THE GLOBAL INITIATIVE
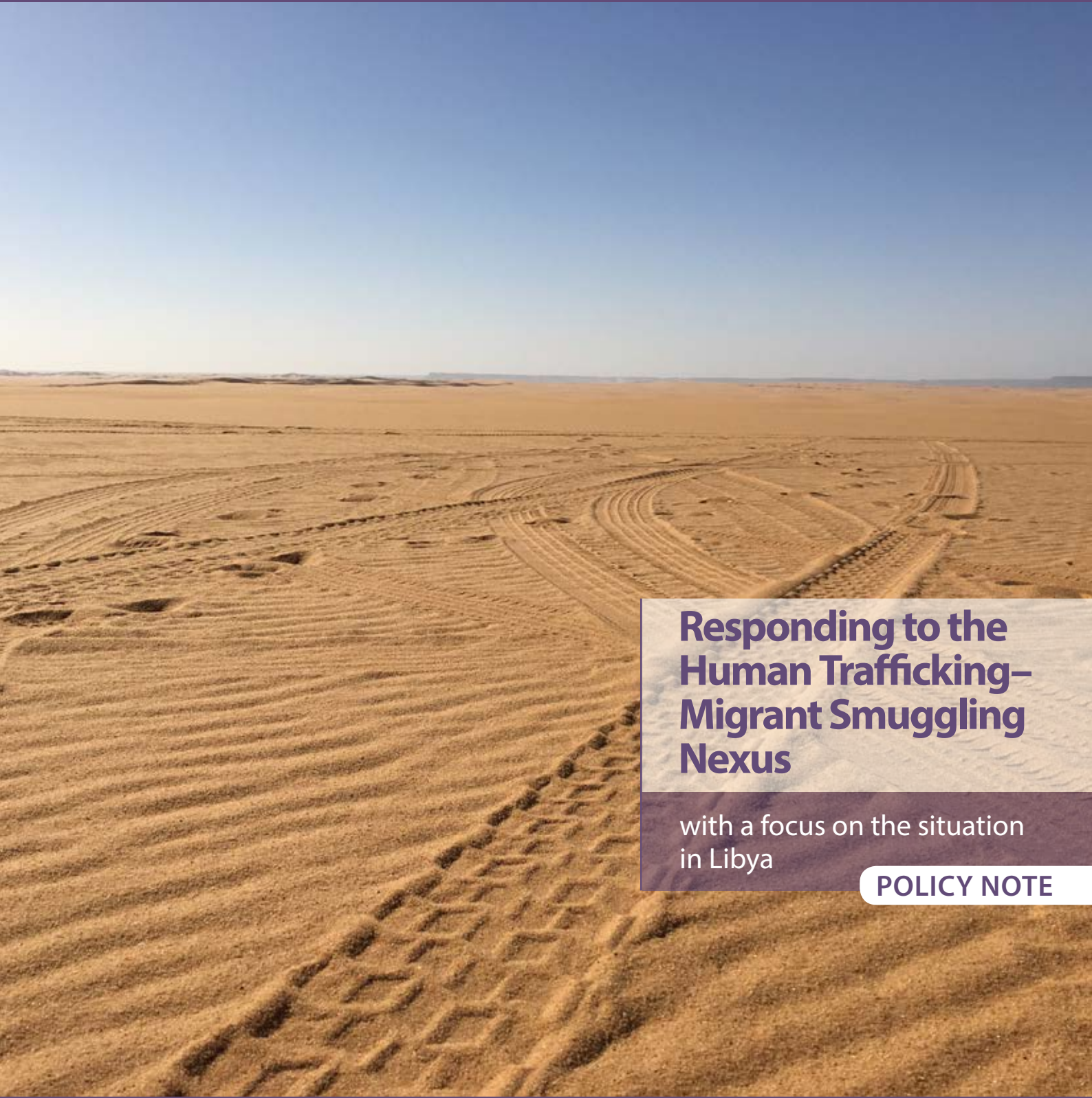## AGAINST TRANSNATIONAL ORGANIZED CRIME

Responding to the Human Trafficking– Migrant Smuggling Nexus

with a focus on the situation in Libya

POLICY NOTE

July 2018

Summary

Probably nowhere more than in Libya have the definitional lines between migrant smuggling and human trafficking become as blurred or contested. Hundreds of thousands of migrants have left Libya's shores in the hope of a new life in Europe; tens of thousands have died in the process. The inhumane conditions migrants face in Libya are well documented. The levels of brutality and exploitation they experience in Libya's turbulent transitional environment have led to smuggling and trafficking groups being bundled under one catch-all heading by authorities and policymakers, and targeted as the root cause of the migration phenomenon. In many respects, this would appear to conveniently serve the interests of EU leaders and governments, who choose to disguise the anti-migration drive they urgently seek support for behind a policy of cracking down on both trafficking and smuggling rings, which they conflate as a common enemy, and one and the same. Given the highly complex context of Libya, this report proposes instead that any intervention to address the so-called migrant crisis should place the human rights of migrants at its centre, as opposed to necessarily demonizing smugglers, who are often the migrants' gatekeepers to a better existence elsewhere.

Introduction

It is increasingly common for policymakers and practitioners in the disciplines of migration management to speak of the 'blurring lines' between migrant smuggling and human trafficking. Yet when, in 2000, the UN adopted a legislative framework on organized crime, the UN Convention against Transnational Organized Crime (UNTOC), human trafficking and smuggling were clearly defined differently, and divided into two clearly distinct protocols.

While both human smuggling and trafficking can involve the recruitment, movement and delivery of people from one state to another, the point of distinction usually made is whether the people are willing participants in the process and in the final outcome. Traffickers coerce, exploit and enslave their victims. Smuggled migrants, on the other hand, have entered into a consensual relationship with their smugglers and are free at the end of their journey.

