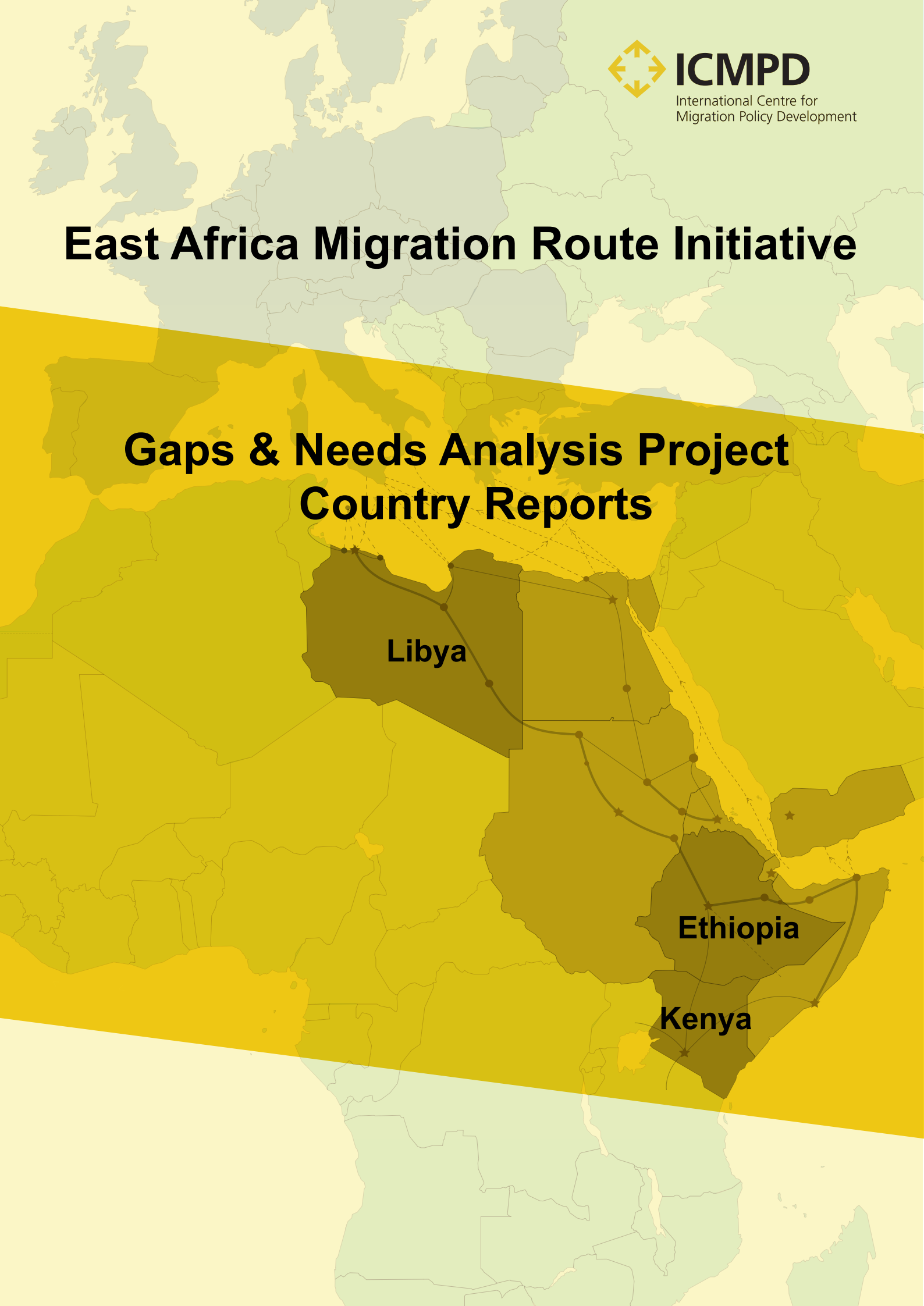# East Africa Migration Route Initiative

Gaps & Needs Analysis Project
Country Reports

Libya

Ethiopia

Kenya

East Africa Migration Route Initiative Gaps & Needs Analysis Project Country Reports:

Ethiopia, Kenya, Libya

Contents

Abbreviations

AU	African Union
AMWIK	Association of Media Women in Kenya
ANNPCAN	African Network for the Prevention and Protection against Child Abuse and
ARRA	Agency Refugee and Returnee Affairs
AVR	Assisted Voluntary Return
BCP	Border Crossing Point
CBMM	Capacity Building in Migration Management
CEN-SAD	Community of Sahel-Saharan States
COI	Country-of-origin Information
COMESA	Common Market for Eastern and Southern Africa
CSA	Central Statistical Agency
DFID	Department for International Development
DMCP	Diplomatic Missions and Consular Posts
EAC	East African Community
EAMRI	East Africa Migration Route Initiative
EAPCCO	Eastern Africa Police Chiefs Co-operation Organisation
EC	European Commission
EEA	Ethiopian Expatriate Affairs
ETB	Ethiopian Birr
EU	European Union
FIDA	Federation of Women Lawyers
HPI	Human Poverty Index
ICMPD	International Centre for Migration Policy Development
ICPAT	IGAD Capacity Building Programme Against Terrorism
ICRC	International Committee of the Red Cross
IGAD	Intergovernmental Authority for Development
IPRS	Integrated Population Registration System
ILO	International Labour Organisation
IOM	International Organization for Migration
JKIA	Jomo Kenyatta International Airport
JRS	Jesuit Refugee Services
KAP	Kenya Administration Police
KEPSA	Kenya Private Sector Alliance
KPS	Kenya Police Service
MIDA	Migration for Development in Africa
MOLSA	Ministry of Labour and Social affairs
MoU	Memorandum of Understanding
NGO	Non-Governmental Organisation
NISS	National Intelligence and Security Service
PASDEP	Plan for Accelerated and Sustained Development to End Poverty
Quest	Qualified Expatriate Somali Technical Support
RCK	Refugee Consortium Kenya
RDBMS	Relational Database Management System
RSD	Refugee Status Determination
SALW	Small Arms and Light Weapons

SDPRP	Sustainable Development and Poverty Reduction Programme
Sida	Swedish International Development Co-operation Agency
SME	Small and Medium Enterprises
SNNPRS	Southern Nations Nationalities and Peoples Regional State
THB	Trafficking in Human Beings
TRIM	Transit and Irregular Migration Management
UNDP	United Nations Development Programme
UNECA	United Nations Economic Commission for Africa
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UN OCHA	United Nations Office for the Co-ordination of Humanitarian Affairs
UNODC	United Nations Office for Drugs and Crime
WHO	World Health Organisation

1 Executive summary

As part of the East Africa Migration Route Initiative (EAMRI), the United Kingdom Home Office, with the support of the Foreign and Commonwealth Office, had tasked the International Centre for Migration Policy Development (ICMPD) to implement the East Africa Migration Route Gaps and Needs Analysis project, to establish a clearer picture of migration flows and trends as well as migration management capacities and frameworks in place in East Africa. The project consisted of two phases: a desk research phase, concluded with the "East Africa Migration Route Report", and a field research phase to validate and complete the findings of the preceding desk analysis. The "East Africa Migration Route Report" had recommended focussing the field research on three countries placed along the East Africa migration route – Ethiopia, Kenya and Libya - stating that they merited "further attention in the EU's effort to understand migration flows in East Africa."[1]

The report at hand is the result of the field research missions to Ethiopia, Kenya and Libya, which took place between December 2007 and February 2008. During the missions a broad range of stakeholders were consulted on the migration flows to/through/from, and migration trends in, Ethiopia, Kenya and Libya. Migration management capacities and needs of relevant authorities were also assessed.

1.1 Ethiopia

Ethiopia is a country of origin, transit and destination for international migration. While outward migration from Ethiopia includes voluntary, involuntary and forced migration, inward migration largely consists of refugees. Ethiopia presently hosts about 85.000 refugees from Angola, Burundi, Djibouti, Eritrea, Liberia, Rwanda, Somalia, South Africa, Sudan, Uganda, and Yemen in seven refugee camps situated along its borders. Somali, Eritreans and Sudanese make up the majority of the caseload – with the latter now repatriating in large numbers. Refugees are confined to the camps and have limited rights of movement, education and work. The lack of adequate social and health services, protection issues and the confinement to camps lead to secondary movements.

Centrally located in the Horn of Africa, Ethiopia has developed into a major transit point or "migration hub" along the Eastern African migration routes both for transit migration and irregular migration movements. Addis Ababa is said to be a hub on two land routes of which one leads from the Horn of Africa via Sudan, Chad and Libya to the Mediterranean Sea and the other through Somalia to Yemen across the Gulf of Aden. Ethiopia's Bole International Airport is also reported to be a hub of transit and irregular migration on the air route leading to Europe, including irregular migration flows from Asia transiting through Africa.

Migration management in Ethiopia must contend with a number of particular challenges, such as the mixed and composite character of migration flows, the enormous length and permeability of its land borders, as well as border conflicts and risks of "insecurity spill over" from neighbouring countries. Controlling borders and managing migration in the country also entails ensuring that trade and traditional cross-border movements are not hampered since these are vital for a large number of people in Ethiopia's border areas. At present, the Ethiopian migration authorities do not have sufficient resources and specifically trained staff to adequately respond to these challenges. Deficiencies are most apparent in the areas of staff training, technical equipment and means of communication. Furthermore, there is a need to support the country in developing and maintaining appropriate migration intelligence systems, in order to collect, analyse, process and most importantly exchange relevant

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[1] ICMPD: East Africa Migration Routes Report, September 2007: 33. http://www.icmpd.org/fileadmin/ICMPD-Website/Irregular_Migration/East_Africa_Migration_Routes_Report.pdf

statistics on border apprehension, asylum applications and visa data. Such a system is needed to gain a sound knowledge on the size and structure of migration flows.

Ethiopia is also a country of origin and transit for the trafficking of human beings. Ethiopian men, women and children are trafficked both within and from the country for the purpose of forced labour and sexual exploitation. Ethiopia needs a comprehensive policy targeting the elimination of trafficking and providing guidance to, and co-ordinating the efforts of, different stakeholders. The legal framework should entail a comprehensive set of laws that clearly define and address the issue of human trafficking.

Although the Ministry of Labour and Social Affairs offers a number of services to potential migrants, migrants, returnees and their families, the majority of Ethiopians willing to work abroad prefer the "quicker" informal migration channels. The conclusion of specific labour agreements that would grant a limited number of Ethiopians better access to residence and labour markets in European countries could set in motion circular migration while avoiding unintended consequences (permanent settlement, irregular migration).

Like most African countries, Ethiopia is affected by the loss of human capital through the emigration of the highly skilled. The Ethiopian government has taken a number of important steps to harness the benefits of international migration, including mobilising expatriate professionals to contribute to the development of their home country and encouraging remittance flows through formal channels. With regard to the latter however, most of the transfers are still being done informally. Ethiopia could take a number of policy measures to encourage a more productive use of funds. Such policies could notably entail a better inclusion of expatriates in the formal banking systems, the improvement of the banking system's infrastructure, better linkages between banks and enterprises, as well as the stimulation of competition in the remittance market.

Based on the findings of the mission's visit to Ethiopia and on available documentation, this report makes recommendations for possible international support capacity-building activities primarily, but not exclusively, directed towards policy development, as well as improvements in information exchange and staff development. Another priority identified in this report is co-operation and co-ordination among national and international stakeholders in all migration-related areas. International support activities should be strategic and coherent in that they need to be complementary and based on an approach which includes i) regional activities, ii) support to develop Ethiopia's own capacities to manage migration and iii) assistance, which provides for the needs of individuals and specific migrant categories.

Most importantly however, the report recommends placing all international support activities in the context of a comprehensive and co-ordinated pro-poor development strategy, such as the Plan for Accelerated Sustainable Development to End Poverty (PASDEP) at the national, and the New Partnership for Africa's Development (NEPAD) at the regional level. Support to the PASDEP's poverty reduction strategy will ultimately improve Ethiopia's migration management capacities, including harnessing the benefits of migration, and address some of the strongest push factors for international migration.

1.2 Kenya

Kenya is a country of origin, transit and destination for various migration flows. It is strategically located, has relatively developed infrastructure, good air and land connections, large migrant communities and well-connected smuggling networks. Population movements in the region are not new, but Kenya's migration management capacity has yet to match the challenges the country now faces in combating trafficking in human beings, irregular migration, promoting circular migration, tapping into remittances and fulfilling its obligations as a host state to some 250.000 refugees. Kenya needs a comprehensive migration policy and strategy. This can, however, only be implemented if the lack of data, overlapping of responsibilities, lack of co-ordination, and lack of financial and human resources are addressed.

Efficient border management is a core element of migration management and requires a comprehensive approach to facilitate legitimate movements while at the same time tackling people smuggling and trafficking in human beings; an approach that Kenya lacks. The country does not have sufficient human, financial and technical resources to carry out efficient border management. Document fraud is also prevalent, so officers at all border crossing points need continuous training and improved technical resources on the detection of falsified documents.

Kenya's lack of a comprehensive migration policy also affects its management of identity documents and visas. Co-ordination and co-operation both within and between different services takes place on an *ad hoc* basis and the services are therefore unlikely to adapt, quickly or uniformly, to any external/internal changes. In practice this means that the response to changes in, for example, irregular migration flows will differ. The different agencies should co-ordinate and harmonise their working procedures, establish clear and transparent communication and exchange information on a regular, standardised basis.

Kenya has a long history as a refugee hosting state, with large groups of Sudanese, Somali and Ethiopian refugees. While there are efforts underway to repatriate Sudanese nationals, the situation in Somalia is unlikely to allow for repatriation in the foreseeable future. Overpopulated refugee camps, the lack of a political will to naturalise and integrate refugees and limited resettlement plans push refugees to try their luck elsewhere, either as urban refugees in Nairobi or by leaving Kenya, more often than not by irregular means.

Kenya has become an important irregular migration hub, as a destination, but also a country of origin or transit towards Southern Africa, the Arabic Peninsula, West Africa, Europe and North America. Kenya's position as transit country is gaining in importance both regionally and internationally, with increasing numbers of migrants transiting from South and East Asia. Despite its growing importance, human smuggling is not high on the political agenda, and the appropriate legislation, policy and implementation instruments are not in place yet.

Those who decide to leave Kenya legally do so primarily as an economic coping strategy. The Middle Eastern countries receive a large number of Kenyans looking for job opportunities abroad, as do the UK, US and Norway and, on the continent, South Africa, Lesotho, Botswana and Nigeria. Brain drain, especially in the health sector, has been a problem for many years.

Many migrants fall prey to traffickers. Trafficking of Kenyan children, women and men, both internal and international, for the purposes of domestic servitude, prostitution and forced labour is on the increase. Kenya does not yet have a comprehensive law or set of laws that define and address the issue of human trafficking and, although child trafficking is becoming more and more recognised as a problem, there is still a strong need for sensitisation and awareness raising activities on the problem as a whole.

Lastly, efforts are needed to tap into the financial and human resources of the estimated 2 million-large Kenyan diaspora in developing the country. Remittances are considered as one of the most important financial inflow to the country, matching the financial incomes generated by the tourism industry. The challenge remains how to better channel these remittances into income-generating activities, as most of the money flows into the non-productive sector. Another big challenge associated with targeting the diaspora is the lack of information on and co-ordination of the numerous actors involved.

1.3 Libya

Historically, Libya has been an important destination for migration from Sub-Saharan Africa: proximity and traditional trade links attracted labour migrants who settled in Libya for a period of a few years to make some savings and return back home. From the 1960s onwards, Libya has actively encouraged labour immigration since its booming economy relied on foreign labour. Initially, this was supplied by nationals from Arab countries, later followed by sub-Saharan African migrant workers in the 1990's. The latter trend reflected Libya's pan-African

policy, which notably also led to the creation of the Community of Sahel-Saharan States (CEN-SAD).

In recent years, Libya's status as destination country has changed. As the country is increasingly perceived as a gateway to Europe, it has also become a country of transit, in addition to being a country of destination. In the context of the East Africa Migration Route, migrants from the Horn of Africa enter Libya from the Sudan and cross the country in order to reach the Mediterranean coast.

Entering Libya via its southern borders is relatively easy as the 1.792 km long desert border is practically impossible to control. Crossing the desert, however, bears many risks for the migrants as the journey is long and extremely arduous. Moreover, every year, many migrants die attempting to reach the European territory by sea.

The migration flows from sub-Saharan Africa through Libya are mixed, comprising both irregular migrants and asylum seekers. Indeed, Libya's proximity to conflict-ridden and unstable countries also makes it a refugee receiving state. To date, Libya does not provide adequate protection to refugees: related legislation is fragmentary and there is currently no asylum procedure in place, though a draft law on refugees seems underway.

Estimates about migrants and refugees in Libya vary from 1 to 2 million, the wideness of this figure bearing proof of the lack of reliable information available on the migration and asylum reality in the country. Migration-related competences are shared between a variety of national stakeholders, increasing the risk of an uncoordinated approach. In effect, at present, there is no overall migration policy in place and the country deals with migration management in an ad-hoc manner. In addition, there is a considerable lack of research and reliable "hard" data on which to base migration policy.

Libya needs international support to provide adequate response to the migration challenges it currently faces. At the basis of such support is a comprehensive profile of the nature, trends and composition of migration flows transiting through or remaining in Libya; and a thorough assessment of Libyan institutional capabilities in managing these flows. Comprehensive research is also needed to establish which occupational groups are actually needed in Libya, followed by a policy encouraging the legal immigration and subsequent integration of these professionals. This should be complemented by strengthening national capacities to systematically collect, analyse and disseminate migration related data from various sources.

Most importantly, international capacity-building activities should aim at establishing professional migration management capacities. Well-trained operational staff, be it at the border or in the detention centres, can significantly contribute to a more efficient approach to the management of migration flows. This training would benefit from addressing knowledge gaps in migrants' rights, data collection and analysis, operational procedures and the application of a comprehensive legal framework. Furthermore, staff needs to be provided with, and trained on the use of, appropriate equipment to perform their tasks.

More international efforts also need to be directed towards helping Libya to develop a differentiated approach to mixed migration, based on functioning policies for the management of related migration flows and in line with international standards on safeguarding rights of refugees.

Lastly, international operational co-operation needs to be provided along the migration routes back to the countries where migration flows originate, as lacking migration management capacities of Libya's neighbouring countries in the South also impact on the sustainability of related Libyan efforts. On the regional level, Libya, just as all the countries along the East-African migration route, would greatly benefit from expanding regional migration dialogue southwards in order to create links between relevant authorities and current/future migration management experts throughout the region. The creation of a Migration Resource Centre and Regional Consultative Process (RCP) within IGAD will foster exchange of knowledge and information, as well as boost regional know-how on mixed migration management. This

could be linked to the Mediterranean Transit Migration (MTM) dialogue: Based on a two-pillar approach – security and migration-development – North African Arab partner states of the MTM dialogue could act as "twinning partners" to guide the inclusion of their Southern neighbours in such an informal dialogue.

2 Introduction

The European Union's Global Approach to Migration provides guidance to the EU for the external dimension of its migration agenda.[2] The Global Approach uses the concept of *migration routes* to develop and implement migration policy thereby highlighting the importance of operational co-operation between countries of origin, transit and destination.

The East Africa Migration Route Gaps and Needs Analysis project, funded by the UK Border Agency (UKBA) and implemented by the International Centre for Migration Policy Development (ICMPD) is placed in the context of the Global Approach and more specifically the East Africa Migration Route Initiative (EAMRI), for which the UK has the lead. The project's objective was to provide a knowledge base about migration patterns along the East Africa migration routes and to provide recommendations for migration-related support activities in the interest of all countries placed along these routes.

The project was implemented in two phases: i) A desk research of current knowledge on East African migration routes, covering Egypt, Eritrea, Ethiopia, Kenya, Libya, Somalia, Sudan and Yemen and ii) complementary field research missions to Ethiopia, Kenya and Libya, three geographically strategic countries along the East Africa migration routes[3] and "host" to a number of important migratory hubs.[4]

During the field research missions a broad range of stakeholders were consulted on the migration flows to/through/from, and migration trends in, Ethiopia, Kenya and Libya. Migration management capacities and the needs of the relevant authorities were also assessed. Meetings were held with the national authorities, representatives of EU Member States Embassies, international organisations, and non-governmental organisations.

The findings of the missions are summarised in the report at hand. In compliance with the comprehensiveness of the Global Approach, it covers a broad spectrum of migration-relevant topics, ranging from legal and irregular migration, combating trafficking in human beings and smuggling of migrants, strengthening protection for refugees, enhancing migrant rights and harnessing the positive links between migration and development. The recommendations put forward include short-term actions, as well as longer-term projects to address the root causes of irregular migration.

Although the report attempts to provide an overview of the migration situation along a particular route, each of the countries has to be seen in its particular context with specific challenges for which tailor made approaches have to be defined. Furthermore, much of the findings in this report reflect the meetings that were held during the field research missions and the information that was made available. Consequently each country section might have a different thematic focus and emphasis on the recommendations. More in-depth additional

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[2] Initially developed for Africa and the Mediterranean region, the global approach has meanwhile been extended to the Eastern and South-Eastern regions neighbouring the EU.
[3] The East Africa migration routes referred to in the context of this report are the following: i) A land route, which leads from the Horn of Africa via Sudan, Chad and Libya to the Mediterranean Sea, ii) a second land route, which starts in Ethiopia leads through Somalia and to Yemen across the Gulf of Aden, iii) air routes from Asia and Africa via Ethiopia and Kenya to Europe. When talking about routes, this report refers to trends, or connections between strategic transit places, rather than exact migration itineraries as the latter are manifold and subject to frequent changes. For more information, please refer to the ICMPD: East Africa Migration Routes Report, September 2007
[4] Hubs are strategic transit places along the migration routes that provide migrants with the necessary infrastructure and services to continue their migration journey. Hubs can be oases, ports, refugee camps, airports, border towns and larger cities.

country specific surveys would be welcomed to further enhance the knowledge base on the migration realities of the three countries.

The project team would like to take this opportunity to thank all those who took the time to meet the mission members and who contributed to the information in this report.

3 Ethiopia

3.1 Overview of the migration system

3.1.1 Background

Population mobility in and from the Horn of Africa has a longstanding tradition. However, conflict, environmental deterioration and economic decline paired with growing economically active populations have increased labour and forced migration both in the region and beyond. These migration flows are generally of a heterogeneous nature, comprising traditional trans-border mobility, labour migration, asylum migration and irregular migration.

Like most countries in the Horn of Africa, Ethiopia is both a sending and receiving country of migration, while inward migration is marked by refugee movements, mainly from Sudan, Somalia and Eritrea. The refugee flows into Ethiopia are primarily the result of political and civil unrest and recurring natural disasters in the neighbouring countries.

Ethiopia's land border extends over 5.328 km and is difficult to control. Not only its length, but also the topography, border conflicts and violence among trans-boundary pastoralist groups pose particular challenges to border management. Placed at a central location along the East African migration route, which leads from the Horn of Africa via Sudan and Libya to the Mediterranean Sea, Ethiopia has developed into a place of transit migration.

With an estimated population of 78 million in 2005[5], Ethiopia remains a poor country, ranking 98th among 102 developing countries of the Human Poverty Index (HPI).[6] According to the 2006 Plan for Accelerated and Sustained Development to End Poverty (PASDEP), 16% of the country's total population lived in urban areas in 2004/ 2005. It is estimated that by 2020 about 22 million people will live in Ethiopia's largest cities.[7] The growing rural-urban migration is expected to result in rising urban unemployment, which in turn may lead to increased international migration.

International migration from Ethiopia is an economic coping strategy and a societal issue. The migration of a family member generates resources, which support other family members and enables them to make investments in education, health and housing. The ability to invest in these resources reduces the vulnerability of family members, particularly women and children. Migration is also a means to improve the family's social status: providing their younger sibling with better education opportunities is a very strong incentive for Ethiopians to migrate abroad. Migration of the highly-skilled is considerable as qualified professionals increasingly leave the country seeking better opportunities for professional development and higher salaries.[8]

3.1.2 Legal and institutional framework

Ethiopia's governmental structure includes the federal government, nine regional States, the self-governing administrations Addis Ababa and Dire Dawa and 556 Woreda. The Woredas for their part are composed of a number of Kebele, which are the smallest unit of local government in Ethiopia.

The main government body entrusted with migration-related competences is the National Intelligence and Security Service (NISS), which has the competences and functions of a Ministry of Interior and is directly accountable to the Prime Minister. Within the Service, the two departments with migration-related responsibilities are the Main Department for Immigration and Nationality Affairs (which has 11 regional offices- hereafter referred to as

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[5] UN World Population Prospects 2006
[6] UNDP 2006
[7] PASDEP 2006, p.53
[8] Shinn 2002

Main Immigration Department) and the Agency for Refugee and Returnee Affairs (ARRA).[9] Other administrations with related competences are:

- The Ministry of Foreign Affairs (MFA)

- The Ministry of Labour and Social Affairs (MOLSA)

- The Ministry of Justice;

- The Federal Police;

- The Diaspora Co-ordinating Office of the Ministry of Capacity Building;

- The Ethiopian Customs Authority of the Ministry of Revenue.

Ethiopian laws and directives relevant to migration include:

- The *Constitution of the Federal Democratic Republic of Ethiopia,* which lays down a legal basis for freedom of movement, 1994;[10]

- The *Proclamation regulating the issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia,* 1969*,* on the conditions of entry to and exit from the State and provision of legal status to persons permitted to stay in the State on a temporary or permanent basis;

- The *Directive Issued to Determine the Manner of Employment of Ethiopian Nationals Abroad*, 1994;

- The *Proclamation on Private Employment Agencies*, 1998, which protects the rights of Ethiopian migrant workers abroad.

- The *Proclamation on Providing Foreign Nationals of Ethiopian Origin with certain Rights to be Exercised in their Country of Origin*; 2002

- The *Proclamation on Security, Immigration and Refugee Affairs Authority Establishment*, 1995, providing for the responsibilities of administrations with migration related competences;[11]

- The *Criminal Code of Ethiopia*, 2004, which sanctions trafficking in human beings, smuggling in human beings and the forgery of public documents.

- The *Directive on the Establishment and Operation of Foreign Currency Account for Non-Resident Ethiopians and Non-Resident Ethiopian Origin*, 2004.

- The *Directive Issued to Determine the Residence Status of Eritrean Nationals Residing in Ethiopia*, 2004

Ethiopia is a founding member of the OAU/AU, the Intergovernmental Authority for Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA) and hosts the Economic Commission for Africa (ECA), as well as several UN regional bodies and organisations for Africa.

3.1.3 Challenges

1. Many of the interlocutors confirmed that there is generally very little data and knowledge about in- and outward migration in Ethiopia. Research on the matter is still in its early stages and a number of national and international stakeholders are planning or have only recently started taking up migration issues (see section below).

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[9] Proclamation No.471 /2005. Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia

[10] Article 32: Freedom of Movement: 1. Any Ethiopian or foreign national lawfully in Ethiopia has, within the national territory, the right to liberty of movement and freedom to choose his residence, as well as the freedom to leave the country at any time he wishes to. 2. Any Ethiopian national has the right to return to his country.

[11] Meeting with the Ministry of Foreign Affairs, 15.01.08

2. The main obstacles to efficient migration management in Ethiopia are:

- A lack of financial resources;

- A lack of human resources;

- A discrepancy between the central and the regional level caused by poor transport and communication infrastructure;

- Limited regional and bilateral co-operation in the area of migration.

3.1.4 International support activities

- Migration-related matters form part of the United Nations Economic Commission for Africa (ECA) 2008-2009 programmatic activities. The ECA plans to prepare a follow-up report to the "International Migration and Development: Implications for Africa," report, which was published in September 2006 for the High Level Dialogue on International Migration and Development. The follow-up report will focus on capacity building needs with respect to migration management. In 2007, the ECA and the International Organization for Migration (IOM) signed a Memorandum of Understanding (MoU), which lays down the terms for their co-operation in the areas of data collection and research, policy development, capacity- building and promotion of regional and sub-regional co-operation and integration. Joint activities will centre on the topics of migration and development, fight against trafficking in human beings and human smuggling, protection of the human rights of migrants, gender equality and gender mainstreaming.

- The UK, in co-operation with IOM, IGAD, the African Union (AU), Italy, Malta and the Netherlands have recently started implementing a regional project called "The East Africa Migration Route: building co-operation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination," funded under the 2006 AENEAS Programme of the EC.[12] The project targets immigration officials of Chad, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Niger, Somalia, Sudan, Tunisia, Uganda and Yemen and will include the following activities: i) establish a Migration Resource Centre and Regional Consultative Process (RCP) for the exchange of information and best practice on migration management; ii) enhance the capacity of the targeted African countries, the IGAD Secretariat and EU Member States to collect and analyse intelligence relating to illegal migration; iii) organise two technical workshops on key thematic migration issues; iv) address key gaps in the region's border and migration management structures; v) provide training to officials from East African countries on technical and policy migration management topics; vi) inform potential irregular migrants via targeted publicity campaigns of the dangers of irregular migration; vii) assess the feasibility of undertaking of a joint operation in an African country to disrupt illegal migration.

3.1.5 Recommendations

1a. Ethiopia would greatly benefit from international capacity-building assistance to develop national capacities for the production of reliable migration statistics. Sound statistical data and reliable data collection systems support informed policy decisions and are hence at the basis of the development of an appropriate migration policy, which takes into account all aspects of migration (including labour migration, irregular migration, protection, integration) and reflects national objectives and priorities.

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[12] The AENEAS programme provides financial and technical assistance to third countries in support of their efforts to ensure more effective management of all aspects of migration flows. In 2007 it was replaced by a new programme entitled "Thematic Cooperation Programme with Third Countries in the Development Aspects of Migration and Asylum", covering 2007-2013.

Accurate data on migration is also needed to plan for the budgetary support needed by the Ethiopian migration authorities.

1b. A variety of national administrations currently have a competence in migration matters. Increased and systematic co-operation and co-ordination among these actors and between the national and regional level need to be encouraged. A stakeholder analysis (including their specific tasks) could identify gaps in procedures and information exchange and provide recommendations for improvements. Such an exercise would also provide useful information for the roadmap elaboration to support the decentralisation of the migration services, as currently planned by the Main Immigration Department.[13]

2a. Continued efforts should be vested into building Ethiopia's own capacities to more effectively manage migration. These will be complementary to ongoing support activities and should preferably be of a government-to-government or 'colleague-to-colleague nature

2b. There is currently no comprehensive migration policy in place in Ethiopia, although elements of it do exist. "The Migration Policy Framework for Africa" adopted by the African Union in 2006 could provide the guidelines for the development of such a policy.[14] It is a comprehensive document, which aims to harmonise migration legislation and policy throughout the continent. Migration related support activities in Ethiopia should thus take this framework document into consideration.

2c. Effective development interventions need to be placed into a comprehensive and co-ordinated strategy for pro-poor development. In the Ethiopian context, activities touching upon development should hence be aligned to Ethiopia's poverty reduction strategy - the Plan for Accelerated Sustainable Development to End Poverty (PASDEP).[15] At the regional level, international support activities need to make sure that they reflect the priorities of the New Partnership for Africa's Development (NEPAD).[16]

3. Representatives of the African Union (AU) underlined the massive wake lying ahead of the African countries after the conclusions of the Tripoli Ministerial Conference in 2006[17] and the EU- Africa Summit in Lisbon in 2007. While this momentum should be used to provide the needed support to African States, co-ordination and co-operation at regional and national level will be important to pool resources and avoid duplication.

4. Regional co-operation aspects need to be mainstreamed in all support activities and there is a need for good practices in this regard. It is thus recommended that migration-related support activities in Ethiopia co-operate and co-ordinate with IGAD, and more specifically the IGAD Migration Resource Centre at the IGAD Secretariat, which will be established under the 2006 AENEAS programme project mentioned above. This could be linked to the Mediterranean Transit Migration (MTM) dialogue: Based on a two- pillar approach – security and migration-development – North African Arab partner states of the MTM dialogue could act as "twinning partners" to guide the inclusion of their Southern neighbours in such an informal dialogue.

