizing irregular movement might also help the Libyan Government achieve a number of other goals by facilitating efforts to combat corruption, protect labour standards and fight crime. Arguably, it could also reduce the number of people who claim to be bona fide asylum-seekers but are not actually in need of international protection. Similarly, it may reduce the likelihood that migrants will try to proceed beyond Libya to Europe because they are unable to obtain a stay and work permit in Libya.

Moreover, regularization might facilitate migrants' return home rather than provide incentives to remain in Libya, as critics at times argue. This is because people can return to their home countries for short periods to test the stability and economic opportunities of the country without fearing loss of their ability to earn livelihoods in Libya; migrants who feel threatened through deportation and a lack of legal options for movement are often more likely to stay in a foreign country, despite experiencing extreme hardships, since return without known livelihood alternatives is too risky. Alternately, as mentioned earlier, these migrants may seek to continue on to Europe seeing no option to return home or remain in Libya.

As has been the case in South Africa, regularizing migration might enable the State to measure the volumes and impacts of migration more accurately. Additionally, it may help to improve enforcement of labour standards for all by reducing the prevalence of what is essentially a "dual labour market" in which different work standards and wages exist for irregular migrants versus Libyans. Regularization might also increase the ability of migrants to contribute more productively to the Libyan economy by utilizing their skills in the formal labour market and through entrepreneurialism.

The lack of adequate options for legal entry and residence for migrants has led to costly and largely ineffective border control and policing efforts to enforce

immigration laws. Regularizing the stay of irregular migrants and creating agreements with neighbouring States could have positive impacts on security and law enforcement by:

- reducing the necessity to migrate through irregular channels and thus reducing exposure to physical danger associated with irregular migration – including assault and extortion by smugglers and natural hazards;
- reducing the significant expenditure incurred by the expulsion, deportation and detention system, which it seems has not been effective in reducing the number of irregular migrants in the country or in deterring new entries;
- reducing cross-border smuggling and the potential for corruption of border officials and police officers;
- enabling the Libyan security services to focus on crime fighting by reducing time and other resources spent on immigration policing, which does not impact crime levels;
- discouraging the fight against irregular immigration by non-State actors; and
- increasing public confidence in the ability of the State to maintain law and order.

Finally, regularizing irregular migrants would enable more targeted assistance to the most vulnerable migrants who require humanitarian support. The effective provision of humanitarian support by government, international organizations and civil society has been hampered to date by the irregular status of many migrants in Libya, which makes them less accessible to these actors. Protecting the most vulnerable also protects the general population from undesirable social effects of migration such as communicable diseases.

Policy options

Based on the aforementioned considerations, Libyan authorities may wish, in the short to medium term, to review the country's policies on deportation and detention of irregular migrants as follows:

Expulsion, deportation and readmission

- As mentioned, a wide range of migrants are, according to Libyan rules, considered illegal in the country and accordingly are subject to deportation. This, in turn, results in considerable pressure on deportation mechanisms and responsible authorities. It may be appropriate to review

the legislation, with the aim of reducing the number of immigration violations which are considered cause for deportation.

Other measures, such as the obligation to leave the country without formal deportation action, could be prescribed in lieu of deportation in case of less serious violations.

Pending a review of the legislation, a change in administrative practice might be encouraged with a view to:

- making more frequent use of alternative sanctions to deportation; this would also contribute to relieving pressures on deportation mechanisms and responsible authorities;
 - allowing administrative, as opposed to judicial action, to be taken in the case of some immigration violations; and
 - speeding up the documentation process when a person detained does not hold a valid travel document.
- Even more importantly, there is a need to revise the rules according to which all migrants who fail to comply with the requirements for entry or stay may be subject to a prison sentence. In this connection, it is gratifying to note that, partly because of the current malfunctioning of the judiciary, these rules are currently not applied in practice, even in response to more serious violations.

It may also be appropriate to provide that deportation action should not be implemented if there are compelling compassionate reasons not to do so; for example, the legal presence in Libya of close family, health reasons or other compelling compassionate circumstances that would make deportation undesirable.

- Another practice that puts unnecessary pressure on deportation mechanisms and the responsible authorities and, therefore, may require revision is that of initiating deportation procedures against persons who, due to the situation in their countries of origin, cannot be deported without risk to their lives or serious human rights violations. Changing this practice may require revision of the underlying rules so as to exclude the issuance of deportation decisions in such cases.

Revision of the current rules should also be considered to the effect that deportation procedures should not be initiated against asylum-seekers, unless their claims to asylum have been considered and rejected on the grounds that they are not in need of international protection. It follows that if an asylum-seeker's claims have been properly considered but deemed to be unjustified, he/she would not be considered to be in need

- of protection, and in the absence of other reasons for the exercise of discretion in the person's favour, should be removed if in the country unlawfully.
- It should, moreover, be considered how best to ensure that the competent authorities issue formal decisions on deportation.
 - In parallel, it would be desirable to clarify, by way of administrative instructions and guidelines, the rules currently in force and the administrative practice to be applied by the implementing authorities. Unless there are grounds for deciding otherwise, administrative instructions of this type should be published.
 - Further to clarifying the roles of the respective institutions and entities involved in apprehension and deportation of migrants, clarification of the rules relating to the decision-making procedure regarding deportation of foreign nationals is required, for example, as regards the obligation to issue formal decisions on expulsion, the form of such decisions, and notification of decisions and remedies, including possibilities of submitting appeals to courts, and of making administrative representations against removal.⁴⁶ In advance of any change in the legislation, details of this sort should be set down in a published document, produced administratively.⁴⁷
 - With a view to strengthening the possibility for migrants to challenge decisions on deportation, further ensuring such decisions are properly communicated and that migrants are informed about available remedies, consideration should be given as to how best to involve NGOs, civil society organizations, lawyers and intergovernmental organizations in counselling and assisting migrants.
 - It may also be of interest to review the role of the judiciary in deportation cases, including considering the possibility of assigning such cases to specialized judges, reviving the currently dormant court and prosecution office for irregular migration established by Decision 10/2010, or creating specialized immigration courts, such as those existing in some other countries.⁴⁸ Arrangements might be introduced, under which representations might be made administratively to a nominated body, within the MoI, by the person who is to be deported or someone acting on his/her behalf. Although falling short of a judicial review of the case, it would be possible to specify in an administrative document, which should be published, circumstances that might be taken into account,

⁴⁶ As mentioned, it is understood that work is currently ongoing with a view to supplementing Law 19/2010 with provisions relating to procedures for its implementation.

⁴⁷ Recommendations regarding the deportation procedure and related provisions in Law 19/2010 have been made in connection with the Policy Task Force established with the framework of the START ("Stabilizing at-risk communities and enhancing migration management to enable smooth transitions in Egypt, Tunisia and Libya") programme.

⁴⁸ Specialized Migration Courts exist, for example, in Sweden.

in considering whether deportation should be effected, for example, the existence of close family members in Libya, health reasons or other compelling compassionate circumstances.

- Pending adoption of legislation prohibiting the direct or indirect return of persons in need of international protection to countries where they risk being exposed to persecution or ill treatment or serious human rights abuses, consideration might be given to the issue of administrative instructions to this effect.

Moreover, the specific rights of asylum-seekers and refugees should be reflected in other pieces of legislation, for example, the legislation relating to non-nationals, including legislation relating to expulsion and detention of those illegally present, which currently amalgamates asylum-seekers and refugees with irregular immigrants.

- With a view to better organizing the deportation of irregular migrants, it would be appropriate to consider how to improve cooperation on return and readmission with receiving countries, including countries through which migrants transited on their way to Libya. This may, in part, be due to staff not having specialized knowledge regarding travel documents. With this in mind, consideration might again be given to establishing a specialized travel document unit, for which staff would be trained in issues relating to the establishment of identity and nationality or citizenship, and would build up close relations with the consular authorities of foreign nationals.
- Preferably, forced return should be carried out on the basis of readmission agreements, which should be negotiated with key receiving countries.

Such agreements should include the following elements:

- Readmission of own nationals and of third-country nationals and Stateless persons, and readmission of those in transit;
- Time limits for reply to a request by a contracting party;
- Data protection; a prohibition against return of persons to countries where they would risk persecution or ill treatment;
- Means of identifying persons to be readmitted, including cooperation agreements on the issue of travel documents;
- Designation of authorities responsible for reception of return migrants.

Return and readmission could be one of the topics included in the deliberations of the forum for cooperation and dialogue between Libya and its three southern neighbouring countries, namely, Chad, Niger and Sudan, which might usefully be created.