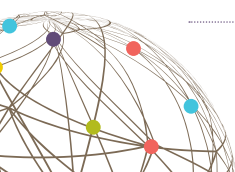*There is little positive that can be said about the conditions migrants face in Libya.*

Practitioners have found, however, that in, reality, the terms of this demarcation are not so easily definable – a fact that has significantly complicated the picture for those with a mandate for responding to migration and trafficking, and for protecting migrants and victims of trafficking (VoTs). Under the UN's human-trafficking framework, whether or not a victim may have consented is in fact irrelevant, because if the act, means and purpose of the perpetrator are proved, then the crime is deemed to be trafficking.[1]

Migrants who consensually use the services of smugglers to facilitate irregular journeys may also find themselves subjected to periods of detention, forced labour or sexual exploitation along the route. Many make the journey fully aware that they will face bribes, threats, violence and abuse along the path. What some do not know, however, but may experience, is that their journey is a 'choreographed step toward their eventual exploitation' and human trafficking.[2]

Since 2014, thousands of Africans per month have boarded vessels leaving Libya's shores on the final leg of a journey that they hope will end in asylum in Europe. In Italy alone, more than 600 000 migrants have arrived on the country's shores in four years; more than 12 000 have died trying.[3]

There is little positive that can be said about the conditions migrants face in Libya. Numerous reports from UN agencies and international NGOs, and the testimonials of migrants themselves,[4] speak of heinous abuse, such as forced labour – including people being compelled to carry out mine clearance – violence, sexual exploitation and rape, involuntary detentions for indefinite periods, kidnapping and extortion. In a December 2016 survey, the

International Organization for Migration (IOM) found that 76% of some 1 400 migrants and refugees interviewed in Italy had experienced at least one indicator of human trafficking and other exploitative practices during their journey on the central Mediterranean route.[5] Similarly, a recent (but as yet unpublished) Oxfam survey found that 84% of those interviewed said that they had been subjected to inhumane treatment, including brutal violence and torture.[6]

The number of deaths, and the brutality and exploitation that migrants have experienced, on the route through Libya have led to the terms 'smuggler' and 'trafficker' being used interchangeably, almost synonymously, to describe those who facilitate this migrant journey.

Yet under the Protocols to UNTOC, the distinction is clear. Trafficking in persons is defined as 'the recruitment, transfer, or receipt of persons, by means of use of force or other forms of coercion, of abduction, of fraud, or of the abuse of power, for the purpose of exploitation'. The smuggling of migrants is defined as 'the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident'.[7]

Therefore, although the experience of the person in transit is important, when drawing a line between human trafficking and migrant smuggling, the defining feature is in fact the intent of the perpetrator. Under the Trafficking in Persons Protocol,[8] Article 3(a) defines trafficking as constituting three elements: (i) an 'action', being recruitment, transportation, transfer, harbouring or receipt of persons; (ii) a 'means' by which that action is achieved (threat or use of force, or other forms of coercion, e.g. abduction, fraud, deception, abuse of power, or a position of vulnerability, and the giving or receiving of payments or benefits to achieve consent; and (iii) a 'purpose', namely, to exploit. In the successive article, 3(b), the Trafficking in Persons Protocol makes it clear that consent of the victim is irrelevant when any of these three criteria have been present, but that all three elements must be present to constitute human trafficking.

But, as is often the case, legal definitions that may seem straightforward on paper can prove far harder to apply to the messy and ambiguous circumstances of real life, and where competing accounts or incomplete information further complicate the assessment.

But whether it is smuggling or trafficking, whether the act is viewed from the perspective of the victim or the perpetrator, Libya is an extremely complicated terrain for anyone to navigate. It is a country now almost completely devoid of the rule of law. Militias compete violently for control over territory and for political influence in the turbulent post-revolution transition. Militias along the coast control the boat departures and tax the trade, and in many cases, they patrol the shorelines and operate many of the migrant detention centres, official and otherwise. With competing centres of power in the country, state authority is an ambiguous concept; those who have the capacity to influence events may have multiple identities, allegiances and vested interests.

Facing unsustainable levels of irregular migration across the Mediterranean, and finding themselves accountable for intolerable levels of mortality, the European Union (EU) and its member states are urgently seeking effective interventions. They want to reduce the levels of irregular migration, but also to promote protection and human rights, and to try not to derail the delicate Libyan transition process. It is debatable whether all of these objectives are compatible or coherent.

Interventions in Libya are escalating, as are anti-smuggling activities on and offshore overseen by various Libyan authorities and the coastguard. The EU has also recently approved a €90 million package of support to manage mixed migration flows, expand the protection space and support socio-economic development in Libya.[9]

Moreover, new instruments and diplomatic tools, including the use of sanctions, are being applied. In May 2017, the prosecutor of the International Criminal Court told the UN Security Council that her office is considering launching an investigation into alleged migrant-related crimes in Libya, including human trafficking. This was followed by a recommendation in June by the UN Panel of Experts' report on Libya to extend international sanctions to those

'committing serious violations of human rights and international humanitarian law'.[10] And finally, in June 2018, the UN Security Council did indeed take an unprecedented step by imposing sanctions on six human traffickers in Libya – four Libyans and two Eritreans.[11]

This research report is intended to interrogate the implications and consequences of the interchangeable use of the terms 'trafficking' and 'smuggling' when applied to the context of Libya – firstly, for migrants and VoTs; secondly, for the groups facilitating movement, and, finally, for the states seeking to manage irregular migration.

Methodology

The Global Initiative Against Transnational Organized Crime has been conducting research and data collection in Libya since 2013. The data and analysis presented here are based on our own direct sourcing from a range of informants on the ground across Libya and the broader Sahel, including migrants, community members, local officials and those active in facilitating irregular migration. This was funded in part through T-STAN: Toolkit on Smuggling and Trafficking, and a Security and Rule of Law Approach to their Possible Nexus, with a focus on the route from Libya to the EU, which was supported by a grant from the Netherlands Organisation for Scientific Research (NWO-WOTRO) programme Security & Rule of Law in Fragile and Conflict-Affected Settings.

More detailed analysis can be found in the Global Initiative's research report published in March 2017, 'The human conveyor belt: Human trafficking and smuggling in post-revolution Libya', and in the Institute for Security Studies' report 'The anti-human smuggling business and Libya's political end game' published in December 2017. Both of these publications have drawn upon ongoing monitoring of migratory nodes, and cite interviews and exchanges with key informants in Libya, Egypt, Tunisia, Sudan, Malta, Italy and Brussels, including Libyan and European politicians, diplomats, security sources and activists, as well as brokers and smugglers involved in various trades.[12]

Since January 2014, more than half a million people have departed from Libya's shores and crossed the Mediterranean by boat to reach Italy.