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[13] Meeting with IOM, 16.01.2008
[14] African Union Executive Council: The Migration Policy Framework for Africa, Banjul, June 2006
http://www.africaunion.org/root/au/Conferences/Past/2006/November/SA/EU/EXCL276(IX)_Strategic_Framework_for_Policy_Migration.doc
[15] The key strategic objectives of the PASDEP are: 1. Build all-inclusive implementation capacity; 2. Accelerate growth; 3. Create a balance between economic development and population growth; 4. Unleash the potentials of women; 5. Strengthen infrastructure, 6. Strengthen human resource development; 7. Manage risk and volatility; and, 8. Create employment opportunities. PASDEP, 2006: 46.
[16] The New Partnership for Africa's Development (NEPAD), October 2001
[17] Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006

> Another potential partner is the UNECA, which can facilitate dialogue between African countries at regional and sub-regional level.[18]

3.2 Regular migration

3.2.1 Legal and institutional framework

The Ministry of Labour and Social Affairs (MOLSA) is responsible for the issuance of work permits to foreigners and the regulation of provision of foreign employment services to Ethiopians,[19] whereas the Main Immigration Department (under NISS) issues permits for residence and stay.

The *Private Employment Agency Proclamation* stipulates that all Ethiopians wishing to work abroad must do so via a private employment agency. The proclamation includes provisions on the conditions and validity of the agency license, lawful behaviour, prohibition to ask fees from jobseekers, deposit for the purpose of protecting the migrant's worker's rights, reporting obligation on the situation of the worker abroad and penal sanctions.

The *Proclamation regulating the issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia* includes a special provision with regard to the prevention of health risks for migrant workers: No foreigner is to enter or exit the county without first presenting a valid international health certificate.

3.2.2 Challenges

1. The majority of Ethiopians willing to work abroad prefer the "quicker", informal migration channels to the legal migration process. According to IOM, 72 per cent of the Ethiopian migrants used the services of both illegal and legal employment agents for the process of migration. Of these, 60 per cent used illegal agents, 20 per cent used legal agents, and 20 per cent did not know the status of the agents they used.[20]

2. Trafficking of Ethiopian women to the Middle East and the Gulf States is recognised as a big problem by both the government and international actors. Ethiopian women have limited access to education and employment opportunities in the formal sector, job opportunities offered in the Middle East therefore attract a growing number of migrants. Estimates of the number of Ethiopian female migrants in the Middle East vary. In Lebanon alone, the number is estimated to be between 17.000 and 35.000. There are reports of Ethiopian women having been trafficked onward from Lebanon to Turkey and Greece.

3. In order to fight trafficking in human beings, the MOLSA seeks to establish framework contracts with destination countries, however with limited success. In some cases employers were ready to sign agreements with private employment agencies, which are registered with the Ministry.[21]

3.2.3 Governmental measures

MOLSA offers a number of services to potential migrants not least to prevent trafficking in human beings (*see section 8 on Trafficking in Human Beings*). These services also include pre-departure training and counselling for potential migrants. Although this has proven to be insufficient as an anti-trafficking measure, MOLSA would like to expand and develop the training for the purpose of empowering potential migrants who plan to move to the Gulf States and the Middle East.

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[18] Meeting with the UNECA, 17.01.2008
[19] Proclamation No.471 /2005
[20] Dessalegn, Bezaiet: FMO Country Guide: Ethiopia, http://www.forcedmigration.org/guides/fmo033/fmo033.pdf, accessed 5.3.2008
[21] Meeting with the Ministry of Labour and Social Affairs, 15.01.2008

3.2.4 International support activities

- The ECA is, in co-operation with UNDP, ILO, the African Development Bank and the AU going to establish a Regional Employment Network (for all of Africa). The background for this project is the 2004 *Ouagadougou Extra-ordinary Summit on Employment and Poverty Alleviation in Africa*. The project is still in its initial phase; a consultant has been drawing up different scenarios and will present them in February/March.[22]

- IOM is currently implementing a number of activities in the area of migration and health, including:

  - A project funded by Ireland aid, which aims at raising awareness towards HIV/AIDS among rural communities in the Sidama, Silti and Gurage Zones of the Southern Nations Nationalities and Peoples Regional State (SNNPRS) and at promoting behavioural change towards the HIV epidemic among migrant workers and traders, demobilised workers and their wives, female sex workers and internally displaced persons.

  - Migration health assessment for refugees and migrants to overseas resettling countries such as Australia, Canada, New Zealand and USA. This includes migration and travel health assessment advice, processing and treatment of refugees and migrants prior to their travel for resettlement or family reunification.

- USAID funds an IOM implemented project, which supports the MOLSA in providing potential migrants, migrants, returnees and their families with pre-departure counselling. The objective of the project is to empower potential migrants by raising awareness about the realities of irregular migration and in particular the risks for women, as well as on psychosocial issues, human rights, financial management and health issues. The project also provides an anonymous hot-line counselling service and is complementary to IOM's anti-trafficking information campaigns.

3.2.5 Recommendations

1. According to the MOLSA, the current pre-departure training and counselling services need to be increased as the empowerment of potential migrants reduces their vulnerabilities. This will also require the further development of MOLSA's capacities to deliver such training (train- the -trainers, training facilities and equipment). Pre-departure training should be participatory and extend to several days to provide adequate time for reflection and opportunities to clarify and seek further information if needed. Decentralised training venues with locations closer to the home of the would-be migrants reduce costs of transportation.

2. Course contents for female migrant workers should be developed by relevant government departments in close consultation with NGOs, gender and migration specialists, migrant women workers and reliable recruiting agencies. Trainers should also include returned women migrants. UNIFEM has published a comprehensive briefing kit, entitled *Empowering Women Migrant Workers in Asia*, which can be used as reference tool.[23]

3. The conclusion of specific labour agreements that would grant a limited number of Ethiopians better access to residence and labour markets in European countries could set in motion circular migration while avoiding unintended consequences (permanent settlement, irregular migration).

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[22] Meeting with the UNECA, 17.01.2008
[23] UNIFEM: Empowering Women Migrant Workers in Asia, www.unifem.org

3.3 Passports, visa and identity cards

3.3.1 Legal and Institutional framework

The rules governing the issuance of travel documents and foreigners' entry to and exit from Ethiopia are contained in the *Proclamation Regulating the Issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia*, No. 271/1969, 22 July 1969.

Passports are issued by the Ministry of Foreign Affairs. The Ministry also issues emergency travel documents to resident foreigners. Ethiopia is currently introducing biometric passports and the old passport is expected to phase out in five years. However, admittedly only very few citizens have the means to apply for a passport.[24]

Identity cards are issued by the Kebele, the smallest administration unit in Ethiopia. There is presently no uniform, national ID card. Plans to introduce such a card failed due to the high costs involved.[25]

All foreign nationals must be in possession of a visa to enter Ethiopia, with the exception of nationals of Kenya, Djibouti and the Sudan. The visa is issued in the form of a sticker to be affixed in the passport. Ethiopia issues tourist, transit and business visa. Tourist and business visa are issued with varying validity times and number of entries depending on the purpose of travel and the applicant (special rules may apply to persons of Ethiopian origin who are nationals of other countries).

Tourist visas may be obtained at:

- Ethiopia's diplomatic missions abroad.[26] This includes single entry tourist visa (valid for three months), multiple entry tourist visas (valid for three months) and multiple entry tourist visas valid for six months for foreign nationals who are Ethiopians by birth. Foreign nationals, who are non-residents of a country where an Ethiopian Mission is represented/accredited, can also receive a tourist visa upon request if the visa applicants are from the list of tourist generating countries.[27]

- Bole International Airport. Foreign nationals, who are coming from countries which do not host an Ethiopian diplomatic representation, or who are from tourist generating countries, may receive their tourist visas upon arrival at the airport.

Visitors need to present an international health certificate proving the prescribed immunisations (yellow fever in particular) to obtain a visa.

Furthermore, special rules apply to tour operators, organising trips for tourist groups. The visa applications can be submitted to the Main Department for Immigration and Nationality Affairs, and the visa can be issued at Bole International Airport.

Business visas are issued by Ethiopian missions for:

- those who frequently travel for governmental business;

- those who are coming to conduct research and other studies independently;

- those who are coming to participate in and conduct workshops, seminars and other similar activities for a short period of time without contractual employment and who are not obliged to get a residence- and work permit;

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[24] Ibid.
[25] Ibid.
[26] Ethiopian Embassies, Permanent Missions & Consulate Generals. Also Ethiopian Honorary Consulates that are authorised to issue visas by the government can provide the same service.
[27] Argentina, Australia, Austria, Belgium, Brazil, Canada, China, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Republic of Korea, Kuwait, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Russian Federation, South Africa, Spain, Sweden, Switzerland, United Kingdom and United States.

- members of international, regional, and sub-regional organisations who are coming to attend meetings and other activities and for members of Diplomatic Missions resident in Ethiopia who are coming for official business;

- employees of different airlines who conduct business related to the airline.

Business visa are issued as 1) single entry business visa valid for three months, 2) multiple entry business visa valid for three months, 3) multiple entry business visa valid for six months on request for organisations who have a good track-record on trade, investment and other development activities in Ethiopia and 4) a multiple entry business visa valid for six months to Ethiopians by birth/blood who have acquired citizenship of another country and who frequently travel for investment purposes.

Visas are issued upon request by the applicant. Applicants need to submit sufficient and convincing documents about their travel issued by relevant bodies. A business visa can also be provided for foreign nationals who are non-residents of a country where an Ethiopian Mission is represented/accredited, if the applicants can provide convincing evidence.

At Bole International Airport:

- For foreign nationals who are coming from countries where Ethiopia is not represented, provided that this has been requested by the relevant organ to the Immigration and Nationality Affairs Main Department and after its approval, as 1) a single entry business visa valid for three months or 2) a multiple entry business visa valid for three months

Regarding all visa issued at the airport, the work procedure is communicated in detail to the Bole Immigration Division.

Visa applications should in general be considered within 24 hours by the Ethiopian diplomatic missions unless there are difficulties or if applications are delayed due to security reasons.

To enter Ethiopia, all tourists should possess sufficient foreign currency to support themselves during their stay in the country. In addition, not less than 100 USD and two passport size photographs are needed to process business/tourist visa requests upon arrival.

In addition, the Main Department of the Immigration and Nationality Affairs has issued rules on a visa waiver for certain officials from the OAU and the UNECA and other UN Organs and Agencies for listed activities.[28]

Special rules apply to Eritrean nationals and naturalised Eritreans who need to go trough full visa procedures even though they are nationals of the so-called tourist generating countries; the airlines are responsible for verifying that all persons of Eritrean origin have a valid Ethiopian visa before travelling to Ethiopia even though they have another nationality.

3.3.2 Challenges

1. The visa system in Ethiopia needs modernisation and has to include information exchange mechanisms in order to make it a tool for migration control. The Main Department, its regional offices and the border crossing points (BCP)/ entry points are presently not connected and have no means to exchange information. In fact, most of the Main Department's facilities lack basic communication equipment. This situation has to be seen against the background of Ethiopia's general lack of communication infrastructure, especially in the rural areas.

2. Training of immigration officers in specialised areas such as detection of forged documents is not sustainable, due to the high staff turnover and the Ethiopian authorities have stated that there is a need to extend this support.[29]

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[28] Directive on the Waiver and Issuance of Business Visa on arrival for Representatives, Officials and Experts Travelling to Ethiopia for Official Business, Meetings, Seminars and Workshops of the OAU and the UNECA and other UN Organs and Agencies.

3. Civil registration of birth, marriages, and death is not automatic in Ethiopia. The documentation of these events is relatively new and largely confined to urban areas. A church-issued document, an acknowledgment from the Kebele or confirmation from three witnesses are sufficient evidence for the issuance of certificates.

3.3.3 International support activities

- Capacity building in the area of detection of falsified documents has been provided to immigration officers of the Main Department by several international stakeholders. Presently and upon request by the Ethiopian authorities, some EU Embassies provide ad hoc support to the visa checking procedures at Bole International Airport.

- UNFPA's Population and Development Programme aims at among others supporting the establishment of civil registration, the Vital Statistics Registration system. UNFPA also provided technical and financial support to the Central Statistics Agency in preparing and implementing the 2007 population census. In order to better process census data, the Central Statistical Agency (CSA) used census forms and technology provided by DRS Data Services Limited[30], a UK based company, which provided similar technology to Australia, Zambia, Tanzania, Cameroon, Nigeria and Sudan.

3.3.4 Recommendations

1a. Visa policy should be modernised, developing in a migration control and security instrument. Visa policy should primarily be based on objective circumstances (i.e. transparency of respective legislation, whether international rules and practices on passports and their issuance are taken into account, implementation of provisions in questions, misuse of passports).

1b. It is important that the legislation regulation to visa matters is set out in a clear, transparent and accessible act, visibly setting out the responsibilities for the authorities and creating necessary legal bases for the range of issues to be covered relating to the visa procedure.

1c. The authorities and systems involved in the visa matters have to be perceived as one whole in order to reach a well functioning visa system, whereby the legislative structure, visa practice and staff capacity is concurrently dependent on the organisation of communication, access to a visa register as well as access to secure equipment and documents and vice versa.

1d. Judging from relevant regulations, it can be presumed that many visas are issued at the borders. Issuing visas at the border on a routine basis should be avoided. In general it is considered more secure when the visa, representing the first border control, is issued before the foreigner enters the country, that is to say at the DMCP (Diplomatic Missions and Consular Posts), and that the first control is made there. This should especially be seen in relation to existing lack of communication possibilities between BCP and the Main Department.

1e. Good co-operation between all the authorities involved in the visa issuing procedure is a pre-requisite for an efficient visa system. In order to ensure co-operation between all authorities, Ethiopia should be supported in building up a visa information exchange system for consultation and exchange of data between the DMCP, the Ministry of Foreign Affairs, the Main Immigration Department and most importantly the international airports. Staff and communication equipment regarding all structures involved in the consultation procedure have to be upgraded to be able to carry out the

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[29] Meeting with the Ministry of Foreign Affairs, 15.01.2008; meeting with the Main Department for Immigration, 16.01.2008
[30] www.drs.co.uk/

necessary checks on visa applications (*persona non grata*, rejected visa applications purpose of travel and guarantees).

2. Document identification training should be placed in a wider context of a comprehensive training curriculum, which covers all areas of migration management. Ad hoc training activities should give way to a more sustainable approach, which builds the Main Department's own capacities to develop and deliver training to its immigration officers (*see recommendations in section 5 on Border Management*).

3. With a population of approximately 75 million, including a large number of pastoralists, Ethiopia will need more assistance in implementing ongoing activities in the area of civil registration and population census. In the area of civil registration, the United Nations Statistics Division *Principles and Recommendations for a Vital Statistics System, Rev. 2* is a useful reference tool. It is a guide for national governments in establishing and maintaining reliable civil registration systems, provides technical guidance on standards, concepts, definitions, and classifications for civil registration and vital statistics to further increase international comparability of data.

3.4 Border management

3.4.1 Background

Ethiopia's land border extends over 5.328 km. Of the five countries neighbouring Ethiopia, Sudan shares the longest borderline, 1.606 km. Somalia comes second with a frontier length of 1,600km, while Ethiopia's margins with Kenya cover a distance of 861 km and 912 km with Eritrea. Djibouti has the shortest borderline with Ethiopia, which is 349 km.

Ethiopia's borders are said to be very porous, which is due to the length of the overall borderline, as well as to the diverse topography, which make border control particularly difficult. Furthermore, the Ethiopian borders have seen recurrent competition for scarce resources between trans-boundary pastoralist groups.

3.4.2 Legal and institutional framework

The Main Department for Immigration and Nationality Affairs mans the official land and air gates. The Department's immigration officers have the following competences:

- Control of entries into and departures from Ethiopia

- Inspection of travel documents and visa

- Search of conveyances

- Detention of persons who have attempted to cross the border illegally for investigation purposes.[31]

In addition, much of Ethiopia's border areas are patrolled by the military forces, particularly at the border with Eritrea, Somalia and in the Gambella region at the border with Sudan, where recurring inter-community violence poses security threats for the larger region.

Ethiopia has two air gates: Bole International Airport (Addis Ababa) and Aba Tenna Dejazmach Yilma International Airport (Dire Dawa) for flights from Djibouti with Djibouti Airlines. According to information received from the Main Immigration Department, two more air gates are currently being planned.[32] Addis Ababa's Bole International Airport, formerly known as "Haile Selassie I International Airport", was upgraded in 2003 in response to the

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[31] Proclamation regulating the Issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia, No. 271 of 1969
[32] Meeting with the Main Department for Immigration and Nationality Affairs, 16.01.2008

considerable traffic augmentation, which the airport had seen in the late 90s. It is a two-floor, 3,800 sq. metres, and 320 metre-long building with an annual maximum capacity of three million passengers.[33] Such capacity is believed to be sufficient for the next 20 years. It is one of the largest airports in East Africa and has increasingly developed into a major transit point or "migration hub" along the Eastern African migration routes both for transit migration and irregular migration movements.

The mission received contradictory information on the number of land gates. From information received by various stakeholders, the following could be made out:

Moyale is the main official border crossing point (BCP) at the Ethiopian-Kenyan border. Reportedly, there are several other crossing points along that same border, which are used by cattle breeders and informal traders. Similarly, traditional cross-border movements mark the borderline with Somalia: as people on both sides of the border are predominantly nomadic, there are several unofficial border crossing points. The BCPs at the border with Sudan are in Humera and Metema. Dewele at the border with Djibouti has both a road and a railway BCP. The rail way runs from Addis Ababa to Djibouti via Nazaret and Dire Dawa. All official BCPs have full immigration and customs checks.[34] The unresolved border dispute between Ethiopia and Eritrea continues to keep the border zone locked in a militarised stalemate. The parties have not been able to agree on the demarcation of the border or de-escalate their military presence.

Ethiopia has a number of agreements and co-operation mechanisms in place with its neighbouring countries:[35]

- Ethiopia and Kenya signed a mutual visa abolition agreement in 1966 and a border agreement in 1970.

- There are several mechanisms of co-operation that exist between Ethiopia and the Sudan, which include the Joint Ministerial Commission, the Joint Political Committee and the Joint Border Development Commission.

- Ethiopia and Djibouti have established a Joint Border Administrators and Commissioners Committee, which examines border security, immigration, refugee and health matters as well as other related issues and a Joint Border Sub-Committees, which reacts to problems that may arise along the common border.

3.4.3 Challenges

1. The length and topography of the Ethiopian borders require an approach to border control entirely distinct from the European understanding of border protection. Among others, nomadic and pastoral cross-border movements, which play a vital role in the lives of significant populations in Ethiopia, need to be taken into account and the lifestyle of these groups must be recognised and protected. Furthermore, border conflicts, risks of spillover of insecurity from neighbouring countries, proliferation of small arms, localised cross-border conflicts and inter-community violence pose particular border security challenges. Due to the present geopolitical situation, border control in Ethiopia is currently seen in a context of military protection of the country and the armed forces are present in most of the border areas.

2. The main obstacle to the Main Immigration Department's current ability to respond to the challenges posed by the enormous length and permeability of Ethiopia's land borders is a lack of both financial and human resources. Deficiencies are most apparent in the areas of staff training, technical equipment and means of communication. The Department has inadequate patrolling capacities and virtually no

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[33] MTM Map on African and Mediterranean Irregular Migration Routes (ed. 2007)
[34] Website of the Ministry of Foreign Affairs of Ethiopia
[35] Meeting with the Ministry of Foreign Affairs, 15.01.2008

technical means of information exchange between its offices. Indeed, only five of all the land gates are presently connected through a network.[36]

3. The lack of communication and co-operation between the federal and the regional governments is said to be considerable and to lead to discrepancies between the capital and the regions.

3.4.4 International support activities

- The IGAD Capacity Building Programme Against Terrorism (ICPAT) is geared towards the member states of IGAD, namely Djibouti, Eritrea, Ethiopia, Kenya, Somalia, Sudan and Uganda. It takes concerted action in the establishment of a regional approach to counter terrorism with a broader international strategy. This includes developing operational capacity to counter illegal cross-border movements through improved inter-departmental and regional collaboration, working towards the standardisation of border control measures within the IGAD region, information sharing and research. ICPAT has recently carried out a desk and field research along the borders between Ethiopia and Kenya, and Kenya and Sudan and proposals have been forwarded for government consideration and action.[37]

- Ethiopia has benefited from capacity-building support and document training by the UK, Netherlands and Denmark capacity at Bole International Airport. Upon request, some EU Embassies provide assistance to check visa at the airport (*see section 4 on Passport, Visa and Identity Cards*).

3.4.5 Recommendations

1. Bringing border management practices in line with European standards in an area where ethnic clans, traditional trade routes and pastoralists traditionally need to move beyond national boundaries is both unwanted and impossible. International assistance in the area of border control and migration management will have to meet the complex requirement of ensuring secure borders while at the same time not hampering trade and pastoralist cross-border movements ("secure but open borders"). In addition, it will be important to place support interventions in the context of existing regional frameworks and initiatives, such as for example the New Partnership for Africa's Development (NEPAD). Indeed one of NEPAD's objectives is i) the reduction of delays in cross-border movement of people, goods and services, ii) the promotion of economic activity and cross-border trade through improved land transport linkages and iii) an increase of air passenger and freight linkages across Africa's sub regions. NEPAD therefore suggests the establishment of customs and immigration task teams to harmonise border crossing and visa procedures.[38]

2. Increased capacity-building support needs to be given to the Main Immigration Department in the area of training and staff development. Training of immigration officers is currently done at the Department's own training academy, which is however ill-equipped.[39] Furthermore, the considerable travelling distances between the immigration officers' duty station and the academy in Addis Ababa pose additional obstacles to continued training. Although training has been given to immigration officers by a number of international stakeholders, the high staff turnover has hampered the sustainability of these training activities. It will therefore be important to support the Main Immigration Department in the development of its own capacities to develop and deliver training, including in the regions where staff tends to be less well

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[36] Meeting with the Main Department for Immigration and Nationality Affairs, 16.01.2008
[37] Meeting with the Institute for Security Studies (ISS), 15.01.2008
[38] NEPAD 200, op. cit, p. 31
[39] Meeting with the Main Department for Immigration and Nationality Affairs, 16.01.2008; meeting with IOM, 16.01.2008

trained than in the capital. This can be achieved by providing support to the training academy to:

2a. Perform a thorough training needs assessment.

2b. Develop a comprehensive training curriculum, which covers all migration-related aspects (entry, residence and exit conditions; profiling and interviewing; basic check procedure; asylum procedure; trafficking in human beings; human smuggling; detection of forged documents and counterfeits; border surveillance; legislation including international human rights provisions; asylum seekers' rights; vulnerable persons; airport-specific activities including liaison with airlines).

2c. Develop a specialist training curriculum in the area of detection of forged visa and travel documents, where there is a need for more experts.

2d. Train trainers who can deliver continuous, on the job training (field training officers).

2e. The Main Immigration Department needs technical equipment for border control, including border surveillance (mobile units), equipment for the headquarters, facilities for the branch offices and technical means for information exchange and communication, including a network combining all offices of the immigration services.[40]

3a. Communication and co-operation between the central and the regional level as well as among authorities, which have a migration- related and intelligence competence, require clear definitions of respective tasks, competences and a description of procedures. Such inter-agency co-operation should have a basis in laws or by-laws.

3b. Efficient border management also depends to a large extent on information that has been gathered by the different national and international agencies. An essential part of co-operation consists of the exchange of data in order to fulfil the specific tasks of border security. This also includes data on individuals. However, natural persons enjoy the fundamental right that their personal data are protected in accordance with national and international principles. Issues of data protection therefore always have to be kept in mind, and building capacities in this regard should be supported.

4. First steps towards a co-operative regional approach in migration management have been taken between Ethiopia and its neighbours through standing bilateral consultation. Although the mission has not received information on the exact co-operation modalities, joint border operations don't seem to have taken place yet. Bilateral cross-border co-operation could be further strengthened covering for instance the harmonisation of procedures and introduction of one-stop controls, associated training and exercises, joint patrols and bilateral exchange of information. Such co-operation does not only increase efficiency of border control of but also leads to cost savings.

3.5 Irregular migration[41]

3.5.1 Background

Ethiopia is located on the East Africa migration route, a land route which leads from the Horn of Africa via Sudan, Chad and Libya to the Mediterranean Sea. A second route in East Africa leads from Somalia to Yemen across the Gulf of Aden. It is used by Somali and Ethiopians

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[40] Meeting with the Ministry of Foreign Affairs, 15.01.2008; meeting with the Main Department for Immigration, 16.01.2008

[41] This report uses the term "irregular migration" to refer to illegal entries, legal entries with subsequent illegal residence (visa overstayers, etc.) as well as "apparently legal entries" (i.e. entries within a legal entry scheme achieved through deception or fraud "Illegal migration" is used for illegal border crossings only.

(reportedly mostly from the north- eastern parts of Ethiopia) who travel to the port of Bossaso in Somalia/Puntland to attempt the sea voyage over the Gulf of Aden to Yemen. Very little is known however about the details and the exact trajectories along those two prevailing routes. In fact, they have to be seen primarily as geographical connections between important stages or "hubs" of the irregular migration process. There is anecdotal evidence that Addis Ababa is such a hub, a gathering point for migrants who plan to take the journey following both the East Africa and the Gulf of Aden route.

Ethiopia, and more specifically Bole International Airport, is also said to be a hub of transit and irregular migration on the air route leading to Europe, including for Asian irregular migration flows transiting through Africa.

3.5.2 Legal and institutional framework

Human smuggling, i.e. facilitating the illegal entry of a person against payment, is an offence under criminal law in Ethiopia. In the 2005 version of the *Criminal Code*, Article 243 reads as follows:

> *(1) Whoever intentionally: a) departs from, enters into or resides in the territory of the State in violation of the national law; or b) causes any of the acts specified in (a) above to be committed, is punishable with simple imprisonment or fine or with both.*

> *(2) Whoever, with the intention of obtaining, directly or indirectly, advantage procures illegal entry of a person, who is not either a national or a permanent resident of Ethiopia, into the territory of another State or produces, procures, provides or possesses a fraudulent travel document or identity card for enabling illegal entry into the Ethiopia territory of the person or performs an act that enables him to illegally remain in Ethiopia without complying with the necessary legal requirements, is punishable with rigorous imprisonment from five years to ten years.*

> *(3) Where the life or safety of the migrant is endangered or is subjected to inhuman or degrading treatment as a result of the crime committed under sub-article (2) of this Article, the person who committed the crime shall be punishable from five years to fifteen years of rigorous imprisonment.*[42]

The *Proclamation Regulating the Issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia*, which regulates the issuance of travel documents, visa and registration of foreigners in Ethiopia, requires that all foreigners residing in Ethiopia must be registered with the Main Immigration Department. Failure to produce a registration permit may lead to temporary custody of the person. Hotels and innkeepers must transmit information on foreigners. The same proclamation also includes a provision on carrier liability.[43]

Ethiopia ratified the United Nations Convention Against Transnational Organized Crime in July 2007, but has not signed the Protocol against the Smuggling of Migrants by Land, Air and Sea.

The institutional framework for the fight against irregular migration involves the National Intelligence and Security Service, with broad authority for intelligence, border security (through the Main Immigration Department) and criminal investigation, as well as the Federal Police. Unfortunately it was not possible to meet with any law enforcement officials during the mission to Ethiopia.

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[42] Criminal Code of the Federal Democratic Republic of Ethiopia, May 2005
[43] Proclamation Regulating the Issuance of Travel Documents and Visas, and Registration of Foreigners in Ethiopia, No. 271/1969, 22 July 1969

3.5.3 Challenges

1. Although the mission did not receive information on data collection and modalities of co-operation and information exchange between the NISS and the Federal Police for example, constrained resources are likely to hamper an efficient approach towards irregular migration. According to some of the interlocutors, the Federal and Regional Police are notoriously under equipped.

2. A main challenge posed to the management of irregular migration in East Africa, is the mixed, composite character of its migration flows: Migration movements include traditional trade and pastoralist movements, labour migrants, asylum seekers and irregular migrants, driven by similar forces and using the same routes and means of migration. In most cases, it is difficult to make a sharp distinction between different categories of migrants, as individual motivations are often complex, mixed and may change over time. Managing mixed migration flows is particularly complex, as it requires a differentiated approach, taking into account protection concerns and the matching capacities.

3.5.4 Governmental measures

The government recognises that illegal migration flows have developed into a problem but there is also a need for support to translate this political will into action.

With regard to readmission of its own citizens, the Ethiopian Embassies abroad have been instructed to provide the necessary documentation, provided there is certainty with regard to the nationality of the person to be returned. The Ethiopian authorities accept the use of the standard EU removal letter with attached supporting evidence. The Ministry of Foreign Affairs specifically highlighted its good co-operation with the UK, which should be extended to other EU countries.[44]

3.5.5 International support and activities of civil society organisations

- The Netherlands, UK, USA and Canada provide training to the staff of Ethiopian Airlines and immigration officers at regular intervals since 2005. However, staff turnover has hampered the sustainability of these training activities.

- The UK is currently planning an exercise, to take place in March or April 2008, involving all international liaison officers in the region to concentrate their resources on Addis Ababa with the aim of sensitising the authorities on airport security.

- The International Committee of the Red Cross (ICRC) mostly comes into contact with migrants when these request travel assistance after having been expelled from e.g. Yemen back to Ethiopia. Although this falls outside ICRC's mandate, the Red Cross usually helps these migrants return to their homes.[45]

- The Mixed Migration Task force, composed of IOM, UNHCR and other UN agencies and international NGOs, provides assistance to stranded migrants in Somaliland and runs a number of awareness raising campaigns about the dangers of illegal migration, although admittedly such activity has limited impact.[46]

- In the area of Assisted Voluntary Return (AVR), IOM operates voluntary returns of Ethiopians from Switzerland and from the UK. The programme caters for concrete support towards individual reintegration in Ethiopia, and comprises assistance to develop individual plans for social and economic reintegration, pre-departure training and/or training after arrival and contributions in kind.

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[44] Meeting with the Ministry of Foreign Affairs, 15.01.2008
[45] Meeting with the ICRC, 17.01.2008
[46] Meeting with IOM, 16.01.2008

3.5.6 Recommendations

1a. Capacity-building support should be given to Ethiopia's development and maintenance of appropriate migration intelligence systems, which comprise the collection, analysis, processing and sharing (among relevant national stakeholders) of relevant statistics, such as border apprehension statistics, statistics on asylum applications, visa data, nationalities of apprehended migrants etc. The analysis of this data is suited to serve as indicators for developments in the area of irregular migration. Indeed, an improved management of irregular migration is based on sound knowledge on the size and structure of related migration flows, as well as on the main strategies used by irregular migrants and professional organisers of human smuggling operations.

1b. A regional context is particularly important to tackle irregular migration. Professional human smugglers operate on a transnational level. Close co-operation between authorities of countries that are affected by the activities of a specific group or network of organisers is an essential pre-requisite for the disruption of irregular migration processes. Irregular migration and human smuggling also take advantage of existing differences between national migration management systems and the resulting loopholes. A further approximation of migration policies and legislation, especially between neighbouring countries, is suited to close these loopholes and thus to reduce the number of options for human smugglers in carrying out their activities.

2. The *Refugee Protection and Mixed Migration: a 10-Point Plan of Action* developed by UNHCR is an important reference tool for capacity-building activities in the area of management of mixed migration. Technical assistance needs to be provided to set up an efficient screening and referral mechanism which ensures i) proper registration of apprehended persons and a first screening to distinguish between different motivations or types of migrants; ii) referral to the appropriate locations/ authorities, including due access to asylum processes for those in need of international protection and iii) special attention to vulnerable groups, especially to women and unaccompanied minors.

3. In the context of irregular migration, travelling by air usually involves the use of forged, purchased, borrowed or stolen passports (using the look-alike method) or a passport that falsely relates the migrant to the smuggler. There is a need to increase capacities of the immigration officers deployed at Bole International Airport to detect forged documents. In order to make support activities in this area are more sustainable it is recommended that the focus is put on developing the Main Immigration Department's capacities to develop and deliver such specialist training (*see recommendations in section 5 on Border Management*).

4. With regard to Assisted Voluntary Return (AVR), the Ministry of Foreign Affairs suggested involving the Ethiopian government when designing the support packages, as they have currently created a number of incentives for the Ethiopian diaspora, either to return or to invest (*see section 9 on Migration and Development*).[47] These privileges and benefits could also be applied to Ethiopians participating in AVR.