- The use of readmission agreements as a basis for return would also contribute to improving conditions of migrants being returned, in particular if they include rules requiring that migrants be handed over to authorities of receiving countries.⁴⁹ With a view to further improving those conditions, it may be considered appropriate to develop policies, followed by rules regarding practical arrangements and conditions of migrants in connection with return, including, for example, as regards transportation and provision of food during return travel.
- With the aim of facilitating the social and professional reintegration of persons returned in the framework of assisted voluntary return programmes and, thus, reducing incentives for remigration, it may be considered appropriate to enhance these programmes by strengthening the element of financial and in-kind reintegration assistance, funding of viable revenue-generating projects – such as the establishment of microenterprises – vocational training, job placement schemes, housing or other measures that would contribute towards their sustainable reintegration. This would also increase the incentive for illegal migrants to come forward, for inclusion in assisted voluntary return programmes.

These topics could be included in the deliberations of the forum for cooperation and dialogue between Libya and its three southern neighbouring countries, namely, Chad, Niger and Sudan, if and when established.

With a view to creating credible alternatives to forcible return, international funding for such programmes should be included in discussions with bilateral and multilateral donors, including the EU.

- Defining the notion and sanctions for trafficking in human beings would be an important step to support the Libyan authorities' efforts to combat irregular migration.⁵⁰
- With the aim of facilitating the identification of irregular migrants and, thus, their return, it is suggested to continue to enlarge current efforts to register migrants in detention.

⁴⁹ The purpose of raising this issue would be to develop policies, followed by rules, which would reduce some of the current deportation practices that have, in some instances, involved undue hardship for migrants.

⁵⁰ According to the Ministry of Justice Legal Consultant, draft legislation on trafficking in persons is currently being prepared.

- Other issues likely to increase administrative efficiency and effectiveness on detention and removal process, and which might thus merit consideration, are as follows:
 - The need for appropriate exchanges of information on policy and operational issues;
 - The possibility of a training needs assessment and of a joint training for various agencies involved in the apprehension of irregular migrants and of visits by/to staff with similar responsibilities in other countries;
 - Preparation of new and updating of existing standard operating procedures;
 - Improved communication between senior officers and operational staff; and
 - Promulgation of details of trends that would be of value to operational staff.

Detention

- With a view to limiting the number of foreign nationals subject to immigration detention, consideration should be given to introducing a maximum detention period, through a revision of the legislation, or, until such a revision can be achieved, by way of administrative practice. The establishment of immigration detention time limits would bring Libya in conformity with international standards requiring that detention pending expulsion must be for as short a period as possible, as well as with the legislation of other countries.
- The objective should be to limit the very wide circumstances, which may, according to Libyan legislation, result in immigration detention and, at the same time, bring the country's detention practice in line with international standards and best practices. The suggested action should be to clarify the circumstances under which detention may be ordered, as well as those under which it is no longer permissible, and set these down in guidance to staff, which should be published.⁵¹
- According to international standards, a person may only be detained, with a view to ensuring that an expulsion order will be executed, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of detention in each individual case, the authorities of the host State have concluded that compliance with

⁵¹ One of the purposes of looking into the reasons which may lead to detention of non-nationals in Libya would be to seek to achieve that migrants who cannot be deported, including because in need of international protection, are not subject to detention. In this connection the issue of time limits should also be considered.

- the removal order cannot be ensured as effectively by resorting to non-custodial measures.⁵²
- Detention may be ordered, in particular:
 - when there is a risk of absconding;
 - when the migrant concerned avoids or hampers the preparation of return or the removal process; and⁵³
 - if the migrant is a security risk to himself/herself or others.
 - Detention pending removal is justified only for as long as removal arrangements are in progress. If such arrangements are not executed with due diligence, the detention will cease to be permissible.⁵⁴ When it appears that a reasonable prospect of removal, or legal or other conditions under which detention was permissible, no longer exists, detention ceases to be justified and the person concerned must be released immediately. Detention should be permissible only while removal is realistically foreseeable. It follows that if there is no travel document and the country to which removal is intended is known not to accept undocumented nationals, detention should cease as soon as it becomes apparent that no travel document is likely to be obtained.
 - The need to detain an individual must be reviewed at reasonable intervals of time. In the case of prolonged detention periods, such reviews should be subject to the supervision of a judicial authority.⁵⁵
 - As mentioned, the legal possibilities of applying alternatives to immigration detention such as bail or temporary release should be explored. With this in mind, the introduction of legal provisions for the grant of bail, with financial sureties being taken, a requirement to live at a certain address, and to report to a specified authority at specified intervals, would be one possible approach. This might be granted by a court or a senior official. Alternatively (or additionally), legal provision might be made for a less formal approach, which might allow “temporary release” from detention, again with a requirement to live at a certain address, and to report to a specified authority at specified intervals. This might be granted by an official, including one at a detention centre.
 - As also mentioned, as a general rule, asylum-seekers (in addition to children, victims of trafficking, victims of trauma, disabled persons, etc.) should not be detained. With a view to adhering to this principle, consideration should be given to accommodating this group in open

⁵² Guideline 6, Twenty Guidelines on Forced Return, based on Article 5 ECHR.

⁵³ See EU Return Directive, Article 15 (a) and (b).

⁵⁴ See Guideline 7, Twenty Guidelines on Forced Return; EU Return Directive, Article 15.1 in fine.

⁵⁵ Guideline 8, Twenty Guidelines on Forced Return.

reception centres, rather than holding them with other foreign nationals in closed detention centres. This would also contribute to reducing pressures on those centres.

- The same applies to other vulnerable groups, such as children, victims of trafficking, victims of trauma and disabled persons, who should, as a general rule, not be held in closed detention centres.
- The policy options for increasing the effectiveness of the possibility for migrants to challenge decisions on deportation suggested above are equally valid when it comes to strengthening the effectiveness of challenging decisions regarding immigration detention.

Thus, it is recommended that clear rules on the decision-making procedure regarding detention be established, including the form of detention decisions; the administrative levels at which detention decisions should be made; notification (in writing) of decisions; reviews of detention, including the levels at which these should be undertaken (incrementally higher the longer detention has lasted); and remedies, including possibilities of submitting appeals to the judiciary. Such rules should be published.

- With a view to improving conditions in immigration detention facilities, the following actions should be considered:
 - Establishment – or to the extent they exist – further development of rules regulating conditions in immigration detention centres (including matters such as minimum space, recreation, access to lawyers and other advisers – for example, NGOs, UNHCR and ICRC – family visits, separation of men and women, special conditions for families and vulnerable groups, if exceptionally held in detention centres).
 - Establishment – or to the extent they exist – further development of the technical standards to be applied to immigration detention facilities, structures and equipment.
 - On the basis of the standards established, determination of physical conditions and rehabilitation and equipment needs of existing detention facilities, for example, necessary structural changes of the buildings and modification of the layout and equipment needs.⁵⁶
 - Determination of future needs for immigration detention facilities, including their location, needs for establishing new centres, respectively closing existing centres that do not conform to the standards established (needs analysis).

⁵⁶ In this connection, the manner in which these needs should be assessed and current efforts to improve the centres (for example, through the ongoing project Prevention and Management of Irregular Migration Flows from Sahara Desert to the Mediterranean Sea (the Sahara Med project)) could be discussed.

- Establishment – or to the extent they exist – further development of rules relating to the treatment of migrants in immigration detention facilities, including standard operating procedures for staff and house rules for the facilities.
- Strengthening the role of intergovernmental organizations and NGOs and civil society in general in immigration detention centres, for example, in providing legal and social counselling, material assistance and health services and, thus relieving the burden of authorities in running immigration detention facilities, as well as strengthening the role of these actors in monitoring detention centres.
- Ensuring aliens in detention centres have the possibility of contacting their respective consular authorities.
- Determination of the role of staff in immigration detention facilities in processing of cases of migrants, investigation of violation of immigration rules and collection of information required for such investigation.

Access to employment for detained migrants

As indicated, in Libya, all irregular migrants – including asylum-seekers and refugees – may be subjected to detention. Also, as mentioned earlier, the policy of Libyan authorities with regard to employment of irregular migrants and asylum-seekers in detention centres has been to allow them to work if employers willing to hire them can be found. Once a work permit has been issued, migrants are allowed to leave the detention centres and, in principle, to regularize their immigration status.