These reports were informed by four extensive face-to-face interviews with smugglers operating in the Tripolitania in 2016 to 2017, and 54 surveys carried out among people rescued off Libya between June and July 2017. The reports also benefited from a prolonged engagement with 15 migrants and refugees about their experiences on the central Mediterranean route, lasting in some cases more than a year.

Further interviews were conducted by the authors with international experts, law-enforcement professionals, policymakers, and NGO and UN System practitioners working on the migrant crisis. The report also benefits from the literature available from open-source information outlets focusing on Libya and the smuggling and trafficking industry.

Migrant smuggling in Libya

Since January 2014, more than half a million people have departed from Libya's shores and crossed the Mediterranean by boat to reach Italy.[13] The Mediterranean became the world's deadliest sea crossing in 2015. Yet, despite hundreds of millions of euros of investment by the EU and its member states, there have been no consistent signs that the rate of irregular migration was being sustainably reduced, or that the risks to migrants were diminished. In fact, quite the opposite. The rate of departures remained largely the same in 2017, with nearly 155 000 people having been rescued in the Mediterranean by the end of November. Of the people migrating irregularly in 2017, 2 961 died at sea.[14] At the same time, the range of nationalities of people taking their chances through Europe's open back door has grown, and the proportion of fatalities has increased.

A confluence of dynamics and drivers has contributed to making this problem intractable,[15] but the heart of the Gordian knot is the state of play in post-revolution Libya. The failure to establish a stable post-transition central government, the competing militias that hold the country hostage, extensive fuel smuggling, falling oil prices and the overall degradation of the economy and security have left a free-for-all in Libya. The complete breakdown of the rule of law allows the smugglers, who have always been a feature of Libya's economy, to smuggle and traffic fuel, commodities, arms and people with complete impunity.[16]

Commoditization of migration: A historical practice

For decades – maybe even centuries – Libya has served as the entrepôt for the migrant-smuggling trade from Africa to Europe, as well as being a destination in itself. Migrant smuggling has long been a mainstay of the illicit economy in Libya: neither the most lucrative, nor the most important, yet entirely ubiquitous – the most widespread of all smuggling and trafficking activities, with significant local involvement and acceptance.[17]

Before the 2011 revolution, Libya was a continental powerhouse, with the highest GDP in Africa. It boasted very high rates of economic growth: annual GDP growth averaged 8% from 2000 to 2012, and even in the midst of its fractious post-Gaddafi political period, the World Bank forecast rates of growth in the region of 23% – almost unheard-of for a country in transition.[18] Under Gaddafi, government policy, though often schizophrenic on this point, tolerated irregular migration by sub-Saharan Africans, whose presence was necessary to support the Libyan economy, though migrants were frequently subjected to harsh conditions and persecution by the state, and were broadly despised by the predominantly Arab population. In 2011, before the revolution, the IOM estimated that 2.5 million irregular migrants were living and working in Libya.[19] Therefore, even before the revolution and the current breakdown of the rule of law, there existed a well-established smuggling infrastructure bringing people across the desert and into Libya.

Crossing the Sahara is impossible without assistance, so all migrants coming into Libya require the services of one of the nomadic tribes to guide them across the desert. Along Libya's vast but largely uncontrolled southern borders, semi-nomadic groups move with ease, facilitating passage across the Sahara for sub-Saharan migrants. The routes and networks that are used to move migrants are closely integrated into the local economies of border towns, particularly in areas where involvement in the migrant trade has been an accepted economic practice, with little stigma attached to it: 'These people want to move to Europe, not stay here, and we make good money,' a local community member with links to the smuggling trade was quoted as saying in November 2012.[20] Forced labour has long been an expected cost of migration. Migrants work to pay their passage to Libya and then on to Europe, contracted out as work gangs to local Libyan businesses in construction or agriculture, often doing the jobs that Libyans have preferred not to do themselves.

Irregular migrants were also at risk from the state in Gaddafi's Libya, as mentioned above. Under Law No. 19, Article 6, 'The illegal migrant will be put in jail and condemned to forced labour in jail or a fine of 1 000 Libyan dollars. … The person must be expelled from Libyan territory once he finishes his time in prison.'[21] Under this system, migrants were forced to pay not only the fine but also the costs of their return journey. Fees for labour were retained by the prison service, and the 'fine' was often paid to the prison or detention centre staff to secure the migrant's release.

The choice facing the migrant was therefore between their fate at the hands of the state's official detention policy and at the hands of the militia groups.

Running a prison or detention centre under the Gaddafi regime thus became a lucrative business.[22] Moreover, as Libya has not ratified the 1951 Refugee Convention, nor the 1967 protocol, there is no asylum procedure in place in Libya, and, as a European Commission assessment reported in 2014, irregular migrants, refugees and asylum seekers are 'all considered to be "illegal migrants" '[23] – and such an approach is still congruent with contemporary Libyan national law.

This punitive legal stance taken by the state against irregular migrants opened space for another kind of criminal enterprise to flourish: militia groups would round up irregular migrants to extract extortion – or threaten to hand them over to the detention centres. The choice facing the migrant was therefore between their fate at the hands of the state's official detention policy and at the hands of the militia groups. If the extortion fee was paid to the militia groups, at least migrants would typically be released to continue working or have the chance to make their onward journey, whereas detention centres might send them home – though many of these facilities would also open themselves up to business for smugglers (see Figure 1).

Resource predation and the industrialization of migration

Since the revolution, however, the ongoing fighting, the grip of militia-based politics and the deterioration of the Libyan economy have led to the almost complete commoditization of the migrant-smuggling trade, and have reduced the capacity for international oversight.