5. The ICRC mentioned the need to support the identification of mortal remains on the Gulf of Aden route; this belongs to ICRC's competency and the ICRC has expertise in this regard.

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[47] Meeting with the Ministry of Foreign Affairs, 15.01.2008

3.6 Refugee protection related matters

3.6.1 Background

The refugee flows into Ethiopia are primarily the result of political and civil unrest and recurring natural disasters in the neighbouring countries. About 85.000 refugees from several African countries are present, including Angola, Burundi, Djibouti, Eritrea, Liberia, Rwanda, Somalia, South Africa, Sudan, Uganda, and Yemen.[48] However, refugees from Somalia, Sudan and Eritrea make up the majority. Most recently 3.000 Kenyans sought refuge in Ethiopia.[49]

Ethiopia hosts some eight refugee camps that are located along its western, northern and eastern parts of the border: two for South Sudanese, four for Eritreans, two for Somali.[50] UNHCR is the main office in charge of co-ordination of assistance in the various camps. The Administration for Refugee and Returnee Affairs (ARRA), which falls under the National Intelligence and Security Agency, is the national partner of UNHCR. ARRA is in charge of food distribution and security issues in the camps, as well as programmes on health and education.[51] To protect its natural resources and infrastructure from the pressure of the refugee influx, Ethiopia has confined the refugees in camps and has limited their rights pertaining to movement, education and work opportunities. Permits to leave the camps can be issued for personal, medical, educational or safety reasons.

Somalis[52]

Somali refugees began arriving in Ethiopia as a result of the Ogaden war of 1977–78 and again after the fall of the Siyad Barre government in Somalia in 1991. They mainly settled amongst their clan members in the bordering Ethiopian Somali region, officially known as Somali National Regional State, but also known as Ogaden after the region's majority clan, since clan territories span the border between the two countries. Most Somali refugees repatriated between 1997 and 2005.

The upsurge of insurgency in Somalia, where Ethiopia has been military engaged since 2006, has led to renewed refugee flows into Ogaden and Kenya. The Ethiopian army has also been involved in a counter-insurgency operation in Ogaden since June 2007, therefore the current numbers of refugees and IDPs in that region are not known. In July 2007, the Ethiopian army ousted the International Committee for the Red Cross (ICRC) from Ogaden, and after Médecins sans Frontières had to leave for security reasons the same month, the organisation was not allowed to return.

In the Kebelaia camp a revalidation activity is currently ongoing, which includes digital fingerprinting to both limit the risk of multiple registrations and to facilitate additional identity checks. The camp in Teferibo was currently reopened.

It is believed that many ethnic Somalis of Ethiopian origin spontaneously move into the refugee camps due to recurrent drought and insecurity. Limited economic opportunities in the area also push returnees to join the camps in order to get access to food and other assistance. A thorough screening process, however, helps identify refugees from Ethiopians.

Urban refugees are found in major towns, but information is not readily available since many are not registered. UNHCR has registered just over 1.000 urban refugees in Addis Ababa; the Government estimates that there are about 100.000 ethnic Somalis of mixed origin and status living in the city. According to the United States Committee for Refugees and

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[48] Meeting with the Ethiopian Administration for Refugee and Returnee Affairs (ARRA), 15.01.2008
[49] Ibid.
[50] The number of refugee camps fluctuated during the finalization of this report.
[51] Forced Migration Online: Refugee situations in Ethiopia, http://www.forcedmigration.org/guides/fmo033/fmo033-5.htm accessed 26.2.2008
[52] Forced Migration Online, Refugee situations in Ethiopia, http://www.forcedmigration.org/guides/fmo033/fmo033-5.htm accessed 26.2.2008; UNHCR, Ethiopia Country Operations Plan 2008

Immigrants, "some 50.000 Somalis entered between August 2006 and February 2007 and between 30.000 and 45.000 unregistered Somali asylum seekers lived in and around the capital Addis Ababa and other urban areas". Unregistered Somali refugees report choosing to live in Addis Ababa because of its security relative to the camps, its economic opportunities in the informal economy, and because they have come from Mogadishu and are not accustomed to rural life. Any Somali wishing to claim asylum may, of course, do so.

Sudanese

Most of the Sudanese refugees arrived in Ethiopia in the early 1980s. The refugee population in Ethiopia reached its peak of more than 300.000 in 1991.[53] The number has now reduced substantially, since most refugees are repatriating, many spontaneously. In December 2007, UNHCR resumed repatriation of Sudanese refugees from western Ethiopia after a six month break; over 600 people were assisted to return to Sudan.[54] A total of some 27.000 refugees returned to the Sudan voluntarily since 2006, 600 alone in December 2007, leading to the closure of the Yarenja camp.[55] With repatriation having continued as assumed, two more camps, Bonga and Dimma, were closed in 2008.[56] ARRA would like to repatriate a further 28.500 Sudanese refugees in 2008.[57] With respect to repatriation of South Sudanese in East Africa, UNHCR will give priority to returnees from Ethiopia.

Repatriation is implemented in accordance with the tripartite agreement[58] for the repatriation of Sudanese refugees signed between Ethiopia, Sudan and UNHCR in February 2006.

Eritreans

The number of Eritrean refugees has doubled since 2002. A steady flow of 200 to 300 individuals arrive each month at the Shimelba refugee camp in northern Ethiopia and December 2007 saw an unprecedented 600 individuals arrive, which may have been due to rumours about resettlement plans.[59] Eritreans are usually recognised as refugees on *prima facie* basis and UNHCR has issued a non-return advisory. The refugees mainly come from ethnic groups living on both sides of the border, such as Tigray-Tigrinya[60], Kunama and Afar; all claim persecution and harassment by the Eritrean government. Restrictions in education in Eritrea have also developed into a major push factor, as universities recently were turned into military camps. Although Eritrean refugees generally fit the common denominator of the African refugee being young and male, single women also flee to avoid mandatory conscription.

Internally displaced persons[61]

Internally displaced persons (IDPs) in Ethiopia are mainly the result of conflicts, but the full extent and nature of such conflict-induced internal displacement is not known. Those displacements that are documented have given rise to an estimate of some 200.000 conflict-induced IDPs country-wide.[62] The current situations of conflict-induced internal displacement

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[53] Forced Migration Online: Refugee situations in Ethiopia, http://www.forcedmigration.org/guides/fmo033-5.htm; UNHCR, Ethiopia Country Operations Plan 2008
[54] UNHCR News Stories 17.12.2007, http://www.unhcr.org/news/NEWS/476696814.html
[55] Information provided by UNHCR after the mission, during the finalisation of this report Autumn 2008
[56] Information provided by UNHCR after the mission, during the finalisation of this report Autumn 2008
[57] Government of Ethiopia: 28,500 Sudanese refugees to be repatriated, Reliefweb 10.01.2008
[58] Tripartite Agreement between the Government of the Federal Democratic Republic of Ethiopia and the Government of the Republic of the Sudan and the United Nations High Commissioner for Refugees for the Voluntary Repatriation of Sudanese Refugees in Ethiopia Back to the Sudan, signed on 27 February 2007
[59] UNHCR, Ethiopia Country Operations Plan 2008; USCRI, http://www.refugees.org/countryreports.aspx?id=1995, accessed 27.02.2008
[60] The large number of landmines planted during the war is an obstacle for resettlement to the Tigray region.
[61] Internal Displacement Monitoring Centre (2007): Ethiopia: Addressing the rights and needs of people displaced by conflict
[62] According to current estimates, some 60,000 people remain displaced by the 2004 border referendum along the Somali-Oromiya regional border. This number includes Somali and Oromo IDPs. As of September 2007, an estimated 20,000 people in Borena and Guji zones (Oromiya region), 60,000 in Gambella region and 62,000 in

should be seen in the context of broader population movements, because economic migration and resettlement programmes also influence the composition and cohabitation of populations, as well as the stability of regions.

People in the Gambella region on the South Sudanese border have been displaced for many years, since significant migration into the region, partially across the border from Sudan, upset the region's ethnic balance. The Tigray region hosts the IDPs remaining from the 1998-2000 border war with Eritrea. Since the Ogaden region is under military control, there are no confirmed numbers available about IDPs as a result of the recent standoff in the Somali region between the Ethiopian army and the Ogaden National Liberation Front.

3.6.2 Legal and institutional framework[63]

Ethiopia is party to the 1951 Refugee Convention and its 1967 Protocol, reserving the right to interpret the right to work and to primary education as non-binding recommendations. The country is also signatory to the African Union's 1969 *Convention Governing the Specific Aspects of Refugee Problems in Africa*.

The 2004 Refugee Proclamation establishes a procedure for applying for asylum and prohibits the government from refusing entry to refugees or asylum seekers and returning them to a country where they would be at risk of persecution. It should be noted that while NISS is referred to as the designated government authority, ARRA should be seen as the *de facto* implementing agency. According to the Proclamation, persons can apply for asylum with NISS/ARRA or a police station within 15 days of arrival. It authorises the head of NISS/ARRA to designate classes of persons as *prima facie* refugees under the African Refugee Convention definition. It requires NISS/ARRA to issue identity cards to refugees and asylum seekers and prohibits prosecution regarding illegal entry or presence. Apparently the government has issued identity cards to asylum seekers and refugees in urban areas but not to those in camps.

In general, Ethiopia does not allow refugees to work. The government has only granted work permits to foreigners when there were no qualified nationals available and rarely issues permits to refugees. It has, however, tolerated some refugees with special skills working illegally, as well as refugee participation in the informal sector, including trading in markets or doing other piecemeal jobs.

In 2003, Ethiopia signed the *Khartoum Declaration of the OAU Ministerial Meeting on Refugees, Returnees and Internally Displaced Persons in Africa*. The Declaration calls upon governments to seek durable solutions to the problem of forced population displacement, reaffirms the right of return, appeals to countries of origin to create conditions conductive to voluntary repatriation and recognises that local integration and resettlement is a desirable solution for dealing with the situation of refugees who are unable to return home.

3.6.3 Challenges

1. Of those registered in refugee camps less than half are usually actually living there. A recent revalidation by UNHCR showed 50% residing in the Shimelba camp, but only 10% in the Kebrebeyah camp.[64] ARRA has recently noted that offering to provide a safe conduit to the Sudanese border for those wishing to cancel their refugee status and move on could be one way to deal with the problem. This would allow ARRA to better monitor the movements.

   Conditions in the refugee camps push people to leave. Many refugees would not survive without remittances, especially Somali feel obligated to give to those in need

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Tigray remained displaced. No estimates are available on displacement in Afar, or in SNNPR, although informal information suggests that there are between 25,000 and 30,000 IDPs in SNNPR.

[63] See USCRI, http://www.refugees.org/countryreports.aspx?id=1995, accessed 27.02.2008
[64] Information provided by UNHCR after the mission, during the finalisation of this report.

(family or clan member), so many will leave in order to support those who are left in the camps. Another dilemma with the camps is the demographic balance. Women and children often need specific security measures. While the classic demographic profile usually shows a slight majority of women and families, in some of the refugee camps in the north, young, single men (Eritrean) make up the majority of the camp population. With regards to education provided in camps, the result is mixed. On the one hand, refugee camps on the South Sudanese border are used as "boarding schools" for children, probably largely due to the lack of schools and basic infrastructure in South Sudan. On the other, Somali children are reportedly being taken out of refugee camps for child labour.

Integrating refugees is difficult because most refugees are agro-pastoralists who would need farming and grazing land which Ethiopia cannot easily provide. Environmental degradation caused by overpopulated refugee camps is also starting to become a problem according to ARRA. Since urban refugees are not registered, they do not enjoy legal protection from the government or UNHCR, are unlikely to access public services, such as health care and education, and risk being subjected to beatings, sexual violence, harassment, extortion, arbitrary arrests and detention.[65]

2. The asylum-migration nexus is also applicable to refugees hosted by Ethiopia. Both UNHCR and ARRA recognise the problem of secondary movement and wish to address it. UNHCR states that "statistics on the origins of asylum applicants in industrialised states imply that a large proportion are fleeing protracted refugee situations in host states in the region of origin".[66] Many Somali refugees would have liked to stay in the region of first asylum, "but protection issues, lack of social amenities and confinement to camps force them to leave".[67] Secondary movements among the Sudanese caseload are not common, as the South Sudanese refugees in Ethiopia are spontaneously repatriating.

3. The Committee on the Rights of the Child regretted, in its concluding observations in November 2006, that Ethiopia has not withdrawn its reservation with regard to the right to education and expressed concern about the high risk of sexual abuse and exploitation in the refugee camps.[68]

3.6.4 Governmental measures

The Tripartite Agreement between the Government of Ethiopia and the Government of the Sudan and the UNHCR for the Voluntary Repatriation of Sudanese Refugees in Ethiopia was signed on 27 February 2007. It outlines the conditions and procedures for the safe voluntary return of Sudanese refugees from Ethiopia and their reintegration in the Sudan.

The government sees that little can be done with regard to the integration of refugees due to a lack of available means. There are only very limited resettlement opportunities. Recognised refugees are provided with basic services such as food, shelter, education and health, but there is a need to increase these efforts.

The Disaster Preparedness and Prevention Agency provides 3000 ETB as a lump sum to the head of household plus 4000 ETB in travel assistance to those who wish to repatriate to Eritrea as part of the ICRC repatriation programme between Ethiopia and Eritrea, which runs about five times a year.

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[65] Urban refugees and asylum seekers usually "include opportunistic and dynamic individuals as well as those who have failed to survive as part of the normal migration flow" and this makes RSD difficult; UNHCR,: UNHCR's Policy and Practice Regarding Urban Refugees, A Discussion Paper, http://www.unhcr.org/cgi-bin/texis/vtx/research/opendoc.htm?tbl=RESEARCH&page=home&id=3bd4254e7, accessed 9 March 2008
[66] UNHCR: The State of the World's Refugees 2006, Chapter 6
[67] Ibid.
[68] CRC/C/ETH/CO/3 1 November 2006

ARRA has reportedly recently acknowledged the existence of secondary movements and would like to address this problem by offering to provide a *safe conduit* to the Sudanese border for those wishing to cancel their refugee status and move on.

3.6.5 *International support activities*

- UNHCR has developed the *Refugee Protection and Mixed Migration: a 10-Point Plan of Action,* which aims at addressing the challenge of mixed migration management in a comprehensive manner. It addresses the key areas, which require further support from key actors (governmental, international, NGOs) such as data collection and analysis; Protection-sensitive entry systems; Reception arrangements; Mechanisms for profiling and referral; Differentiated processes and procedures; Solutions for refugees; Addressing secondary movements; Return arrangements for non-refugees; Information strategy (see also section 6 on Irregular Migration).

- The US refugee admission programme provides resettlement opportunities to Eritrean refugees, referred by UNHCR.

- IOM ensures the logistics of third-country resettlement for Sudanese, Somalis and Eritreans, as well as travel arrangements, medical screening and the logistics for voluntary repatriation.[69] IOM also helps build the capacity of local authorities and relevant institutions in IDP camp management and camp co-ordination.

- The International Committee for the Red Cross (ICRC) restores family links, particularly for relatives separated by the closed Eritrea-Ethiopia border and for Sudanese refugees. The ICRC mostly comes into contact with migrants when these request travel assistance after having been expelled, for example, from Yemen back to Ethiopia. This falls outside its mandate but the Ethiopian Committee for the Red Cross usually helps these migrants return to their homes. ICRC has recently resolved to give more prominence to the humanitarian consequences of international, regional, national and local migration, including the entire migratory cycle, also return and reintegration.[70]

  ICRC uses the global tracing network and Red Cross Messages (RCM) for family reunification. National Societies collect, forward and deliver RCMs, often after considerable time and effort have been spent tracing the addressees. Those of Somali origin are relatively easy to find due to the well-connected clan system. A lot of requests come from the UK. An increasing number of tracing requests are false, but this is extremely hard to verify. These people do not actually want to find their family but use the ICRC paperwork to seek asylum.

- UNDP funds a project which aims at supporting the return and reintegration of internally displaced persons living in camps in Fafen and Hartishek, in the Somali National Regional State of Ethiopia. This includes the identification of reintegration needs, developing reintegration strategies, facilitating dialogue and co-ordination between partners and provision of assistance to IDPs. The project is implemented by the Disaster Prevention, Preparedness and Food Security Bureau of the Somali Regional State (DPP&FSB), IOM, UNICEF, the World Food Program, the Mother and Child Development Organization (MCDO), the Ogaden Welfare and Development Organization (OWDA) and the Pastoralist Communication Initiative (PCI).

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[69] UNHCR identifies, screens and submits refugees for resettlement according to its resettlement criteria.
[70] ICRC Resolution 5 on International Migration CD/07/R5 of 23-24 November 2007

3.6.6 Recommendations

1a. Ethiopia needs increased assistance capacities for refugees and returnees. There is also a need for the creation of centres, close to the borders, in which a preliminary screening could be done. There is currently only one such centre.

1b. Continued international support should be given to the implementation of UNHCR's *Refugee Protection and Mixed Migration: a 10-Point Plan of Action* (see section above), in order to enable the Ethiopian government to provide adequate responses to mixed migration flows.

2. Known reasons for secondary movements should be addressed, such as protracted refugee situations without prospective integration or return, the lack of adequate social services, crowded camps and Ethiopia's camp confinement policy. It should also be recognised that refugees sometimes may move from the first country of asylum due to the lack of effective protection.

3. To counter child labour in the vicinity of the refugee camps, as well as internal and international trafficking of refugee children, the level of assistance in the camps needs to be raised in order to entice the parents to keep their children in the camps. This is particularly valid for the Somali refugee camps.

4. Government recognition of conflict-induced displacement would ensure the protection of all IDP populations and their effective incorporation into the overall national and international responses to ongoing and future natural disasters and conflicts. When not recognised as a specific group, IDPs risk being excluded from humanitarian relief programmes and national food distribution schemes.

3.7 Trafficking in human beings

3.7.1 Background

Ethiopia is a country of origin and transit when it comes to trafficking in human beings. Addis Ababa, in particular Bole International Airport, is increasingly used as a gateway for traffickers of both other African and South Asian migrants. Ethiopian men, women, and children are trafficked both within and from the country for the purposes of forced labour and sexual exploitation. Women are trafficked primarily for domestic servitude to the Middle East and the Gulf States, other destinations include Bahrain, Djibouti, Kenya, Sudan and Tanzania. A small percentage of these women seem to end up in the sex trade after arriving in the countries of destination.[71] There are reports indicating that up to 1.000 women leave the country every month to find jobs as domestic workers abroad. Although the majority of men migrate legally to these countries, some are trafficked to Saudi Arabia and the Gulf States for low-skilled forced labour, and, considering the increased attention given to the prevalence of male trafficking worldwide, chances are that the numbers are greater than currently estimated.

A large part of trafficking in Ethiopia occurs within its own borders. The country has a long history of slavery, prostitution and bonded labour, which has contributed to a high level of tolerance, even ignorance, of the problem of trafficking in human beings.[72] Children and young adults are trafficked internally from rural to urban areas for domestic servitude, commercial sexual exploitation and forced labour such as street vending or traditional

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[71] U.S. State Dept Trafficking in Persons Report, June 2007, http://gvnet.com/humantrafficking/Ethiopia-2.htm, accessed 5.3.2008

[72] Ryu, Alisha *(*26 May 2005): Ethiopian Children Easy Prey for Child Traffickers, http://www.voanews.com/english/archive/2005-05/2005-05-26-voa26.cfm Accessed 5.3.2008; Endeshaw, Yoseph, Gebeyhu, Mebratu & Belete Reha,: Assessment of Trafficking in Women and Children in and from Ethiopia, IOM, November 2006

weaving.[73] Girls are primarily trafficked for domestic labour and prostitution[74], whereas boys are sought after in the traditional weaving industry.[75] The traditional practice of early marriage is a significant push factor for young girls.[76] Brokers are often known to the victims of trafficking or their families. Many times relatives or neighbours return to rural areas for holidays and then persuade families to send their child along with them to big cities with the promise of education or a job.[77] In other cases, children are lured to come along without the families' involvement.

3.7.2   Legal and institutional framework

The Constitution specifically mentions that "no one shall be held in slavery or servitude. Trafficking in human beings for whatever purpose is prohibited".[78] The Constitution also provides for the rights of women and children[79] and prohibits exploitative child labour[80].

Trafficking is also an offence under criminal law in Ethiopia. The Criminal Code was amended in 2005 replacing the one from 1957, but the latter still applies to all acts committed before the new Criminal Code entered into force in April 2005.[81] In the 2005 version, Article 635 reads as follows [1957 wording in brackets]:

> *Whosoever, for gain, or to gratify the passions of another: a) traffics in women or minors [infants and young persons], whether by seducing them, by enticing them, or by procuring them or otherwise inducing them to engage in prostitution, even with their consent, or b) keeps such a person in a brothel [disorderly house] or let her out to prostitution, is punishable with rigorous imprisonment not exceeding five years and a fine not exceeding ten thousand Birr [dollars], subject to the application of more severe provisions, especially where there is concurrent illegal restraint.[82]*

The biggest weakness of the 1957 Criminal Code was that the purpose for trafficking had to be prostitution. When the code was redrafted in 2005 an additional article dealing with forced labour of women or minors (Article 597) was introduced. Article 597 expressly covers also those who transport the victims to their place of destination *whether in Ethiopia or abroad*, thus making no distinction between internal and international trafficking for the purpose of forced labour (again, only referring to women and minors).[83]

In addition to the Criminal Code, the Private Employment Agency Proclamation from 1998 punishes private employment agencies that send Ethiopian women abroad without having a

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[73] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[74] Young girls are increasingly sought after in the sex trade, since they are believed to be less exposed to HIV.
[75] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[76] Salopek, Paul: The bride was 7: In the heart of Ethiopia, child marriage takes a brutal toll, Chicago Tribune December 12, 2004, http://www.chicagotribune.com/news/specials/chi-0412120360dec12,1,2870744.story?coll=chi-newsspecials-hed
[77] Endeshaw, Yoseph, Gebeyhu, Mebratu & Belete Reha: Assessment of Trafficking in Women and Children in and from Ethiopia, IOM, November 2006
[78] The Federal Republic of Ethiopia Constitution, Article 18 (2)
[79] Ibid, Articles 35 and 36
[80] Ibid, Article 36(e)
[81] Endeshaw, Gebeyhu & Reha (2006), op.cit.
[82] Ibid, pp.92-93
[83] (1) "*Whoever by violence, threat, deceit, fraud, kidnapping or by the giving of money or other advantage to the person having control over a woman or a child, recruits, receives, hides, transports, exports or imports a woman or a minor for the purpose of forced labour, is punishable with rigorous imprisonment from three to twenty years, and fine not exceeding fifty thousand Birr.*" (2) "*Whoever knowingly carries off, transports or conducts whether by land, by sea or by air, the victims mentioned in sub-article (1), in order to deliver tem at their place of destination, or who aids and abates such traffic, whether in Ethiopia or abroad, is liable to the penalty prescribed under sub-article (1) above.*" Ibid., pp.95-96

license or doing so by other unlawful means.[84] The Proclamation was revised in 2006 and awaits parliamentary ratification.[85]

Ethiopia has ratified several UN and ILO conventions dealing with employment and labour issues[86], but the absence of official translations and publications makes it difficult to apply them in practice. The provisions would necessitate supplementary national laws in order to be applicable since the wording is inherently general. Ethiopia has *not* ratified the major UN and ILO instruments relevant to trafficking, such as the Palermo Protocol (UN Protocol to Prevent, Suppress and Punish Trafficking in Person, especially of Women and Children, 2000).[87]

3.7.3 Challenges

1. Ethiopia does not have a comprehensive national policy on trafficking in human beings, more specifically:

   · Ethiopia does not have a specific national policy targeting the elimination of trafficking, which would provide guidance to and co-ordinate the efforts of different stakeholders.

   · Ethiopia does not have a comprehensive law or set of laws that define and address the issue of human trafficking. Instead the provisions applicable to the trafficking crime and protection of the trafficking victims are scattered within the Constitution (Article 18 (2) prohibition of slavery and servitude), the Criminal Code (Articles 635-638), the Civil Code (Articles 2512- 2593) and others.

2. It is always difficult to assess the extent of a problem that by its very nature remains hidden, but an additional challenge for the Ethiopian government in tracing victims of trafficking in the Middle East and Gulf States, is that almost all Ethiopian women with Christian names change into Muslim names to facilitate the visa process.[88] With regards to internal trafficking, there is also a lack of data, specifically on trafficked children, and since a large number of children are neither registered at birth nor at a later stage this poses a significant challenge for the Ethiopian government.[89]

3. Trafficked Ethiopian women are subjected to various forms of abuse and exploitation in the countries of destination. In most cases, women are initially willing to migrate and voluntarily travel to the countries of destination lured by the prospects of earning a living. However, upon arrival the promised job does not materialise, travel documents are confiscated and the women are exploited. No contact with family members, long working hours, no salaries, denied rest, leave and/or food and sexual harassment are some of the abuses the trafficked victims are subjected to.

   Some local police and border control agents are believed to accept bribes to overlook trafficking.[90]

4. The Criminal Code provisions on trafficking are limited to women and children, thus neglecting the growing phenomena of male trafficking. Male trafficking is mostly done for the purpose of labour exploitation, but can also be trafficking for organs.

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[84] Ibid., pp.98-99
[85] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[86] UN Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others (1949); UN ICESCR and ICCPR(1966); CEDAW (1979); CRC (1989); ILO, the Abolition of Forced Labour Convention (1957); ILO, the Discrimination Convention (1958); ILO, Convention on the Worst Forms of Child Labour.
[87] Endeshaw, Gebeyhu & Reha (2006), op.cit.
[88] Dessalegn, Bezaiet (2004): FMO Country Guide: Ethiopia, Forced Migration Online, *University of Oxford*, http://www.forcedmigration.org/guides/fmo033/fmo033-6.htm
[89] CRC/C/ETH/CO/3 1 November 2006 (next report due 12 December 2011)
[90] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.

Articles 590 and 597 of the Criminal Code only criminalise trafficking of women and children for the purposes of prostitution and forced labour, which is a very narrow definition, omitting other forms of exploitation.

Article 598 of the Criminal Code on Unlawful Sending of Ethiopians for Work Abroad-again only covers women, excluding men and minors/children from the category. While the purpose of the measure is protective, it can easily result into gender discrimination, where women would be more prejudiced or scrutinized against obtaining jobs aboard.

Finally, and most importantly, the Criminal Code has no provisions on the rights and protections of the trafficking victims, especially if they choose to co-operate with the law enforcement agencies (LEA) or testify as witnesses in the court. There are no victim-witness protection provisions or available options for the trafficking victims to stay legally in the country during the time they co-operate with LEA or serve as a witness in the court. Absence of such provisions would inevitably lead to the victims of trafficking distrusting the police or government authorities to come forward to identify themselves as victims or to provide necessary assistance and co-operation to police officials and courts in apprehending and charging the traffickers. Eventually absence of proper victim protection provisions results in a low number of victim identification and a low number of prosecution of traffickers.

3.7.4 *Governmental measures*

Following accusations of being indifferent to the plight of Ethiopian female migrants in Lebanon, both by international and national media, the MFA set up a national committee to look into trafficking to the Gulf States in June 1999.[91] As a result of the recommendations made by the committee, a Consulate was opened in Beirut. With respect to the Gulf States, Ethiopia has only recently established diplomatic ties and does not have embassies or consulates in all of them, which makes it difficult to keep an eye on the situation of the Ethiopian migrants.[92]

In an attempt to prevent trafficking, the Ministry of Labour and Social Affairs (MOLSA) introduced the requirement for migrant workers to produce and register all foreign employment contracts in order to verify their compliance with national law. While this measure regulates labour migration, it does not hinder, in the case of trafficking, that contracts are changed or annulled upon the migrant's arrival in the country of destination. Nevertheless, when verifying employment contracts together with the Ethiopian Consulate in Lebanon, MOLSA has found that some of them originate from black market brokers rather than legitimate migrants independently securing employment.[93] MOLSA has sought to establish framework contracts with countries in the Middle East, but destination countries have been reluctant to accept. In some cases, however, employers have been ready to sign agreements with (registered) private employment agencies.

MOLSA is also responsible for issuing licenses to private employment agencies to send workers abroad.[94] Several illegal employment agents, attempting to deceive potential migrants with fraudulent job offers from the Middle East, as well as travel agency owners, using their agency as a front cover for carrying out trafficking, have been apprehended by police during the last couple of years.[95] MOLSA is trying to remedy the situation by acting as

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[91] Kebede, Emebet: Ethiopia: An Assessment of the International Labour Migration Situation – the case of female labour migrants, International Labour Organization, http://www.ilo.org/public/ english/employment/gems/do wnload/swmeth.pdf, p.24. There had been an increasing number of reports of beatings, rape and even suspicious death of Ethiopian female workers in Beirut.
[92] Ibid, p.25
[93] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[94] Kebede, op.cit., p.25.
[95] Kebede, op.cit., pp.25-26; U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.

a "recruitment agency", but illegal channels are usually preferred because they are quicker. As a reaction to the increased awareness of the trafficking problem, the Ministry for Women Affairs was created.

Pre-departure orientations on the risks of irregular migration have been offered by MOLSA but were discontinued when this proved to be an ineffective measure against trafficking. Awareness raising campaigns on trafficking are conducted from time to time by the police, the Ministry of Information and non-governmental organisations, but there are reportedly no ongoing information campaigns.[96]

Awareness raising has also been on the agenda of the inter-ministerial counter-trafficking task force, which has conducted training workshops for high court judges, national labour bureau personnel and police commissioners.[97] The task force is chaired by the Ministry of Justice and includes representatives from the MFA and the police. The task force most recently suggested that the anti-trafficking provisions of the new Criminal Code be revised and strengthened.[98]

With respect to internal trafficking, there are at least ten police stations in different parts of the capital where police officers and social workers co-operate on child trafficking cases. But the caseload is reportedly too big compared to the available money and manpower of the police.[99] This joint police-NGO child victim identification and referral mechanism, so called Child Protection Units (CPUs), rescue and collect information on trafficked children, and facilitate their return to their families.[100] In 2006, the CPUs referred 240 trafficked children to IOM and local NGOs for care.

3.7.5 International support activities

- Switzerland is currently funding an awareness raising campaign on internal trafficking, due to its link to international trafficking. Internal trafficking in human beings often leads to international trafficking. USAID also funds a project on internal trafficking.

- Ethiopia currently only has one shelter in which an NGO assists trafficking victims.

- IOM has conducted several studies on trafficking in and from Ethiopia. With respect to awareness raising, IOM has:

    - produced booklets, calendars and films;

    - targeted female students with the aim of sensitising them on issues of trafficking and HIV/AIDS;

    - produced radio and TV spots on migrating abroad and the risks of being trafficked, and informing listeners about their telephone hotline, which provides pre-employment and pre-departure counselling fro migrants.

- IOM has provided training on trafficking in human beings for teachers, MOLSA and private employment agencies, members of the inter-ministerial counter-trafficking task force, judges and LEA (including immigration officers) and for members of the media.

- IOM has also supported MOLSA to develop a database for the purpose of registering data on labour migration and trafficking in human beings, including statistics on prosecution of trafficking cases as a measure to combat the problem.

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[96] Kebede, op.cit.,p.25.
[97] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[98] Meeting with MOLSA, 15 January 2008
[99] Endeshaw, Gebeyhu & Reha (2006), op.cit.
[100] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.

3.7.6 *Recommendations*

1. Ethiopia needs a comprehensive policy targeting the elimination of trafficking, and providing guidance to and co-ordinating the efforts of different stakeholders. The legal framework should entail a comprehensive set of laws that clearly define and address the issue of human trafficking. Clear definitions in the laws would help in their implementation since it would be easier for practitioners (police, prosecutors and judges) to identify acts of human trafficking.

2. A basic precondition for developing a comprehensive national response to trafficking is the systematic collection and management of statistical data relevant to trafficking in human beings. Continued support should be given to Ethiopia to improve the quality and reliability of data collection (including databases) and the use of collected data.