Whether such regularization actually takes place, however, depends on the willingness of the employers to undertake the steps and commitments required to this effect and experience has shown that employers are often unwilling to do so, preferring to employ the migrants informally (i.e. irregularly).

It follows that one way to improve the conditions of detained migrants would be to assist them in obtaining employment and subsequently in regularizing their immigration status.

The difficulties in regularizing the status of detained migrants who have obtained gainful employment are largely related to the unwillingness of employers to take the steps required to this effect. It may be appropriate to strengthen the role of the competent Libyan authorities in this regard, thus reducing the role of employers in this process.

A logical way of doing this would be to strengthen the role of the MoL in this process, including in particular the Employment Offices, in ensuring employers

adhere to their obligation to take steps to regularize the migrants they employ. In this manner, the Employment Offices would contribute to ensuring migrants' rights are respected and abuses of their situation reduced.

At the same time, consideration should be given to strengthening the role of Employment Offices in matching requests for work by migrants in detention with labour market needs.

To this effect, the capacities of the Employment Offices would need to be enhanced more generally, including, for example, their capacity to assess labour market needs and the availability and capacity of Libyans to fill these needs.

Additional measures that could strengthen the efforts towards regularizing migrants in detention through employment include:

- the creation of job placement schemes; and
- the establishment of schemes for upgrading skills of migrants in detention.

If such additional measures were to be adopted, care should be taken not to create apprehension among Libyans. Accordingly, consideration should be given to allowing Libyans to benefit from similar schemes.

Access to employment for other irregular migrants

If job placement and skills upgrading schemes for migrants in detention were to be created, they could perhaps include also irregular migrants who are not in detention, although a perceived difficulty could be in persuading such individuals to come forward, if they fear detention and deportation.

If, meanwhile, strengthening of the role of Employment Offices in the management of migration described in the previous section has been achieved, they could also play a more important role in providing employment. However, as mentioned earlier, in order to achieve this, the capacities of the Employment Offices would need to be strengthened so as to allow them to perform this function.

Regularization⁵⁷

Based on Libya's previous experience with regularization of irregular migrants and views expressed by members of the current administration, regularization is seen as a viable option.

⁵⁷ The policy options described in this section are partly inspired by the considerations contained in the aforementioned article "Regularising Zimbabwean migration to South Africa".

Indeed, according to staff in the MoL, regularization of irregular migrants through employment is among the priorities of the Ministry.

Before making any announcements, Libyan Ministers had met with representatives of embassies and informed them officially of this possibility.

In the past, there have been a number of other regularization exercises for irregular migrants in Libya. For example, in 2007, through Decision 98/2007, citizens of countries with which Libya had concluded bilateral or regional labour agreements were given the possibility of entering the country for a total period of three months in order to seek employment and regularize their status. Those already working illegally in the country were allowed to regularize their status.

Moreover, in 2009, following a Government Decree of 1 January 2009, irregular migrants, regardless of their nationality, who had obtained an employment contract, were invited to regularize their status.⁵⁸

MoL staff also reported that on three occasions in 2013, the possibility of the Ministry facilitating regularization of irregular migrants had been announced. The announcements, which targeted the private and public sectors, had also encouraged employers to hire irregular workers. It is understood that these announcements resulted in the regularization of a significant number of irregular migrants.

If Libyan authorities indeed agree with the need for regularization of irregular migrants, the question arises as to what the most appropriate regularization exercise for the country would be under the current circumstances. Based on regularization exercises carried out in a number of other countries, in particular in Europe and the United States, and also in African countries, such as South Africa, one possibility would be to allow irregular migrant workers who are holders of work contracts to regulate their immigration status. Such an exercise would be in line with that carried out following the Government Decree of 1 January 2009.

The many migrants in Libya who work without having received a work contract would, however, not be included in this exercise. For this reason, it may be considered appropriate to include in the regularization all migrants currently residing in Libya whether or not they have a work contract, or those who resided there before a certain date, or even allow migrants who cannot establish residence or show they work a certain period to obtain a work contract.⁵⁹

Both of the above scenarios could involve limiting eligible candidates to nationals of one or more countries.

⁵⁸ See ICMPD report, p. 131.

⁵⁹ The latter would not be regularization, but rather a special visa regime.

Another variant would be to allow only irregular migrant workers fulfilling specific skills requirements needed in the country to regularize their status. This variant would depend upon the Libyan needs for migrant labour having been assessed.

Libyan authorities might also choose to regularize only unskilled migrants, who are the main source of irregular migration in Libya, or to regularize unskilled migrants working in specific sectors, for example, agriculture and construction. This would, however, appear to be unfair to those who have skills of value to Libya.

Whatever regularization formula is chosen, it should indicate whether the duration of the residence permit is limited in time (to a certain number of months/years, or one or more seasons), possibly subject to renewal, or involves permanent residence, immediately or after a certain time.

It would have to be determined whether it should be the migrants applying directly for regularization or employers applying on their behalf.

Whereas allowing migrants to apply directly for regularization would be advantageous for migrants whose employers do not wish to request regularization of their status for them, a system where only employers can apply for regularization of their employees would make it easier for employers to continue employing migrants illegally.

The type of documentation required by the migrants seeking to be regularized would also have to be determined. As many irregular migrants do not carry passports when entering Libya,⁶⁰ requirements in this regard would have to be flexible, possibly accepting – for identity purposes – documents issued by consular authorities in Libya of migrants' countries of origin, or other documents, such as drivers' licences, from which the applicant's identity can be inferred. However, it would be inconsistent with generally accepted international practice that a person applying for residence or other leave to remain must produce evidence of identity and citizenship. In the absence of a passport, a national identity card might suffice for this purpose, but there would still be a need for a document in which authorized stay could be endorsed.

In the legal instrument on which the regularization is based, the rights of regularized migrants should be clearly stipulated.

As previous regularization exercises, including in Libya, have shown, factors such as the regularization involving a fee or other payments for services (for example,

⁶⁰ However, according to the findings of the Danish Refugee Council, reported in the study *We Risk Our Lives for Our Daily Bread: Findings of the Danish Refugee Council's Study of Mixed Migration in Libya* (December 2013, available from http://drc.dk/fileadmin/uploads/pdf/IA_PDF/North_Africa/Danish_Refugee_Council_Report__Risking_our_Lives_Mixed_Migrants_in_Libya_Dec_2013_01.pdf), most illegal migrants have some form of identification from their countries of origin.

issuance of work permits or insurance), or obligations imposed on employers in case of regularization (for example, payment of tax or social security), may determine the success rate of the exercise.

Another well-known key to the success of such an exercise is that it should be accompanied by a campaign informing migrants of its existence and explaining the modalities involved in applying and the rights and obligations of regularized migrants.

For the regularization exercise to be attractive, consideration should be given to a prior deportation ban. However, this would be feasible only if the regularization were to apply to all categories of irregular migrant. Otherwise, some migrants might be hesitant to apply, fearing that, once identified through the exercise, it might be easier to deport them if their application for regularization would be rejected.

Factors against regularization

As mentioned, arguments against regularization have included that such action may attract yet greater numbers of irregular migrants, who may believe that if they can avoid detection they will, in due course, benefit from an “amnesty”, allowing them to remain, and perhaps to bring family members to join them.

Other factors for consideration are as follows:

- Even after any regularization programme had been completed, intending irregular migrants would be likely to choose Libya as a destination, on the basis that if they managed to enter they would benefit from further regularization in due course.
- It might also be argued that it is wrong, in principle, to reward people, by the grant of legal status, who have shown disregard for immigration laws.
- Considering whether an irregular migrant should be allowed to remain under a regularization programme would be an extremely time-consuming exercise.
- It would be necessary to interview all applicants carefully to ensure that they meet any criteria set down for acceptance. All the circumstances of the case would need to be taken into account before a final decision could be made. In particular, consideration should be given to the possibility that an applicant might pose a security risk, and more generally to an applicant's personal history, including character, conduct, associations and arguably employment record. It is suggested that account would also need to be taken of economic factors – for example, has the applicant been able to support himself/herself and any dependants, and will this

continue to be the case if residence is allowed under the regularization programme?

In considering the factors for and against a regularization programme, it should be noted that the thinking of the MoI seems to be that irregular migrants in the country are a source of available manpower which could satisfy the need for labour of the country and if used could reduce the number of irregular migrants in the country by regularizing their immigration status.

International cooperation on irregular migration

Gaps/needs identified

This section looks at possible gaps or needs in Libya's international cooperation mechanisms regarding irregular migration.