Figure 1: Resource predation on migrants by militias and state
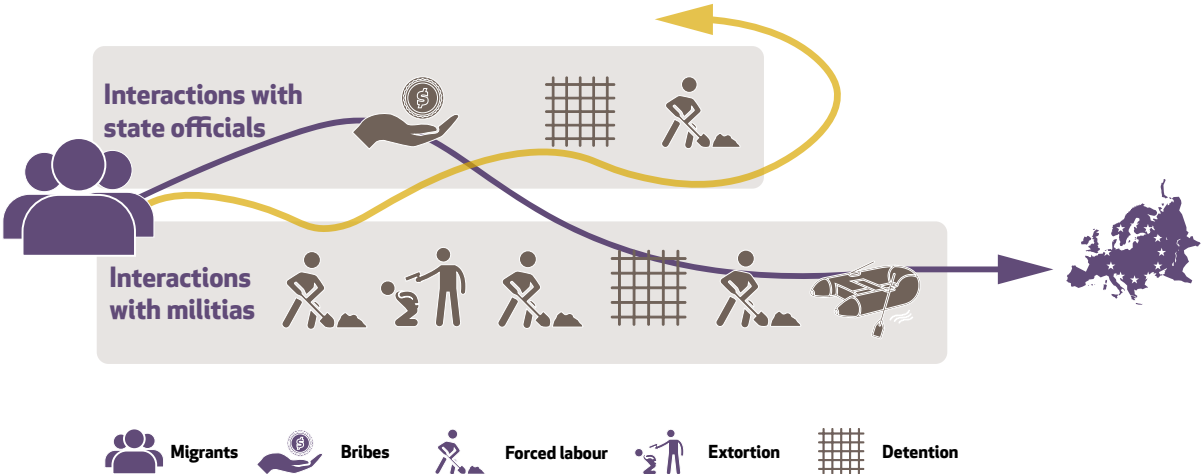
The years following the revolution were characterized by competition over the distribution of power and access to state resources. Militias seeking political control needed resources to grow their firearm capacity, sustain their troops and buy the loyalty and support of their municipalities. Those that did not have access to these resources – which was typically more the case in the border areas – found influence and resources through control of the illicit economy.[24]

Migrants, due to their vulnerability and ubiquity, were an easy way to make money, as they had been before the revolution. However, three things had changed. First, the state's security structures were now completely undermined, throwing the route to Europe wide open. Secondly, militias created protection markets around smuggling economies and this activity in many places worked in symbiosis with the community – because civilians who had nothing to do with migrant smuggling felt that predation on migrant smuggling was necessary for the protection of the community. Finally, and most importantly, militias increasingly moved into the migrant-smuggling business directly and in some cases formed fluid regional syndicates, establishing protection economies around key smuggling nodes (i.e. towns, infrastructure points or detention centres). The confluence of these three factors allowed the smuggling economy to expand its capacity and logistical latitude, and operate with greater impunity than ever before.

In the post-revolution period, these phenomena led to the industrialization of migrant smuggling in Libya. At embarkation points, launch operations could now be done with greater ease, involving more boats for greater

efficiency. At logistical nodes on the coast or in the 'connection houses' inland, where migrants were detained awaiting their boat passage, migrant numbers swelled to unprecedented levels. Migrants in their thousands were housed in warehousing-type facilities. It was reported that holding facilities that were closer to urban areas and to roads began to be used, to reduce the logistical costs and inefficiencies for the smugglers. Whereas, in the past, migrants had to be transported secretly, reports increasingly emerged, particularly in the south, of convoys of 4x4 vehicles driving freely on the highways, with their human cargo openly on display, while militia-controlled checkpoints would wave them through.[25]

The parallel business of migrant extortion became supercharged in the permissive environment of post-revolution Libya. Small armed bands prey upon independent migrants (though people travelling alone have become increasingly scarce as the levels of conflict and risks to migrants have increased), and on small convoys of migrants. Attacks on migrant connection houses have also been documented. Armed groups kidnap migrants, strip them of whatever possessions of value they might have, then take them to remote locations and threaten their lives unless a ransom payment is made. Kidnappers sometimes use physical and/or sexual violence to elicit the ransom payments.[26] The period of captivity depends on how long the migrant takes to meet the payment. Those who cannot pay can be sold into bonded labour or to brothels, or killed.[27]

Dedicated kidnap gangs like these have become an integral part of Libya's smuggling economy, in some cases serving almost like an ancillary insurance function to the smuggling trade. In some reports, smugglers have sold migrants to the kidnaps gangs either where disputes have arisen, or in cases where migrants cannot pay for their onward passage. The kidnap gangs then take on the liability for longer-term storage and surveillance of migrants, extracting the highest possible fees they can from them. Once these have been paid, migrants will typically be passed back to the smuggling crews to continue their onward journey.

Forced and indentured labour

Forced labour in Libya is a practice that exists along a spectrum of criminal exploitation. At one end, in its most basic form, individual migrants seeking employment (either because they intend to stay in Libya or because they need funds for an onward journey to Europe) will work for construction sites or farms, for example, where they may well end up going months without pay. Sometimes small salaries are agreed to, in addition to housing and basic meals, but then employers may fail to make the payment for several months.

The practice of using migrants as a source of free labour is widespread and on the increase as the Libyan economy becomes increasingly constrained, and as businesses that are under financial pressure become reliant on such labour when they are challenged to remunerate people appropriately.

Forced labour in Libya is a practice that exists along a spectrum of criminal exploitation.

Along this forced-labour spectrum, a more coercive step is seen when smugglers make arrangements for migrants to work in conditions of forced labour or servitude involuntarily. This has become more prevalent as migrants' ability to move freely in Libya has become constrained. Smuggling groups hold migrants in warehouses, and then rent them to local businesses or individuals as casual labourers or work gangs. This can continue for an indefinite period of time while their onward transit is being arranged, and the conditions of work can be substandard. The UN Panel of Experts reported, for example, that one militia group was using migrants for landmine clearance, without their being given training or protective gear. An Eritrean described working in this way for a year until he was transferred to a coastal smuggling group for passage to Europe.[28]

Then there is the final level of exploitation, whereby migrants who have entered into a compact for a journey find themselves in a position of indentured servitude, slavery or protracted sexual exploitation, either enacted by a

smuggler or his associate. This is imposed entirely against their will and there is no prospect or expectation that they will be able to continue their journey.

In each category of forced labour along this continuum of exploitation, the smuggled migrant becomes, by definition, a victim of human trafficking, regardless of whether this was an arrangement they had entered into willingly, or whether the smuggling compact was eventually honoured and passage to Europe (or elsewhere) was finally provided.

As we shall explore in the next section, the challenge with defining such practices as human trafficking, however, stems from the ubiquity of the crime in Libya, the degree of acceptance it has with the community and migrants themselves, and the weak capacity for either the state or the international community to respond.