3a. Prosecution of trafficking crimes is still low.[101] To improve this, the investigative capacity of police and the judicial understanding of trafficking should be improved in order to allow for more convictions of traffickers. Courts are congested and need additional resources to function effectively and efficiently. Adequate sentences for trafficking crimes should also be imposed.[102]

3b. Continued training and sensitisation on trafficking in human beings for Ethiopian officials, including officials posted abroad in embassies and consulates.

3c. In the longer-term perspective, women should have better opportunities to acquire skills training and jobs in Ethiopia. Women will continue to migrate for employment abroad, and risk being trafficked, as long as they cannot empower themselves economically at home.

4a. Only trafficking of women and children for the purposes of prostitution and forced labour are criminalised in Ethiopia. This narrow definition falls short of the international standards in the Palermo Protocol, which provides that in order to qualify as a crime, trafficking must be for the purpose of "exploitation". An important distinction here is that Protocol provides broad and non-restrictive coverage where the "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs", while the definition of purpose in the Criminal Code is restricted to prostitution and forced labour. The Code should be amended to include other forms of exploitation such as exploitation for sexual purposes (pornography, rape, sexual assault) or for the removal of organs.

4b. Ethiopia should also introduce legal provisions on the rights and protections of trafficked victims. The introduction of victim-witness protection provisions would contribute to increased numbers of cases of trafficking being prosecuted.

5. Bilateral agreements would be a good way of ensuring the protection of labour migrants and enhancing co-operation on anti-trafficking measures. Such agreements are not easy to secure due to the unbalanced national interests of the sending and receiving countries.

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[101] U.S. State Dept Trafficking in Persons Report, June 2007, op.cit.
[102] For example, travel agencies charged with trafficking are sentenced under the provision "slavery", which does not prohibit bail. As a result, the agencies are not deterred to go back to trafficking, knowing they can get out on bail for 5000 Birr. See Kebede, op.cit., p.25.

3.8 Migration and development

3.8.1 Background

International migration undeniably can have favourable features for the countries of destination and origin as well as for the migrants and their families. For the latter migration can generate remittances and hence contribute to a decline in poverty. Upon return, expatriates also take back vital skills and expertise and thus contribute positively to development in their home countries. The Ethiopian government has taken a number of initiatives to maximise the utilisation of remittances and skills and experiences of returning migrants. Despite these efforts, the majority of remittance flows are channelled through informal channels and numbers of returnees remain low.

3.8.2 Legal and Institutional framework

Diaspora engagement

The Ethiopian government acknowledges the value of mobilising the Ethiopian diaspora members for the development of their home country. A reference to the role of Ethiopian expatriates as development partners was already included in Ethiopia's *Sustainable Development and Poverty Reduction Programme* (SDPRP) of 2002-2005 and has been reiterated in the *Plan for Accelerated and Sustained Development to End Poverty* (PASDEP) for 2006-2010, which mentions the "positive impact of the diaspora, which is increasingly engaging in, or returning to Ethiopia, and providing a cross-fertilisation of ideas, skills, and injections of capital and remittances that can help accelerate development".[103]

The government established two departments within federal Ministries to reach out to the diaspora:

- The Ethiopian Expatriate Affairs (EEA) General Directorate in the Ministry of Foreign Affairs was set up in 2002 to i) facilitate co-operation between different Ministries and Ethiopian expatriates, ii) maintain their rights and privileges and iii) ensure their involvement in the socio-economic development of the country. To that end, the EEA Directorate disseminates information to Ethiopians who live abroad, notably through its Embassies. Furthermore the EEA Directorate has been mandated to do research on diaspora matters in order to create a basis for informed policy development.[104]

- The Diaspora Co-ordinating Office in the Ministry of Capacity Building was created in 2004 to attract capacities and resources among diaspora members for the benefit of capacity building in Ethiopia.

In order to ensure interagency co-ordination at the federal level, a committee, composed of representatives of the Ministry of Foreign Affairs, the Ministry of Trade and Industry, the Ministry of Culture and Tourism, the Ministry of Labour and Social Affairs, the Ministry of Revenue, the Main Department of Immigration and the National Bank of Ethiopia was established to co-ordinate and share information on their respective diaspora engagement activities.[105] A similar co-operation mechanism between the federal and the regional level was set up to create an environment conducive for investment.[106]

At the regional level, each State has created an office, which specifically deals with matters related to the diaspora. These offices were instructed to develop annual action plans, which include guidelines for the provision of services to diaspora members, plans to open diaspora

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[103] PASDEP, op.cit., p.216
[104] Website of the Ministry of Foreign Affairs of Ethiopia, accessed on 4 March 2008
[105] AHEAD, Enabling Diaspora Engagement in Africa: Resources, Mechanisms and Gaps. Case Study: Ethiopia. May 2007, p. 36
[106] Meeting with the Ministry of Foreign Affairs, 15.01.2008

offices in the major towns[107] and to develop an information database on planned and implemented projects in each region.[108]

The government also took some legislative measures to facilitate the mobility of diaspora members living abroad and attract their investments:

- As an alternative to granting dual citizenship, the government issues a *Person of Ethiopian Origin Identity Card*, the so called *Yellow Card*, which grants Ethiopians with foreign citizenship the same rights as a citizen with the exception of permanent occupation in National Defence, Security and Foreign Affairs.[109]

- Since 2001, returnees have the right to import certain goods free of duty.[110] Initially, this included duty free car imports, however as a reaction to abuse, a new directive was issued in 2006 lifting this privilege.[111]

- Under a directive issued in 2006, non-resident Ethiopians are given permission to open foreign bank currency accounts (for USD, Pound Sterling, Euro).[112]

- Ethiopian expatriates are offered privileged treatment under domestic investors' schemes.[113] Several agencies, such as the Ethiopian Investment Authority, the Ethiopian Investment Commission, the Addis Ababa City Administration Investment Authority and Regional Investment Offices provide so called one-stop-shop services to potential domestic and foreign investors.[114]

- The government has provided land for the construction of residential buildings for diaspora members.[115]

According to information provided by the Ministry of Foreign Affairs, diaspora members have invested almost 13 million Ethiopian Birr (ETB) (approximately 932.200 EUR) in the period between July 1992 and November 2007, creating 35.262 permanent and 29.000 temporary jobs.[116]

Remittances

The National Bank of Ethiopia (NBE) controls the remittance flows in Ethiopia and the operation of formal remittance systems. The 2006 Directive on international remittance services aims at increasing transparency and making money transfers faster and more cost effective. It also includes a provision on advertisement through websites, brochures and Ethiopian Embassies abroad.[117]

According to data from the National Bank, remittances through formal channels amounted to 636.2 million USD in 2007.[118]

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[107] Also see www.ethiopiandiaspora.org
[108] AHEAD, 2007, op. cit., p. 39
[109] Proclamation No. 270/2002: Providing Foreign Nationals of Ethiopian Origin with certain Rights to be Exercised in their Country of Origin
[110] Returnees are categorised in five groups according to their status, executive responsibility, job mission and period of stay. Returnees in groups 1 to 4 can import their belongings duty free within 1 year from their arrival date and those in group 5 within 3 months.
[111] AHEAD, 2007, op. cit., p. 44
[112] Directive No. FXD/31/2006, amendment to Directive No. FXD/25/2004. Establishment and Operation of Foreign Currency Account for Non-Resident Ethiopians and Non-Resident Ethiopian Origin.
[113] Proclamation No. 375/2003: A Proclamation to Amend the Investment Re-Enactment Proclamation No. 280/2002
[114] Ahead, 2007, op.cit., p. 47, www.ethiopiandiaspora.org
[115] Website of the Ministry of Foreign Affairs accessed on 4 March 2008, official millennium page accessed on 4 March 2008
[116] Meeting with the Ministry of Foreign Affairs, 15.01.2008
[117] Directive No FXD/30/2006: Provision for International Remittance Services, 28 August 2006b
[118] Meeting with the Ministry of Foreign Affairs, 15.01.2008

3.8.3 Governmental measures

As part of its strategy to improve communication with Ethiopian diaspora members, the Ministry of Foreign Affairs has assigned one diplomat in each diplomatic mission abroad who is responsible for matters pertaining to the Ethiopian community.[119] The Ministry's and Embassies websites provide information to potential returnees. In 2006 and 2007, government officials at different levels visited Canada, the USA and Europe to have direct talks with diaspora members in order to inform them about recent developments in Ethiopia and opportunities for returnees.[120]

3.8.4 Challenges

Return of skills and brain drain

1. Like most African countries, Ethiopia is affected by the loss of human capital through emigration of the highly skilled rather than by the positive effects resulting from return migration of these migrant categories. The loss of large numbers of qualified emigrants entails particularly negative effects for a country faced with skills gaps on the one hand and scarce resources to invest in education on the other. In Ethiopia, fragile sectors such as health care are particularly affected by brain drain.

2. A number of international support projects aim at mobilising professionals to contribute to the development of their home country (see below). However, one of the constraints returnees might encounter is difficulties to reintegrate.[121] They experience a number of frustrations back in Ethiopia as they have got used to a different life style, working conditions and work culture. Tensions between the home community and the returnees arise, as the latter are perceived to be privileged. According to some interlocutors, the Ethiopian millennium celebrations revealed animosity towards the diaspora, who "walk differently and talk too loud" and are given tax cuts. This was also uttered by government officials in the media, although the government had specifically used the opportunity of the millennium celebrations to outreach to the diaspora.[122]

Remittances

1. While the remittance flows through formal channels have shown a steady increase for the last ten years,[123] many interlocutors suggested that most of the transfers are still being done informally. There are several reasons why migrants might prefer the informal channels, despite the governmental measures described above: First, it allows for an immediate transfer of funds to the home country without having to register the transaction officially. Unregistered channels are often pursued, either because undocumented immigrants generally do not have access to banks, or because of a lack of nationwide banking networks, making it difficult to transfer money to remote areas. The unofficial niche markets are filled by a wide range of small and independent service providers and can thereby cover a wider geographical scope.

2. The second reason for relying on informal channels is their lower cost. Research on informal money transfer systems suggests that transfers via informal channels cost the remitter a mere 1 to 2% of the transaction sum, a value that may be exceeded up to ten times in the formal sector. The fixed base fees charged by money transfer

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[119] Website of the Ministry of Foreign Affairs, accessed on 5 March 2008
[120] Meeting with the Ministry of Foreign affairs, 15.01.08; AHEAD, 2007:40; www.ethioembassy.org.uk
[121] Meeting with AHEAD, 17.01.08
[122] See also: The Ethiopian Millennium Festival National Secretariat's Strategic Plan (Draft) 2006 – 2008, December 2006
[123] Since 1998 the share of remittances in GDP has increased from 1,23% to 3, 65% I 2004-2005. (National Bank of Ethiopia in Hunzinger, 2007: 3). According to a study commissioned by the International Fund for Agricultural Development (IFAD), Ethiopia received 591 USD in remittances in 2006 (4,4% of the GDP).

companies are not only considerably higher but made even more disadvantageous by the fact that many migrants send money in small monthly instalments, on average US$200, instead of sending a higher amount annually.

3.8.5 International support activities

- www.ethiopiandiaspora.org is a website run by IOM and the Cooperazione Italiana and launched in March 2004 in the framework of the MIDA Italy project. It provides an information platform for the Ethiopian community abroad and hosts a database for professional and non-professional Ethiopians interested in the MIDA programme. According to the IOM Database Statistic, 564 Ethiopian diaspora members have registered as of 10 January 2008.

- The MIDA-Health Sector Programme of the Migration for Development in Africa (MIDA) is a joint IOM and World Health Organization (WHO) initiative, which aims at mobilising African health professionals abroad to contribute their skills to the benefit of the national health sector. The programme also set up a database on African health professionals living overseas, by field and level of competencies.

- A similar project, Migration for development in Ethiopia (MIDEth), is currently being implemented by IOM and UNDP. It intends to contribute to the development efforts of the Ethiopian Government through virtual skills transfer, temporary assignments, permanent relocation and investment promotion through matching. The project also includes a component on review of policy guidelines and regulatory frameworks and one on research on the Ethiopian diaspora.

- www.sendmoneyhome.org is an internet portal supported by the UK Department for International Development (DFID), which provides information on remittance service providers, fees and transfer speed.

3.8.6 Recommendations

Return of skills and preventing brain drain

1. Improving employment conditions is an important contribution to remove the push factors for migration of the highly- skilled. However, it has to be stated that the highly skilled are the most "mobile" migrant category, best suited to utilise their options on a global scale and widely unbound of migration regimes. Only a general improvement of living conditions in countries of origin, which goes beyond mere economic categories, but also fosters good governance, democratic institutions, social and political transformation will be fully effective in creating incentives to stay in or to return to Ethiopia.

2a. Temporary return should be further encouraged in co-operation with the host countries to ensure that diaspora members do not lose their benefits in the countries of current residence.[124] Empirically well-proven examples of circular migration and temporary return are the ones where the obstacles to individual mobility of migrants are comparatively low. The absence of barriers to individual movement makes it easy for migrants to commute back and forth. The conclusion of specific labour agreements that would grant a limited number of Ethiopians better access to residence and labour markets in European countries can contribute to set in motion circular migration while avoiding unintended consequences (permanent settlement, irregular migration).

2b. Communication and information on diaspora matters needs to be extended to the national level to bridge the gap between those Ethiopians who return and those who

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[124] Between 1995-99, only 66 Ethiopians participated in IOM's Return of Qualified African Nationals (RQAN) scheme.

stayed. A consistent message on the benefits of co-operation between returnees and the local population and the importance of each unique contribution needs to be conveyed to the public. A comprehensive communication strategy could contribute to this end. Such a strategy should involve national stakeholders, diplomatic missions abroad and diaspora organisations and be developed and implemented within the Ministry of Information's mandate.[125] This would also provide for an opportunity to re-launch some of the official information websites, as many of these sites need updating and offer room for improvement in information quality and presentation.

2c. Information on the Ethiopian diaspora in Europe seems to be scarce compared to the knowledge available on Ethiopian communities in the USA and Canada. Reliable de-personalised data on expatriates is an important precondition for the development of tailored approaches towards the diaspora, which take into account its diversity while at the same time base their activities on sound information and data. Research on migration and development should include the collection of statistical data, measure the size and composition of the diaspora and the impact of diaspora activities in national development effort. Administrative data on issued *Yellow Cards* could be used to establish a contact database for reaching out to the diaspora.

Remittances

1a. Better inclusion of expatriates in the formal banking systems: The so called "unbanked" are subject to higher transfer costs and practical problems in carrying out transfers on a permanent basis, while being deprived from accessing benefits offered to regular bank clients. Assisting remittance senders and recipients to participate in the banking system would help lower transfer fees, increase the access to other benefits and thus "formalise" informal remittance schemes.

1b. Improved usage of remittances requires the improvement of the infrastructure of banking systems. The support of European countries in institutional capacity building and in improving the overall market and financial environment is a crucial factor in "formalising" remittance flows.

1c. Capacity-building projects should support the creation of sound credit practices, improved linkages between banks and enterprises, strengthened managerial expertise and provision of adequate infrastructure to enable banks to attract new assets and eventually set up mechanisms for catching part of the remittance flows, and orient them towards investment policies.

1d. Banks in Ethiopia should be supported in devising special programmes offering financial and technical reintegration assistance and investment schemes to return migrants. Such programmes should employ specifically trained intermediaries who advise and support return migrants in developing and implementing individual business plans and link these individual plans to broader priorities and needs of local business development.

2. Efforts to reduce the costs associated with cross-border money transfers should be supported. Although the rates have decreased markedly in recent decades due to an increase in the volume of transfers, additional reductions are desirable. The stimulation of competition in the remittance market by supporting related projects and activities could result in lower transfer fees and consequently increase both the total volume of remittance flows as well as the share of flows via formal money transfer systems to developing countries.

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[125] Proclamation No.471 /2005. Definition of Powers and Duties of the Executive Organs of the Federal Democratic Republic of Ethiopia Proclamation

4 Kenya

4.1 Overview of the migration system

4.1.1 Background

Kenya occupies a strategic geographic position in the East Africa Region and has a long history of being a particularly attractive country of destination for various migration flows. People from its neighbouring countries have crossed the border mainly for reasons of political instability and food insecurity, but also due to traditional pastoral movements and cultural ties. The country continues to attract these heterogeneous migration flows due to its location, relatively developed infrastructure, good air and land connections, large migrant communities and well-connected smuggling networks.

For these very reasons Kenya is not only a country of destination, but increasingly a country of transit. Most transiting migrants are of Somali and Eritrean origin, having left their country of origin because of political insecurity and looking to join their respective diaspora communities in Europe and North America. Kenya's position as transit country is gaining in importance in international migration patterns, also from far away regions such as South and East Asia.

The country harbours a significant number of refugees, both from the Horn of Africa and the Great Lakes region. The largest refugee groups are of Ethiopian, Eritrean, Sudanese and Somali origin, but while there are efforts underway to repatriate Sudanese nationals, the Ogaden conflict in Ethiopia, the border conflict and oppressive political situation in Eritrea and the war in Somalia are unlikely to allow for repatriation in the foreseeable future. The permanent state of the refugee camps is a cause for concern as the living conditions and lack of prospects (resettlement for instance) push these people to leave Kenya for other destinations, more often than not by irregular means.

Those who decide to leave Kenya, legally or illegally, secondary refugee movements aside, do so primarily as an economic coping strategy. The Middle Eastern countries receive a large number of Kenyans looking for job opportunities abroad, as do the UK, US and Norway and, on the continent, South Africa, Lesotho, Botswana and Nigeria. Brain drain, especially in the health sector, has been a problem for many years. Many migrants also fall prey to traffickers; trafficking of Kenyan women and men for the purposes of domestic servitude, prostitution and forced labour has been on the increase in the whole region.

The recent political unrest, which started after the assessment mission and therefore falls outside of the scope of the report, has lead to a displacement of over 231.000 Kenyans and some persons even crossing the border to Uganda.[126]

4.1.2 Legal and institutional framework

Kenya is a presidential representative republic, where the President acts both as head of state and head of government. The local administration is divided among 69 rural districts, each headed by a commissioner appointed by the president. The districts in turn are joined to form eight provinces supervised by the government. These are the Central, Coast, Eastern, North Eastern, Nyanza, Rift Valley and Western Provinces, plus the Nairobi Area.

The main government body entrusted with migration-related competences is the Department of Immigration in the Ministry of State for Immigration and Registration, which falls under the responsibility of the Office of the President. Other departments that fall under the competences of this Ministry are the Civil Registration, the National Registration Bureau and the Refugees Department. The Immigration Department is responsible for the control of the entry exit of all persons, as well as the residence of foreigners and issuance of work permits, passports and visas.

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[126] Kenya Red Cross Society, *Information Bulletin No.7/2008*

Other public administrations with migration-related competences include:

- Office of the President
    a. Ministry of State for Youth Affairs
- Ministry of Planning and National Development
- Ministry of Foreign Affairs
- Ministry of Labour and Human Resource Development
- Ministry of Finance
- Central Bank of Kenya
- Ministry of State for Provincial Administration & Internal Security
    b. Kenya Police
    c. Administration Police

Kenyan laws and directives relevant to migration include:

- The Constitution of Kenya
- The Constitution of Kenya Review Act
- The Penal Code
- The Citizenship Act
- The Births and Deaths Registration Act
- The Immigration Act
- The Aliens Restriction Act
- The Refugee Act
- The Sexual Offences Act
- The Children's Act
- The Administration Police Act

Kenya is a founding member of the East African Community (EAC), which already has a common passport and aspirations of establishing an East African Federation merging the five member states Burundi, Kenya, Rwanda, Tanzania and Uganda into a single state. Kenya is also member of the African Union (AU), the Intergovernmental Authority for Development (IGAD), and the Common Market for Eastern and Southern Africa (COMESA) and hosts the Interpol sub-regional bureau for eastern Africa.

4.1.3 Challenges

1. The instability of the region poses particular challenges to cross-border co-operation in the field of migration. The absence of a sub-regional dialogue on migration issues, which includes all the countries placed along the East Africa migration routes, also impedes the development of a common understanding of migration towards, within and out of the sub-region.

2. At a national level, Kenya has no comprehensive migration legislation framework, nor does the country have a comprehensive migration management strategy. The large number of state actors involved in the various aspects of migration management creates certain confusion, overlapping and gaps in responsibilities and also hampers the development of a comprehensive migration management system. The existence of the Immigration Department would allow, at least in theory, for a unification and

concentration of efforts, however the Department lacks human, financial and technical resources and co-ordination with other state actors to ensure efficiency of its action.

3. The situation of Kenya is, on numerous issues, similar to what other African countries are facing. The difficulties of the government are, in addition to the challenges mentioned above, primarily due to a lack of data and information on the various aspects of migration towards, in and out of Kenya.

4.1.4 International support activities

- Migration-related matters form part of the United Nations Economic Commission for Africa (ECA) 2008-2009 programmatic activities. The ECA plans to prepare a follow-up report to the "International Migration and Development: Implications for Africa," report, which was published in September 2006 for the High Level Dialogue on International Migration and Development. The follow-up report will focus on capacity building needs with respect to migration management. In 2007, the ECA and the International Organisation for Migration (IOM) signed a Memorandum of Understanding (MoU), which lays down the terms for their co-operation in the areas of data collection, research, policy development, capacity- building and promotion of regional and sub-regional co-operation and integration. Joint activities will centre on the topics of migration and development, fight against trafficking in human beings and human smuggling, protection of the human rights of migrants, gender equality and gender mainstreaming.

- The UK, in co-operation with IOM, IGAD, the African Union (AU), Italy, Malta and the Netherlands have recently started implementing a regional project called "The East Africa Migration Route: building co-operation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination," funded under the 2006 AENEAS Programme of the EC.[127] The project targets immigration officials of Chad, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Niger, Somalia, Sudan, Tunisia, Uganda and Yemen and will include the following activities: i) Establish a Migration Resource Centre and Regional Consultative Process (RCP) for the exchange of information and best practice on migration management; ii) Enhance the capacity of the targeted African countries, the IGAD Secretariat and EU Member States to collect and analyse intelligence relating to illegal migration; iii) Organise two technical workshops on key thematic migration issues; iv) Address key gaps in the region's border and migration management structures; v) Provide training to officials from East African countries on technical and policy migration management topics; vi) Inform potential irregular migrants via targeted publicity campaigns of the dangers of irregular migration. vii) Assess the feasibility of undertaking of a joint operation in an African country to disrupt illegal migration.

4.1.5 Recommendations

1. At the regional level, Kenya, just as all the countries along the East Africa migration route, would greatly benefit from the development and implementation of an informal regional migration dialogue in order to create links between relevant authorities and current/future migration management experts throughout the region. The creation of a Migration Resource Centre and Regional Consultative Process (RCP) within IGAD (see section 2.4 above) will foster exchange of knowledge and information, as well as boost regional know-how on mixed migration management. This could be linked to the Mediterranean Transit Migration (MTM) dialogue: Based on a two-pillar approach – security and migration-development – North African Arab partner states of the MTM

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[127] The AENEAS programme provides financial and technical assistance to third countries in support of their efforts to ensure more effective management of all aspects of migration flows. In 2007 it was replaced by a new programme entitled "Thematic Cooperation Programme with Third Countries in the Development Aspects of Migration and Asylum", covering 2007-2013.

dialogue could act as "twinning partners" to guide the inclusion of their Southern neighbours in such an informal dialogue.[128]

2a. The development of a comprehensive migration legislation framework and migration management strategy based on expertise from European partners and more advanced African states (e.g., Morocco, Algeria), which have benefited from past twinning experiences. This exchange of practice and expertise could be done through formal as well as informal channels (e.g., via the dialogue mentioned above). Moreover, the "Migration Policy Framework for Africa" adopted by the African Union in 2006 could provide the guidelines for the development of such a policy.[129] The document covers the main migration issues including labour migration, border management, irregular migration, forced migration, human rights of migrants, migration and development, inter-state co-operation and also addresses cross-cutting aspects. Within this framework, international assistance could provide support and advice to the Kenyan Immigration Department with respect to the development of a comprehensive migration policy and a related implementation plan. Such work would also involve other national administrations, which have a role in migration management, e.g. through an inter-agency/cross-ministerial working group. The policy implementation plan could subsequently serve as a basis for the development and implementation of further project-based activities, which would take forward specific aspects of the migration policy.

2b. The creation of a Kenyan inter-ministerial commission – for example under direct supervision of the Office of the Prime Minister – would contribute to better co-ordinate and unify migration-related information, and concentrate efforts to address migration management challenges that Kenya is currently facing. The body would act as a one-stop-shop for the policy development, implementation/administrative matters and information sharing.

2c. There is an important need for financial support to implement and/or develop any comprehensive migration management strategy, framework or structure. Kenya has little financial means to dedicate to migration management, be it for the training of relevant officials, the hiring of new human resources and/or the financing of technical equipment.

2d. In order to implement the above recommendations, particular attention needs to be paid to the development of the Immigration Department's human resources. It is recommended to develop a comprehensive training curriculum for immigration officers, which includes generic, specialist and continuous training and which is based on a thorough training needs assessment.

3. Sound statistical data and reliable data collection systems support informed policy decisions and are hence at the basis of the development of an appropriate migration policy, which takes into account all aspects of migration (including labour migration, irregular migration, protection, integration) and reflects national objectives and priorities. Accurate data on migration is also needed to plan for the budgetary support needed by the Kenya Immigration Department. Kenya would benefit from international capacity-building support to develop national capacities for the production of reliable migration statistics.

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[128] The proposed dialogue could also follow the Rabat Process approach and develop along three areas: illegal immigration, legal migration and migration and development.
[129] African Union Executive Council: The Migration Policy Framework for Africa, Banjul, June 2006
http://www.africa-union.org/root/au/Conferences/Past/2006/November/SA/EU/EXCL276(IX)_Strategic_Framework_for_Policy_Migration.doc

4.2 Regular migration

4.2.1 Legal and institutional framework

The Ministry of Labour and Human Resource Development has the overall responsibility for developing and co-ordinating policies on Kenya's human resource development.[130] In accordance with this, the Ministry's Human Resource Management and Employment Department is, among other things, responsible for formulating manpower policies, undertaking labour market studies, developing a manpower data bank through a labour market information system, and providing employment services, including the promotion of foreign employment.[131] As concerns the last point, the Section for Foreign Employment assists foreign employment agents to hire Kenyan employees.[132]

The most common countries of destination for labour migrants are the Gulf countries, UK and Norway for nurses, the USA, South Africa for engineers and lecturers, as well as Lesotho, Botswana and Nigeria.[133]

4.2.2 Challenges

The Ministry of Labour, more specifically the Human Resource Management and Employment Department faces the following challenges in fulfilling its functions:

1. Lack of a labour migration policy.

2. Lack of information on labour migration flows; who comes to Kenya, who leaves and which skills do these migrants have?

3. Lack of functioning bilateral co-operation between sending and receiving countries, including pre-departure briefings for migrants, briefings upon arrival and debriefings for returnees.

4.2.3 Governmental measures

- After a visit to the Philippines, Kenya established a technical committee on labour export and developed a one-stop-shop for Kenyans wanting to leave.

- In 2007, through the Youth Enterprise Development Fund (YEDF) programme, 317 young Kenyans were assisted to migrate principally to the Arabic Peninsula.[134] In 2008 the objective is to facilitate legal migration of some 10.000 young Kenyans.[135]

4.2.4 International support activities

- The UN Economic Commission for Africa is, in co-operation with UNDP, ILO, the African Development Bank and the AU going to establish a Regional Employment Network (for all of Africa). The background for this project is the 2004 Ouagadougou

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[130] The Ministry mandate is derived from Presidential Circular No 1/2006 of March 2006, and from the following Acts of Parliament and other policy documents: Employment Act, Cap. 226; The Regulation of Wages and Conditions of Employment Act, Cap. 229; The Trade Disputes Act, Cap. 234; The Workmen's Compensation Act, Cap. 236; The Trade Unions Act, Cap. 233; The Industrial Training Act Cap 237; The Factories and Other Places of Work Act, Cap. 514; National Social Security Fund (NSSF) Act, Cap 258; ILO Conventions and Recommendations; The Industrial Relations Charter of 1984; Economic Recovery Strategy for Wealth and Employment Creation; The 9th National Development Plan; Session Paper No.2/2005 on MSE development; and The Legal Notice 7354 of September 2002 on the establishment of the Productivity Centre of Kenya (PCK). (http://www.labour.go.ke)
[131] With regards to work permits, the Department cooperates with Immigration Department, which is responsible for issuing them.
[132] Meeting with the Ministry of Labour and Human Resource Development, 10 December 2007
[133] Ibid.
[134] YEDF was created as a result of the Kenya Vision 2030. One of the 5 objectives of the fund is to *"Facilitate employment of youth in the international labour market".* It also aims to assist young Kenyans in establishing micro or small scale enterprises. Please also see footnote 6.
[135] No further information was made available as to how this employment in the international market is facilitated.

Extra-ordinary Summit on Employment and Poverty Alleviation in Africa. The project is still in its initial phase; a consultant has been drawing up different scenarios and will present them in February/March.[136]

- IOM has plans to assist the Ministry of Labour to establish a Migration Unit within the Ministry. The dynamics of labour migration and subsequent development of policy recommendations have also been planned.

- IOM and the EAC co-hosted a regional workshop on Labour Migration and Migration for Development in Nairobi in May 2004. The workshop focused on IOM-funded country assessments of current legislation, institutional structures and resources; procedures and services in the management of labour migration; identification of policy guidelines and regulatory frameworks; improving remittance services and enhancing its development impact; and, mapping of existing communication capacities and technologies for virtual skill transfer.[137]

- On 8 January 2001, ILO and EAC signed a Memorandum of Understanding that inter alia deals with the facilitation of labour mobility and harmonisation/approximation of labour legislation.

4.2.5 Recommendations

1a. As a sending country, Kenya would benefit from support to develop an emigration management approach that benefits the migrants and their families, as well as the country's economy. The basis of such an approach should be a policy that includes provisions on pre-departure preparation and on safeguarding of the migrants' rights while abroad. It should be emphasised that in order for such a policy to be fully effective and provide a solid framework, it must form part of a comprehensive national migration management policy.

1b. A new labour migration policy should also take into account regional developments, such as the EAC, which already has recommended the establishment of national and regional tripartite consultative bodies on labour migration issues able to advise governments and social partners on policy and implementation measures.

2. Information is naturally key for developing policy. The Human Resource Management and Employment Department need support to develop a labour market information system. This system is planned to take the form of a data bank and should include information on labour migration flows.

3a. Some of the provisions in the above-mentioned policy can be achieved through negotiations (bilateral agreements) with receiving countries to accept standard employment contracts, which ensure the rights of their workers abroad or by requiring that prospective migrants register their contracts in order to check if conditions are acceptable.

3b. Pre-departure training and counselling services need to be increased as the empowerment of potential migrants reduces their vulnerabilities. This will also require further development of the Ministry's capacities to deliver such training (train-the-trainers, training facilities and equipment).

3c. The conclusion of specific labour agreements that would grant a limited number of Kenyans better access to residence and labour markets in European countries could set in motion circular migration while avoiding unintended consequences (permanent settlement, irregular migration).

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[136] Meeting with the UNECA, 17.01.2008
[137] IOM, "Kenya: Regional Workshop On Labour Migration", International Organization for Migration (Geneva), Press Release, 4 May 2004, http://www.hartford-hwp.com/archives/36/523.html

4.3 Passports, visa and identity cards

4.3.1 Legal and institutional framework

Following the restructuring of the government in 2005, the Ministry of Immigration and Registration of Persons was created. It brings together four population registration departments: Immigration, National Registration Bureau, Refugees and Civil Registration, which were previously under different ministries.

<u>Passports</u>

The Immigration Department is responsible for issuing both Kenya and East African passports.[138] In order to obtain a passport the applicant must prove Kenyan citizenship and financial security.[139] Proof of citizenship constitutes an identity card, issued by the National Registration Bureau, and a birth certificate, issued by the Civil Registration Department.

The applicant must prove his/her ability to cover all expenses while abroad. Proof of financial security can be executed by two sureties of Kenyan citizenship or by a bank or insurance company. The sureties can then be held responsible for expenses that may be incurred by the government of Kenya. The Committee on the Elimination of Discrimination of Women has expressed its concern over the fact that single women must obtain their father's consent, while married women need the consent of their husbands to apply for a passport.[140]

Passports are valid for 10 years and 5 different types of passports can be issued, out of which the East African Passport is only valid within the East African Community (EAC).[141] As of March 2008 a new set of more secure passports will be issued.