As mentioned, whereas a number of bilateral forums in which issues relating to irregular migration could possibly be discussed have been created as a result of security cooperation agreements concluded between Libya and its neighbouring countries Algeria, Chad, Egypt, Niger, Sudan and Tunisia, currently there seems to be little systematic and structured cooperation on these issues between Libya and its neighbours.

Libya is a member of a number of multilateral migration dialogue and cooperation forums, including the Euro-African Migration and Development Process (Rabat Process) and the 5+5 Dialogue on Migration in the Western Mediterranean. The main focus of these forums is on migration movements between participating African countries and Europe. Libya is also a member of the African Union, which has a number of forums where migration issues are discussed.

Libya, moreover, has external cooperation agreements on prevention and combat of irregular migration and border control with a number of European countries, including in particular Italy and Malta. These comprise search and rescue operations, including the provision of logistical and technical support to Libyan Coast Guard, and arrangements regarding return and readmission to Libya of migrants who transited through Libya prior to their arrival in Europe. Whereas the return and readmission arrangements are currently suspended, cooperation on search and rescue at sea has been stepped up, following the large number of recent tragic events where migrants have died in an attempt to cross the Mediterranean from Libya.

Libya's current cooperation arrangements on irregular migration include only limited systematic and structured cooperation with the main countries of origin and transit countries. They do not appear to fully address Libya's current need for international cooperation in this area. A case in point is the apparent current absence of readmission agreements with the main sending countries

and, therefore, of standardized procedures and criteria for return of irregular migrants, be it citizens of those countries or third-country nationals.

The lack of a regular dialogue on migration issues with Libya's southern neighbouring sending countries has also been pointed out on a number of occasions as a particular problem, including by representatives of those countries with whom the Consultant spoke, who have stressed the need and expressed the desire to establish such a dialogue. These include, in particular, its three southern neighbours – Chad, Niger and Sudan.

Another need for international cooperation highlighted by Libyan authorities relates to harmonization of Libyan immigration legislation with that of neighbouring North African countries.

Policy options

Against this background, there is a need to explore the possibilities of improving Libya's current mechanisms for international cooperation regarding irregular migration.

Strengthened international cooperation appears particularly relevant with two of Libya's southern neighbours – Chad and Niger – from where, or through which, a significant number of migrants in Libya traditionally come. Cooperation with these countries seems to have focused on security, including border security, issues, rather than on migration per se.

Other issues that could be included in the cooperation between Libya and the aforementioned countries include:

- arrangements to facilitate legal labour migration, including, in particular, seasonal migration;
- the possibility of regularization of irregular migrants, including identification and documentation of undocumented migrants;
- transit through Niger⁶¹ of ECOWAS nationals seeking to enter Libya;
- return and readmission of irregular migrants;
- reintegration of returnees into countries of origin;
- information campaigns in countries of origin aimed at discouraging irregular migration; and
- migrants' rights.

⁶¹ Another country through which migrants coming to Libya transit, Chad, is not a member of the ECOWAS, but Niger is.

In this connection, consideration might be given to establishing a forum comprising Chad, Niger and Libya (and possibly Sudan) for cooperation concerning the aforementioned and other issues of common interest to participating countries. Such a forum might benefit from the inclusion of countries of final destination, who might be potential donors – for example, the European Commission and EU Member States – as well as intergovernmental organizations.

Consideration might also be given to the possibility of such cooperation taking place in the framework of the CEN-SAD, which comprises most of the African States from which migrants come to Libya. CEN-SAD's founding treaty, as revised in 2013, and its most recent strategy, includes migration among the main issues of concern to the organization.

The possibility and modalities of such cooperation within CEN-SAD could be discussed between the organization and IOM in the framework of the agreement concluded between the two organizations in 2005.

Strengthened cooperation on migration issues with North African countries (Algeria, Egypt, Morocco and Tunisia), including in particular Libya's Mediterranean neighbouring countries from which migrants come to Libya (Egypt and Tunisia), may also be desirable.

Again, the current cooperation between Libya and these countries focuses mainly on security, including border security.

Issues which it seems would be desirable to include in the cooperation between Libya and these countries include:

- arrangements for legal labour migration (relevant in particular to Egypt and Tunisia and, to some extent, Morocco), including through bilateral labour agreements;
- return of irregular migrants to countries of origin;
- migrants' rights; and
- harmonization of immigration legislation among participating countries.

It follows that, ideally, issues relating to migration in Libya should be dealt with in the framework of a forum which would include countries of origin, transit and final destination, as well as international organizations and bilateral and multilateral donors.

Such a forum should have the ability to deal comprehensively with joint challenges, based on a thorough analysis of the many issues of relevance to migration movements to Libya and the capacity to develop comprehensive

strategies and action plans aimed at improving the management of migration to Libya.⁶²

Registration of irregular migrants

Gaps/needs identified

As mentioned earlier, a serious gap in Libya's management of irregular migration is the absence of a system for registration of irregular migrants. Whereas certain data, such as names, date of birth, sex and, if known, nationality of apprehended migrants and migrants in detention are recorded, Libyan authorities have, until recently, not been attempting to undertake a more systematic registration of irregular migrants, thus depriving themselves of an important migration management tool.

Currently, as part of the US Government-funded project "Enhancing the Protection of Irregular Migrants", IOM is assisting the MoI in establishing a biometric migrant registration and case management system in the immigration detention facilities in Libya. The registration includes bio data such as name, place of origin, gender, ethnicity and religion, and includes a photo and finger prints.

The registration, moreover, includes migrants' answers to a number of other questions, such as:

- Why did you come to Libya?
- Would you like your embassy to be informed about your presence in Libya?
- Would you like to stay in Libya?

Once registered, migrants are issued an identification card.

Whereas UNHCR registers persons identified as being of concern to the organization, this registration is not shared with Libyan authorities nor do the authorities themselves register persons in need of international protection.

Policy options

Clearly, the systematic registration of migrants is an important migration management tool.

⁶² See also: A. Malakooti, "Mixed migration into Libya: Mapping migration routes from Africa to Europe and drivers of migration in post-revolution Libya", *Migration Policy Practice*, 3(6), December 2013–January 2014. Available from http://publications.iom.int/bookstore/free/MigrationPolicyPracticeJournal14_30Jan2014.pdf.

A registration system, such as that with which IOM is currently assisting Libyan authorities in six immigration detention facilities, further to serving to identify the migrants and manage their cases, could also contribute to manage assistance being provided to migrants in detention facilities.

Moreover, experience has shown that the issue of an identification card to registered migrants may facilitate their access to services, such as hospitals, which they could not otherwise access on the basis of other identification documents such as their national passports.

Because of, on the one hand, its usefulness as a migration management tool for Libyan authorities and, on the other hand, the advantages which registration and the subsequent issue of identifications cards provide to registered migrants, it may be considered appropriate to expand this initiative beyond the six immigration detention facilities where it is currently being rolled out. The potential value of this is undoubted, given that it is now well established that no immigration control system can operate efficiently and effectively without such a computerized system, and preferably one using biometric data. As a matter of fact, Libyan authorities have asked for a similar system to be introduced at the Tripoli airport.

Consideration might also be given to making a call for irregular migrants outside detention centres to register. If such a call is likely to be heeded by migrants, it should be coupled with the possibility for those agreeing to register of being issued a stay permit, allowing them a certain period – for example, six months – to find employment and on that basis regularize their immigration status.

Consideration might also be given to issuing migrants registered in detention centres with a stay permit of a limited duration, which would allow them to leave the centres and look for employment.

However, there would be an evident risk that an irregular migrant who had been apprehended and detained would have to be apprehended again, if he/she failed to comply with any requirements as to residence, and report to a nominated authority. The position is different if an irregular migrant has employment, for which authority might be granted. This might also be an option for asylum-seekers.

The latter option may, in particular, be pursued with regard to persons whom, because considered of concern to UNHCR, the organization agrees to assist, for example, by providing material assistance, support with job search or vocational training opportunities.

Applying this solution to persons belonging to nationalities that Libyan authorities have decided not to deport would seem to make even more sense.

Assisted voluntary return

As mentioned earlier, for a number of years IOM has been implementing assisted voluntary return programmes in Libya, which, in addition to assistance before departure, have traditionally included limited assistance for reintegration in certain countries of origin.

Frequently, however, persons who have returned in the framework of these programmes have again migrated to Libya. For many of them, the reason for remigration is the impossibility of re-establishing their lives in their home countries and achieving social and professional reintegration there.