Human trafficking in Libya

Although reports of migrant abuse have intensified in the last few years, this is not a new phenomenon. Inhumane treatment of migrants in Libya, in particular those from sub-Saharan Africa, pre-dates the Libyan revolution in 2011 and the current 'migrant crisis'. The international community and human-rights monitors regularly documented how sub-Saharan migrants – as well as the numerous other nationalities that were drawn to Libya's booming hydrocarbon economy – had been persecuted during Gaddafi's four-decade reign.

Conditions in detention centres have always been a point of particular concern. In 2005, the former director of the Italian secret service reported to the Italian Parliament that 'undocumented migrants in Libya are caught like dogs'.[29] A 2006 Human Rights Watch report detailed abuses against migrants, including arbitrary, unfair and indefinite detention, torture, extortion of bribes with violence and the threat of deportation.[30] A 2009 US State Department's human-rights report on Libya estimated that 1% of the estimated 2.5 million irregular migrants in Libya were victims of human trafficking, having been forced into commercial sex work.[31]

The situation for migrants, while unquestionably dire, is, however, mirrored by similar kinds of treatment experienced by combatants, minority groups and civilians in Libya's continued and volatile conflict. The Office of the High Commissioner for Human Rights released a report in February 2017 that documented widespread violations and abuses committed across Libya since 2014, including unlawful killings, abductions and disappearances, indiscriminate attacks, torture and ill-treatment, arbitrary detention, as well as violations against women, journalists and human-rights activists.[32]

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These points highlight that while the migrant-smuggling industry in Libya has been decried for its brutality, these practices are not unlike those that are perpetrated by both state officials and smugglers before the revolution, and neither are they very different from forms of abuse against Libyan citizens. In the current context, the treatment of migrants is an acute sore in a long-festering wound.

Identifying victims of trafficking

Identifying VoTs is inherently difficult, as the current means that is relied upon to do so is almost exclusively through self-reporting and victims' own accounts. This presents a number of challenges, including, at the most basic level, the fact that the true foundation of the distinction between migrant smuggling and trafficking is the actions and intent of the perpetrator. As mentioned above, under the Trafficking in Persons Protocol, it is the 'action', 'means' and 'purpose' of the trafficker that establish the crime, and all three elements must be present to constitute human trafficking.

However, identifying the motivations of criminal actors is a challenge. Migration and protection agencies rarely concern themselves with gathering data or performing analysis that identifies the groups behind smuggling or trafficking – this remains the mandate of law enforcement. There is a fear that documenting this would compromise their humanitarian neutrality.[33]

Identifying VoTs is even more challenging in emergency contexts characterized by extreme vulnerability, overwhelming desperation and service-provider fatigue. Governments are primarily responsible for identifying and supporting VoTs, a fact accepted by Libya when, in 2004, it ratified the Trafficking in Persons Protocol of UNTOC. However, as the 2017 United States Trafficking in Persons Report on Libya highlighted:

> Despite this political progress, the GNA [Government of National Accord] struggled to gain institutional capacity and the resources to address trafficking, as the government was focused on consolidating control over its territory and countering extremist violence throughout 2016 and into 2017. The judicial system was not fully functioning, as courts in major cities throughout the country have not been operational since 2014. Violence driven by militias, civil unrest, and increased lawlessness continued to plague Libya throughout the reporting period. Extra-legal armed groups continued to fill a security vacuum across the country; such groups varied widely in their make-up and the extent to which they were under the direction of state authorities. These groups also committed human rights abuses, including unlawful killings.[34]

Libya's counter-trafficking response, as with many countries in conflict, is in its infancy and it competes with a raft of other serious issues of national concern – countering armed insurgencies, and providing national social and economic security, etc.

As a result, the task of identifying VoTs often falls to various agencies of the UN, international aid providers and local NGOs. The UN Refugee Agency (UNHCR) and the IOM – the key UN agencies for supporting refugees, asylum seekers and migrants – regularly come into contact with VoTs or people at risk of becoming VoTs. Both organizations have counter-trafficking field staff who face the challenge of distinguishing between violence, abuse and trafficking of migrants and refugees. At the time of writing, due to these challenges, the IOM is developing a new handbook for practitioners that highlights key differences.[35]

Migrants near the southern Libyan border.
Photo: Tom Westcott

Both the IOM and UNHCR have tools to assist field staff in screening victims of trafficking. However, only the IOM has made its tool public. The IOM has a detailed 24-question screening form, divided into understanding the 'process: entry into trafficking' and the 'exploitation phase'. The questions touch on the critical elements of determining a case of human trafficking: the act (i.e. when, where and how the person was recruited, transported, transferred, harboured or received); the means (when, where and how the person experienced threats or use of force, coercion, abduction, fraud, deception etc.); and the purpose (what type of exploitation the person experienced). The questions are structured to allow the interviewer to reach a conclusive decision on the status of the interviewee. There is, like any tool, an element of interpretation that needs to be made by the interviewer, requiring a degree of skill and empathy to ensure the interviewer elicits enough information to accurately assess the case.

The IOM and UNHCR interviewees for this report both indicated that in the past there has been mislabelling of victims – sometimes because staff were unable to recognize the subtle differences between crimes, and at other times because it seemed bitterly unfair to deny a desperate, abused and highly traumatized person support, in the absence of alternative programmes to provide support.

Understanding the theoretical differences between extreme violence and abuse, and exploitation that amounts to human trafficking is only one part of the problem. For field staff faced with overwhelming numbers of people in need, a migrant who was kidnapped for ransom, who was chained to the ground for a month and had molten plastic seared into his back, is arguably in as much need as the migrant who was promised safe passage to Europe but whose smuggler had trapped her in a brothel at a transit hub. One is a smuggled migrant abducted for the purposes of extortion; the other is a smuggled migrant turned victim of trafficking for commercial sexual exploitation. The effect of this is a distortion of the numbers of VoTs being recorded and an obfuscation of what practices fall within and outside of the definition of trafficking.

Screening victims of trafficking in Libya

Since 2014, the UNHCR and IOM have evacuated all international staff from Libya to Tunisia (a move they are reconsidering). National staff work predominantly from home, unless they are delivering services to migrants in community centres and detention centres. Most diplomatic missions have withdrawn from the country, while only a limited number of NGOs continue to operate.

