

**Europe's asylum and migration policy:
for the promotion of human rights or the protection of economic self-interest?**

EU agreements with Libya

"It is my objective to put the protection of fundamental rights of all people involved in migratory and asylum flows at the centre of our efforts in the EU relationship with Libya. The Cooperation Agenda will enable us also to promote initiatives aimed at better protecting and assisting the rights of migrants and refugees"

Cecilia Malmstrom, EU Commissioner for Home Affairs, 5 October 2010

On 4th October 2010, the European Union and Libya signed a 'migration cooperation agenda' in Tripoli. Signatories for the EU were Cecilia Malmstrom, EU Commissioner for Home Affairs and Stefan Fule, EU Commissioner for Enlargement and European Neighbourhood Policy. Signatories for Libya were Moussa Koussa, Libya's Foreign Minister, and Younis Al-Obeidi, Secretary of the General People's Committee for Public Security. The terms of the agenda were vague but included cooperation on border surveillance, smuggling and trafficking, refugees and international protection.

The migration co-operation agenda was the culmination of several years of negotiations and agreements between both the EU and Italy with Libya on immigration, dating back to October 2004, when the international arms embargo against Libya was lifted after Gaddafi, encouraged by Tony Blair, had announced in December 2003 that Libya was giving up its weapons of mass destruction.

The EU agreement with Libya in October 2010 also followed a separate agreement between Italy, the former colonial power, and Libya which dates back to August 2008. In that month, Italy and Libya signed a 'Treaty of Friendship, Partnership and Co-operation' (a 'Friendship Pact') in which Italy agreed to pay €5 billion in infrastructure projects over 25 years. This was in compensation for abuses during its rule and to strengthen Libya's border controls. Although this was an agreement between Italy and Libya, 50% of the payment was to come from Italy and 50% from the EU. Italy agreed to pay towards the construction of detention centres and towards the cost of returning non-Libyan nationals to their countries of origin. Estimates vary but it has been calculated that Libya has had 27 detention centres around the country, accommodating migrants and refugees in appalling conditions, sometimes for several years, without access to lawyers or courts.

In May 2009, Italy and Libya launched joint naval patrols, intercepting and forcibly returning those trying to cross the Mediterranean to Italy. No attempt was made to determine whether any of those returned were in need of international protection, were victims of trafficking or particularly vulnerable. Returnees included children. Italy's action was in contravention of the 1951 UN Refugee Convention which prohibits the return of people to countries where there is a real risk of persecution. Nevertheless, the return of migrants and refugees to Libya has continued, evident in the joint operation between Italy and Frontex (the EU external borders agency), known as Operation Hermes and operating since February 2011 when people fleeing the violence in Tunisia began to arrive in Italy.

In mid-March 2011, Italian naval vessels blocked the arrival in Sicily of a ferry carrying 1800 mainly North African nationals after it had already been prevented from arriving in Malta, forcing it to return to Libya. A spokesman for the Italian government said that they could not be certain that those on board were “genuine evacuees”. At the same time, there were reports that a boat carrying people from Tunisia sank in rough seas, leading to the death of 35 people on board.

Unlike Italy, Libya has never signed the Refugee Convention and although the UN Refugee Agency, UNHCR, had an office in Tripoli, it had no formal agreement with the Libyan regime and UNHCR permits issued to individuals in Libya were no guarantee of protection from abuse, detention or forcible return.

The Libyan signatories to the migration co-operation agenda with the EU were high ranking officials in the Gaddafi administration, well-known for their involvement in his regime and in matters which have previously led to the condemnation of Libya as a pariah state and one which could not be trusted to uphold basic human rights, such as the right to life and the right not to be subjected to torture, inhuman or degrading treatment or punishment.

Moussa Koussa, who was head of the Libyan External Security Agency until he became Foreign Minister in May 2009, masterminded the killing of Libyan dissidents abroad. He was based at the Libyan Embassy in London in 1980 but was forced to leave after his presence there became unacceptable. He has never been held to account for his part in the elimination of Gaddafi’s opponents despite the fact that the security services have information about the crimes.

Younis Al-Obeidi was a signatory to the Memorandum of Understanding agreed between Britain and Libya and signed on 18 October 2005, 3 months after the London bombings. The Memorandum was an agreement that, if Britain returned those considered to be terrorists to Libya, their human rights would be protected. A significant element of the Memorandum was the role to be played by the Qadhafi Development Foundation established and run by Saif al-Islam Gaddafi, a son and assumed successor to his father. The Memorandum was rejected by the tribunal established by the British government to hear appeals against deportation in national security cases, the Special Immigration Appeals Commission (SIAC). In April 2007, SIAC ruled that the Memorandum could not guarantee that people returned to Libya would not be subjected to torture or inhuman and degrading treatment.

Moussa Koussa had already demonstrated his contempt for human rights and, at the very least, Younis Al-Obeidi was shown to be unable to ensure Libya lived up to its commitment not to torture its own citizens, let alone foreign nationals. But both were trusted by the EU to enter into agreements to police the EU borders in the Mediterranean and protect those intercepted in the process.

Ironically, just two months after the migration co-operation agenda was agreed, Younis Al-Obeidi confirmed reports that Libya would not implement the security agreements because it was seeking €5 billion per year to keep Europe free from ‘illegal immigrants’, not €5 billion over 25 years!