Policy options

With the aim of facilitating their social and professional reintegration and thus reducing incentives for remigration, consideration might be given to strengthening the reintegration elements of assisted voluntary return programmes, including, in particular, by increasing financial and in-kind reintegration assistance, for example by funding viable revenue-generating projects – such as establishment/start-up of microenterprises – vocational training, job placement schemes, housing or other measures which would contribute towards their sustainable reintegration.

Consideration might also be given to the involvement of Libyan NGOs and civil society organizations in counselling and assisting migrants prior to voluntary return and, to this end, providing training and coaching for organizations interested in performing this task.

Strengthening the involvement of NGOs, civil society organizations and employment offices in countries of origin in reintegration and increasing the role of IOM offices in those countries in supporting and monitoring reintegration activities might also be considered.

Consideration might also be given to the possibility of allowing persons who returned involuntarily, rather than through voluntary return programmes, to benefit upon return from reintegration assistance and to broadening such programmes to include also legal migrants. An argument against this would be that it might dissuade people from making voluntary departures. They might feel that they might as well hold out as long as possible, perhaps enjoying the benefits of employment in Libya, in the hope that they might finally be allowed to remain.

Libyan authorities may have an interest in contributing financially to assisted voluntary return programmes – traditionally financed by donor countries – insofar as they may result in reducing the length of stay of migrants in Libya and, hence, the cost of caring for them during their stay.

Those who qualify for refugee status should, of course, apply for this, rather than voluntarily return, and should be confident that efficient and effective procedures are in place for their claims to be properly determined. It would be important for information campaigns to make this clear.

Information campaigns

Gaps/needs identified

Currently, there do not seem to be any projects/programmes aimed at informing potential migrants about the risks of illegally migrating to Libya.

Thus, the question arises whether there is a need for such projects/programmes, which, in turn, raises the question whether, prior to their journey, migrants are aware of those risks.

It is often said that migrants undertaking the journey to Libya are well aware of the dangers and risks involved, but choose to ignore them, just as those who aim subsequently to cross the Mediterranean to Europe choose to ignore the dangers of doing so, which are well known to them. However, according to the 2013 Altai report,⁶³ the picture is more nuanced.

Based on interviews with migrants, Altai found that economic migrants from Libya's surrounding countries are often not deterred by the hazardous nature of the journey and do not have concerns about crossing the Sahara as they cannot find jobs in their countries of origin and so do not see any other option other than leaving. They often live in the rural areas of Sudan or Niger, for example, and so do not see crossing the desert as a major issue.

Moreover, migrants who return home after a period of migration tend to keep the information within their family circles or among close friends. If their journey was unsuccessful, for example, because they were detained in Libya or could not find a job, they tend to not spread the news very far. They may well see their return home as a failure in their attempts to achieve a successful new life, not least if friends and/or family contributed funds towards the cost of their original migration.

This, according to Altai, may explain why so many migrants commence their journeys with so little information, in spite of so many having made the journey before having information that could be shared. Moreover, the information that does spread tends to be very practical information about how to make the journey rather than information on whether the journey should be made at all or the risks involved. Thus, the issue, according to Altai, is not a lack of information, but rather a matter of selectively seeking information.

⁶³ See http://www.altaiconsulting.com/docs/migration/mixedmigrationlibya/Altai_Consulting-UNHCR-Mixed_Migration_Libya.pdf.

Altai also looks at information-sharing among migrants concerning the crossing to Europe.

It also appears clear that those intending to make such perilous journeys do not prepare themselves adequately for them, for example, by taking with them supplies of food and water, and safety devices, such as life vests.

Communication with the general public

There would also be merit in formulating and launching a campaign informing Libyans of the positive aspects of migration, in view of creating a more positive attitude towards migrants.

Policy options

Based on the situations described, the establishment of information programmes that would provide potential migrants with objective information on the risks and dangers of attempting to migrate illegally to Libya should be considered. They could explain why, in spite of so many migrants having unsuccessfully made the journey, their failures were not widely reported in their countries of origin, and could have some impact on reducing future irregular immigration to Libya.

Such programmes should also present existing regular migration options as alternatives, and options for those who would likely be able to successfully claim refugee status.

It is understood that such programmes have been developed by a Libyan NGO, but have not yet been implemented.⁶⁴

Building capacities of non-governmental organizations and civil society organizations

As mentioned in Chapter 3.2, a number of Libyan NGOs and civil society organizations have taken an interest in and have carried out some activities on issues relating to migrants. Although well intentioned, their efforts have not always been effective.

It is therefore suggested that, with a view to the work of Libyan civil society organizations in this area becoming more effective, there is a need to increase these organizations' knowledge and understanding of issues, such as the nature of mixed migration and the international rules and principles governing voluntary and forced migration. Building their capacities to provide legal

⁶⁴ The NGO in question is the Benghazi-based Islamic Committee of the International Crescent (ICIC), one of the specialized institutions of the Organization of Islamic Cooperation, which developed an awareness programme targeting, inter alia, migration towards Libya. The programme is meant to be implemented by the ICIC as well as relevant national Red Crescent and Red Cross societies in migrants' countries of origin.

advice and other legal assistance, social counselling and support, for example psychological counselling or psychosocial support, to migrants, and to support such activities through fundraising, is another way in which the ability of these organizations to become more effectively involved with migration issues Libya could be enhanced.

Such activities, together with the reinforcement of the capacities of the labour offices in managing labour migration, are important steps that might be taken to improve recognition and management of circular migration, and might also involve establishing temporary worker schemes related to sectors such as agriculture, construction and tourism.

4.2 LONGER-TERM OPTIONS

As mentioned, the focus of this project is on some of the elements of Libya's migration policy, which should be given priority in the short to medium term. The reason for this approach is that while the development of a full-fledged migration policy is likely to take one or more years, Libya is currently facing a number of challenges as a result of the influx of migrants which need to be urgently addressed.

In the next sections, some of the issues that Libya may wish to address in the longer term are discussed briefly.

4.2.1 GENERAL

Migration legislation

As is often the case in post-conflict situations involving a regime change, there is lack of clarity as to which laws and other legal norms adopted before the change are still in force. This is clearly the case when it comes to the legal norms applying to work in Libya. Technically, laws governing the entry and stay in the country issued by the previous regime remain applicable. However, the extent of their implementation is currently unclear.

Accordingly, there is a need to undertake an exercise of consolidation of the norms currently applicable in this area.

A number of gaps in these norms, on the existence of which there is wide agreement, should be filled. While some of these gaps are due to the absence of regulation in certain areas, others are caused by lack of clarity of existing norms, or by contradictions between them. Yet other gaps are caused by the incompatibility of Libyan national legislation and international norms and principles to which Libya has subscribed, including international human rights law.

A main obstacle in this regard is obtaining a clear picture of which international provisions have been transposed into Libyan legislation, which national laws and other provisions are currently applicable and which among the applicable provisions are actually being implemented. Libya may, therefore, wish to undertake a comprehensive assessment of its legal framework relating to migration. The assessment should:

- include an analysis of the legal framework relating to labour migration, including its overlap with irregular immigration to Libya, including laws, by-laws and administrative instructions and guidelines currently applicable, thus providing analyses for employment frameworks for both regular and irregular migrants;
- determine incompatibilities between the framework and international law applicable to Libya, as well as contradictions between various Libyan norms and needs for consolidation of norms adopted prior to 2011 with post-2011 norms; and
- make suggestions for addressing gaps and needs identified.

Consideration should also be given to publishing, preferably on the Internet, not only of all legislation and regulations in force, but also of administrative documents, such as standing instructions to staff, criteria for entry and permission to remain, for determining that a person is an irregular migrant and whether detention is appropriate. Study of practices in other countries that are faced with challenges similar to those of Libya in these respects would be beneficial.

Particular focus should be placed on rules and other documents relating to expulsion, detention and deportation of migrants, including those concerning treatment of migrants in immigration detention facilities and the layout and equipment of those facilities, which, as mentioned in the section on administrative practice in Chapter 4.1.2, are problematic in some respects.

Clearly, filling gaps that require revision of legislation, or the adoption of new legislation, which entails the involvement of Parliament, cannot be achieved in the short term. These gaps could be filled by the issuance of such documents as administrative instructions, and guidelines to staff and members of the public. These would include documents that might benefit from publication.

It is of interest to note that one of the activities of the EU Migration Programme for Libya, which was expected to start implementation in mid-2014, is a review of the current Libyan normative and regulatory framework relating to the different dimensions of migration.