The remaining organizations identifying VoTs in Libya are the IOM, UNHCR, UN Population Fund, CESVI (an Italian NGO), the Danish Refugee Council, and local group Mercy Wings. These organizations report that migrants face enormous hurdles being identified as VoTs. Migrants are perceived by Libyans to be economic opportunists willing to work in the informal sector, or they are perceived as commodities to be exploited. Government institutions detain and arrest migrants, and limited to no efforts are made to identify detained migrants as VoTs.

The UNHCR and IOM come into contact with VoTs in Libya through protection monitoring in community development centres and detention centres, from referrals by community members, and from calls for help made to the various hotlines operated by the UNHCR and CESVI.
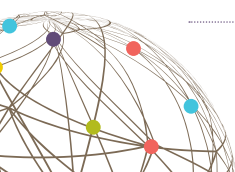
For the many potential VoTs trapped in detention centres, it is extremely difficult for organizations to ask any direct questions about their smuggling and/or trafficking experience owing to the confines of the room, the inability to establish trust and confidentiality, and the high risk that the perpetrator may also be in the room. When there are visible triggers to prompt questioning, such as pregnancy, some sensitive inquiries are made but few women are willing to disclose their status as a victim of sexual abuse or commercial sexual exploitation. For callers to the hotline, when red flags that signal exploitation are raised, the case is immediately referred by email to the UNHCR national officer in Tunis, and the case is then referred for further detailed screening and support services.

Recourse for victims of trafficking and the agency of migrants

Of the range of protective and support options required by VoTs – everything from legal, psychosocial and medical support, to access to translators, temporary residency rights and shelter – very few solutions are available for VoTs in Libya. In the absence of service providers on the ground, the most common method of support provided to VoTs in Libya is voluntary repatriation, delivered by the IOM. However, even this option cannot be applied universally to identify victims. For a VoT to access repatriation, the embassy of their country of nationality must be present in Libya, and, for many, this is not the case.

Another option, resettlement in a third country, is rare and subject to strict quotas. Most countries that do accept resettled VoTs require an official face-to-face interview with the victim, which is often impossible without an embassy. Again, without service providers physically present in Libya, there is also a lack of human resources available to deal with resettlements. As a result, most VoTs in Libya receive only the basics of emergency support – temporary financial assistance, primary medical care, and some psychosocial counselling. It may be crucial support, but it is generally insufficient to meet either short- or long-term needs.

Service providers reveal that most trafficking victims are not willing, at least at first, to reveal what they have experienced or to take advantage of security programmes provided by the IOM and local institutions. There

are many reasons for this, including links between trafficking victims and the traffickers, the control that the accompanying person (for instance, the *madame* or *boga* in the Nigerian context[36]) has over the victims, or the belief that victims cannot violate an oath that has been sealed with a voodoo ritual or a rite of initiation (in other words, cases where the victim is committed to honouring an agreement that has been entered into). Finally, victims may be reluctant to reveal their experience out of a sense of responsibility towards their family: they may fear risk of retaliatory actions by traffickers against their family members back in their country of origin.[37]

Therefore, regardless of how well trained staff may be in terms of detecting the warning signs of human trafficking and responding appropriately, they increasingly come into contact with victims who do not wish to be identified or supported. This can occur for a number of reasons. In addition to those outlined above, victims are unaware of their rights; they fear stigma or reprisals from traffickers; organizations cannot guarantee their safety; authorities detain and prosecute victims; there are poor conditions in shelters; the services available to them are limited; they also fear a lack of justice or compensation.

Consequently, in Libya, as well as in other countries in northern Africa and the Middle East, where VoTs are identified, the UNHCR and IOM have few options other than to offer victims repatriation to their countries of origin. But, for those who have used their life savings or entered into substantial debt to fund their journey, especially if they are the future breadwinners for families living in poverty, and for those who have limited or no livelihood opportunities at home, the option to return home is a grim one.

In the absence of alternative forms of support, refusing repatriation and attempting to move closer to the country of destination are viewed as the only choice. This is particularly true for those who consider their period of greatest risk already behind them, and their preferred final destination as tantalizingly close – as is often the case with those who have suffered detention in Libya and whose next step would be to board a boat to Europe.

Surveying for human trafficking upon arrival in Europe

As a result of these huge challenges when it comes to identifying, screening and supporting VoTs in Libya, many continue to their European destinations unidentified. To better understand the experiences of migrants and refugees arriving in Europe, the IOM has developed the Human Trafficking and Other Exploitative Practices Prevalence Indication Module, which is now deployed on a systematic basis as part of the IOM's Displacement Tracking Matrix Flow Monitoring System.

The module consists of six proxy indicators for potential human trafficking or exploitative practices. The indicators are classified into two groups – direct experiences and observed experiences:

Direct experiences	Individuals who were held against their will
	Individuals who had worked without receiving the expected payment
	Individuals who were forced to work
	Individuals offered a marriage arrangement
Observed experiences	Offer of cash in exchange for blood, organs or body parts
	Individuals threatened with sexual violence

The module has been used in surveys of migrants and refugees using the central and eastern Mediterranean, and western Balkan routes to Europe. Data available from April 2017 indicates that 76% of individuals answered 'yes' to at least one of the four human trafficking and other exploitative practices indicators, based on their own direct experience; 72% of all migrants interviewed experienced physical violence during their journey; and 91% of all direct experiences of exploitation occurred in Libya.[38] In the most recent publication, which focuses specifically on the experiences of Nigerian migrants travelling towards Europe, the findings were even starker in terms of

exploitative experiences. It suggested that 79% of all Nigerian migrants, and 86% of males, responded positively to at least one of the four direct experience criteria.[39]

Although the data should raise serious concerns among governments, policymakers and practitioners about the range and level of abusive conditions migrants experience, the information does not identify cases of human trafficking. Rather, it presents initial evidence of exploitative experiences of those in transit, revealing the need for further surveying and detailed screening to determine whether those experiences amount to the level of exploitation required to meet the criteria that define human-trafficking intent.