<u>Identity cards and birth certificates</u>

Since 1980, all Kenyans, male or female, aged 18 years and above can be issued with a national identity card.[142] In 1995 the National Registration Bureau started issuing the so called second generation identity cards, in which civil status and biometric data is automated (see Annex I).

A registration officer has unlimited power to demand documentary or other evidence if he/she is not satisfied with the information provided by the applicant. This may be called for because: the documents presented to them have been altered or are suspected to be forged; the applicant's home district is on the Kenyan border; or, the applicant is a Kenyan national by naturalisation or registration.[143]

An identity card should normally be processed within 60 days, but the procedure may be extended if an original document is missing, an applicant has applied for registration more

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[138] The East African passport is valid for travel within and issued in all three East Africa Community countries only and will entitle the holder to a multiple entry stay of renewable six months validity in any of the countries. The passport is issued in all three EAC member states

[139] Documentary evidence of Kenya Citizenship, i.e. Naturalisation, Registration, and Birth Certificates & Identification Card original and copies; Financial security, i.e. security bond executed by Bank or Insurance companies or by two sureties of good financial standing and who must be Kenya Citizens. The letter should be counter-signed by a District Commissioner of the area where the sureties reside; In case of married woman, documentary evidence of marriage e.g. Sworn Affidavit, marriage certificate.; In case of children /people under the age of 21 years of age, written consent from Father or legal guardian unless one is a member of the Armed forces; The application must be recommended in section '6' by a citizen of Kenya such as Minister of religion, a Minister or Legal Practitioner, an established Civil Servant or Bank Official personally acquainted with the applicant, but not by immediate relatives; Applicant must be Bona Fide Kenya citizen; Must demonstrate a genuine reason for travel; Applicant must be capable of meeting travel up-keep expenses while outside Kenya.

[140] Another concern is a regulation stating that children born abroad to Kenyan women are not considered Kenyan citizens. They are given entry permits of limited duration only and have to apply for citizenship.

[141] 1. Ordinary 32-page Passport; Kshs 3,040; 2. Ordinary 48-page Passport; Kshs 4,540; 3. Diplomatic 48-page Passport; Kshs 6,040; 4. East African Passport; Kshs 940; 5. Temporary permit; Kshs 800

[142] The Registration of Persons Act, CAP 107,

[143] Ministry of State for Immigration and Registration of Persons, http://www.identity.go.ke/FAQs.html accessed 18.02.2008

than once and already been issued with two identity cards previously, original registration records on names/date of birth/home have been illegally altered, the identity card number quoted in the application is incorrect, or the thumbprint impression on the application form is not identical to the impression on the original record. Subsequently an application may be rejected due to missing signatures or stamps, missing or poor photograph, missing/poor/non-identical thumb/fingerprint, suspected non-Kenyan, double registration or an illegal alteration of original registration records.

Applications from all registration points countrywide are received and registered centrally at the Production Section. This includes application, left thumb fingerprint impressions, photograph and signature.

Fingerprinting was computerised in 2002. The Automated Fingerprint Classification and Archival System (AFIS) scans fingerprint impressions into the database and the Fingerprint Automated Identification System codifies it automatically. The Production of Security Documents Section is responsible for the production of security documents and also maintains registration bio-data (including fingerprints) pertaining to security documents produced for the client. The section produces, *inter alia*, alien certificates, refugee identification cards and civil servants identity cards.

The National Registration Bureau also produces statistics and maintains a comprehensive register, which is made available to relevant stakeholders and authorised agencies. However, the Immigration Department pointed out that the population registration system needs to be enhanced with an on-line information exchange system. At the moment, data cannot be shared as quickly as needed.

The Births and Deaths Registration Act lays down the framework for the registration of births and deaths.[144] Birth registrations are done immediately or within six months after the date of birth occurring in Kenya. Parents/legal guardians of newly born babies and Rescue centres taking charge of newly born abandoned babies may apply for birth certificates. For this you need an acknowledged birth notification.

Visas[145]

The Immigration Department is responsible for issuing entry visas and for providing consular services in Kenyan missions abroad. Provided they can exhibit a valid travel document, most nationals can apply for an entry visa upon arrival at the airport. Except for multiple entry visas, which are issued within 30 working days, all visas may be issued on application.

Both Eritrea and Ethiopia have concluded visa abolition agreements with Kenya, thus facilitating movement between the countries.[146] Nationals of the following countries in the region are also not required to have visas: Tanzania, Uganda and Zambia.

The following commonwealth countries can issue Kenyan visas on behalf of Kenya and vice versa: Jamaica, Singapore, Lesotho, the Gambia, Mauritius, Trinidad and Tobago, Sierra Leone and Tuvalu.

According to the Immigration Act Chapter 172 of 1967, all persons wanting to enter Kenya that are not Kenyan citizens need to be in possession of a permit or a pass[147].

The following types of visa are issued:

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[144] Births and Deaths Registration Act, Chapter 149
[145] Citizens of the following countries do not require visa for entry: The Bahamas, Barbados, Botswana, Brunei Darussalam, Cyprus, Dominica, Fiji Islands, Gambia, Grenada, Grenadines, Ghana, Jamaica, Lesotho, Malawi, Mauritius, Maldives, Namibia, Naura, Nauru, Papua New Guinea, St. Lucia, Zimbabwe, Zambia, Samoa, Seychelles, Singapore, Sierra Leone, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tuvalu, Uganda, St. Vincent and Tuvalu.
[146] San Marino and Uruguay have also concluded visa abolition agreements.
[147] Exemptions are given for some categories such as the accredited representatives of Commonwealth countries accredited envoys of foreign states and their families.

- **Ordinary/Singe Entry Visa**

  All persons intending to enter Kenya for visits or residency need to be in possession of this visa. The current standard visa fee for an ordinary or a single journey entry visa is US $ 50.

- **Transit Visa**

  All persons intending to transit trough Kenya for periods not exceeding seven days need to be in possession of this visa. The transit visa fee is US $20.

- **Diplomatic Visa**

  This visa is issued free of charge to holders of a Diplomatic Passport on official business. (Diplomats and governing officials on private visits to Kenya and who are nationals of countries that require referred visas shall have their visa applications referred to the Principal Immigration Officer, Nairobi, for approval.)

- **Official/Service Visa**

  Official, Service, Ordinary/Transit Visas are issued free of charge to holders of Official or Service passport on official visits

- **Multiple Journey Visa**

  All persons who are nationals of countries which require visas for Kenya and who by nature of their business or circumstances require to make frequent visits to Kenya may be issued with Multiple Journey Visa for Kenya within six (6) or twelve (12) months as the case may be. Multiple Journey Visas are referred to the Principal Immigration Office for processing and approval, ad are valid for six (6) or twelve (12) months as the case may be. The standard fee for a multiple journey visa is US $100 for all nationalities.

- **Courtesy Visas**

  Courtesy, Transit and Ordinary Visas may be issued free of charge in accordance with the provisions of categories 1, 2 and 3 of the Visa Regulations, where the applicant is not entitled to a Diplomatic Visa, but where it is considered by the issuing officer to be desirable on the grounds of international courtesy.

The following categories of persons are according to the Immigration Act considered prohibited immigrants and can according to the same act not be issued an entry permit:

- Any persons incapable of supporting himself/herself or his/her accompanying dependants in Kenya.

- Any person suffering from a mental disorder or being a mental defective.

- Any person who refused to submit to medical examination on arrival when required to do so by an Immigration Officer in accordance with the provisions of the Immigration Act.

- Any person certified by a medical practitioner to be suffering from a disease, which shall make his/her presence in Kenya undesirable on medical grounds.

- Any person who, not having received a free pardon has been convicted in any country including Kenya, of murder, or of any offence for which a sentence of imprisonment has been passed for any term and who, by reasons of such conviction and imprisonment is considered to be an undesirable immigrant.

- Any person whose entry and presence in Kenya is deemed by the Minister to be contrary to national interests, including persons suspected to be involved with or sympathetic to terrorist groups.

- Any prostitute or person living on or receiving or who has lived on or received the proceeds of prostitution.

- Any person in respect of whom there is in force an order directing him/her to remain out of Kenya.

- Any dependants of the persons mentioned in the foregoing categories and classes.

- Any person who is involved or suspected to be involved in illicit trafficking and trade in narcotics.

- Any person or groups of persons who are involved or suspected to be involved in human trafficking.

- Any person involved or suspected to be involved in illicit arms trade.

- Any person involved or suspected to be involved in money laundering.

4.3.2 Challenges

1. The lack of a common migration policy affects the management of identity documents and visas, as co-ordination and co-operation both within and between different services takes place on an *ad hoc* basis and is unlikely to adapt, quickly or uniformly, to any external/internal changes. In practice this means that the different services will respond differently to changes in, for example, illegal migration flows.

   The population registration services in Kenya are carried out by different agencies operating under different legal mandates, such as the Civil Registration Department, National Registration Bureau, Immigration Department, Registrar General, National Social Security Fund, and the National Hospital Insurance Fund. To a large extent, these registration agencies operate manually, independently and without internal and external co-ordination and co-operation. This has led to duplication in the collection and processing of population data, poor service delivery and is prone to forgeries and manipulations.

2. The current practice of stamped visas should be made more secure by introducing visa stickers, as already has been noted by the Immigration Department.

3. The lack of information and communication technology at the border crossing points (BCP)/entry points effectively hampers communication and information exchange between the local, regional and central levels. Against this information, conducting the first border control by issuing visas at the border is problematic.

4. Fraudulently obtained identity or travel documents. Besides efforts to reduce crime related to passports and visas, such as forged documents, combating corruption among government officials is a necessary step in order to reduce document fraud.

4.3.3 Governmental measures

As a means to enhance efficiency and performance, the Kenyan Government has recently undertaken measures to implement information and communication technology in key sectors, which includes the Immigration and Civil Registration Departments.[148] The absence of an electronic register for the latter proved particularly challenging, since records and files take a long time to trace. The Government aims to have a civil registry present in every district.

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[148] Muraya, Gathoni, "Kenya: E-Government Report Card", *The East African Standard* (Nairobi), 9 December 2007, AllAfrica Global Media http://allafrica.com/stories/200712100765.html accessed 21.02.2008

This measure forms part of a larger initiative, namely to create an Integrated Population Registration System (IPRS)[149], which will entail the conversion of 7 million records. The idea dates back to 2000 when the IPRS project was expected to develop a policy framework, electronic linkages through computerisation between the various population registration agencies and to harmonise the various population registration systems in Kenya. However, the project never took off. In 2005, an Inter-ministerial Taskforce was tasked to come up with recommendations on how to fulfil the IPRS objectives. The Taskforce presented to the National Economic and Social Council the following recommendations in January 2006:

- Introduction of a unique national number, personal identification number (PIN), for all individuals resident in the country. That the number be assigned at birth for all residents and serve as the control number for all registration and other services.

- Establishment of a National Population Register, containing information of all residents and serve as a central reference for all population registration systems.

- Establishment of a central database to facilitate operations of the National Population Register.

- Develop ICT related human capacity across all Population Registration Agencies.

- Funding for computerisation of Primary Registration Agencies (PRAs), whose operations are not fully computerized, that is, Civil Registration Department, National Registration Bureau, Immigration and Refugees, in readiness for electronic linkages.

- Development of a nationwide ICT infrastructure backbone to link government agencies for purposes of information sharing and verification.

Based on these recommendations an IPRS Strategy paper was prepared. This entailed research on best practices in countries that have established integrated population registration systems and study tours to Israel and Malaysia. The Strategy includes:

- Unique Personal Identification Number (PIN) to be assigned at birth for all Kenyans. Foreigners intending to become Kenyan Citizens and residents will be assigned the PIN on registration. The number will enable one to differentiate Kenyans from non-Kenyans, and will serve as a common identifier in all subsequent registrations.

- Conducting a nation-wide crash registration programme. To ensure that the proposed National Population Register has up-to-date information of all Kenyan citizens, there is need to carry out a crash registration programme. Civil Registration Department will cover registration for those not registered below the age of 18 years while National Registration Bureau will register all unregistered Kenyans above the age of 18 years.

- To further enhance registration of births, a directive should be issued to make the production of a birth certificate necessary when applying for an ID card.

- Creating a central national population database in electronic form, which will ensure that registration agencies as well as other stakeholders are able to access basic information on an individual. The Central Database will contain basic information pertaining to an individual while respective population registration agencies will continue maintaining information related to their core function. Apart from accessing the central database, there will also be agency-to-agency data sharing provision. This information will include:

    i.   Personal Identification Number
    ii. Names
    iii. Date of birth
    iv. Place of birth

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[149] Ministry of State for Immigration and Registration,
http://www.mirp.go.ke/Integration%20of%20Population%20Registration%20Systems.htm accessed 21.02.2008

      v. Sex
     vi. Nationality
    vii. Marital status
   viii. Residence/Physical address
     ix. Occupation
      x. Biometrics
     xi. Date of death
    xii. Ethnicity/Race

- Computerisation of all primary population registration agencies. This will facilitate internal and external linkages within and between the registration agencies, and establish a common platform for information sharing.

- It is important to note that registration of births is key to realisation of IPRS, and it is therefore imperative that computerisation of the Civil Registration Department be prioritised.

- Establishment of an ICT infrastructure to facilitate linkages amongst government agencies, with specific emphasis on the primary population registration agencies for purposes of information sharing and enhancement of data integrity. These linkages will be through local and wide area networks extending to the district level.

- The National Population Register will need a robust and resilient communication network to facilitate its access to all the distributed offices of the primary registration agencies. The database will run on a powerful, reliable and robust Relational Database Management System. A similar or equivalent RDBMS is recommended for use by the individual primary registration agencies to facilitate easy and seamless update of the National Population Register. This will ensure the register is current, complete and accurate.

- Access to information in this database will be made possible to the wider public via a secure and auditable means whilst ensuring confidentiality and privacy of data. See Annex II for a table of the central database.

According to the Ministry of Immigration and Registration of Persons, implementation of IPRS is envisioned to start soon.[150]

To conclude, the key policy priorities for the Ministry are: e-Government, increasing coverage of registration, modernising travel documents to biometric format, and improving service delivery. With respect to the passport and visa issuance systems, the Immigration Department acknowledges that there is room for improvement. Visas are currently being stamped into passports, visa stickers have however been procured. And, as previously mentioned, a new set of more secure passports have been planned for March 2008.

4.3.4 Recommendations

> 1a. International support for the implementation of the strategy for the IPRS will provide for information sharing between the population registration agencies and a standardisation of operations, which will contribute to improved identity and travel document management. Migration management should preferably integrate the functions of all involved national agencies. The different agencies should co-ordinate and harmonise their working procedures, establish clear and transparent communication and exchange information on a regular, standardised basis.
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> 1b. The authorities involved in visa matters should be treated as one entity in order to have a well functioning visa system, whereby the legislative structure, visa practice and staff capacity is concurrently dependent on the organisation of communication,

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[150] Statement from Permanent Secretary, http://www.mirp.go.ke/ps_statement.htm, accessed 18.02.2008

access to a visa register as well as access to secure equipment and documents and vice versa. Good co-operation between all the authorities involved in the visa issuing procedure is a pre-requisite for an efficient visa system.

1c. In order to ensure co-operation between all authorities, Kenya should be supported in building up a visa information exchange system for consultation and exchange of data between the DMCP, the Ministry of Foreign Affairs, the Immigration Department and most importantly the international airports. Staff and communication equipment regarding all structures involved in the consultation procedure have to be upgraded to be able to carry out the necessary checks on visa applications (*persona non grata*, rejected visa applications purpose of travel and guarantees).

2. Visa stickers should be introduced as soon as possible, since these are more secure than visa stamps. Once visa stickers are introduced, a corresponding register should be established to keep track of all issued and rejected visa applications, as well as destroyed or damaged stickers. The border crossing points should have access to this register so that they can control issued visas at the border. Kenyan Missions abroad should also be connected to the same system.

3. Judging from relevant regulations, it could be presumed that a fair share of visas is issued at the borders. It is recommended to routinely issue the visa before the foreigner enters the country, that is, at the DMCP (Diplomatic Missions and Consular Posts). This is considered to be more secure and means that the first border control would be made at the DMCP. This should be seen in relation to existing lack of communication possibilities between BCP and the Main Department.

4. In order to reduce forged and fraudulently obtained travel and identity documents, efforts to combat corruption among issuing authorities need to be intensified.

4.4 Border management

4.4.1 Background

Kenya's land border stretches some 3.477 kilometres in a region long marked by insecurity and its coastline extends for 536 kilometres, including the strategically important harbour of Mombasa, the largest cargo-handling port on Africa's east coast. The country borders the Indian Ocean, Ethiopia, Somalia, The Sudan, Tanzania and Uganda.

From a security perspective Kenya faces tensions with its neighbours Somalia, Uganda and Sudan, and, at the time of writing, escalating levels of domestic post-election violence. Cattle rustling and other forms of illegal cross-border incursions also cause local difficulties across Kenya's common borders with Ethiopia, Tanzania and Uganda.

4.4.2 Legal and institutional framework

The Immigration Department was curved from the Police Department in 1950. The Immigration Act of 1964 was revised and a new Immigration Act, the current operational Act of the Department, came into force on 1st December 1967.[151] The Immigration Department in Kenya falls under the Office of the President and was placed in the new Ministry of Immigration and Registration of Persons in 2005. The Immigration Department issues work permits, passports and visas.[152]

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[151] The Department operates under the following immigration laws: Citizenship Act, CAP 170, Immigration Act CAP 172, Aliens Restriction Act, CAP 173 and the Constitution of Kenya, Chapter 6.

[152] More specifically, the Immigration Department has the following competences: 1) Control and regulate residency through issuance and renewal of entry/work permits and other passes as provided for by the Immigration Act; 2) Issuance of Kenya passports and other travel documents including United Nations Convention on Travel Document (UNCTD) in conjunction with UNHCR; 3) Consider and grant Kenya citizenship to qualified foreigners under the Kenya Constitution and the Citizenship Act; 4) Issuance of entry visas provided for under the

The control and regulation of the entry and exit of all persons at airports, seaports and land border posts also forms part of its mandate. The powers of the Immigration Officers are based on the 1962 Immigration Act (chapter 172) and include border control, customs and law enforcement functions.

The land border posts with Somalia are Liboi and Mandera.[153] Uganda and Kenya have the common border posts Busia, Malaba, Lwakhakha and Suam. The border to Tanzania may be crossed in Isebania, Namanga, Loitokitok, Taveta and Lunga Lunga. Border crossing points to Ethiopia are Moyale and Mandera and Sudan can be entered via Lokichogio. The following airports can be used for entry, exit and transit: Jomo Kenyatta International Airport, Moi International Airport, Wilson Airport, Eldoret Airport, Kisumu Airport, Malindi Airport, Garrisa Airport and Lokichogio Airport.

In addition to immigration officials, the border is also manned by the Kenya Administration Police (KAP) and the Kenya Police Service (KPS), which both fall under the Ministry for Internal Security and Provincial Administration. One of the core duties of the KAP[154] is border security. They are deployed at the border between the official border crossing points, whereas the KPS mans the official border crossing points. There are also special Kenya Airports Police Units within the KPS at Jomo Kenyatta International Airport, Moi International Airport and Eldoret Airport who are mandated to uphold recommended levels of civil aviation security. These units are responsible to prevent and detect crime, and may also control all points of entry and search passengers and their luggage.

The KPS is a member of the Eastern Africa Police Chiefs Co-operation Organisation (EAPCCO)[155], which has been developing strategies to address cross-border crime problems affecting the region. The cross-border crimes most commonly affecting the region are illegal possession and proliferation of small arms, drugs trafficking, motor vehicle theft, economic crime and corruption, terrorism, environmental crime and cattle rustling. The Interpol Sub Regional Bureau in Nairobi functions as the secretariat of EAPCCO.

4.4.3 Challenges

1. The Immigration Department lacks sufficient human, financial and technical resources to carry out its mandate. Both the number of officials and their training do not match the needs to meet the regional migration flows. According to the Immigration Department, information and communication technology equipment is particularly needed at the border crossing points in order to exchange information more rapidly and efficiently. Additional surveillance equipment and mobile patrol vehicles are also needed.

2. Kenya has become an increasingly important hub for migration via air routes. Jomo Kenyatta International Airport in Nairobi has seen a rise in both the number and diversity of people using Kenya as a transit point for moving onwards. Addressing these illegal flows is a challenge, as the arrivals, departure and transit areas are mixed. There is a need to reconfigure the airports to meet international standards and enhance the capacity of the Kenyan authorities to manage the flow of air travellers in a smooth but secure way.

Kenya visa regulations; 5) Register all non-citizens resident in Kenya under the Aliens Restriction Act and others; 6) Declaration and removal of prohibited immigrants; 7) Offer quasi-Consular functions on behalf of a number of commonwealth countries who are not represented in Kenya and who have requested the Kenya government to do so; 8) Provide consular services to our nationals and foreigners at the missions abroad; 9) Investigate and prosecute persons who contravene the Immigration law as and regulations; 10) Enforce the Citizenship Act, the Immigration Act, the Aliens Restriction Act and the visa regulations.

[153] The border to Somalia closed in early 2007 and remained closed at the time of writing.
[154] Acts of Parliament Cap. 85,and Caps 128,63 and 75 Laws of Kenya
[155] EAPCCO was founded in Kampala during the 1st meeting of eastern African police chiefs held on 18-19 February 1998. The meeting resolved to set up an institutionalised body after emphasizing the need for a collective effort to curb cross-border crime within the region. The EAPCCO constitution was signed in Khartoum, Sudan on 20th June 2000 and came into force on 21st August 2002.

3. Document fraud is prevalent, so officers at all border crossing points need continuous training and improved technical resources on the detection of falsified documents. One problem in relation to this, and in relation to the reported high number of corruptible immigration officials, is how to identify fraudulently obtained but genuine travel documents.

4. With the exception of Somalia, the Immigration Department considers co-operation at the border with its neighbouring countries to be satisfactory, especially with Tanzania and Uganda. They admit, however, that their Tanzanian counterparts have been concerned over the large number of migrants passing through Kenya trying to transit Tanzania on their way to South Africa. One of the reasons for this transit movement seems to be that the Kenyan authorities only rarely interact with their Ethiopian counterparts. On this note, the Immigration Department stated that both Ethiopia and Tanzania occasionally drop illegal migrants at the Kenyan border at night.

Ever since Kenya's independence in 1963, relations with Somalia have been strained.[156] The collapse of Somalia in the early 1990s produced new security dilemmas including flows of firearms across the porous frontier and livestock raids and banditry. The border with Somalia has been closed, with Kenyan security forces patrolling the border. Illegal cross-border movements along the almost 700 km of joint border still occur however. The Kenya-Somalia border zone is characterised by its semi-arid climate and nomadic pastoralism. Kenya's capacity to exercise control has been described as weak or non-existent, with local communities relying on tribal or clan militias for protection. The level of poverty and unemployment is among the highest in the country and environmental degradation of rangelands contributes to periodic clashes over land. Towns and villages are important sites of trade and aid, which means that those who govern these growing urban settlements also control the local patronage.

Although the region remains insecure, it is more secure now than in the 1990s. The Kenyan authorities rely on traditional elders and customary clan law to deter crime and mediate in the conflicts. There have, however, been instances where the interests of political and business leaders in Nairobi and Mogadishu, the diaspora and new clansmen (*galti*) have accelerated local conflicts. But also internal spoilers, particularly those who rely on humanitarian aid contracts, have been known to make use of local tensions. These local dynamics should be taken into consideration by any external intervention in the Kenya-Somalia border zone.

Security relations with Sudan are marked by the unresolved territorial dispute over the Elemi triangle, which borders Kenya, Sudan and Ethiopia. This potentially oil-rich piece of land is also home to local armed cattle-related conflicts. Kenya and Sudan have signed a Bilateral Trade Agreement in 1977. One of its aims is to enhance ties in the area of security co-operation along the common border.

4.4.4 Governmental measures

The member States of the EAC are planning to turn the Immigration Management Training Institute (IMTI) in Moshi, Tanzania into a regional migration management training institute in East Africa. Negotiations on a regional training curriculum are currently underway.

4.4.5 International support activities

- Denmark is, in co-operation with the International Organization for Migration (IOM), implementing a project with the aim of providing the Immigration Department with mobile border units to be deployed along Kenya's unguarded borderline with Somalia.

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[156] Institute for Security Studies, http://www.iss.co.za/Af/profiles/Kenya/SecInfo.html, accessed 21.02.2008

- The US International Narcotics and Law Enforcement Bureau has funded an IOM implemented project by which a manual on border procedures was produced to provide immigration officers at airports, border crossing points (BCP) and regional offices with guidance on specific procedural matters, including passport checks. This was complemented with specialized training in border management.

- A regional project, "The East Africa Migration Route: building co-operation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination" funded by the European Commission is currently being implemented by the UK, in co-operation with IOM, IGAD, the African Union (AU), Italy, Malta and the Netherlands. The project targets immigration officials of Chad, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Niger, Somalia, Sudan, Tunisia, Uganda and Yemen and also includes a component on border management, which aims at addressing key gaps in the region's border and migration management structures (also see section 2.4).

4.4.6   Recommendations

1.a The work of immigration officers needs to be considered a specialised profession, which requires specific training. Such training, a transparent and adequate recruiting system, as well as proper career management are important elements for the creation of a motivated, responsive and accountable workforce. Increased capacity-building support hence needs to be given to the Immigration Department in the area of training and staff development. In particular, the Department should be supported to develop its own capacities to develop, deliver, evaluate and adapt training of its immigration officers. Against the background of ongoing discussions to create a regional immigration training centre in Tanzania (see section 1.4), international assistance could help providing a better basis for the development of relevant training curricula by supporting large- scale training needs assessments. Fellowships for Kenyan immigration officers to study in a relevant academy in Europe could also be considered.

1.b The Immigration Department needs technical equipment for border control. The provision of this equipment should be based on a special needs assessment and should be complemented with training in the use of the equipment.

2.a Efficient border management is a core element of migration management and requires a comprehensive approach to respond to the complexity of facilitating legitimate movements while at the same time tackling people smuggling and trafficking in human beings. The basis of an efficient border control system is a national strategy, covering all elements touching upon border management and including all authorities, which have a related competence.   Because of the involvement of a variety of actors in tasks related to the management of state borders, such a strategy should include provisions with regard to intra-agency co-operation (between units within an administration), inter-agency co-operation (between all agencies with a border management related competence) and international co-operation (between agencies involved in border issues in different countries).   International capacity-building projects could support the Kenyan authorities in developing/ adapting and implementing such a strategy, which should lead to a more co-ordinated and efficient response to the border management challenges that Kenya is currently facing. The Integrated Border Management (IBM) concept developed by the EC for the Western Balkan countries could serve as a basis for the development of such international support action.[157] Particular focus

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[157] Intra-agency, inter-agency and international cooperation are the three pillars of the EC Integrated Border Management (IBM) concept for the Western Balkans. IBM covers coordination and cooperation among all the relevant authorities and agencies involved in border security and trade facilitation in order to reach the goal of open, but controlled and secure borders. In 2004, the EC published the Guidelines for Integrated Border

should be put on inter-agency co-operation as Kenya's borders are currently manned by several services. Inter-agency co-operation could include joint patrols and other surveillance tasks, joint operations, exchange of information and training. The issue of international co-operation will be addressed separately in recommendation 3.

2.b Data collection and analysis were put forward by the Kenyan authorities as those areas for which further support would be needed. This would also include an assessment and recommended changes in the data protection law and classification of information and data. An assessment and subsequent recommendations for improvements are also needed for the performance of operational risk analysis. Ultimately, all border authorities should be able to create reliable risk assessment of the border situation in order to deploy their resources in the most efficient way.

3. The Kenyan authorities have expressed the wish to intensify regional and bilateral co-operation, especially with Uganda and Tanzania, and, through this, harmonise their border operations. International stakeholders could share their experience and good practices in this area and support the Kenyan authorities to step up co-ordination with their neighbouring countries. Such support could include developing appropriate legislation, (supplementary) bilateral agreements and MoU, harmonisation of day-to-day work practices, creating one-stop controls, associated training, joint patrols and exchange of information. Depending on the closeness of the bilateral relations, these activities could be preceded by confidence-building activities, such as for example joint participation in seminars and training workshops, mutual working visits, as well as participation in international and regional meetings and activities.

4.5 Irregular migration[158]

4.5.1 Background

As explained previously, due to a combination of various elements, Kenya's regional attraction has made it become an important country of origin, transit and destination. Irregular immigration to Kenya has become a concern for the Kenyan authorities. According to intelligence services, Kenya in general and Nairobi in particular have become an important illegal migration hub towards Europe and beyond:[159] from the simplest and most direct air route Nairobi-London to the most complex thousands of kilometres- and month-long indirect journey towards the United States of America or the United Kingdom.[160]

The most common irregular migration routes where Kenya has a role, whether as an origin, transit or destination migration hub, could be described as follows:

- A direct air route to Europe;

- An indirect air route from Kenya through other African countries, especially West Africa, to Europe

- An indirect air route from Kenya through the Middle East to Europe;

Management in the Western Balkans, as a basis for the implementation of the IBM concept. An updated, more practical version was produced in 2007 and contains examples of lessons learnt, good practices and practical recommendations. Although initially developed for the Western Balkans countries, many elements of the IBM guidelines can applied by other governments to develop more consistent border management systems. For more information please refer to the "EU Guidelines for Integrated Border Management in the Western Balkans", updated version 2007, http://www.icmpd.org/792.html?&tx_icmpd_pi2[document]=584&cHash=4a3246083c

[158] This report uses the term "irregular migration" to refer to illegal entries, legal entries with subsequent illegal residence (visa overstayers, etc.) as well as "apparently legal entries" (i.e. entries within a legal entry scheme achieved through deception or fraud "Illegal migration" is used for illegal border crossings only.

[159] Meeting with Serious Organised Crime Agency (SOCA) Liaison Officer, British High Commission to Kenya, 10 December 2007; and presentation of Deputy Director of Human Smuggling and Trafficking Centre in Washington at the Europol Annual Senior Expert Meeting on Facilitated Illegal Immigration, The Hague, 12-13 March 2008.

[160] Ibid

- From Kenya-Ethiopia-Sudan-Libya, towards Italy or Malta by sea;

- From Ethiopia, Somalia and Djibouti over the Gulf of Aden and further north through Yemen and Saudi Arabia i) reaching Turkey, Greece or Cyprus,[161] or ii) going by land or air routes via Caucasus, Russia, Ukraine or Belarus to the EU.

- From Kenya towards South Africa and by air to Europe and the Americas.

- Air or sea route from Asia to Kenya, then land and/or air route towards West Africa; and finally sea route towards Europe.