Moreover, as mentioned earlier, by Decree issued by the Prime Minister's Office, the Government of Libya, with the help of IOM, has established the L/PTF, which will review the country's migration legislation and make suggestions for revisions that may be required.

Institutional framework and capacities for migration management

Set-up and capacities of Libyan institutions with responsibilities for migration management

The assessment of Libya's institutional set-up and capacities for management of irregular migration is based on the existing reports that have included specific chapters on analysis of the institutional structures and capacities of the Libyan migration management system⁶⁵ and other available material. It also reflects the Consultant's own findings during missions to Libya, which involved meetings with officials working within the relevant national institutions, staff of international organizations and NGOs knowledgeable about the functioning of those institutions. Among the main deficiencies identified by observers are the lack of a comprehensive national policy on migration management and the absence of a national dialogue on migration involving key stakeholders.

Consideration might accordingly be given to initiating a systematic dialogue between the different relevant ministries. For this purpose, it is recommended that migration management in Libya be directed at the highest level in order to ensure coordination with other interested parties. Therefore, there would be merit in the creation of a coordinating committee overseen by the Prime Minister's Office or another Senior Minister, preferably one with appropriate responsibilities for migration issues. In addition, there is a need for legal cover to specify the authorities for this committee.

It would be desirable for this body to include all the ministries with migration-related functions⁶⁶ and other relevant bodies, for example the Coast Guard. In addition, on an ad hoc basis, senior representatives of IOM, UNHCR and other bodies with expertise could be invited to attend as observers and, from time to time, to submit written comments on the migration situation in Libya.

⁶⁵ These include in particular the report *A Comprehensive Survey of Migration Flows and Institutional Capabilities in Libya*, prepared by the ICMPD in 2010 (the ICMPD report); "Integrated Border Management Needs Assessment for Libya", prepared in 2012 following a mission to the country by a team of EU experts (the IBM report); and the report "Migration Management Assessment in Libya" prepared by IOM that same year (the IOM report). It should be noted that, albeit of high quality and pertinent, because written some three years ago and, thus, before the 2011 regime change and the changes in the migration situation in Libya which followed, the ICMPD report is partly outdated. The IBM report, as its title says, looks at institutional set-up relating to migration management only from a particular angle – that of integrated border management. Hence, the conclusions contained therein are only partly relevant to the current assessment of that set-up.

⁶⁶ At the very least, Migration, Health, Higher Education, Interior, Justice, Defence, Finance, Foreign Affairs, Labour and Planning, and the Prime Minister's Office.

Consideration might also be given to how civil society organizations could possibly contribute to the dialogue.

Other deficiencies identified by the assessment include the following:

- Inadequate infrastructure (e.g. office premises and communication networks);
- Insufficient equipment (e.g. office, including IT and biometrics, equipment and vehicles);
- Inappropriate staffing levels, recruitment policies and practices;
- Weak management structures and practices;
- Malfunctioning coordination and cooperation processes between the key Libyan actors in this area and between those actors and their counterparts in neighbouring countries;
- Lack of an adequate knowledge base containing quantitative and qualitative data on migration;
- The need for comprehensive standard operating procedures, updated regularly, and covering all relevant aspects of migration legislation, regulations, policies and practices – to be published when complete;
- Absence of a coordinated approach to the gathering of information on legal and illegal migration. There would be a need for a dedicated unit to be established, which would gather information and disseminate it to all appropriate staff. This would include trends and types of abuse identified, including on the use of falsified documents.

Training of Libyan officials with responsibilities for migration management

One of the main gaps in Libyan migration management capacities is caused by the lack of sufficient knowledge of Libyan migration officials about the applicable regulations and administrative practices, including international standards and best practices. The absence of appropriate regulations and practices or a lack of knowledge of them, rather than unwillingness to apply them, often result in faulty decisions made by these officials.

This situation is, in turn, the result of insufficient training of the competent officials on migration issues.

The proposal regarding standard operating procedures would greatly assist in addressing this issue, but staff training would still need to be increased.

Whereas, in the past, some training activities have been conducted by international organizations, such as IOM and UNHCR, there are no systematic training programmes in Libya in this area.

Training needs identified thus far include the following areas:

- Libyan national immigration law, including on-entry and after-entry provisions (covering both short-term and long-term stays), the concept of irregular migration, provisions relating to expulsion, deportation and detention of irregular migrants and non-refoulement of persons in need of international protection;
- International legal norms and principles and best practices relating to immigration, asylum-seekers and refugees;
- Identification and registration of migrants;
- Protection of vulnerable categories;
- Management of immigration detention facilities, including management skills in general, treatment of detainees in line with national law, international standards and best practices, encompassing basic standards and principles of human rights for treatment of migrants in detention; and publication of house rules; migrants' rights; protection of vulnerable migrants, asylum-seekers and refugees; administration; procurement of supplies; logistics; recording of detainees; and publication of instructions to detention centre staff;
- Management of expulsion, deportation and assisted voluntary return in line with national law and international standards, including international human rights law;
- Provision of humanitarian assistance.

Consideration might also be given to the need for training on business and financial planning, policy development and communication skills for senior staff.

A formal migration training needs assessment would be beneficial, covering all the main agencies, and that the funding of a centralized training facility for all the government bodies involved should be considered. Consideration might also be given to the roles that might be played by trainers from other countries being involved in the training programmes in Libya, and in the benefits to be derived from study tours abroad for appropriate Libyan officials.

In addition, job classification, selection, continuous training and performance evaluation need to be reviewed throughout the government bodies involved in migration management.

Coordination among government institutions

It would be beneficial to establish a Libyan internal coordination forum, even if ideally there should be a single central institution or body with responsibility for migration issues. This forum should include the main Libyan authorities with responsibilities relating to migration, firstly, the MoI and the MoL and, secondly, the Ministry of Justice, the Ministry of Defence and the Ministry of Foreign Affairs. The Prime Minister's Office should play an important role and ideally chair the forum.

Other ministries that should be associated with the forum, because of having responsibilities relevant for migrants include the Ministry of Health, the Ministry of Education, the Ministry of Social Affairs, the Ministry of Finance, the Ministry of Economy, the Ministry of Local Government and the Ministry of Planning.

To the extent that their mandates include issues relating to migration, Libya's border agencies, such as the Coast Guard, Customs, the Border Guard and the Border Police, should also be involved.

Involvement of the Libyan public

As indicated, it would also help if Libyans are informed of the positive aspects of migration, in view of creating a more positive attitude towards migrants.

4.2.2 LEGAL MIGRATION

Entry and admission

Another set of policies, which the Libyan Government may wish to review in the long term, relates to entry and admission of foreigners, including, for example:

- mechanisms and conditions for granting entry visas;
- staffing of visa posts abroad (a number of countries have staff who have served in immigration posts at home and thus gained substantial experience before undertaking issuance of visa);
- types of entry visa;
- required data for visa processing;
- travel documentation (including, for example, biometrics and advanced passenger information);
- conditions for and refusal of entry;

- the role of computerization and biometrics in issuance of visa, and the grant of leave to enter and exit controls; and
- bilateral and multilateral labour migration agreements with neighbouring countries.

Stay and residence

Policies relating to stay and residence which the Libyan Government may wish to review in the long term include:

- conditions for granting residence permits;
- conditions for refusal and withdrawal of residence permits;
- modalities of residence permits;
- status of foreign residents;
- family reunification;
- rights of foreign residents; and
- the role that can be played by computerization and biometrics in relation to granting authorization to stay.

These observations about training needs and about the publication of administrative documents and instructions to staff would be relevant to the policies on entry and admission and on stay and residence.

4.2.3 IRREGULAR MIGRATION

Some of the key long-term policy issues that might be considered would include the following:

- Sanctions (including custodial sentences and monetary charges) imposed on:
 - migrants;
 - human smugglers; and
 - carriers (including lorry drivers).
- Trafficking in human beings, including the need to focus on traffickers, with those trafficked being given more beneficial consideration, as appropriate, particularly in the case of children.

- Expulsion and deportation (forced return), including:
 - procedure;
 - (judicial) remedies;
 - travel documents for the purpose of expulsion – including the case for a dedicated unit that would build close contacts with embassies and consulates;
 - detention and the alternatives to it;
 - voluntary return; and
 - readmission (agreements).
- Supervision of staff, given that they will frequently be engaged in operations away from their normal base, and that the attractions of accepting corrupt payments are particularly high in this area of work.
- The role that computerization and biometrics can play in enforcement issues.