Foreign nationals in Libya

Until the recent uprisings in Libya there were an estimated 1.5 million foreign nationals in Libya, many employed to work in the construction, oil or health sectors. Others were in transit to Europe where some at least would claim asylum.

Amongst foreign workers were nationals of China, Bangladesh, Pakistan, India, Vietnam, Thailand, Ghana, Nigeria, Mali and Burkina Faso. Some were employed by foreign companies which had entered into lucrative contracts to work in Libya, particularly in the oil and construction industries. When the uprisings began, many of the migrant workers found themselves stranded on the borders between Libya and Egypt or Tunisia. Some of them were forced to leave without their passports, retained by their employers who had left them to make their own way to safety. Bangladeshi employees of a Chinese company reportedly left being owed 2 months' salary. China, one of the voting members of the UN Security Council which does not support the call for a no-fly zone in Libya, is the first country to indicate that its companies are ready to go back into Libya to continue contracts there.

Libya, as well as being a destination for migrant workers, is also a country through which many sub-Saharan people will try to pass in order to attempt the journey to safer places in Europe. These include nationals of Somalia, Eritrea and Ethiopia, countries with poor human rights records.

The uprising in Libya has occurred for a number of reasons but there is no doubt that it has been spurred on by the events in Tunisia and Egypt where popular revolts have led to the dictators of those countries being forced out even if the battle is still ongoing for real freedom from past oppression. But it is through the uprising in Libya that the issue of foreign nationals in the region has come to the fore. And it is primarily through Libya that European countries have sought to control the Southern Mediterranean border to prevent Africans entering Europe, regardless of their right to claim asylum or their need to seek employment. Europe therefore chose to enter into an agreement with one of the most brutal regimes in North Africa, one well known for gross violations of human rights against its own people, let alone against those for whom it has shown even less regard.

European financial investments in North Africa

The EU plan for a number of years has been to develop a policy towards those countries in close proximity to Europe which would be of benefit to Europe. Central to this has been the strengthening of its borders to prevent foreign nationals entering the territory of the European Union. In addition, this has gone hand in hand with Europe's desire to protect and develop its energy supplies. In Libya, this has so far been through individual companies based in EU countries, the most notable of which is BP Global.

In May 2007, BP signed a major exploration and production agreement with Libya's National Oil Company. The deal, secured during a visit by Tony Blair to Libya, included an initial exploration commitment worth \$900 million, BP's largest single exploration commitment. The deal was signed at Sirte, Colonel Gaddafi's home region and the site for the offshore drilling. Remarkably, despite the

significance of the commitment by BP in Libya, their website does not list Libya as a country of operation. Sirte has remained under the control of the Gaddafi regime throughout the uprising.

The EU has also worked through its European Neighbourhood Policy (ENP) to develop ties with its closer neighbours on issues of prosperity, stability and border security. Launched in 2004, it declares that its policy is:

“based upon a mutual commitment to common values: democracy and human rights, rule of law, good governance, market economy principles and sustainable development”.

Included in the 16 countries in the ENP are the North African countries of Algeria, Egypt, Jordan, Morocco, Syria and Tunisia, none of which have a recognised democratic system, a respect for human rights or the rule of law. Therefore, the foundation of the ENP is suspect.

Another element of the development of relations between the EU and neighbouring countries is the Union for the Mediterranean, launched in 2008 and formerly known as the ‘Barcelona Process’. Algeria, Egypt, Jordan, Libya, Morocco and Tunisia are amongst the countries in the Union. The purpose is to promote economic integration and democratic reform. The evidence of work to promote economic integration is a little easier to identify than that to promote democratic reform, not least because of a programme linked to both the ENP and the Union, known as the Facility for Euro-Mediterranean Investment and Partnership (FEMIP).

Since it was launched, FEMIP has invested €10 billion between October 2002 and December 2009. It has focused on 2 priority areas: the support for the private sector and the creation of an investment friendly environment. Its partner countries have included Algeria, Egypt, Morocco, Syria and Tunisia.

Its main channel of investment is the European Investment Bank (EIB), the leading investor in the Mediterranean. The EIB has stated:

“The promotion of sustainable, competitive and secure sources of energy is a key policy objective of the European Union. For this reason, the European Investment Bank has also made lending to support Europe’s energy needs a top priority.”

Take Egypt as an example. Since 2006, the EIB has invested €1.8 billion in the country of which €1.17 billion has been in energy. Add to it the amount spent on ‘industry’ in the form of an oil refinery and the total amount is €1.33 billion. In other words, just under 75% of EIB’s investment in Egypt has been directly or closely related to energy infrastructure, production or supply.

Business as Usual?

The turmoil in North Africa was sparked by the suicide of a young Tunisian man, Mohamed Bouazizi, who set himself alight after his only means of economic survival was taken away from him. The ‘cry for freedom’ that is spreading, particularly amongst the young, will be drowned if we, in Europe, do not accept that, along with political power, there must be economic enfranchisement for the people in those countries. Unless people are able to access the wealth of their country, they will continue

to be forced to seek protection and survival elsewhere, including Europe, and therefore Europe will not know the stability that it longs for.

But the discourse in Europe suggests that lessons have not been learnt. On 11th March 2011, the EU High Representative for Foreign Affairs and Security Policy, Catherine Ashton, presented a proposal to the European Council for a Partnership for Democracy and Shared Prosperity with Southern Mediterranean countries, a partnership that, she said, should be founded on a deeper economic integration, broader market access and political co-operation. But not, presumably, on the basis of human rights.

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