There is a handful of organised crime smuggling groups operating in Nairobi facilitating the movement of migrants in various directions. Smuggling groups consist of loosely connected individuals and organised crime groups which use a very flexible range of modi operandi adapted to various types of facilitation. Taking full advantage of the high level of corruption in the country, the smuggling groups provide legitimate but illegally obtained passports, fake identity cards, false or falsified passports and visa fraudulently obtained. They also offer a full service package, which includes the guarantee for several attempts, infiltration of resettlement programmes[162] etc. Somali smuggling networks are identified as the most efficient facilitators. The costs of the journeys vary between highly expensive fees close to 10.000 USD by air, using air routes via Jomo Kenyatta International Airport, and 250 USD per stage of the journey by land. The main nationalities heading to or transiting through Kenya are Somali, Chinese, Bangladeshi, Sri Lankan and Indians.[163]

An example of a complex full end-to-end package has been identified as using the air route Nairobi-Amsterdam-Belgrade then continuing by land towards Austria, Germany, back to the Netherlands and to the UK hidden in a lorry and transported by ferry lines. Examples of this kind are multiplying in various regions. However, East Africa in general and Addis Ababa and Nairobi in particular are regularly mentioned as being major hubs for this type of complex facilitated irregular migration.[164]

It is only in the last few years that the issue of people smuggling gained importance on the regional as well as national political agendas. At the regional level, trafficking and smuggling of human beings has now become a priority although to a lesser extent than for example anti-terrorism, drug trafficking and smuggling of small arms and light weapons (SALW).[165]

4.5.2 Legal and institutional framework

According to the Kenyan authorities, obstacles towards a more efficient response to irregular migration in general and smuggling -related activities in particular are numerous. A first step towards improvement is the development of an appropriate legislation and policy.[166] Kenya has ratified the Protocol Against the Smuggling of Migrants in 2005[167]. The *Aliens Restriction Act, Cap 173* [Kenya]. No. 5 of 1973; Cap 173. 18 May 1973, provides for the right of the

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[161] Meeting with Syrian Ambassador to Austria, Vienna, 10 October 2007. According to the Hellenic Coast Guards, Security Directorate, an estimate 20,000 illegal migrants from the Horn of Africa are gathered around Basmana/Izmir, Turkey and attempt crossing by small groups towards the EU, MTM Warsaw Meeting, 3-5 September 2007. Between 1997 and 2007 the percentage of Africans, mostly from East Africa, among apprehended irregular migrants by the Turkish authorities rose from 0.6% to 17.8%, Turkish answer to the MTM questionnaire, Ministry of Interior, Turkey.
[162] There have been reports of refugees being killed so that illegal migrants can take their place in the refugee camps. This way, smuggling networks facilitate infiltration of illegal migrants into resettlement programme. (Meeting with SOCA, 10 December 2007)
[163] Meeting with Serious Organised Crime Agency (SOCA) Liaison Officer, British High Commission to Kenya, 10 December 2007.
[164] Europol Annual Senior Expert Meeting on Facilitated Illegal Immigration, The Hague, 12-13 March 2008.
[165] Meeting with Head of the Interpol Sub-regional Bureau fro East Africa, Nairobi, 10 December 2007.
[166] Meeting with Immigration Department, Nairobi, Monday 10 December 2007.
[167] Protocol against the Smuggling of Migrants by Land, Sea and Air, also referred to as Palermo Protocol

Minister in a situation of imminent danger of emergency to impose restrictions on aliens, such as prohibiting them from entering or leaving the country.[168]

The most specific legislation, the *Immigration Act, Cap 172 (last amended 1972)* [Kenya]. No. 25 of 1967; No. 6 of 1972; Cap 172, 1 December 1967, forbidding entry to certain categories of persons, makes references to persons involved in human trafficking but does not mention smuggling made. Section 3 on Prohibited Immigrants lists the categories of persons to whom entry should not be authorised.[169] However,

> *"[a]n immigration officer may in his discretion issue a prohibited immigrant's pass to a prohibited immigrant, permitting him to enter and remain temporarily in Kenya for such period and subject to such conditions as may be specified in that pass."*

Section 4 on Entry and Removal of Immigrants states that

> *"[s]ubject to this section, the presence in Kenya of any person who is not a citizen of Kenya shall, unless otherwise authorized under this Act, be unlawful, unless that person is in possession of a valid entry permit or a valid pass."*

Section 7 on Falsified Documents stipulates that any fraud entry permit,[170] pass or certificate, shall be deemed void and without effect. According to Section 8 on Power to Remove Persons Unlawfully in Kenya, a person unlawfully residing in Kenya under the Immigration Act or a person in respect of whom a recommendation has been made under section 26A of the Penal Code shall be removed to

> *"the place from whence he came, or with the approval of the Minister, to a place in the country to which he belongs, or to any place to which he consents to be removed if the Government of that place consents to receive him".*

The person may be kept in prison until his/her departure. A removal order under this Act shall continue to have effect and may be enforced accordingly whenever the person is found in Kenya. Moreover, Immigration Officers or Police Officers may arrest persons suspected to be unlawfully present in Kenya without a warrant.

According to intelligence services, there is little to no prosecution of immigration-related offences. As in many African countries, combating smuggling simply remains a low priority. In addition to the lack of legislation and policies, the Kenyan authorities clearly indicate that they are technically not properly equipped and trained to conduct an efficient action against people smuggling.[171] No information could be obtained on the existence of a specific task force or department on combating people smuggling.[172]

At the regional level, the Interpol Sub-regional office covers 12 countries and serves as secretariat of EAPCCO. The next EAPCCO meeting will take place in Addis Ababa in September 2008[173] and Interpol headquarters will organise an expert meeting specifically on

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[168] *Aliens Restriction Act, Cap 173* [Kenya]. No. 5 of 1973; Cap 173. 18 May 1973, available online in UNHCR Refworld at: http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=3ae6b4e438 [accessed 17 March 2008]
[169] See section 4.1 Institutional framework of Passports, Visas and Identity Cards for the detailed list.
[170] Section 6: The 13 classes of entry permits that can be issued are specified in the Immigration Act. Entry permits other than of class K, L or M, can be invalidated if the person has failed to engage, within fourteen days, in the employment, occupation, trade, business or profession in respect of which that entry permit was issued, ceases to engage in this employment, or engaged in any other employment than the said employment. If the holder of an entry permit of class K or L engages in any employment, occupation, trade, business or profession, the entry permit will cease to be valid.
[171] Meeting with Immigration Department, Nairobi, 10 December 2007.
[172] For a description of the law enforcement forces, see Section 3.2 – Border Management – Legal and Institutional framework.
[173] Interpol indicated its willingness to incorporate immigration issues in the agenda of the next EAPCCO meeting; Meeting with Head of the Interpol Sub-regional Bureau fro East Africa, Nairobi, 10 December 2007.

people smuggling for the first time in Lyon in October 2008.[174] UNODC, through its regional office in Nairobi, covers 13 countries in the region. At regional level, UNODC co-operates with Interpol and EAPCCO. Its support to the Kenyan authorities is two-fold, namely 1) to provide legal assistance to ensure the full transposal of the Palermo Protocol into national legislation, 2) to develop regional action plans on trafficking and smuggling. Both Organisations underline the shortcomings in funding thus underlining that low focus is given to stopping smuggling activities. Both organisations also acknowledge a serious lack of data, statistics and information at both national and regional level.

4.5.3 Challenges

A main challenge posed to migration management in East Africa is the mixed, composite character of its migration flows: migration movements include traditional trade and pastoralist movements, labour migrants, asylum seekers and irregular migrants, driven by similar forces and using the same routes and means of migration. In most cases, it is difficult to make a sharp distinction between different categories of migrants, as individual motivations are often complex, mixed and may change over time. Managing mixed migration flows is particularly complex, as it requires a differentiated approach, taking into account protection concerns, and the matching capacities. Like most of its neighbours Kenya hence faces a highly challenging situation.

Moreover, the combat of irregular migration in general and people smuggling in particular is not a high priority in a country, which has concerns of greater importance. Furthermore, as widely reported, the extent of corruption among certain services is also to be considered as a key challenge.

However, national and regional institutions, agencies and instruments exist. For them the following, more specific challenges could be identified:

1. Lacking awareness among officials of the dangers and risks of irregular migration and people smuggling.
2. Lacking awareness in the population of the dangers and risks of irregular migration and people smuggling.
3. Lack of legislation and policy to combat people smuggling at national and regional level.
4. Lack of data and statistics, as well as information-sharing mechanisms both at national or regional level.
5. Lack of cross-border co-operation through regional institutions and instruments.

4.5.4 Governmental measures

The government measures specifically targeted at combating people smuggling are extremely limited. However, various measures described in the section on border management and visa can be expected to have an effect on people smuggling.

4.5.5 International support activities

IOM, with regard to irregular migration in general, and UNODC and Interpol, especially with regard to people smuggling, are the most important regional actors. No activities specifically targeting people smuggling are currently being undertaken.[175] However, various activities, such as the Joint training of police and immigration officials on MIND/FIND (Interpol Mobile and Fixed Network Databases on stolen or lost travel documents), which is related to border management, are contributing to the fight against irregular migration.

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[174] Presentation of Interpol Smuggling and Trafficking Intelligence Officer, Europol Annual Senior Expert Meeting on Facilitated Illegal Immigration, The Hague, 12-13 March 2008
[175] Meeting with Head of the Interpol Sub-regional Bureau for East Africa, Nairobi, 10 December 2007.

As mentioned, IOM's various programmes and projects, such as the project *Capacity building in migration management to improve orderly and safe migration in Kenya*, contribute to combating irregular migration. At a regional level, the completed IOM *Capacity Building to Reduce Irregular Migration and Enhance Security in Africa*, and the UK-Italy-Malta-Netherlands-IOM-IGAD project *East Africa Migration Route: Building information and Developing Joint Practical Initiatives amongst countries of origin, transit and destination*, starting in January 2008, contributed and will contribute to combating irregular migration.

4.5.6 Recommendations

1. It is recommended to raise the awareness of officials, both at national and regional level, about the need to fight people smuggling. Relevant actors such as UNODC and Interpol indicated that getting funding for such activities has proven difficult as combating irregular migration is not yet considered a priority. Interpol's Sub-regional Bureau, acting as Secretariat of the EAPCCO, offered to work with ICMPD to include irregular migration in the agenda of the next EAPCCO meeting in Addis Ababa in September 2008.

2. There is also a need to raise public awareness about the dangers and risks of irregular migration and the use of smuggling services. Various activities implemented by UNODC, Interpol, IOM and NGOs, financed by international donors, have until now put most of their focus on raising awareness on trafficking in human beings and not so much on the risks and danger of irregular migration and people smuggling. Even though the efficiency of such awareness raising campaigns is sometimes limited, it is a step towards a broader acknowledgment of smuggling being a serious issue not only to the authorities but also to potential irregular migrants.

3. People smuggling networks take advantage of weaknesses in existing national migration management systems. The networks operate at a transnational level and make benefit of the loopholes between national systems. Close co-operation between authorities of countries that are affected by the activities of a specific group or network of organisers is an essential pre-requisite for the disruption of irregular migration processes. A further approximation or harmonisation of migration policies and legislation, especially between neighbouring countries, is suited to close these loopholes and thus to reduce the number of options for human smugglers in carrying out their activities.

4. At national level, attention should also be given to capacity-building support to Kenya's development and maintenance of appropriate migration intelligence systems, which comprise the collection, analysis, processing and sharing (among relevant national stakeholders) of relevant statistics, such as border apprehension statistics, statistics on asylum applications, visa data, nationalities of apprehended migrants etc. The analysis of this data is suited to serve as indicator for developments in the area of irregular migration. Indeed, an improved management of irregular migration is based on sound knowledge on the size and structure of related migration flows, as well as on the main strategies used by irregular migrants and professional organisers of people smuggling operations.

5. The opening of a Target Group within the Europol Analytical Work File (AWF) CHECKPOINT would facilitate the operational information exchange and co-operation of concerned EU Member States in the combat of organised crime smuggling networks. The AWF CHECKPOINT is a "*platform*" analytical work file focused on providing support and adding value to the Member States' investigation into combating facilitated illegal migration into and within the EU. Such a Target Group provides analytical support for on-going investigations in two or more EU MS, e.g. MS targeted by flows of East African Migration i.e. UK, France, Italy, Malta, Sweden and the Netherlands. Supporting agencies like Interpol and Eurojust have operational agreements with Europol and can therefore take part in a Target Group within AWF

4.6 Refugee protection related matters

4.6.1 Background

Kenya has a long history of being a refugee hosting state. Ethiopians and Eritreans entered northern Kenya already in the 1930s and throughout its independence Kenya has seen the arrival of refugees fleeing from its neighbouring countries, largely for political reasons. Until the collapse of Somalia on 1990, refugees enjoyed full status rights, including the right to move freely in the country and work.[176] The huge influx of Somali refugees, reaching as much as 400.000 in 1992, and the subsequent wave of Rwandans, Burundians and Congolese from 1994 and onwards, led to a stricter refugee regime in Kenya, such as the encampment policy.[177]

Kenya is currently hosting between 250.000 and 280.000 refugees, the majority from Somalia and large numbers originating from Ethiopia and Sudan. There are two refugee camps: (1) the **Kakuma** refugee camp located in the north-western part of the country and is the recommended location for refugees and asylum seekers from Ethiopia, Eritrea[178], D.R. Congo, Rwanda, Burundi, Sudan and Uganda. The different nationalities are divided into groups and zones in the camp depending on their country of origin, for ease of administration and contacts. (2) The **Dadaab** refugee camps are located close to the border with Somalia and primarily host Somali refugees. Since Kenya requires that refugees stay at the refugee camps, asylum-seekers are requested to report to either Kakuma or Dadaab to make their asylum-claim and access services.[179]

Composition of the caseload[180]

Renewed clashes in south and central Somalia in 2006 led to a large influx of **Somali refugees** fleeing the hostilities and the decision by Kenya to close the Kenya-Somalia border. Dadaab hosts some 177.000 refugees, mainly from south and central Somalia. The volatile security situation combined with the almost total destruction of basic infrastructure will prevent large-scale returns of Somalis in 2008. Given the limited options for voluntary repatriation then or local integration of Somalis in Kenya, UNHCR will focus on resettlement as a durable solution in 2008 and 2009. The Somali refugee flow is likely to continue in 2008. Since the Dadaab camps are overcrowded, all new Somali refugees will be housed in camps in Kakuma.

Sudanese refugees have been repatriating voluntarily and are likely to continue doing so in 2008. The Kakuma camp is the main target of the voluntary repatriation programme, but Sudanese refugees in camps in Nairobi and Dadaab will also be helped to repatriate. The international community, in its efforts to restore stability and rehabilitate basic infrastructure in Southern Sudan, is expected to support the refugees' return.

Nairobi also hosts estimated 50.000 **urban refugees**, 35.000 of which have been registered with UNHCR.[181] Urban refugees can also be found in Mombasa and Kisumu. Furthermore,

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[176] Muli, Koki & Marcel Rutten, "Findings, Views and Policies on Migration in Kenya", Working Papers Series '*Migration and Development' Report no.10, 2006*, Research Group Migration and Development, Radboud University, Njimegen, p.2
[177] Ibid.
[178] "Nationality swapping" has been known to occur, with Ethiopians posing as Eritreans.
[179] Refugee Department, http://www.refugees.go.ke
[180] UNHCR, "UNHCR Global Appeal 2008-2009 – Kenya", *UNHCR Fundraising Reports*, 1 December 2007, http://www.unhcr.org/home/PUBL/474ac8ce0.pdf
[181] Meeting with UNHCR, 11 December 2007

there are as many as 100.000 **stateless** Sudanese (Nubians) in Kenya, whose legal status needs to be improved.

4.6.2 Legal and institutional framework

Kenya acceded to the 1951 UN Convention Relating to the Status of Refugees in 1966; to the 1967 Addition Protocol to the Convention in 1988; and to the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa in 1993. On 29 November 2006, Kenya adopted its first Refugee Act after ongoing discussions for some thirty years. Before the adoption of this law, all refugee status determination (RSD) activities were conducted by UNHCR. At present time, the UN refugee agency continues to deal with this issue as the government has yet to develop the capacity to take over this task.

The Ministry of Immigration and Registration of Persons has the overall responsibility for administering the Act. More specifically, it is the Refugees Department that will co-ordinate all refugee protection measures as well as promote durable solutions for refugees in Kenya. Annex II provides an overview of the organisational chart of the Department. In addition to the above-mentioned, the Refugee Act sets down the following responsibilities:[182]

- Liaison with UN agencies and other institutions, the provision of adequate facilities and services for protection, reception and care of refugees.

- Register all asylum seekers and refugees and maintain an appropriate registration and documentation system for reference

- Issue identification cards and travelling documents to refugees

- Manage refugee camps, reception and transit centres, and other related facilities and promote the welfare of refugees.

- Host communities: promote rehabilitation of refugee hosting areas; work for a peaceful and harmonious co-existence between refugees and host communities, consequently soliciting funds for refugee assistance programs which have a positive impact on host communities; ensure that refugees economic and productive activities do not have a negative impact on the host communities, natural resources and the environment; ensure sustainable use of resources in the designated refugee hosting areas

Once the infrastructure is in place and the Refugee Department is ready to take on RSD, asylum applications will be adjudicated by the Refugee Status Determination Committee, an inter-ministerial body comprising members from key ministries and the security services, under the overall authority of the Commissioner for Refugee Affairs. When this is in place, it will be possible to appeal rejected applications to the Refugee Appeal Board, and then to the High Court of Kenya. The Minister responsible for refugee affairs will have the power to revoke refugee status in cases where the applicant has committed a serious non-political crime while in the country. Legally speaking, this procedure should be an improvement on the current situation, as a rejected application by UNHCR could only be appealed to UNHCR itself.

4.6.3 Challenges

1. The current Refugee Act can be deemed an empty shell at this stage. The legal structures described above are not yet in place. The Refugee Department is understaffed and untrained. As a result, there are great challenges in all aspect of the asylum process: from putting in place the structure, hiring and training personnel, developing a country-of-origin information (COI) unit, raising awareness and training the various bodies involved in the justice system which come to face with asylum

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[182] Refugee Department, http://www.refugees.go.ke

seekers, from the border guards and policemen to various level of central and local government civil servants which will be tasked to provide necessary services to the refugee population (registration, health care, education, housing, legal aid, etc.).

2. The situation in the camps is often critical, but sometimes better than that of the local communities surrounding those camps. This does create a certain level of resentment towards the refugee population. These discrepancies combined with resource constraints act as a push factors for the host community populations both with respect to domestic and international migration. The growing numbers of urban refugees has also an effect in Nairobi, mainly on the security situation.

3. Integration is non-existent. At this time, the refugee population can only decrease through returns or resettlement, the latter being limited to about 4.500 per year, mainly towards Canada and the US. For those who have been living in the refugee camps on a more or less permanent basis, Kenya's unwillingness to integrate them is likely leading to secondary movements, where persons feel pushed to immigrate to another country more often than not, illegally.

4.6.4 Governmental measures

The Kenyan Government, with the adoption of the Refugee Act, should take over tasks in regard to registration and refugee status determination. At this time, the capacities to do so are insufficient; the Refugees Department only registers refugees already recognised by UNHCR.

In March 2006, the Government started an aliens' registration exercise in the Nairobi suburb of Eastleigh encouraging all refugees to register. The objectives were to conduct a baseline survey on the number of urban refugees, to identify refugees capable of working and doing business in Kenya and give them legal status, that is, Class H permits and licenses, and in identifying illegal aliens. Since the Class H Permit costs 60.000 KSH, not everyone could raise this money to continue their businesses. The Government also stated that "if refugees can survive in urban areas on their own, they should come to us and their status will be changed to read urban and not camp refugees".[183]

4.6.5 International support activities

- UNHCR is still responsible for the registration of refugees and refugee status determination. Once Kenya assumes its responsibility in refugee management, UNHCR will shift its focus to a more advisory function and will, in the longer perspective, concentrate on strengthening government institutions and creating networks with non-governmental organizations (NGOs) and civil society actors to see that all asylum seekers and refugees have legal assistance.184

- Through the Strengthening Protection Capacity Project (SPCP), funded by the UK, UNHCR is receiving assistance to (1) increase its RSD capacity and (2) issue Identity Cards to refugees. The aim of the former is to increase the capacity for UNHCR to make asylum decisions in Kenya and improve the level of professionalism of the Refugee Status Determination process, in preparation for Kenyan government assuming responsibility for it. The aim of the latter is to provide refugees with an identification document that hitherto has been lacking in Kenya .

- Resettlement activities are mostly carried out by UNHCR and NGOs.

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[183] RCK interview with Mr. Peter Kusimba, Head of the National Refugee Secretariat and Under Secretary in the Ministry of Immigration and Registration of Persons, Accessed 27.03.2008 http://www.rckkenya.org/issues.html. Urban refugees should be issued with an alien card that looks like the national identity card for citizens but with a different colour scheme and an alien's inscription on it.
[184]UNHCR, "UNHCR Global Appeal 2008-2009 – Kenya", *UNHCR Fundraising Reports*, 1 December 2007, http://www.unhcr.org/home/PUBL/474ac8ce0.pdf

- UNDP has a project targeting the situation of the local population in a radius of 100 km around the Kakuma camp. This helps alleviating the differences between refugees and locals, where the situation of refugees is often perceived as being more advantageous.

- The Jesuit Refugee Services (JRS), an international NGO, is involved in several assistance and advocacy programmes for refugees.

- At the local level, the Refugee Consortium of Kenya (RCK) is providing capacity building in the form of training and awareness of local government administrations towards refugees. RCK also provides legal advice and assistance for all asylum seekers and refugees regardless of documentation.

4.6.6 Recommendations

> 1.a Development of RSD capacity (personnel) and training. As the Refugee Act has been adopted, capacity will be needed to ensure that government officials implement it in accordance with recognised international standards.
>
> 1.b Establishment of a country-of-origin information unit. Kenya may not have yet the capacity to run a full-fledged COI unit, but training could still be provided on how to build and use one.
>
> 2. Increased efforts to mitigate social and economic discrepancies between refugee camps and their host communities, for example, the UNDP initiative mentioned above or similar projects.
>
> 3. Enhancement of resettlement programmes, which appears to be one of the few durable solutions to accommodate recognised refugees. The current resettlement rate is low in comparison to the overall needs, so assistance should be provided to the Kenyan authorities in building contacts and information exchange with countries selecting overseas refugees.

4.7 Trafficking in human beings

4.7.1 Background

Kenya is a source, transit and destination country and its significance as a trafficking hub within the region is increasing. Kenyan children, women and men are trafficked out of the country for domestic servitude, enslavement in massage parlours or brothels and forced labour.[185] Playing the role of labour brokers, traffickers often deceive potential victims on job opportunities abroad. For victims trafficked abroad through foreign employment agencies, Lebanon, Saudi Arabia, Kuwait, the U.A.E., Yemen and Germany are some of the most common countries of destination. To cross the borders with their victims, traffickers have been known to falsify travel documents in co-operation with government officials.

South and East Asian women are transiting Nairobi on their way to Europe and North America[186], a route that is made easy by the large Indian and Chinese communities living there, as well as numerous direct flights between the countries. Another important entry point is Mombasa, where victims are passed off as tourists and then trafficked on to Nairobi and eventually abroad.

Asian men and women, primarily from India, Bangladesh and Nepal, are also being trafficked to Kenya for the purpose of bonded labour in the construction and garment industries as well

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[185] U.S. Department of State, "Trafficking in Persons Report 2007", *Publication 11407*, www.state.gov/g/tip. Kenya has been placed on the *Tier 2 Watch List*, which means that the Government does not fully comply with the minimum standards for the elimination of trafficking, but is making significant efforts to do so.
[186] Ibid.

as for commercial sexual exploitation in the coastal sex tourism industry.[187] Among Kenya's neighbouring countries, trafficking of women and children from Burundi and Rwanda for the purpose of sexual exploitation in Kenya is prevalent. As concerns internal trafficking, girls and boys are being trafficked from rural to urban areas for domestic servitude, street vending, agricultural labour, and commercial sexual exploitation.

Child trafficking from Kenya to other African countries, the Middle East and Europe was brought to the forefront of public attention in 2004. A Kenyan bishop in the UK was found to harbour children in his Kenyan home, who were being trafficked to the UK under the guise of being "miracle babies" delivered by infertile or post-menopausal followers of his Church. The largest maternity hospital in Kenya, Pumwani Hospital, where some 100 babies are being delivered each day, also came under criminal investigation due to disappearing babies. Allegedly, nurses and doctors have been involved in stealing, selling and switching healthy and still-born or sick babies. Lack of proof has stalled the investigations. According to the NGO the Child Rights Advisory Documentation and Legal Centre (The CRADLE) the going rate today for an African child is about 20.000 KSH, 60.000 KSH for a coloured baby and more than 100.000 KSH for a white baby. Most babies sold are unwanted children from poor mothers or sex workers who are unlikely to claim them back.[188]

4.7.2 Legal and institutional framework

Kenya's legislation does not deal with trafficking in human beings (THB) as an offence of its own. Nevertheless, various laws can currently be used to prosecute THB related offences. The Constitution outlaws slavery, servitude and forced labour as well as torture and other forms of degrading treatment.[189] Kenya's Penal Code includes provisions on offences related to trafficking in human beings that prohibit abduction, including the deceitful persuasion of a person to move[190], trafficking in slaves[191], unlawfully compulsory labour[192] and child stealing[193]. An important step is the recent amendment to the Penal Law which allows testimony of children before courts.

The Sexual Offences Act, passed in 2006, seeks to punish sexual exploitation of children. Article 13 of the Act[194] specifically deals with child trafficking as an offence, criminating any person who:

> *(a) knowingly or intentionally makes or organizes any travel arrangements for or on behalf of a child within or outside the borders of Kenya, with the intention of facilitating the commission of any sexual offence against that child, irrespective of whether the offence is committed;*

> *(b) supplies, recruits, transports, transfers, harbors or receives a child, within or across the borders of Kenya, for purposes of the commission of any sexual offence under this Act with such child or any other person.*

In absence of a comprehensive piece of legislation addressing all forms of THB, the CRADLE, with the support of the British High Commission, initiated the process of drafting an

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[187] Kenya, Country Reports on Human Rights Practices 2005, US Bureau of Democracy, Human Rights, and Labor, March 8, 2006, http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm
[188] Meeting with the CRADLE 13 December 2007; Boggan, Steve, "God Knows", The Guardian, Monday June 5 2006, http://www.guardian.co.uk/world/2006/jun/05/kenya.familyandrelationships
[189] Constitution of Kenya, Chapter 5, Articles 73 and 74
[190] Penal Code, Chapter 25, Article 256: *Any person who by force compels, or by any deceitful means induces, any person to go from any place is said to abduct that person.*
[191] Penal Code, Chapter 25, Articles 263-265
[192] Penal Code, Chapter 25, Article 266
[193] Penal Code, Chapter 14, Article 174: […] *forcibly or fraudulently takes or entices away or detains the child; or receives or harbors the child, knowing it to have been so taken or enticed away or detained.*
[194] Sexual Offences Act (An Act of Parliament to make provision about sexual offences, their definition, prevention and the protection of all persons from harm from unlawful sexual acts, and for connected purposes), Chapter 3 of 2006, Article 13

Anti-Trafficking Bill. Initially developed in close co-operation with civil society organisations and intergovernmental organisations, the Bill has been passed onto the Office of the Attorney-General. It has not yet been passed, with understaffing in the drafting department of the Attorney-General's office slowing down the process.[195]

The current institutional framework is still weak. In 2003, an anti-trafficking unit was created in the police force with US assistance. However, this unit has yet to be fully equipped. An inter-ministerial agency on THB has also been established, but lacks capacity to function effectively and does not involve civil society organisations. The Children's Services Department is responsible for the care and protection of children, including adoption, and has been giving increased attention to the problem of trafficking in children. The Anti-Trafficking Bill is expected to establish the institutional framework necessary to prevent THB and to ensure victim protection. The Office of the Vice President has reportedly been deemed the most appropriate co-ordinating body for the institutional framework.

4.7.3 Challenges

1. Kenya lacks a comprehensive national policy on THB, more specifically the country does not have a specific national policy targeting the elimination of trafficking, which would provide guidance to and co-ordinate the efforts of different stakeholders. Government actions against THB have been sporadic, under-funded and not co-ordinated between the relevant ministries.

2. Although Kenya has acceded to the Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children as well as the Protocol Against the Smuggling of Migrants in 2005, the national legal and institutional framework on THB is still insufficient:

    a. Kenya does not yet have a comprehensive law or set of laws that define and address the issue of human trafficking.

    b. Trafficking in Children is addressed in the Sexual Offences Act. Although this is an important step in criminalising not only the trafficker, but also anyone who in any other way is involved in the exploitation of the child, the Act only targets sexual exploitation, thus falling short of international standards. The definition is too narrow, omitting other forms of exploitation.

    c. Enforcement of existing laws is weak; fines are small and jail time is not always enforced.[196]

3. There is a lack of knowledge among the general public and government officials that THB is a crime. There is a strong need for sensitisation and awareness raising activities on THB. The problem is perpetuated by the deception of relatives, employment agencies and trafficking syndicates, as well as corruption.[197]

4. The lack of reliable data is a significant challenge. In addition, there is no information sharing mechanism between different stakeholders, including civil society organisations, and hence limited information on the extent and nature of the problem and modus operandi. This naturally hampers targeted action and an optimal use of available resources.

4.7.4 Governmental measures

The Kenyan Government has taken the following steps to address THB:

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[195] Meeting with the CRADLE, 13 December 2007
[196] Kenya, Country Reports on Human Rights Practices 2005, US Bureau of Democracy, Human Rights, and Labor, March 8, 2006, http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm
[197] The "Report on the Status of Human Trafficking in Kenya" by the CRADLE (2006) states that 67% of the interviewed trafficking victims had bribed government officials directly or through brokers an average of 25.000 KSH to get passports.

- Creation of a National Steering Committee, comprising 28 agencies, addressing the problem of child trafficking.

- The Children's Services Department is addressing legal gaps in the Children's Act concerning trafficking in children and are also involved in awareness campaigns in school and local communities.[198]

- A registration program for hotels along the coasts to prevent trafficking for sexual exploitation in the tourism sector, introduced in 2004.

- A 10-person Human Trafficking Unit within the Kenyan Police Service (KPS), launched in 2004. In August 2004, the police charged several persons with participating in an international child trafficking ring involving the abduction and foreign sale of infants and young children. In July the accused faced additional charges related to child theft and were awaiting trial at year's end.[199]

- An awareness raising campaign on Human Trafficking of the Ministries of Tourism, Labour and Foreign Affairs in 2004 and 2005.

- A report on trafficking in children for sexual exploitation in the tourism industry, presented by the Ministry of Tourism.

- Mandatory pre-departure counselling for Kenyans leaving the country to work abroad, introduced by the Ministry of Labour in 2005.

- Inspection of employment agencies suspected of being engaged in trafficking activities.

4.7.5 *International support and activities of civil society organisations*

- UNODC's East Africa Regional Office is based in Nairobi. Since THB forms part of its core activities, UNODC provide support to the Kenyan Government. In May 2006, UNODC together with IOM and the CRADLE, did an audit on Anti-Trafficking Bill against the Palermo Protocol. Within the framework of the UN Global Initiative to Fight Human Trafficking, and because East Africa has been identified as a source region, an external consultant has been hired to assess the THB situation in the region.

- In January 2008, the UK, Italy, Malta and IOM launched the project "East Africa Migration Route: building co-operation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination", which aims at fostering inter-state and intra-regional co-operation on the fight against illegal immigration. It will contribute to build the capacity to manage migration of the Secretariat of the Intergovernmental Authority on Development (IGAD) and 13 East African countries, one of them being Kenya.

- In February 2006, IOM completed Phase I of the project "Counter Trafficking in Kenya", which included initiatives for capacity building, as well as prevention, protection and prosecution. Currently, phase II of the same project is being implemented.

- In October 2007, IOM started a research project examining men being trafficked from East to South Africa. One of the objectives of this project is that the findings serve as a basis for developing a strategy to address this issue.

- The project "Countering Human Trafficking in Kenya: Capacity Building and Sensitization of Health Care Providers, Community Leaders and Community

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[198] Meeting with the Children's Services Department, 13 December 2007
[199] Kenya, Country Reports on Human Rights Practices 2005, US Bureau of Democracy, Human Rights, and Labor, March 8, 2006, http://www.state.gov/g/drl/rls/hrrpt/2005/61575.htm

Stakeholders" currently implemented by IOM focuses protection and assistance services for victims of trafficking.

- Non-state actors active in the field of anti-trafficking are the Child Welfare Society of Kenya, the African Network for the Prevention and Protection against Child Abuse and Neglect (ANPPCAN), the CRADLE, the Refugee Consortium Kenya (RCK), the Coalition of Violence against Women, FIDA Kenya, and the Association of Media Women in Kenya (AMWIK).

  - ANPPCAN implements a child trafficking programme including information dissemination, review of policies, dialogue with key stakeholders, training of government departments and strengthening existing anti-trafficking units.

  - The CRADLE started to include THB in its agenda in 2003, conducts awareness raising campaigns, provides legal aid and has been actively involved in the drafting of the Sexual Offences Act and the Anti-Trafficking Bill. It produced the "Report on the Status of Human Trafficking in Kenya" in 2006.

  - FIDA Kenya has been working with the Kenyan police force on a regular basis for the past ten years. Their training manual, which originally focused only on gender and human rights, now includes sensitisation on THB and has become part of the police training curriculum. FIDA Kenya also conduct awareness raising campaigns and provides legal assistance to victims of trafficking. In 2008, FIDA Kenya plans an awareness-raising programme targeting the tourism sector.