Donor coordination

The EU Migration Programme Action Fiche, prepared by the European Commission at the end of 2013,⁶⁷ stressed that “as in any fragile context, donor coordination is a challenging exercise in Libya”. The Action Fiche reviews, in particular, the following ongoing developments and challenges:

The EU Delegation holds regular monthly coordination meetings on cooperation, bringing together EU embassies in Tripoli, on all sectors covered by EU and Member States’ assistance.

In an effort to ensure that external support is coordinated, the United Nations Special Mission to Libya has set up a number of coordination forums and working groups on: human rights and transitional justice; constitutional process; the security sector; demobilization, disarmament and reintegration; border management; and public administration.

However, no working group has been set up to coordinate interventions in the migration management sector. Attempts to ensure coordination were left to IOM and UNHCR, given their involvement in the sector. Therefore, donor coordination is still at an embryonic stage and needs to be reinforced.

⁶⁷ See http://ec.europa.eu/europeaid/documents/aap/2013/af_aap_2013_lby_p2.pdf.

The EU is the leading donor in migration management support and should therefore play an important role in ensuring donor coordination, together with the national authorities.

On 10 September 2013, the Libyan Government co-chaired a meeting with EUBAM Libya, involving the international community in discussions about border security.

Members of the Border Management Working Group (BMWG), set up by then Prime Minister Ali Zeidan in June 2013, were joined by diplomats at the International Coordination Meeting (ICM) on border management.

The BMWG, composed of representatives from ministries and other agencies with border management roles, is tasked with creating a national strategy, and monitoring and controlling its implementation. The BMWG is also a focal point on border affairs.

The BMWG has already set up three subgroups to work with EUBAM Libya. One will draft an IBM white paper, working alongside all relevant ministries, the second is tasked with establishing a Border Integrated Security Operations Network and the third is undertaking an IBM pilot scheme at Tripoli International Airport.

The ICM aims to coordinate the international community's activities to make sure that the support provided reflects Libya's needs.

Calling on the ICM to coordinate activities of the international community in the area of migration management would be a useful contribution, to assist Libya in developing the country's migration policy as well as to its implementation. First of all, it would allow for better coordination of the international community's efforts to support Libya in this endeavour, ensuring the activities of the international actors are complementary rather than overlapping and respond to the needs of the country.

ANNEX A: LIST OF ORGANIZATIONS AND OFFICIALS INTERVIEWED

- Ministry of Foreign Affairs:
Mohamed Almagro, Deputy Head Department, International Organizations
- Ministry of Interior:
Colonel Zayed Ali Erhoma Zied, Deputy Head Department for Combating of Illegal Migration
- Ministry of Justice:
Salem Etaib, Head, International Relations Office
Mohamed Hamodar, Legal Consultant
- Ministry of Labour:
Bashir Al Fitori, Head Project Department
- EU Delegation to Libya:
Francesca Varlese, Programme Manager in charge of Instrument for Stability Programmes and Migration Portfolio
- European Union Border Assistance Mission (EUBAM):
Maria Nystedt, Human Rights Officer
- Office of the United Nations High Commissioner for Refugees (UNHCR):
Saado Quol, Officer in Charge
- Community of Sahel-Saharan States (CEN-SAD):
Issa Goffa Abderamand, Director, Protocol, Conferences and Documentation
Bakary Coulibali, Director, de l'Intégration et de la Complémentarité
Dr Hassane Soluymane, Director, Peace and Security
- International Organization for Migration (IOM):
Othman Belbeisi, Chief of Mission
Ashraf Hassan, Reintegration Officer
Maysa Khalil, Project Manager
Massimo A. Ramanzin, IBM Expert

ANNEX B: TERMS OF REFERENCE FOR THE STUDY

** Please note that due to security conditions in Libya during the drafting of this report, the timeline was adjusted from that included in these terms of reference.*

BACKGROUND

In February 2011, after more than 40 years of dictatorship, Libya joined the Arab Spring. While a number of positive transformations have been ongoing in the country since the fall of the previous regime, such as the formation of new democratic institutions, security has – in many instances – worsened in the country after the 2011 conflict.

The impact can also be felt on various aspects of migration policy and practice. Lack of control and porous borders mean that criminal networks are increasingly involved not only in arms and drugs smuggling, but also in migrant smuggling and human trafficking. The authorities responsible for anti-smuggling are currently not capable of detecting, investigating and preventing smuggling and trafficking by organized groups or criminal networks. Staff cannot work effectively in the southern part of Libya because of the security situation and tensions among different tribes.

Armed fights are, in turn, often caused by conflicts over the control of smuggling routes. Militias and armed groups are today exercising many roles, including policing their respective territories. These include migrant detention sites, a number of which are still under the control of militias and armed groups, hence outside the State system. This situation is compounded by the ongoing food crisis in the Horn of Africa, food insecurity in several sub-Saharan African countries, in addition to the political instability in other countries such as Côte d'Ivoire and Mali, which brings increased migrant pressure on the southern border of Libya. The conflict also resulted in a significant flow of migrant workers and their families into neighbouring countries, bringing the issue of migration in its regional dimension to the political foreground. The human rights situation for asylum-seekers, refugees and irregular migrants in the country, already precarious under the previous regime, has also deteriorated.

The weak capacity of Libyan authorities to manage migration flows needs to be understood in the context of the overall process of rehabilitation and transition in Libya. Under the previous regime, institutions were not allowed to operate effectively. Regulatory frameworks were weak; organizational structures were not well organized; and decision-making processes, reporting and communication channels suffered from limited systems of accountability and transparency. This has developed in a specific organizational culture, in

which the rule of law, protection of people and service orientation were seen to be of limited importance. There was a generalized lack of policies and strategic planning. Therefore, while at a regulatory level, legal migration channels exist and authorities conduct certain functions, for example issuing of work permits and processing of visa applications, an effective immigration and asylum policy based on the fundamental rights of migrants, refugees and asylum-seekers has yet to be created.

In addition, trafficking in persons is neither defined nor criminalized. Investigators of such crimes have to depend upon other legal provisions. To effectively address this issue, the criminalization of such offences according to the international standards is necessary.

Complex migration flows can be observed in Libya. These are based on the historical circulation of people in the Sahara/Sahel region, shaped for more than half a century by various migrant, trader or other communities who have contributed to its economic life and development.

According to the most recent estimate contained in the June 2013 Altai report, the total stock of migrants in Libya in June 2013 was between 1.7 and 1.9 million, with an increase of between 50,000 and 100,000 migrants expected per year.

The main response by international donors to this situation has been to support EU projects that focus on the following areas:

- 1) Enhancing the capacities of civil society organizations in promoting and protecting the rights of migrants, refugees and asylum-seekers in the southern Mediterranean region;
- 2) Contributing to the enhancement of the capacity of government authorities to: a) manage irregular migration with continuous heed to asylum and refugee protection; and b) strengthen the positive links between migration and development;
- 3) Supporting the national and civil society effort to stem illegal migration along the eastern migration route and assist vulnerable migrants, including through a comprehensive AVRR programme;
- 4) Contributing to strengthening the capacities for effective and protection-sensitive management of mixed migration movements (both refugees/asylum-seekers and migrants) in Libya;
- 5) Cooperating with Libyan authorities in order to further enhance the capacity of Libyan institutions to prevent, detect and manage irregular migration flows entering or transiting the Libyan territory; prevention and management of irregular migration flows from the Sahara Desert to the Mediterranean Sea;

- 6) Developing a sound and sustainable protection regime for asylum-seekers and refugees in Libya and re-establishing assistance mechanisms for targeted asylum-seekers and refugees;
- 7) Supporting the Libyan Government's effort to stem irregular migration along the western and eastern migration routes and assisting vulnerable stranded migrants;
- 8) Supporting the conflict-affected population by creating a safe and secure environment for the reconstruction of Libya; and supporting Clearance of Explosive Remnants of War, protection of vulnerable groups and minorities, capacity-building of national authorities, and prevention and reduction of armed violence;
- 9) Improving the protection and integration of refugees, asylum-seekers and migrants in Libya; preventing rights violations against refugees, asylum-seekers and migrants; ensuring safe integration of refugees and migrants into Libyan society; enhancing understanding of displacement dynamics to and from Libya and the Horn of Africa;
- 10) Stabilizing at-risk communities and enhancing migration management (START project) to enable smooth transitions in Egypt, Tunisia and Libya through activities that aim to: strengthen capacities and mechanisms to address labour market gaps through human capital development and regular migration, including, in particular, in areas and sectors critical to Libya's transition and recovery; support the Government in strengthening migration-related policies and legislation in Libya and in strengthening national capacities in the management of migration flows;
- 11) Establishing EUBAM Libya, which started its work in spring 2013.

