



Migrants as a profitable business model

*Human trafficking along the Libyan
migration route*

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Summary

Migrants who seek international protection in the European Union are usually reliant on smugglers to make their journey. This study involves a review of the statements of 124 witnesses who were questioned within the framework of an international criminal investigation into a criminal organisation involved in the people smuggling of African migrants to Europe, as conducted by the Netherlands Public Prosecution Service (in Dutch: Openbaar Ministerie, OM).¹ Analysis of the statements suggests that the treatment witnesses say they experienced in Libya qualifies not only as (violent) people smuggling, but also as human trafficking. What they experienced points to a gross violation of human dignity and integrity, with smugglers deliberately abusing the migrants' vulnerable position for their own monetary gain.

Brief presentation of the witness statements

The migrants are transported to Libya with the help of smugglers and then accommodated in warehouses which they are unable to leave. In order for them to continue their journey, they have to pay a sum of money and on numerous occasions they have to do so more than once. In order to raise the sum of money in question, physical violence is used to force most of the people to telephone their relatives. As long as the migrants are unable to pay, they remain locked inside the warehouses where, in many cases, they are exposed to (the threat of) severe physical and verbal abuse. The conditions in the warehouses are also degrading, with large numbers of people in a space which is far too small for that purpose. They are not given enough food and drink and there are insufficient sanitary and medical facilities, resulting in outbreaks of diseases such as scabies. The migrants have to comply with strict rules that are enforced using (the threat of) violence. Some of the people incarcerated in the warehouses have to work for the smugglers, with tasks ranging from preparing food to mistreating other migrants. During their stay in Libya, some of the migrants are abducted and/or resold to others (sometimes several times). The result is that they (once again) have to pay to be released.

Migrants' witness statements meet the definition of human trafficking

In the Netherlands the crime of human trafficking is laid down in Article 273f of the Criminal Code (in Dutch: Wetboek van Strafrecht, Sr). According to paragraph 1 under 1 of that article, the crime of human trafficking applies to:

'any person who, with the intention of exploiting another person or removing his or her organs, recruits, transports, transfers, accommodates or shelters that other person, including the exchange or transfer of control over that person, by means of duress, violence or another hostile act, or the threat of violence or other hostile act, or by means of extortion, fraud, deception or the abuse of power arising from a specific state of affairs, or by means of the abuse of a position of vulnerability, or by means of giving or receiving payments or benefits in order to obtain the consent of a person having control over that other person.'

¹ The National Rapporteur's study does not examine the details of the criminal case. The conclusions in this report therefore relate only to the analysis of the witness statements made in the context of this study.

The key elements of this definition are:

- the acts, such as recruiting, transporting and accommodating;
- the means used in the process, such as violence or deception;
- the aim of exploitation.

All three of these key elements are reflected in the witness statements, which therefore meet the definition of human trafficking.

First and foremost, the acts of transporting, transferring, accommodating and sheltering are evident in the statements. The reselling of migrants is also an indication of the exchange or transfer of control over another person. Secondly, it appears that most of these acts are facilitated through the use of, for example, violence, coercion or abuse of a vulnerable position. This is based on the fact that the migrants are not able and allowed to leave before they pay. Until they do so they are locked in warehouses, guarded and escape attempts are met with extreme violence. The poor conditions in the warehouses can also be regarded as a form of coercion. The violence, starvation and atmosphere of fear and uncertainty, are circumstances that have a coercive effect.

While they are being transported the migrants are also beaten by armed men when entering or leaving vehicles, and violence is used to control them during the journey. Coercion is already implied in the act of reselling migrants. The witnesses themselves refer to this as 'kidnapping' and 'hostage-taking'. Sometimes, the act of reselling migrants also involves deception. For example, some witnesses who had paid the required sum of money thought they were being transported to the coast. In reality they were resold to another smuggler. They were then required to pay that smuggler another sum of money, or they had to pay their previous smuggler again if the latter had paid for their release. In addition to the use of so called 'hard' means (of coercion), there are also indications of the 'soft' means of 'abuse of a vulnerable position' and 'abuse of power arising from a specific state of affairs'. This is evidenced by the fact that the migrants are completely at the smuggler's mercy due to the relationship of dependency with that person.

Finally, there are sufficient indications in the statements that the acts were carried out with the intention of exploitation. The smugglers' modus operandi is clearly aimed at maximum financial gain and their large-scale detention of migrants in warehouses can be regarded as a revenue model. After all, people are only released after they have paid the required sum of money. The way migrants are accommodated, with as many people as possible in a limited space and with too few sanitary facilities and too little drinking water, is also an indication of the smugglers' focus on maximizing financial gain. Further evidence of this is the fact that the migrants sometimes have to make repeated payments or have to pay more than originally agreed upon. This is also the case when migrants are resold to others.