  - AMWIK conducts awareness raising programmes on the radio in Kiswahili.

4.7.6 Recommendations

1. Kenya needs a comprehensive policy targeting the elimination of trafficking, and providing guidance to and co-ordinating the efforts of different stakeholders. Such as policy should also include mechanisms for co-operation and exchange of information between countries of origin, transit and destination in order to effectively combat trafficking and smuggling in persons.

2.a It is recommended that the Anti-Trafficking Bill, which is currently still being drafted, will follow international standards, such as the Palermo Protocol (UN Protocol to Prevent, Suppress and Punish Trafficking in Person, especially of Women and Children, 2000). The Protocol provides that in order to qualify as a crime, trafficking must be for the purpose of "exploitation". This is a broad and non-restrictive coverage where the "exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs". Kenya should also introduce legal provisions on the rights and protections of trafficked victims. The introduction of victim-witness protection provisions could contribute to increased numbers of cases of trafficking being prosecuted. Finally, the updating of the Children's Act should be expedited and other laws dealing with THB should also be harmonised accordingly.

2.b Only trafficking in children for the purpose of sexual offences is criminalised in Kenya (through the Sexual Offences Act). Provided that the Anti-Trafficking Bill introduces a broad definition of "exploitation" covering both men, women and children, the Sexual Offences Act need not be amended to also include women and men.

2.c The Anti-Trafficking Bill should clearly define and address the issue of THB. Clear definitions in the laws will help implementation since it will make it easier for practitioners (police, prosecutors and judges) to identify acts of human trafficking. Since prosecution of trafficking crimes is low, the investigative capacity of police and the judicial understanding of trafficking should also be improved in order to allow for more convictions of traffickers.

3. Kenyan government officials need training and sensitisation on THB, including officials posted abroad in embassies and consulates. Building upon the inspection of employment agencies already undertaken by government, a closer monitoring of recruitment offices should be put in place, in combination with awareness raising activities for especially vulnerable professional guilds.

4. A basic precondition for developing a comprehensive national response to trafficking is the systematic collection and management of statistical data relevant to trafficking in human beings. Kenya needs support to improve the quality and reliability of data collection (including databases) and the use of collected data. A mechanism to pool data from all actors involved (i.e. police, relevant ministries, international organisations and NGOs) is recommended. A focal point could be appointed to co-ordinate data sharing on smuggling and trafficking in persons and sharing of information on activities undertaken in this realm in order to ensure optimal use of resources.

4.8 Migration and development

4.8.1 Background

Migration has the potential to positively influence Kenya's development if the migrants' available financial, human and social resources can be tapped into. With an estimated two million Kenyans living abroad, there is an opportunity to open up markets abroad, facilitate trade and relations with foreign governments, transfer knowledge and know-how and generate social and technical transfers and remittances.[200] In many developing countries remittances are nowadays considered to be one of the most important financial inflows. While they should not replace development assistance, remittances channelled into income-generating activities positively contribute to the development of a country. This contribution is still limited, as most of the money flows into the non-productive sector.[201] Social and technical transfers can have equally beneficial implications, and include transfer of knowledge, innovative ideas, political contributions, social values, democratic principles and work attitudes.

Although data on remittances is sparse and partly contradictory, it is safe to say that they account for a substantial share of Kenyan household incomes and are almost as important as major economic sectors, such as tourism. Research carried out by DFID shows that over half of the households in Makueni district were financially supported by migrant family members and that the remittances they received were larger and more secure than their income from local wage labour and even allowed investments in farming.

According to the World Bank Migration and Remittances Factbook, Kenyans abroad remitted USD 1,128 million through official channels only in 2006, which accounts for 5.3% of the GDP. This amount even increased to USD 1,300 million in 2007. On the other hand, the Central Bank of Kenya speaks of USD 472 million being sent back to Kenya in 2006. As for the Ministry of Labour and Human Resource Development, it estimates the amount of remittances to reach USD 1,158 million in 2006, amounting to 0.46% of the GDP.[202]

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[200] According to the Ministry of Labour and Human Resource Development the number of Kenyans in the Diaspora is estimated at 2 million.
[201] Financial remittances are mainly being used for daily household expenses such as food, housing, basic medical services and education. The Central Bank of Kenya estimates that less than 30% of the remittances are invested in the productive sector and hence contribute to long-term development; meeting with the Central Bank of Kenya, 14 December 2007.
[202] Ministry of Labour and Human Resource Development of the Republic of Kenya, sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda, June 2007. For Chapter 1 and 2: http://kenyansabroad.org/wp/wp-content/uploads/2007/07/diaspora_bill_sessional_paper_draft__chp1_2.PDF; and for chapter 3 and 4: http://kenyansabroad.org/wp/wp-content/uploads/2007/07/diaspora_bill_sessional_paper_draft__chp3_4.PDF

Kenya is among the worst affected countries by the loss of its qualified people though brain drain.[203] This mostly affects the health sector, but other highly skilled Kenyans also emigrate to seek better opportunities. An estimated 20 Kenyan doctors leave the country every month to seek better opportunities abroad.[204] However, there is anecdotal evidence that many Kenyan emigrants are unable to use their skills according to their qualification, resulting in a brain waste.

4.8.2 Institutional framework

<u>Diaspora</u>

Acknowledging the benefits migration can have for development, it is becoming a priority for Kenyan authorities to enhance relations with the Kenyan diaspora, and to encourage migrants to contribute to their country's development through the creation of the necessary institutional and financial infrastructure, as well as through networks and contacts.

The main Kenyan authorities involved in dealing with Diaspora matters are:[205]

- The Department of Human Resource Management and Employment (HRME) under the Ministry of Labour and Human Resources Development[206]

- The Youth Enterprise Development Fund (YEDF) under the Ministry of Youth Affairs[207]

- The Ministry of Immigration[208]

- The International Job Office of the Ministry of Foreign Affairs[209]

In order to enhance and better steer Kenyan Diaspora's contribution to the development of their country of origin, the Ministry of Labour and Human Resource Development of the Republic of Kenya[210] prepared in June 2007 a sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda.[211] The Ministry of Labour and Human Resource Development defines the Kenyan Diaspora as "*consisting of Persons of Kenyan Origins (PKO) and Non-Resident Kenyans (NRK). The NRK status is for Kenyan citizens holding a Kenyan passport and residing abroad for an indefinite period whether for employment, business, vocation, education or any other purpose while PKO status designates foreign citizens of Kenyan origin or descent*". This distinction is of importance as Kenyan institutions and resultant statutes do not provide for dual citizenship.

<u>Remittances</u>

The Kenyan authorities acknowledge the importance of the potential of remittances to the development of the country. The Kenya Diaspora Remittance Facilitation Working Committee established in 2005, and attended by representatives of Central Bank of Kenya (CBK),[212]

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[203] See point g. of the challenges identified by the Ministry of Labour and Human Resource Development.
[204] Generally speaking, Kenya is among the top five sending countries from Africa to the developed world. The largest number of Kenyans abroad can be found in the US.
[205] In addition to its services, the Ministry of Labour and Human Resource development lists the following ministries and departments as playing a role in dealing with Diaspora matters: the Ministry of Finance, Planning and National Development, Trade and Industry, Immigration and Registration of Persons, Foreign Affairs, Youth Affairs, East African and regional Affairs and Tourism, point 5.1, sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda.
[206] For more information please refer to
http://www.labour.go.ke/index.php?option=com_content&task=category&sectionid=12&id=25&Itemid=72
[207] For more information please refer to
http://www.youthaffairs.go.ke/index.php?option=com_content&task=view&id=15&Itemid=45.
[208] For more information please refer to http://www.immigration.go.ke/
[209] For more information please refer to http://www.mfa.go.ke/mfacms/index.php?option=com_jobline&Itemid=52
[210] For more information please refer to http://www.labour.go.ke/
[211] See also footnote 3.
[212] For more information please refer to http://www.centralbank.go.ke/

Ministry of Finance,[213] Ministry of Planning and National Development,[214] Ministry of Labour and Human Resource Development, Africa's Brain Gain, Kenya Institute for Public Policy Research and Analysis (KIPPRA)[215], Postal Corporation of Kenya[216] and the Investment Promotion Centre (IPC),[217] aimed at exploring ways in which diaspora remittances can be facilitated.[218] However, in its sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda, the Ministry of Labour and Human Resource Development underlined that "*the lack of structured institutional framework has inhibited the effective contribution of this important resource to national development*".

4.8.3 Challenges

1. The sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda, the Ministry of Labour and Human Resource Development identified ten main challenges to the *effective contribution of Kenya Diaspora to national development:*

   - Lack of statutory provision on dual citizenship.

   - Weaknesses of consular services in answering the needs of the diaspora.

   - Lack of administrative structures and mechanisms for the Government to "use"[219] part of these financial flows as an asset for investment and national development.

   - Lack of structures and avenues enabling Kenyan diaspora to ensure promotion of tourism.[220]

   - Lack on inter-state collaboration in regularisation of undocumented Kenyans in the diaspora.

   - Lack of accurate and reliable data on population, income levels, education and training, work experience and demographic profiles of the Kenyan diaspora.

   - Inability of the Government to attract and retain qualified and skilled human resources from the diaspora community.

   - Lack of policy coherence between, among and within the various state and non-state agencies dealing with diaspora issues, which results in poor co-ordination, duplication of efforts and wastage of resources. That includes a lack of resources and capacity from the actors involved.

   - Lack of a responsive Information and Communication Technology (ICT) policy to encourage the diaspora to participate in the ICT potential for development.

   - Lack of bilateral state agreements that would ensure transferability of social security savings to Kenya.

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[213] For more information please refer to http://www.treasury.go.ke/ or http://www.finance.go.ke/
[214] For more information please refer to http://www.planning.go.ke/
[215] For more information please refer to http://www.kippra.org/
[216] For more information please refer to http://www.posta.co.ke/
[217] For more information please refer to http://www.investmentkenya.com/
[218] Another actor playing a key role in the channelling of remittances towards the productive sector is the Kenya Investment Authority (KIA): http://www.investmentkenya.com/
[219] The sentence used in point 2.3 of the sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda is the following: "*There is however, lack of administrative structures and mechanisms for government to tap directly into these foreign inflows from the Diaspora as an asset for investment and national development*".
[220] Tourism is one of the pillars for growth and development in *Kenya Vision 2030*, the country's development blueprint covering the period 2008 to 2030. For more information:
http://www.nesc.go.ke/Meetings/publications/2006_Oct12_Vision2030.pdf; and
http://ntwiga.net/linked_to/docs/Kenya's%20Vision%202030%20Implementation%20Strategy.pdf

2. In addition to these challenges identified by the Ministry of Labour, it is important to mention the lack of experience and model of co-operation with the diaspora to rely on. The absence of data and challenges to adapt good practices to the Kenyan system hamper the country's development of a productive relationship with its diaspora. To date, the Kenyan authorities have only undertaken one visit to the Philippines to possibly replicate the model developed by the latter.[221] Other relevant experiences and knowledge gained by African countries, which may be more suited to Kenya's specific migration profile, have not been taken into account yet.

3. The Kenyan government has not yet been able to reverse the trend of emigration of the highly-skilled.

4.8.4 *Diaspora and private sector initiatives*

<u>Diaspora</u>

Kenya has a growing and increasingly organised Diaspora present in USA, Canada, UK, Australia, Germany, the Netherlands and Sweden.

- The Kenyan Community Abroad (KCA) is a socio-political, non-partisan organisation, based in Washington, D.C. The KCA was founded in March 1997 with a view to giving Kenyans abroad a platform on which to exchange views and help bring change in Kenya.[222]

- The Knowledge Development Network Central (KDNC) was created in 2004 by Kenyan professionals in the United States. The KDNC aims at providing a platform with partners in government agencies, business organisations, development agencies, local nations based in Kenya, and Kenyans in the diaspora to *provide the needed understanding of a model for introducing sustainable market creation that endorses participatory people based development initiatives.*[223]

- The Kenya Diaspora Network (KDN) is a non-political organisation whose primary objective is to support the Kenyan Government development efforts by aligning the resources and inherent knowledge of Kenyan organisations in the diaspora with the Government's Economic Recovery Plan (GERP) and with the Donors' Country Assistance Plans. The Network was recently formed at the request of the Kenyan government in conjunction with the World Bank Institute and Western Hemisphere African Diaspora Network (WHADN-an initiative of the AU).[224]

<u>Remittances</u>

Most actions to facilitate remittances to either lower its costs or better steer its contribution towards the productive sector are initiated and carried out by associations, the Kenyan diaspora or the private sector.

In 2005, KCA launched a Kenyans Abroad Investment Fund (KAIF) proposal, which aims at collecting funds from migrant communities to channel them to a multilateral account of the Central Bank of Kenya (CBK). Funds will then be transferred to a commercial bank with countrywide branches as a single financial package. This saves members the 10-15% they would otherwise pay to third parties and enables subscriber's relatives to access funds. The CBK has underlined various legal impediments to the actual implementation of such a

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[221] Meeting with the Director of the Secretariat of the Youth Enterprise Development Fund (YEDF), 10 December 2007.
[222] The Kenyan Community Abroad (KCA), P. O. Box 50097, Washington, D.C. 20091-0097, USA; website: http://www.kenyansabroad.org/. KCA currently has six chapters in Kenya, France, Germany, Tri-state (<u>New Jersey</u>, <u>New York</u>, and <u>Connecticut</u>), Michigan, and New England.
[223] The Knowledge Development Network Central (KDNC), 612 West Clara St. Marshall, MO 65340, USA; website: http://www.kdnc.org/
[224] The Kenya Diaspora Network (KDN); website: http://www.kenyadiaspora.org/. For the Western Hemisphere African Diaspora Network (WHADN): http://www.whadn.org/

fund.[225] No information could be gathered on whether or not the KAIF proposal was actually implemented.

Remittance services are offered by micro-finance institutions, banks, Western Union, Moneygram, etc. However, the main obstacle for an optimal use of remittances is the high costs of money transfers as well as their long duration.[226] Lately, Kenya has seen the development of mobile banking or m-banking, which has been successfully tested in the Philippines, Brazil and South Africa. Mobile phone providers such as Safaricom, Celtel, MTN are also providing services to facilitate the transfer of remittances.[227] Western Union has reacted to this evolving business by signing an agreement with the GSM Association (GSMA)[228] to facilitate the development of cross-border mobile money transfer services. Western Union and the GSMA are developing a commercial and technical framework that mobile operators can use to deploy services that enable consumers to send and receive money transfers using their mobile phones. The first commercial services to make use of the framework are anticipated to be rolled out beginning in the second quarter of 2008.[229]

4.8.5 Governmental measures

<u>Diaspora</u>

To date, the Kenya authorities have put in place working committees[230] and encouraged private sector or diaspora initiatives. As previously mentioned, Kenya has looked to the Philippines for best practices.

<u>Remittances</u>

- The CBK has been asked to investigate remittance flows and has therefore met representatives of the diaspora both in the UK and the USA. According to CBK, their work is impeded by the lack of information on the diaspora as well as the large amounts of informal remittance transfers.

- The government of Kenya and the Kenya Private Sector Alliance (KEPSA) are currently working on mainstreaming the issues of the diaspora community and small and medium sized enterprises into the national economy. The Diaspora and SME Draft Bills are currently awaiting discussion in Parliament.

- The Kenya Diaspora Home-Coming Preparatory Forum[231] prepares an annual event that aims at bringing Kenyan emigrants back home in order to facilitate an exchange of experiences. A conference on trade and investment, workshops identifying potential markets for Kenyan products and the establishment of a diaspora databank has been planned. The platform shall facilitate regular exchange between Kenyans at home and Kenyans abroad. No further information could be obtained regarding the progress of this initiative.

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[225] For more information, http://www.centralbank.go.ke/downloads/media_releases/Kenyanabroad.pdf

[226] Here it can be mentioned that some destination countries, such as the UK, established websites comparing the services of different remittance service providers according to costs and speed of transfer in order to assist the diasporas in contributing to development of their home countries. An example for such a website is www.sendmoneyhome.org

[227] For more information on mobile banking: 1) in South Africa through MTN, http://www.mtnbanking.co.za/site/MTNBanking/index2.html; 2) in the Philippines through G-Cash or Smart Money, http://www.g-cash.com.ph/main.aspx?rand=46 with other 3,5 million users; 3) in Kenya through Safaricom, on January 22, 2007, SafariCom, expanded its M-Pesa pilot to all of Kenya. "Pesa" is the Swahili word for cash. It provides money transfer for persons who do not have a bank account.

[228] GSMA is a global trade association representing over 700 GSM mobile phone operators. For more information please refer to http://www.gsmworld.com/index.shtml

[229] Thirty-five GSMA operators with more than 800 million customers in more than 100 countries are participating in the GSMA Mobile Money Transfer program.

[230] See section on Institutional framework

[231] http://www.kenyadiaspora.go.ke/web_pages/diaspora_convetion.html

4.8.6 *International support activities*

International support to the Kenyan authorities for developing a comprehensive diaspora strategy and channelling of remittances has been low. Based on the information available, only IOM is currently developing an "Assessment on the dynamics of labour migration in Kenya and development of policy recommendations". It includes an assessment of skills gaps in Kenya, the development of an online tool in order to gather information from the diaspora and the identification of labour migration trends as well as push and pull factors. Policy recommendations should facilitate the development of a comprehensive labour migration policy.

4.8.7 *Recommendations*

1a. Both the KCA and the Ministry of Labour and Human Resource Development should call for the necessary statutory provision to provide for dual citizenship.232 Moreover, the Kenyan authorities want to make use of the diaspora to promote tourism in Kenya.233 Furthermore, it is envisaged for the Kenyan authorities to engage in 1) negotiations for bilateral agreement with countries of destination to ensure transferability of social security savings of the Kenyan Diaspora to Kenya,234 and 2) dialogue with countries where irregular Kenyan immigrants are residing to facilitate their regularisation.235 Particular recommendations for international support are not specifically recommended for the above-mentioned point.

1b. The Ministry of Labour and Human Resource Development proposes to create the necessary structures and investment avenues to attract remittances, investment and trade opportunities, to create incentives and encourage steering of remittances towards the productive sector as well as holding constant briefs with the Kenyan diaspora.236 The elaboration of joint ventures involving the relevant actors from the national authorities, the diaspora, banks and businesses, with the involvement of the relevant international actors and donors, such as the World Bank, the African Bank for Development and IOM, should be supported.

2.a In order to fill the information gap on the diaspora, a survey focussing on the volume, composition, characteristics, location, organisation and links of the diaspora to Kenya should be conducted. The amount of remittances sent back from the respective destination countries as well as the channels (formal/informal) used for doing so should also be analysed.

2.b A second step would be to establish a catalogue of best practices based on the experience gained by various countries with long history of emigration and well established co-operation framework between the diaspora and the country of origin. It is recommended to elaborate policy recommendations in co-operation with countries with similar experience, for example those of North Africa. These countries have long-standing experience on how to harness the benefits of migration for development and this may be applied to the Kenyan context. The Arab Partner States (APS) have already expressed their will to pass on their knowledge in the framework of the Dialogue on Mediterranean Transit Migration (MTM).

2.c In Kenya it would be recommended that the embassies of countries with a large Kenyan diaspora and the APS authorities/embassies support the development of a harmonised national policy with regard to the Diaspora as well as a co-ordinated and efficient co-operation mechanism between the numerous Kenyan state and non-state

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[232] See point a. of the challenges identified by the Ministry of Labour and Human Resource Development.
[233] See point d. of the challenges identified by the Ministry of Labour and Human Resource Development.
[234] See point j. of the challenges identified by the Ministry of Labour and Human Resource Development.
[235] See point e. of the challenges identified by the Ministry of Labour and Human Resource Development.
[236] See point c. of the challenges identified by the Ministry of Labour and Human Resource Development.

agencies involved.[237] To this effect the establishment of an inter-ministerial commission would be a necessary step towards such development. It would also be recommended to support the establishment of a centralised information system to collect, collate, analyse and disseminate information from and towards the Diaspora.[238] Moreover, the Kenyan authorities plan the establishment of a "broad-based and independent National Diaspora Council of Kenya (NADICOK)".[239]

2.d Abroad, it would be recommended that UK authorities/embassies, other foreign governments or international actors, as well as authorities/embassies of APS, co-operating with Kenya in experience transfer, as mentioned in the second step, in countries where Kenyan Diaspora is present in sufficient numbers to have a potential impact on the development of their country of origin i.e. USA, Australia, Germany, could support the development of adapted services provided by the Kenyan Diplomatic and consular services.

3. The Kenyan Diplomatic and Consular Services could, in co-operation with the diaspora, on the one hand identify labour opportunities abroad to support YEDF and avoid brain-waste, and on the other hand promote and facilitate return of talents to contribute to the development of Kenya in targeted sectors, as well as assisted voluntary return of irregular migrants. The UNDP Quest project (Qualified Expatriate Somali Technical Support) in Somalia, which started in 2004, could provide an example of how to identify and encourage high-skilled expatriate nationals to volunteer their expertise for short periods of time (3-12 months).[240]. It is funded by the UK Department for International Development (DFID), the Netherlands and the Swedish International Development Co-operation Agency (Sida).

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[237] See point h. of the challenges identified by the Ministry of Labour and Human Resource Development. For more information on the list of all state actors involved please refer to footnote 4.
[238] See point i. of the challenges identified by the Ministry of Labour and Human Resource Development. Through its *e-government programme* the Kenyan authorities will put in place an ICT in order to *enhance efficiency and productivity in trade, investment and flow of remittances from the Diaspora.*
[239] See point 5.1 of the sessional paper on Mainstreaming the Kenyan Diaspora Community in the Development Agenda.
[240] The project suffered a gap of two years due to lack of funding, and then re-started again in 2006

5   Libya

5.1 Overview of the migration system

5.1.1 Background

Placed at the crossroads of the Central and East Africa Migration Route, Libya is a country of destination and transit for migration flows originating in Northern, Western, Central and East Africa and heading towards Europe over the Mediterranean Sea. There are, however, factors besides its geographic location that have contributed to Libya's emergence as a place of transit. The porous southern desert borders are easy to cross, the coastline is long and close to Italy and Malta[241]. Both Libya's informal and formal economy provide ample opportunities for migrants to work and make savings for the financing of the next stages of their onward trip. The part of the East African migration route, which leads via Sudan and Libya to Europe is dangerous: desert crossings are long and extremely hazardous; moreover, every year, many migrants die attempting to reach the European coastline by sea.

Another factor, which makes Libya a logical choice for transit migration is its history as a destination country. Trade links and traditional migration patterns between the North African country and its southern neighbours has a longstanding tradition. Jobs in the oil fields and construction sites have attracted migrant workers from the Maghreb, Mashrek and Sub-Saharan Africa for the last three to four decades. Although Libya's pan-African approach has gone through different turns of events, ranging from open-door to restrictive immigration policies, the country's job opportunities and relatively more generous welfare keep attracting labour migrants.

Libya's proximity to conflict ridden and politically unstable countries also makes it an important destination for refugees although the lack of distinction between refugees and migrants by the Libyan authorities makes it difficult to assess their exact number.

Estimates about migrants and refugees in Libya vary from 1 to 2 million. The broadness of this range is a direct testimony to the fact that there is very little reliable data available on the migration and asylum reality in the country.

5.1.2 Legal and institutional framework

The legislative branch of the government comprises People's Congresses at the local, regional and national level (the General People's Congress). The latter elect the executive bodies, which include the Local People's Committees, the regional (Sha'biyat) People's Committees and the National General People's Committee (the equivalent to a Cabinet).

Migration-related competences are shared between a variety of national stakeholders, such as the General People's Committee for Public Security (Department for Passport Investigation, Department of International Relations and Co-operation, Illegal Immigration Department, Department of Police), the General People's Committee for Foreign Liaison and International Co-operation, the General People's Committee for Justice, the General People's Committee for Manpower Employment and Training, the General People's Committee for Finance (Customs Authority) and the armed forces. The illegal immigration department of the General People's Committee for Public Security manages six detention centres.

Efforts to improve co-ordination between the competent authorities include the recent creation of a national commission composed of institutions and government departments dealing with all aspects of migration to exchange information on ongoing activities in this area.[242]

In effect, at present, there is no migration policy in place in Libya. Migration legislation is deemed fragmentary and Libya deals with migration management in an ad hoc manner. In

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[241] See Table 1 for an overview of illegal migrants apprehended by Malta between 1998 and 2008.
[242] Meeting with the Gaddafi Development Foundation, 14.02.2008

addition, there is a considerable lack of research and reliable "hard" data on which to base migration policy.

5.1.3 Challenges

1. There is very little reliable data available to provide an accurate overview of the composition of the migration sample in the country.

2. There is effectively no overall migration policy in place in Libya.

3. Migration management competencies are scattered thus increasing the risk of an uncoordinated approach.

5.1.4 International support activities

- Adam Smith International, an international development consultancy, is currently implementing a UK funded project to assist competent ministries in developing policy options on migration and strategic implementation plans. These proposals will be submitted to the central government for approval. The project will also develop a number of specific project proposals, to be financed either by the EU, other external actors, the Libyan Government, or a combination of either.

- The International Organization for Migration (IOM) has also started some policy work by facilitating regional workshops on labour migration (see labour migration section below) and by offering training on international migration law for government officials. As part of its Programme for the Enhancement of Transit and Irregular Migration Management in Libya (TRIM), IOM is also in the process of finalising a study on new migration trends in West Africa and a survey of relevant migration-related legislation and policies in Libya. The survey is expected to be published in April 2008.

5.1.5 Recommendations

1a. The lack of data on migration to and through Libya and difficulties to understand the institutional and legal frameworks of migration management in Libya oblige each project team to start its activities with a preliminary assessment on which further project activities can be based. This was also highlighted by Libyan authorities that have been "assessed" and asked the same questions by several international stakeholders in a row. In order to remedy to that situation and in order to complement ongoing research activity, the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Peace, Care and Relief (IOPCR) and ICMPD are currently putting forward a proposal for a survey to generate a comprehensive profile of i) the nature, trends and composition of migration flows transiting through or remaining in Libya; and ii) Libyan institutional capabilities in managing these flows. Frontex, Europol, Interpol, the Odysseus network and IOM, the International Labour Organisation (ILO), UNDP and other relevant partners will also be invited to contribute their expertise to the survey. The survey will provide a baseline analysis of the overall migratory situation in Libya by targeting key aspects of migration management such as asylum, labour migration, smuggling and trafficking networks, border control, return and readmission, and integration. It aims to serve as a base upon which to elaborate future targeted migration management initiatives. Provided available funding, the survey will be implemented in 2008.

1b. At the same time there is a need to strengthen national and regional capacities to systematically collect, analyse and disseminate migration related data from various sources and the Libyan authorities would benefit from international expertise and good practices in this regard.

2a. Migration policies should be based on the African Union's (AU) "The Migration Policy Framework for Africa" adopted in 2006. It was developed to provide guidance to

> African States in drafting this policy and notably aims at harmonising migration legislation and policy throughout the continent.
>
> 2b. At the regional basis, CEN-SAD suggested establishing a centre for migration policy development, which would support States both in the formulation and implementation of migration policies.[243]
>
> 3. Based on the survey above, which includes a mapping of all migration management authorities and international actors, recommendations could be formulated and implemented with the support of international experts in order to ensure increased co-operation and a more integrated approach towards migration.

5.2 Regular migration

5.2.1 Background

Traditional trade links and the relative ease to travel back and forth had made Libya a popular destination for short-term migration from Sub-Saharan Africa, mainly from Sudan, Chad and Niger. Most of these migrant workers remained in Libya illegally, gathered some savings and went back home after one or two years. In the 1990s, Libya's reorientation towards its southern neighbours "formalised" and encouraged the supply of foreign labour from Sub-Saharan Africa. Since then, Libya's immigration policy has gone through various stages, reflecting the state of bilateral relations between Libya and the source countries, as well as the condition of the Libyan economy and its needs for manpower. Most recently, visa requirements were re-introduced for all nationals, including from African countries.[244]

5.2.2 Legal and institutional framework

The General People's Committee for Manpower, Employment and Training is an important "drop-in centre" for regular migrants as it provides information and advice to migrant workers and their families, as well as to foreign students.

According to the Committee the Libyan labour market can absorb immigration, provided that migrants are skilled.[245] Yet, there is no (in particular skilled) labour migration policy in place. Moreover, little background research is conducted in order to establish national occupational group needs in the country. There are signs, however, that the elaboration of such a policy is underway.[246]

In the legalisation process, foreign nationals can be required to pay fees of approximately 500 Libyan Dinar (LD) (approximately 268 EUR), an amount that many migrants may not be able to afford. In such cases, the General People's Committee for Manpower Employment and Training may, and indeed does, intervene with the relevant authorities on behalf of immigrants to assist in the legalisation of their stay without financial burden. In particular, the Committee lobbies to exempt students from the 500 LD legalisation fee, and supports these students' school enrolment procedures.[247]

5.2.3 Challenges

1. According to some of the mission interlocutors,[248] the presence of Sub-Saharan Africans creates social tensions both in the labour force, where migrants are

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[243] Meeting with CEN-SAD on 14.02.2008

[244] Meeting with the General People's Committee for Public Security - Department of International Relations and Co-operation, 16.02.2008

[245] Meeting with the General People's Committee for Manpower, Employment and Training, 14.02.2008

[246] Meeting with IOM Libya, 13.02.2008

[247] Meeting with the General People's Committee for Manpower, Employment and Training, 14.02.2008

[248] E.g., meetings with the Drug Authority of the Committee for Justice and People's Security, 12.02.2008; Department of International Relations and Co-operation, 16.02.2008.

perceived as a burden despite clear market needs (see above), and amongst the general population, where these same migrants face racism and xenophobia, be they legally or illegally present in the country.

2. In most cases, labour migrants are discouraged from joining trade unions, which exposes them to labour market discrimination. The General People's Congress Order No. 260 of 1989 concerning employment conditions gives employment priority to Libyans and Arabs nationals. The employment of foreigners is conditional on the approval of the Central Employment Bureau.[249] Arguably, the difficulties faced by migrants in legalising their stay and employment situation may have detrimental impact on the integration of third country nationals in Libya.

3. Schooling fees for foreigner children were increased to 100 LD. This governmental policy is seen as hampering the integration of third country nationals, in no small part since most migrant families are in no position to afford these fees and children are thus left uneducated. It is worth noting that refugee children are exempt from payment.[250]

5.2.4 Governmental measures

The General People's Committee for Manpower Employment and Training offers a number of services to migrants, in particular to young migrants (mainly students) and refugees who were referred to them by UNHCR[251]. Such services include:

- Social counselling, administrative support and legal advice;

- Medical checks for all migrants, including regular follow-ups;

- An alphabetisation programme for Somali adults together with UNHCR;

- Vocational training. Upon completion of the programme, migrants are provided with working tools and equipment, allowing them to become self-employed in Libya or to open a business in their home country following voluntary return.

5.2.5 International support activities

- Under the European Commission's Aeneas 2006 programme, IOM plans to implement the project "Facilitating a Coherent Migration Management Approach in Ghana, Nigeria, Senegal and Libya by Promoting Legal Migration and Preventing Further Irregular Migration" This will include providing strategic guidance to governmental partners and other stakeholders on developing labour migration policies and strategies; Identify good practices in labour migration at national level and promote them at regional level through the Economic Community of West African States (ECOWAS) and the Community of Sahel-Saharan States (CEN-SAD).

5.2.6 Recommendations

1. Comprehensive research is needed to establish which occupational groups are actually needed in Libya, followed by a policy encouraging the legal immigration and subsequent integration of these professionals. Such policy should also include provisions, which secure the access to education of all migrant children since education and language skills are the first steps of a comprehensive integration policy.

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[249] ILO Natlex database available at http://www.ilo.org/dyn/natlex/natlex_browse.home
[250] Meeting with IOM Libya, 13.02.2008
[251] Meeting with the General People's Committee for Manpower Employment and Training, 14.02.2008

> 2. Targeted anti-racism campaigns, promoting the positive contribution migrants make to the Libyan economy and society could assist in promoting the integration of third country nationals and sub-Saharan labour migrants in particular.
>
> 3. Giving immigrants the possibility to legalise their stay more easily and with less financial burden would be a first step in promoting an environment that ensures immigrants' security and formalises their wage earning activities. Indeed, on the one hand, easily accessible legalisation system will help facilitate Libya's legal migration management and, on the other, it ensures equal opportunities for migrant workers, thus indirectly contributing to further their integration, both socially and economically.