Though the IOM acknowledges that the survey results 'do not aim to identify cases of human trafficking as defined by international legal instruments', the presentation of the data as an indication of the prevalence of 'human trafficking and other exploitative practices' still risks misleading readers that the information is about actual identified cases of trafficking. There is evidence that media outlets throughout Europe cite this data inaccurately in reports – using headlines such as 'Refugees being forced into "modern slavery" by people traffickers before attempting deadly journey to Europe'; and 'Survey finds 70 per cent of migrants arriving in Europe by boat trafficked or exploited'.[40]

Although it is important to draw attention to these worrying initial findings – and indeed many of those who responded 'yes' to the survey may well be victims of trafficking – until efforts are taken to screen the individuals, as opposed to just surveying their experiences, there is a risk of perpetuating misunderstandings of human trafficking and diluting responses.

In May 2017, IOM Libya announced it would be expanding its research programme by increasing its flow monitoring coverage to 35 municipalities (or *baladiyas*), including surveys of migrants using the human trafficking and exploitative practices prevalence module.[41] Given the extremely high rate of reported instances of exploitation in Libya, these surveys may shed much-needed light on the key hot spot areas in which exploitation is occurring. However, the broad nature of the six proxy indicators means that the module will be unable to differentiate between abusive smuggling practices and cases of human trafficking.

Identifying smuggling or trafficking intent

One of the challenges of distinguishing between VoTs and those in a consensual smuggling arrangement stems from the fact that a clear distinction between the perpetrators of smuggling and trafficking can rarely be drawn, and from how the relationship between the in-group and out-group is defined (see Figure 2).

Figure 2: Identifying the in-group and out-group functions in the human-smuggling industry

As shown in Figure 2, there is an inner ring of services that are central to the smugglers' operations (the in group): procurement of transportation and fuel, and provision of security – both to ward off competitors and to keep migrants in line – which can be considered the 'in-group' core to the smuggling business. There is typically also a whole set of services relating to money. Someone to secure corruption connections and pay bribes will be crucial to ensuring smooth smuggling logistics – though this person could be both directly part of the smuggling crew or more loosely affiliated, providing his services for payment.[42] Many networks will have a dedicated crew member responsible for accounting for, holding and paying out the money associated with the trade. Finally, most will have a financial backer, whose investments allow the initial procurement of transportation infrastructure, the renting of accommodation, access points and other critical elements. This financier may be involved in the logistics of the network, or removed, depending on the network.[43]

In addition, within a smuggling operation there are people who play a multitude of roles, including a range of ancillary and specialized services, but who do not form part of the essential core of the smuggling business (the out group). Ancillary services may include the provision of accommodation and food for migrants in connection houses, for example. These acts are not criminal in themselves, but they support a criminal industry. Specialized services might include changing, holding or transferring money and the provision of fraudulent documents or visas, for example – criminal activities, but which are not unique to, or necessarily part of, the smuggling/ trafficking economy. Furthermore, the association of ancillary activities may appear more integrated over time, because embeddedness in the criminal enterprise increases as familiarity and a business relationship are solidified, or as the providers become more dependent on the profits to be made.

The decision on where to draw the line between those considered to be smugglers or traffickers, and those who merely sit on the periphery of the trade can be a highly political one. It is also a challenge for international actors, with limited presence on the ground, and thus little direct contact with the realities of smuggling enterprises in Libya's violent conflict, to take an informed decision on how to intervene and against whom. This means that international action is sometimes barely better than stabbing in the dark.

The decision on where to draw the line between those considered to be smugglers or traffickers, and those who merely sit on the periphery of the trade can be a highly political one.

In many contexts, even in countries in conflict, the criminal groups that smuggle migrants and refugees are often wholly different from those that traffic people. Iraq and Yemen, countries that are experiencing catastrophic conflict and humanitarian crises, are two current examples that illustrate this crucial difference.

During 2016, smugglers managed to smuggle Syrians across the Syria–Iraq border. But, after reaching northern Iraq, some refugees were deceptively recruited by local Iraqi traffickers into exploitative and slavery-like employment conditions in factories in Dohuk, and to work in commercial sex establishments in Sulimaniyah.[44] Similarly, in Yemen, professional smugglers offering passage by boat to Ethiopian migrants from the shores of Djibouti to Yemen are unrelated to the tribal groups in northern Yemen who extort and torture the same migrants for ransom.[45]

In Libya, however, over the course of 2017, in interviews with the authors, field practitioners have reported an increasing interconnectedness between smuggling and trafficking groups, and a shift in smuggling practices as a result of increasing greed and/or desperation.[46] However, the phenomenon they describe lacks granularity, making it difficult to understand to what extent the kidnapping gangs, while increasingly part of the industry that profits from the commoditization of migration, are associated and integrated with smuggling operations.

If the goal is to intervene in some way, either with international sanctions, censure, or through securitized action, then policymakers will require a far better understanding of the situation. For example, information on whether those groups that move the greatest number of people are those associated with exploitative practices is needed. It

has been repeatedly observed that the most brutal treatment and the contracting of work gangs occur in detention centres. But detention centres (with some exceptions) are often run by militias who are not the same as those involved in the facilitated movement of irregular migrants.

Any effort to intervene in the smuggling markets is unlikely to be successful without a nuanced and holistic political-economy monitoring that has the capacity to map both licit and illicit flows on a continual basis. In Libya, human smuggling is essentially a war economy, and it is the socio-economic and political antecedents that shape the way in which the industry evolves in response to changes in the political environment.[47] Fundamentally, no international agency has sufficient access there to be able to continually gather the granular knowledge needed to determine the associations and allegiances among the different militia groups that are associated with the smuggling trade.

Moreover, in the volatile context of contemporary Libya, these identities are ephemeral and chimeric – shifting constantly in response to the volatile political environment. A smuggler one day may turn into a law-enforcement official the next; and a gang notorious for kidnapping and extorting migrants may suddenly be seen running an internationally funded state detention centre for migrants.[48]

Interventions in Libya: Defining the problem statement

It is clear that, regardless of how the crime is defined – smuggling or trafficking – there is little good happening in Libya. Not only are the lives of countless migrants being lost but, at the same time, the profits from migrant smuggling and human trafficking are undermining the peace process. Due to the profits that can be made, these practices are increasingly becoming a centrifugal force away from central state consolidation, in that they distract international, and therefore national, attention away from focusing on achieving a successful, legitimate and peaceful conclusion to the transition.