Human trafficking for ransom, forced begging and slavery

An assessment of the types of human trafficking and exploitation referred to in the witness statements reveals that the migrants are first and foremost trafficked in return for a ransom. Although this term is not explicitly referred to in Article 273f of the Criminal Code, it still fits the definition of human trafficking. Dutch criminal law practice does not yet include any examples

of the concept of trafficking for ransom. The concept was coined in scientific literature and involves locking up migrants until they pay a ransom. Many of the witnesses had to queue up to telephone their families, sometimes several times a day, for as long as it took until the money was paid. The process of telephoning took up a significant part of their time spent in the warehouses. In doing so, some witnesses explicitly stated that they had to beg their relatives for money. This is also an indication of forced begging.

The witness statements also contain several indications of migrants in Libya suffering from labour and criminal exploitation. Some witnesses stated, for example, that they were forced to work because they could not pay the ransom. The violence and other inhumane treatment of migrants by some so-called 'capos' can be regarded as a form of labour and/or criminal exploitation. 'Capos' are fellow refugees who cannot pay for the journey and therefore have to work for the smuggler in exchange for the crossing. There are also indications of sexual violence. Some witnesses testified about other women who were only allowed to pass through in exchange for sexual acts. Some also stated that a smuggler made women available to others. However, based on the information, it is difficult to assess whether this also qualifies as sexual exploitation.

Finally, the witness statements contain evidence of slavery and slave trade. For example, witnesses report being bought, resold, or acquired by smugglers as if they were the smugglers' commodities. In addition, several witnesses seem convinced that the kidnappings that took place among the smugglers were staged, with the intention being to buy back the migrants from the kidnapper and demand higher ransoms as a result.

Importance of awareness of human trafficking that took place en route and protection for these victims

This study highlights how important it is for policymakers and professionals engaged in law enforcement and the implementation of migration policy to be sufficiently aware of the risks that migrants face during their migration, including the risk of becoming victims of human trafficking. The study demonstrates that the nature and scope of the crime of human trafficking is broader than its more familiar manifestations, such as sexual or labour exploitation.

Human trafficking can leave deep marks on victims and they are often left traumatised by the experience. This can have a negative effect on their ability to get on with their lives. In addition, the trauma can cause people to find it difficult to talk about what happened to them, as cultural norms and a sense of shame. It is therefore important that professionals engaged in law enforcement and the implementation of migration policy are aware of these issues and know how to deal with them in their conversations with possible victims. If signals are missed, human trafficking victims may not get the help and protection they need and are entitled to.

As soon as there is the slightest indication that someone is a victim of human trafficking, law enforcement agencies in the Netherlands have a responsibility to offer the recovery and reflection period to potential victims who do not have sustainable right of residence, even when the human trafficking took place outside the Netherlands. If victims cooperate in criminal proceedings, they will be able to access the help and protection they need to get on with their lives. Currently, however, the protection and assistance offered to these victims is often short-lived because the residence status protection of victims is linked to the criminal process. In the ma-

majority of cases that process is not initiated because there is no authority entitled to launch a criminal investigation, or because there are too few grounds for an investigation. The National Rapporteur has therefore long argued that protection and assistance for victims of human trafficking should be separated from decisions taken in the context of criminal investigations, so that the protection provided to victims can be based on their needs.

Information on the witnesses and the investigation

The international criminal investigation giving rise to the witness statements, was launched in 2018. At the time of writing, criminal proceedings are ongoing against two Eritrean suspects. They are being prosecuted for smuggling people from Eritrea to the Netherlands and other EU countries via Libya, and for several other crimes, including hostage-taking, assault, rape and extortion. The witnesses in this criminal case were interviewed between 2018 and 2021 about their migration from the country of origin to the Netherlands. A few witnesses were interviewed as witnesses who had a relative in Libya at the time in order to obtain more information on payments made in the Netherlands. Based on the statements it is not always clear or known when the witnesses were in Libya, but in the other cases this was mostly between 2015 and 2020. The majority of the witnesses has the Eritrean nationality, about a quarter of the witnesses are women and about a fifth of the witnesses are minors during their migration process.

All witness statements were assessed against the definition included in Article 273f of the Criminal Code. Although the largest group of witnesses stated that they had been forced to make telephone calls to family members, other witnesses were less explicit about this. However, even in those cases, there were indications of coercion. What is more, a small number of witnesses had already collected money prior to their stay in Libya. Although they stayed at the locations in Libya for a relatively short time, they too reported violence they themselves had experienced or had witnessed other migrants suffering.