Moreover, the EU is in the process of establishing the EUR 10 million Migration Management Programme, aimed at assisting the competent Libyan authorities in improving their institutional set-up and capacities for migration management in conformity with international standards and best practices. The Programme is scheduled to start in spring 2014.

The ultimate aim of the Programme is to improve Libya's ability to manage migration, which will be included as building blocks in Libya's still lacking migration policy.

In parallel to the EU Migration Management Programme, other efforts are being undertaken by the international community to assist Libya in developing a migration policy and, subsequently, a strategy to implement the policy, the most important of which is the establishment of the Migration Policy Task Force within the framework of the START project.

THE PRESENT ASSESSMENT: SUMMARY

The study to which these terms of reference apply is meant to provide support to the START activities aimed at establishing a migration policy for Libya. It will focus on policy components identified by the consultant jointly with IOM, and considered as a priority by Libyan authorities. This study is intended to be conducted within a short period, and to provide a review of the situation in Libya in relation to a number of the main components of migration policy identified and to make suggestions for policies in these areas, involving, as appropriate, changes in current practices.

The assessment envisages the gathering of information from the relevant actors concerned with the issues mentioned through administration of a comprehensive questionnaire, as necessary. There is no intention that the questionnaire should be followed slavishly, but it should ensure that all relevant issues are explored in a structured, timely way.

Among other things, it is anticipated that the issues to be explored for each component of migration policy will include:

- the legal framework relating to the relevant component of policy; and
- the capacities of the relevant authorities.

The enquiries envisaged will be conducted by a highly experienced expert, Michael Petersen, who has in-depth knowledge of and experience in the current situation in Libya, including through a recent relevant project he conducted there on behalf of the European Commission. He will be supported by two other experts, Solon Ardittis and Colin Manchip, who have extensive experience and expertise in migration policies adopted in a wide range of countries. They will also provide quality assurance both in relation to the nature and conduct of enquiries in the field and to drafting of the assessment report, which will include recommendations of change of current policies, as appropriate.

PURPOSE OF THE ASSESSMENT

The purpose of the study is:

- to analyse Libya's current rules, institutional set-up and practices relating to migration management in areas considered as priorities for policy development, and, on this basis:
 - to formulate, within these areas, various options for the future development of a migration policy in Libya, including the steps and measures that need to be taken to that effect.

KEY AREAS TO BE EXPLORED BY THE ASSESSMENT

The assessment will explore key components of migration policy in Libya identified as priority areas, organized around the following broad headings:

- Illegal/irregular migration;
- Legal/labour migration;
- Role of NGOs and civil society organizations in migration management;
- International cooperation.

Whereas, as mentioned earlier, the final identification of areas on which the assessment should focus will be determined in consultation with Libyan authorities, the following are some examples of areas that might merit inclusion in the assessment:

ILLEGAL/IRREGULAR MIGRATION

- Legal framework:
 - Consolidation of the national legal framework, including necessary secondary legislation, including regulations;
 - Compatibility with international law.
- Institutional set-up of authorities with responsibilities for management of illegal/irregular migration, such as:
 - the Ministry of Interior, including in particular its Department for Combating Illegal Migration;
 - the Coast Guard;
 - the Customs Administration;
 - the Border Guard;
 - the Ministry of Defence; and
 - the local militias.

This will include consideration of the degrees of cooperation between these bodies and legitimate exchanges of information between them.

- Capacities of authorities with responsibilities for management of illegal/irregular migration:
 - Infrastructure (e.g. office premises and communication networks);
 - Equipment (e.g. office, including IT, equipment and vehicles);
 - Staffing levels;
 - Recruitment policies and practices;
 - Management structures and practices;
 - Data collection storage and sharing;
 - Coordination and cooperation processes between key Libyan actors in this area, including international organizations and NGOs;
 - Cooperation with counterparts in neighbouring countries;
 - Training policies and practices, including development of standard operating procedures and other guidance to staff;
 - Training needs.
- Expulsion and deportation of illegal/irregular migrants, including any rights of appeal;
- Protection of vulnerable groups;
- Readmission of illegal/irregular migrants by sending countries;
- Interception and readmission of migrants leaving Libya illegally/irregularly (boat people);
- (Assisted) voluntary repatriation;
- Smuggling and trafficking;
- Access to employment by illegal/irregular migrants;
- Regularization of illegal/irregular migrants;
- Levels at which a decision to expel/deport an irregular migrant should be taken;

- Immigration detention:
 - Immigration detention criteria;
 - Reviews of decisions to detain;
 - Adequate provision of immigration detention accommodation;
 - Conditions in immigration detention facilities;
 - Immigration detention capacities and needs;
 - Immigration detention facility regulations (including house rules);
 - Training of immigration detention facility staff, including development of standard operating procedures and other guidance to staff;
 - Employment of migrants in detention.

LEGAL/LABOUR MIGRATION

- Legal framework:
 - Consolidation of the national legal framework;
 - Compatibility with international law.
- Permanent migration;
- Temporary migration;
- Circular migration;
- Institutional set-up relating to management of legal labour migration:
 - Ministry of Labour;
 - Employment Offices;
 - Employers.

This will include consideration of the degrees of cooperation between these bodies and legitimate exchanges of information between them.

- Capacities of authorities with responsibilities for migration management:
 - Infrastructure (e.g. office premises and communication networks);
 - Equipment (e.g. office, including IT, equipment and vehicles);

- Staffing levels;
 - Recruitment policies and practices;
 - Management structures and practices;
 - Data collection, storage and sharing;
 - Coordination and cooperation processes between key Libyan actors in this area; this will include consideration of the degrees of cooperation between these bodies and legitimate exchanges of information between them;
 - Cooperation with sending countries;
 - Training policies and practices, including development of standard operating procedures and other guidance to staff;
 - Training needs.
- Assessing the needs for foreign labour;
 - Matching local demand with foreign offers;
 - Role of employers versus Libyan authorities in bringing foreign workers to Libya;
 - Labour agreements with sending countries;
 - Rights of legal labour migrants;
 - Regularization of illegal/irregular migrants;
 - Remittances;
 - Job categories reserved for Libyans.

ROLE OF NON-GOVERNMENTAL ORGANIZATIONS AND CIVIL SOCIETY ORGANIZATIONS IN MIGRATION MANAGEMENT

INTERNATIONAL COOPERATION

- Cooperation with sending countries;
- Cooperation with countries of final destination.

PROPOSED ORGANIZATIONS AND TASKS

The assessment will be carried out in two stages.

- The first stage will begin with a field phase, in early January 2014, during which the consultant will, in consultation with the IOM office in Libya, identify the priority migration policy areas on which the assessment should focus. This will be followed by a series of in-depth interviews with key government officials and other stakeholders in Libya. This fieldwork phase will last approximately two weeks. If and as appropriate, interviews will be guided by a structured questionnaire, which has been developed and which is applied by Eurasyllum on a range of other similar assignments. Arrangements for the interviews schedule of the expert will be facilitated by IOM's office in Tripoli.
- The first part of the second stage, which will mainly be home-based, will consist of the processing of primary data and material collected in Libya, and preparation of a draft of the assessment, including suggestions for policy options. The consultant will thereafter proceed to a second shorter mission to Libya, early March 2014, during which additional data and material will be collected, and during which the draft assessment will be validated with Libyan authorities and, as appropriate, discussed with other stakeholders. The third part of the second stage, which will include a debriefing at IOM Headquarters, will consist of finalizing the assessment.

The enquiries envisaged will be conducted by a highly experienced expert, Michael Petersen, who has in-depth knowledge and experience of the current situation in Libya, including through the recent completion of a similar project there on behalf of the European Commission. He will be supported by two other experts, Solon Ardittis and Colin Manchip, who have extensive experience and expertise on migration policies adopted in a wide range of countries. They will also provide quality assurance both in relation to the nature and conduct of enquiries in the field and to the drafting of the assessment report, which will include recommendations for change, as appropriate.

The study will be completed by the end of April 2014.

PROPOSED TIME FRAME

	November 2013	December 2013	January 2014	February 2014	March 2014	April 2014
Meetings at IOM HQ						
Preparation of mission to Libya						
Missions to Libya						
Drafting of the assessment						



International Organization for Migration (IOM)