As noted earlier, momentum is clearly growing in the international community to seek an urgent end to Europe's so-called migrant crisis and, as EU Commissioner Dimitris Avramopoulos announced after the 2015 Valletta Summit on Migration, 'Europe is declaring war on smugglers'.[49]

In Libya, human smuggling is essentially a war economy.

But there are some ambiguities to the problem statement here. Where the EU and its member states have spoken of ending migrant smuggling, this is often conflated, firstly, with the goal of addressing protection risks for people on the move and, secondly, with reducing levels of irregular migration. These three goals are not one and the same, and, in the framework of some responses, may be mutually exclusive.

Fundamentally, there is only one solution that is likely to be effective at addressing all three goals: simultaneously decreasing the likelihood of migrant deaths or harms, reducing the profits and potency of criminal groups that facilitate irregular migration, while at the same time reducing overall levels of irregular migration. That solution is to increase the available number of safe and legal routes to Europe, as well as to other destinations, and to encourage freedom of movement and trade in the regions of source and transit. Realistically, however, in the current political climate, this solution is unlikely to be appealing to policymakers, and cannot be credibly implemented until Libya is stabilized.

The challenge with conflating the goal of countering migrant smuggling with that of migrant protection is that it can be counterproductive. The actions taken against smugglers, which are criminal justice-led and often militarized, can result directly in increasing the risks to migrants, as opposed to protecting them. As studies have repeatedly shown across several jurisdictions, including in Libya, when smuggling is treated as a serious crime, it has a strong selection effect on those prepared to engage in it, making it attractive to the more criminal actors who are prepared to operate in a riskier market.[50] Another effect of a misguided response to smuggling – and one that we have seen

in Libya between 2014 and 2017 – is that smugglers under pressure are more likely to cut the journey short, forcing migrants to walk the final parts of the journey alone or to crew their own boats; in some cases, they are abandoned at sea to rely on being rescued once in international waters.[51]

Political expediency: Conflating smuggling and trafficking

In the context of the EU migration crisis, and with EU states under immense pressure to control irregular migration, the conflation of smuggling and trafficking has become an effective way of buying some room to manoeuvre. Identifying a situation as one of trafficking helps to strengthen the legitimacy of responses that may otherwise be politically unpalatable. Bombing smugglers' boats and other military action directed against smugglers and their vessels have been proposed as 'anti-trafficking' strategies in the war on smugglers.

Unlike migrants who depart from Libya, who are predominantly from sub-Saharan Africa, during the period 2015–2016, when the eastern Mediterranean route across the Aegean Sea from Turkey to Greece experienced its largest numbers of migrants, those travelling were mostly Syrians, followed by Afghans and Iraqis. In particular in the case of the Syrian migrants, but also to a certain extent with the two other national groups, there was little doubt in anyone's mind that they were prima facie refugees, with legitimate asylum claims to be made. While this may also be the case for those from the African subcontinent, the issue is less straightforward and the merits of each application have to be considered on an individual basis.

For Syrians escaping their country's complex ongoing war, a smuggler may have been a lifeline and a saviour. Following many years of internment in the squalid refugee camps of Turkey, for Syrians, the boat trips across the Aegean were a small, yet critical step towards a new life. Fatality rates associated with these crossings were exceptionally low, and reports of abuses against migrants were rare. Yet for European states, which had to deal with more than 1.1 million people crossing their borders irregularly within 12 months, this secondary movement was a potent and destabilizing political threat, and urgent and decisive measures had to be taken to stem the tide.

There is little dispute that conditions for migrants in Libya are appalling, characterized, as they are, by grave and flagrant abuses of human rights.

If cast as a fight against brutal, exploitative and deadly traffickers – albeit with little granular understanding of the distinction between the groups operating in Libya and those working in Turkey or elsewhere – militarized interventions seem well justified to EU leaders, who can disguise their anti-migration measures behind the facade of a crusade against the universal evil of modern slavery and exploitation.

The challenge of ending human trafficking in Libya

Given the various factors and the hostile macro-environment that have been described in this report, it is unrealistic to expect agencies and practitioners to be able to credibly address human trafficking in Libya any time soon. Effective engagement is inevitably stymied by a host of challenges, including the long-established classification of human smuggling as a crime in Libya; the engagement in the industry by politically motivated militias and local communities; the enmity shown by Libyans towards migrants; the widespread levels of insecurity that beset the nation; and the fragility of the government and its state institutions. Furthermore, restrictions for international actors, who have limited access to Libya, particularly the south, compromise their operational capacity and level of situational awareness. Meanwhile, the heavy focus on migration by international actors, often at the cost of greater domestic priorities, is triggering a growing credibility gap with the EU among the national population.

In the Libyan context, disaggregating cases of trafficking from those of smuggling is almost impossible, and the distinction is not meaningful when applied. There is little dispute that conditions for migrants in Libya are appalling, characterized, as they are, by grave and flagrant abuses of human rights, and the rights of refugees

and migrants. Whether such conditions are categorized under the terms 'smuggling' or 'trafficking' is arguably immaterial, because the victims in this case are not only equally deserving of assistance, but also equally unlikely to receive it. The humanitarian and protection agencies are barely able to meet basic human needs while violent conflicts continue and the political space is contested, let alone provide the raft of protections and support theoretically afforded a VoT. Furthermore, it is questionable whether those 'victims' would choose to take the assistance provided, in the form of repatriation, when many are close to making a successful, albeit risky, crossing to Europe.

However, any intervention in Libya in the current context does need to adhere to some basic humanitarian principles: firstly, to do no harm and, secondly, to remember the responsibility to protect. Arguably, this means adopting a 'stability-first' doctrine for Libya, which places efforts to control migration and to protect migrants within a package of measures aimed at stabilizing, securing and supporting the country and all those who reside within its borders, whether refugee, migrant or citizen.

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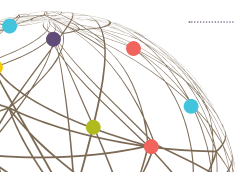
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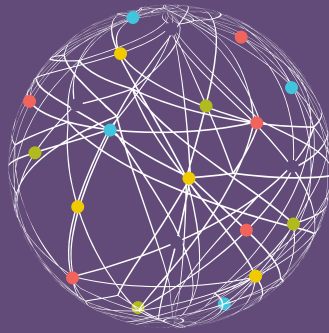
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