5.3 Passports, visa and identity cards

5.3.1 Legal and institutional framework

Law No. 6 (1987), as amended by Law No. 2/2004, is the main domestic law regulating the entry, stay and departure of foreigners.[252]

Libya, which had traditionally pursued a pan-Arab policy turned away from Arab states and towards Africa after the embargo was imposed on the country in 1992. Ever since, a range of agreements between Libya and Sub-Saharan African countries were concluded providing for the free movement of persons between Libya and countries of the African continent.[253] However, during the EAMRI mission, the Libyan authorities confirmed that visa requirements were reintroduced for all third country nationals in December 2007. To apply for a visa, a health check, insurance, a sum of USD 1000,[254] as well as a translation of the passport into Arabic[255] for all non-Arab nationals are required. Passports must be valid for at least six months beyond the date of departure from the country and must not bear Israeli border stamps. Foreigners travelling to Libya may apply for a visa at Libyan Consulates and Embassies and, in exceptional cases, at border crossing points. A multi-entry visa, valid for up to one year, may be granted.[256] Foreigners must register at a police station within 48 hours of arrival.

All that being said, CEN-SAD, founded on Libya's initiative, encourages the freedom of movement of persons and goods between Member States with a view of promoting economic and social integration. CEN-SAD views the free movement of persons between Maghreb states as unproblematic.[257] In cases where visa are required, these are easily obtained at border crossing points. Moreover, students and diplomats can move freely within CEN-SAD Member States.[258]

Finally, it is worth noting that Libyans can enter most Arab and African countries visa-free.

Passports

In Libya, four different types of travel documents can be issued by the Passport Control Division. Ordinary individual passports are issued within approximately one week and are

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[252] European Commission (EC), Report of the Technical Mission to Libya on Illegal Immigration, 2005 http://www.statewatch.org/news/2005/may/eu-report-libya-ill-imm.pdf; Hamood, African Transit Migration through Libya to Europe: The Human Cost, http://www.migreurop.org/IMG/pdf/hamood-libya.pdf, 2006, p. 20
[253] Boubakri, Transit migration between Tunisia, Libya and Sub-Saharan Africa: study based on Greater Tunis, www.coe.int/t/f/coh%E9sion_sociale/migrations/MG-RCONF_2004_%206e%20-%20Report%20by%20Boubakri.pdf, 2004, p. 6
[254] Meeting with the General People's Committee for Public Security - Department of International Relations and Co-operation, 16.02.2008
[255] Information obtained from Libyan Embassy in Vienna
[256] EC 2005, op. cit., p. 43
[257] Meeting with CEN-SAD, 14.02.2008
[258] Meeting with CEN-SAD, 14.02.2008

valid for five years, after which they can be renewed for another five years.[259] Moreover, collective passports, temporary travel documents and travel documents for Palestinians can be obtained. In certain cases, collective passports can be issued for sports, technical and scout teams, as well as for studies or training groups.[260] Reportedly, foreigners with residence or work permits have to apply both for exit and return visa before travelling. Libyan citizens may apply for a special pilgrimage passport.

5.3.2 Challenges

1. The EAMRI mission did not have an opportunity to assess capabilities to control documents. However, the Libyan interlocutors mentioned that airport personnel require specialised training and additional authority in forged document matters.

5.3.3 International support activities

- In the framework of the "Across Sahara" project, funded under the EC Aeneas 2004 programme and implemented by the Italian Ministry of Interior (MoI) and IOM, a laboratory for forgery detection was set up in Libya. Furthermore, kits for forgery detection were assigned to border police officers that had taken part in operation document identification training (for more information on the Across Sahara project, please refer to section 5.5).

5.3.4 Recommendations

1. Technical assistance could be provided to the Libyan authorities in the area of the identification of forged and falsified documents, for example by developing and supporting the implementation of a concept for training and information exchange on forged/falsified documents. Such action should be comprehensive and involve all authorities that have a role in stemming illegal migration flows. Ideally it would also be placed in a larger and sustainable training capacity-building project (see section 5.6)

5.4 Border management

5.4.1 Background

Libya has an overall border of more than 4.000 km, 1.955 km of which is coastline and 1.792 km desert border. The country borders Algeria, Egypt, Tunisia and the Sub-Saharan countries Chad, Niger and Sudan. It is the vastness and topography of the desert land between Libya and the latter three countries that poses particular challenges to border surveillance. The official border crossings with Chad and Sudan are currently closed and the army patrols the border part with Chad in order to avoid spill over from the conflict.

5.4.2 Legal and institutional framework

Border control is shared between the armed forces (military patrols), the police (General People's Committee for Public Security) and the customs service (General People's Committee for Finance). During the EAMRI mission, the visiting team was informed that the customs service has border surveillance responsibilities and that it is vested with the authority to apprehend illegal migrants. Both the police and the customs service have mobile units and a costal guard.[261] Custody of illegal migrants[262] and related procedures, including return, are the responsibility of the police, while the six detention centres for illegal migrants

[259] Norwegian Immigration Appeals Board, Norwegian Directorate of Immigration and Danish Immigration Service, http://www.landinfo.no/asset/159/1/159_1.pdf, 2005, p. 24
[260] EC 2005, op. cit., p. 42
[261] Meeting with the General People's Committee for Finance - Customs authority, 13.02.2008
[262] Ibid

are run by the Illegal Immigration Department of the General People's Committee for Public Security.[263]

Operational co-operation between all relevant authorities was reported to be good and according to some of the mission's interlocutors a "pragmatic" and informal co-operation approach is applied to jointly respond to the magnitude of the border management challenges.

Little information was provided on the legal basis for border control and the main legislation quoted by the Libyan authorities was the law No 2 /2004, organising entry, exit and stay of foreigners in Libya. The customs authorities mentioned that it is mandatory under Libyan criminal law for every citizen to inform the relevant authorities when he or she observes a criminal action. This law also applies to illegal border crossings.[264]

5.4.3 Challenges

1. Both national and international interlocutors were unanimous to say that controlling the desert border in the South is a major challenge and that standard border surveillance would only bring limited results. After having visited the desert southern regions of Libya in June 2007, Frontex even suggested referring to it as the "brown" as opposed to green border in order to mark its distinct nature.[265]

2. Although bilateral co-operation with the neighbouring countries was generally assessed as good, the Libyan authorities felt that the lacking border control capacities in some of these countries also impact on Libya's border security.[266]

3. During the mission, national interlocutors acknowledged that the border police could benefit from training although particular training needs were not specified. Training for staff working at the border is provided in a central training academy. Being deployed to the southern border is considered a hardship post both because of the difficult working conditions in the desert and because of this regions' distance to the officer's origin.

4. The customs authorities, who have so far received little international support, also expressed a need for training and equipment, as well as logistical assistance at sea and in the desert. Contrary to their colleagues from the border police, they have not yet established co-operation with their European counterparts and expressed a wish to set up such co-operation.[267]

5.4.4 International support activities

- Between December 2005 and December 2007, the Italian Ministry of Interior and IOM implemented an EC Aeneas 2004[268] project named "Across Sahara" in Libya and Niger. The project included a variety of pilot activities aiming at combating illegal migration in the two beneficiary countries, such as training of senior border police officers and trainers in the identification, assistance and protection of vulnerable migrants, three operational training courses for border police officers, a training course on search and rescue at sea, as well as piloting of co-ordinated patrolling

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[263] Meeting with the General People's Committee for Public Security - Department of International Relations and Co-operation, 16.02.2008

[264] Meeting with the General People's Committee for Finance - Customs authority, 13.02.2008

[265] Frontex: Frontex led EU Illegal Immigration Technical Mission to Libya, 28 May- 5 June 2007, http://www.infinitoedizioni.it/fileadmin/InfinitoEdizioni/rapporti/LibyaMissionMayJune07ReportFrontex.pdf p. 17

[266] Meeting with the General People's Committee for Public Security - Department for Passport investigation, 11.02.2008

[267] Meeting with the General People's Committee for Finance - Customs authority, 13.02.2008

[268] The AENEAS programme provides financial and technical assistance to third countries in support of their efforts to ensure more effective management of all aspects of migration flows. In 2007 it was replaced by a new programme entitled "Thematic Co-operation Programme with Third Countries in the Development Aspects of Migration and Asylum", covering 2007-2013.

along the Libyan-Nigerien border. The project also provided technical and mobility equipment including IT and communication equipment; kits for forgery detection and off-road vehicles equipped with satellite navigators and radio communication systems. A follow-up project, the "Across Sahara II – Regional Co-operation and Capacity Building on Border and Migration Management" funded under the EC Aeneas programme 2006 is foreseen to include Algeria in addition to Libya and is due to start.

- The Italian government provided Libya with supplies for joint operations, such as boats for sea patrolling.[269]

5.4.5 Recommendations

1. In its 2007 report, Frontex put forward a number of recommendations to support Libya in stepping up its border management capacities. This includes the establishment of a joint national and international task force to develop new border surveillance approaches for brown border controls.[270]

2. Co-ordinated and joint patrolling along the common border between Libya and Niger in the framework of the Across Sahara project has shown that bilateral co-operation at the border can produce demonstrable results in the combat against illegal migration. At the same time, the Nigerien's limited detention and return capacities marginalised the outcome as all the migrants apprehended during the operation had to be released by the authorities in Niger.[271] International operational co-operation hence needs to be provided along the migration routes back to the countries where migration flows originate. This should include the facilitation of co-operation between transit and source countries on the issue of return and readmission.

3a. Pilot training activities should give way to projects, which build up sustainable border police training capacities by developing and supporting the delivery of basic, specialised and continuous training. Such projects should also include i) train-the-trainers modules that promote participatory training and new training techniques; ii) training in developing and performing training needs assessment, iii) training in the use of training evaluation, iv) training in curriculum development and v) training management. Further project activities could include study visits to training academies in Europe or "fellowships" for staff to study at a training academy in Europe.

3b. A review of existing training materials on the topic of migrants' rights has shown that some of the materials are too theoretical to fit the work of practitioners. Course contents for border police officers should be jointly developed by relevant government departments, border police officers, trainers and international migration specialists. Training materials need to be interesting, easy to understand and should ideally become an on-the-job reference tool.

3c. The learning process does not stop at the delivery of training. What needs to be ensured is that training participants retain, apply or transfer what they have learned. This is usually achieved when on-the-job training is added to the learning process. Therefore international projects, which include training components should plan for transfer of learning through coaching and mentoring for example through twinning-like arrangements between personnel of EU and Libyan border police officers. Larger training processes also need to evaluate how the new skills are applied back on the job.

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[269] Representative of the Italian Embassy in Libya, 11.02.2008
[270] Frontex 2007, op. cit, p. 14
[271] Statement made by Niger at the closing seminar of the Across Sahara project, Rome 12 December 2007

> 3d. Training capacity-building projects can be complemented through a series of seminars during which international and Libyan border management experts can exchange experiences and good practices in the are of management and organization of border policing, staff development and human resources management, data collection, risk analysis and intelligence, anti-corruption measures, operational techniques etc.
>
> 4. The customs authorities should be included in international border management capacity-building projects. Preferably project activities should be implemented jointly by representatives of all border agencies in order to promote inter-agency co-operation.

5.5 Irregular migration

5.5.1 Background

Estimated figures on illegal residents in Libya brought up by national interlocutors largely varied and ranged between 1 to 2 million.[272] Though Libya offers good employment opportunities in the oil sector, the construction business and the nascent service industry, it was suggested that the majority of migrants currently present in Libya have no intention to stay but aim towards Europe as soon as they have gathered the necessary means to do so. Table 1 below provides an indication of the flow of irregular migrants linked to the East Africa migration route transiting to Europe. Not all migrants leave Libya from its northern coast but might take other routes via West Africa for example. The national authorities therefore consider Libya to be mainly a migration transit country although transit periods can be very long.

Table 1. Number of irregular migrants arriving by boat, apprehended by the Maltese authorities

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008*
Egypt	1	34	8		307	198	208	381	312	4	
Eritrea					334	1	199	372	368	211	
Ethiopia					63		53	99	143	107	
Libya			1		1						
Somali	15	2			249	86	533	146	311	613	116
Sudan	2			56	25	42	64	420	67	46	
Total	**18**	**36**	**9**	**56**	**979**	**327**	**1057**	**1418**	**1201**	**981**	**116**

*Until February 2008

The Libyan authorities confirmed Kufra's role as both an entry point and an important migration hub for the flows from the Horn of Africa. It seems that many Somali, Ethiopians and Eritreans enter Sudan on the basis of fake employment contracts and travel on to Libya illegally. [273]

Other entry points include Al-Qatrun (at the border with Niger) for migrants from Sub-Saharan Western Africa and Ghat (at the border with Algeria) for Tunisians and most recently for migrants from the Indian sub-continent (Pakistan, Bangladesh). The latter, relatively recent trend raises new security concerns for Libya. [274]

Jdabia (hub), Zuara, Zliten and Misratah (embarkation points) were mentioned as strategic points for migrants transiting Libya to reach Southern Europe.

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[272] According to the 2006 census, Libya has a population of 5,673,000, of which 5,323,000 are Libyan citizens.
[273] Meeting with the General People's Committee for Public Security - Department for Passport investigation, 11.02.2008
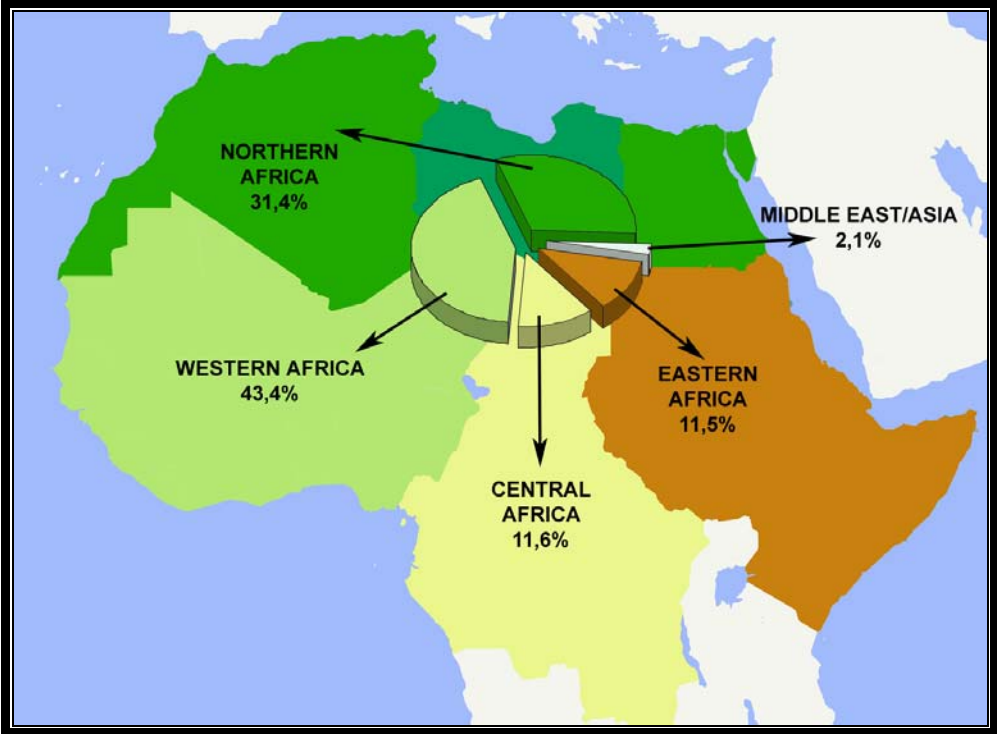[274] Meeting with the General People's Committee for Finance - Customs authority, 13.02.2008

According to the General People's Committee for Public Security, smuggling is mainly based on small-scale activities (e.g. boat owners offering smuggler services). At the same time, recent information exchange with Italy has shown that there seem to be small smuggling networks that extend beyond Libya to Europe.[275] According to the Drug Authority of the Committee for Justice and Peoples' Security, there is no explicit evidence for a link between smuggling in persons and drug trafficking. However, isolated cases of migrants trying to cover the cost of their trip to Europe through drug trafficking were reported. The drug authority expressed concerns that migrants might be forced into drug trafficking through smuggling networks owing to their vulnerable social situation.[276]

It is increasingly felt by the Libyan government that illegal migration has started impacting Libyan society in terms of security, health, social cohesion and economy. Indeed many of the interlocutors met stressed the financial burden of apprehension, detention and repatriation of illegal migrants. The point was also made that this burden is more significant for Libya than for Europe and that there is a need for increased co-operation between Libya and EU Member States to jointly address the issue. At the same time, the official rhetoric refers to illegal migration as a "humanitarian" problem, which requires relevant assistance, including from governmental authorities. All interlocutors reiterated that security approaches towards illegal migration can only be considered short-term actions and that increased assistance needs to be provided to the source countries to combat the root causes and raise awareness about the dangers of illegal migration.

The Libyan authorities provided the visiting team with apprehension and return statistics for the year 2007. According to these figures 384 Ethiopians, 350 Eritreans, 2671 Sudanese and 152 Somali were apprehended between January and December of the past year. According to these same statistics 1467 of Sudanese were provided with voluntary return assistance.

Table 2. Apprehension and deportation of illegal migrants according to their regions of origin in 2007, 30.940 returnees.

[275] Meeting with the General People's Committee for Public Security - Department for Passport investigation, 11.02.2008
[276] Meeting with the General People's Committee for Justice and Peoples' Security- Drug Authority, 12.02.2008

Based on the graph above (see Table 2) Libya seems mostly under pressure from flows originating in North Africa and West Africa, which account for close to 75% of the returnees. This needs to take into account that Egyptian nationals represent 24.8% of these flows. Egypt is regionally part of either North Africa or even the Middle East according to the definition used. Within the context of the migration routes approach Egypt should be considered as part of the East Africa migration route. This consideration allows for a different perspective where the East Africa migration route's importance grows to up to 36% and West Africa represents then 43%. In addition one must take into consideration the fact that Nigeriens represent 50% of all returnees originating from West Africa. Moreover, this graph being based on repatriation, it is important to highlight the fact that Libyan authorities generally underline that the main challenge is ensuring repatriation of migrants originating from the Horn of Africa. Finally, the return figure of 2007 with 30,940 returnees is rather low compared to 47,991 returnees in 2005 and 86,006 in 2006.

5.5.2 Legal and Institutional Framework

From the information received during the mission it was understood that several national administrations have responsibilities in the fight against illegal immigration, notably the Department for Passport Investigation, the Department of International Relations and Co-operation, the Illegal Immigration Department and the Department of Police, all within the General People's Committee for Public Security; the armed forces and partly also the Customs Authority (of the General People's Committee for Finance). Migrants who are apprehended by the patrolling units and coastal guard of the army and the customs service are handed over to the police, who is responsible for the custody of illegal migrants and also implements return procedures.[277] The General People's Committee for Public Security manages the six detention centres for illegal migrants.[278]

The mission did not receive information on the exact co-operation procedures between all the relevant agencies but it was suggested that inter-agency co-operation is generally good.

Libya has ratified the United Nations Protocol against the Smuggling of Migrants by Land, Air and Sea supplementing the United Nations Convention against Transnational Organized Crime. The piece of legislation referred to as providing the basis for the fight against illegal migration is the Law No. 2/2004, regulating the entry, stay and departure of foreigners However, no information was received on the status of its implementation.

5.5.3 Challenges

1. It is a well-known fact that the hidden nature of irregular migration, in particular smuggling and trafficking, makes it challenging to access reliable data on the number and profile of apprehended irregular migrants. Reliable data would be valuable to informed policy making on this front.

2. According to Libyan authorities, the capacities of the country's existing detention centres are insufficient to accommodate the high number of apprehended migrants. It was also stated that the transportation of irregular migrants from the place of apprehension to the detention centres poses difficulties due to a lack of appropriate vehicles. Finally, the Libyan interlocutors indicated that detention centre staff requires additional training, including management training.[279]

3. Migration flows from sub-Saharan Africa are of a mixed and composite character: they include traditional movements, labour migrants, asylum seekers and irregular migrants, driven by similar forces and using the same routes and means of migration.

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[277] Meeting with the General People's Committee for Finance - Customs authority, 13.02.2008
[278] Meeting with the General People's Committee for Public Security - Department of International Relations and Co-operation, 16.02.2008
[279] Meeting with the Department for Passport investigation in the General People's Committee for Public Security, 11.02.2008

In most cases, it is difficult to make a sharp distinction between different categories of migrants as individual motivations are often complex, mixed and may change over time. Libya presently lacks the capacities and infrastructure to provide the appropriate responses to this mixed migration phenomena.

4. The Libyan authorities mentioned that co-operation with neighbouring countries and countries of origin sometimes is difficult, in particular in the area of readmission. Embassies of countries of origin, in particular Ghana, Kenya, Egypt, Ethiopia and Eritrea, are said to use delaying tactics to avoid readmitting their nationals. Furthermore, the Libyan authorities encounter similar difficulties as European States in establishing the nationalities of migrants.[280]

5.5.4 Governmental Measures

A number of initiatives were taken by the Libyan government to step up its efforts against illegal migration, such as the creation of the Illegal Immigration Department, a border security agency and a national commission composed of representatives of agencies dealing with all aspects of illegal migration to exchange information on ongoing activities. No information was however received on the exact workings of these governmental bodies.

At the regional level, the CEN-SAD Member States community are currently discussing a *Draft Agreement on the Readmission of Illegal Immigrants*.

5.5.5 International Support and Activities of Civil Society Organisations

- The UK, in co-operation with IOM, the Intergovernmental Authority for Development (IGAD), the AU, Italy, Malta and the Netherlands have started implementing a project called "The East Africa Migration Route: building co-operation, information sharing and developing joint practical initiatives amongst countries of origin, transit and destination" funded by the EC under the Aeneas 2006 programme. The project includes Chad, Djibouti, Egypt, Eritrea, Ethiopia, Kenya, Libya, Niger, Somalia, Sudan, Tunisia, Uganda and Yemen and includes several components, such as i) the establishment of a Migration Resource Centre and Regional Consultative Process (RCP) for the exchange of information and best practice on migration management; ii) the enhancement of the capacity of the beneficiary countries, the IGAD Secretariat and EU Member States to collect and analyse intelligence relating to illegal migration; iii) the organisation of two technical workshops on key thematic migration issues; v) the provision of training to officials from East African countries on technical and policy migration management topics; vi) the provision of information to potential irregular migrants of the dangers of irregular migration via targeted publicity campaigns and vii) the assessment of the feasibility of undertaking of a joint operation in an African country to disrupt illegal migration.

- Italy is funding the establishment of a first aid camp in Kufra and a second similar camp at the southern border, which is scheduled to be set up by 2010. Italy also supported Libya to establish an Automated Fingerprint System (AFIS) system at Tripoli airport and a security data system, which links 11 cities, mainly along the coast to assist police investigations. About 500 police officers were trained on various issues.

- In August 2007, the Belgian Immigration Office, together with ICMPD and IOPCR conducted a 2-day training on the management of reception and detention centres targeting Libyan officials.

- In the framework of its TRIM project (funded by the EC and the Italian Ministry of Interior), IOM aims at assisting 1.500 voluntary return cases from Libya to countries

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[280] Meeting with the General People's Committee for Public Security, 16.02.2008

of origin. There are plans to open a new centre where potential returnees could get information on Assisted Voluntary Return opportunities. The majority of migrants who wish to return are from West Africa and, recently, Sudanese have showed increased interest in voluntary return assistance. Interestingly, some Sudanese indicated to IOM that the increased school fees acts as a push factor for return. As conflicts continue in the Horn of Africa, Somali and Eritreans do not apply for the current AVR schemes and, to date, only one Ethiopian national sought IOM's assistance to return[281].

- UNODC's (United Nations Office on Drugs and Crime) project "Strengthening the Criminal Justice System Response to Smuggling of Migrants in North Africa: Algeria, Egypt, Libya, Morocco and Tunisia", funded under the EC Aeneas 2006 programme includes i) assessments and drafting of anti-smuggling legislation, ii) assistance in national policy development and establishment of co-ordination frameworks, iii) development of training curricula and delivery of training for law enforcement, prosecution and the judiciary; iv) specialised training in generating criminal intelligence and proactive investigations techniques, v) establishment of anti-smuggling law enforcement units, vi) activities to foster international law enforcement and judicial co-operation and vii) activities to raise awareness of the criminal aspects of smuggling of migrants and its adverse effects.

5.5.6 Recommendations

1a. The elaboration of a detailed research programme on irregular migration flows and trends to and through Libya, including a profile of who is migrating, would be beneficial in providing international and national actors with a greater understanding of the situation in the country, including the end target of mixed migration management measures.

1b. Since several agencies have a role in tackling illegal migration, pooling the knowledge, skills and expertise of all participating authorities and institutions in one central unit would contribute to the development of an integrated approach to fight illegal migration. Swift sharing and thorough analysis of all available relevant information as well as the ability to detect trends at an early stage are essential prerequisites for effectively combating illegal migration and related crime.

2. Support should be given to Libyan in bringing conditions in their detention centres in line with international human rights standards. This would range from the refurbishment of facilities and provision of urgently needed equipment to improve detention conditions to provision of training to staff on management issues and on human rights of detained persons. Increased assistance also needs to be provided to the Libyan authorities to enable them to cater for the needs of stranded migrants

3. In line with UNHCR's 10-Point Plan of Action (see section 7.5), support should be provided to the Libyan authorities to develop a differentiated approach to mixed migration, based on a humane system for managing irregular migration flows, which also ensures that the protection needs of asylum seekers are met. Such action would. It would include technical assistance in setting up screening and referral mechanisms which ensure:

3a. Proper registration of apprehended persons

3b. A first screening to distinguish between different motivations or types of migrant;

3c. Referral to the appropriate locations/ authorities ensuring due access to asylum procedures for those in need of international protection

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[281] Meeting with IOM Libya, 13.02.2008

3d. Protection of particularly vulnerable groups, especially women and unaccompanied minors.
4. At the regional level, Libya, just as all the countries along the East-African migration route, would greatly benefit from the further development and implementation of an informal regional migration dialogue in order to create links between relevant authorities and current/future migration management experts throughout the region. The creation of a Migration Resource Centre and RCP within IGAD will foster the exchange of knowledge and information, as well as boost regional know-how on mixed migration management. This could be linked to the Mediterranean Transit Migration (MTM) dialogue: Based on a two- pillar approach – security and migration-development – North African Arab partner states of the MTM dialogue could act as "twinning partners" to guide the inclusion of their Southern neighbours in such an informal dialogue.[282]

5.6 Refugee protection related matters

5.6.1 Background

Libya's proximity to conflict-ridden and unstable countries makes it a refugee receiving state, although the de facto lack of distinction between refugees and economic migrants makes it difficult to assess their exact numbers. The official approach towards refugees is ambiguous, as Libya does officially not recognise the presence of refugees on its territory. At the same time however, the official rhetoric also expresses sympathy towards refugees and recognizes that the reasons for flight from the countries of origin are genuine.

5.6.2 Legal and Institutional Framework

Libya is not a signatory to the 1951 Geneva Convention on the protection of refugees or its 1967 Protocol, but is party to the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa since 1981, which incorporates and expands the definition of refugees. Libya's protection legislation is fragmentary and there is currently no asylum procedure in place.[283] This, and the lack of distinction between economic migrants and refugees, makes it difficult to assess the number of refugees in Libya.

UNHCR's current caseload amounts to approximately 7000 persons of circa 16 nationalities. UNHCR conducts refugee status determination (RSD) and provides access to durable solutions notably i) self-reliance through integration in Libya by providing vocational training and assistance in job placement, ii) voluntary return in case the situation in the country of origin is safe and iii) resettlement to a third country.

The Libyan authorities grant UNHCR access to detention centres to identify persons in need of international protection. In some cases the UN refugee organisation manages to prompt the release of detained asylum seekers, with the notable exception of asylum seekers apprehended at sea.[284] It has been suggested that the pressure EU Member States exert on Libya to reduce irregular migration from Sub-Saharan African countries increases the latter's reluctance to hand asylum seekers over to UNHCR. This affects both on the human rights situation of Sub-Saharan African detainees and the functioning of resettlement schemes.

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[282] The proposed dialogue could also follow the Rabat Process approach and develop along three areas: illegal immigration, legal migration and migration and development.
[283] Article 11 of the Libyan Constitution Proclamation (1969) for instance prohibits "[t]he extradition of political refugees.", Hamood, African Transit Migration through Libya to Europe: The Human Cost, http://www.migreurop.org/IMG/pdf/hamood-libya.pdf, 2006, p. 19
[284] Meeting with UNHCR Libya, 13.02.2008

UNHCR's work in Libya benefits from co-operation with Libyan NGOs, such as IOPCR, which caters for the needs of refugees and asylum seekers in detention and the al-Wafa Charity Society for Humane Services and Relations, which provides vocational training to refugees.

5.6.3 Challenges

1. Due to the current absence of asylum legislation and protection system and as a consequence to the unclear state policy towards refugees, many refugees end up in irregular situation and cannot get adequate protection.

2. While population mobility across the Sahara has a longstanding tradition, conflict, environmental deterioration and economic decline paired with growing economically active populations have increased both labour emigration and forced migration from sub-Saharan Africa. Although admittedly it is difficult to make thorough assessments about the quantitative dimension of these migrations trend it is safe to say that the heterogeneous nature of these migration flows, comprising traditional trans-border mobility, labour migration, asylum migration and irregular migration, pose particular challenges to Libya's migration management infrastructure and capacities. The country is presently not in a position to provide appropriate responses to the different migrant categories (also see section 6.3).

3. During the EAMRI mission, a group of 700 Eritreans was apprehended and detained in a camp pending deportation in Misratah, this despite their claims that return to Eritrea was not safe. Indeed, Eritrea is notorious for human rights violations and has in the past detained and allegedly tortured nationals upon return from Libya.[285] UNHCR has resettled a number of these Eritrean nationals who were granted refugee status but the opportunities for resettlement are limited. In case of resettlements, single women are favoured in order to protect them from potential abuse in camps. UNHCR, the Vatican and Switzerland, via IOPCR, provided the remaining Eritreans in detention with medical care, blankets and water.[286]

5.6.4 Governmental Measures

Recent developments testify to the fact that Libya has started changing its refugee protection policy. A national committee, established by a decree of the General People's Committee for Justice, recently finalised a draft law on refugees. The draft law was submitted to UNHCR for consideration and advice.[287]

The General People's Committee for Manpower Employment and Training closely co-operates with UNHCR in the provision of services to refugees, such as vocational training and an alphabetisation programme. Libya also shows commitment to contributing to the integration of refugee children by exempting them from school fees.[288]

5.6.5 International Support Activities

- UNHCR has developed the *Refugee Protection and Mixed Migration: a 10-Point Plan of Action,* which aims at addressing the challenge of mixed migration management in a comprehensive manner. This Action Plan is particularly relevant for Libya as it addresses key challenge and foresees the inclusion and support of core actors (governmental, international, NGOs et al.). Areas targeted by the Action Plan are: data collection and analysis; protection-sensitive entry systems; reception arrangements; mechanisms for profiling and referral; differentiated processes and

[285] Human Rights Watch (HRW), Libya: Summary Deportations Would Endanger Migrants and Asylum Seekers, http://hrw.org/english/docs/2008/01/17/libya17810.htm, 17 January 2008
[286] Meeting with UNHCR Libya, 13.02.2008
[287] Meeting with UNHCR Libya, 13.02.2008
[288] Meeting with IOM Libya, 13.02.2008

procedures; solutions for refugees; addressing secondary movements; return arrangements for non-refugees; information strategy. A proposal for funding the implementation of the *10-Point Plan of* Action has been submitted by UNHCR together with IOPCR and ICMPD under the *EC Thematic Programme of Co-operation with Third Countries in the Areas of Migration and Asylum*. A tripartite agreement between UNHCR, IOPCR and ICMPD to support the implementation of the 10-Point Plan of Action has been developed and is expected to be signed before summer 2008.

- IOM is handling third-country resettlement, voluntary repatriation, as well as travel arrangements and the logistics for repatriation.

5.6.6 Recommendations

> 1a. In close co-operation with UNHCR, increased support needs to be given to the Libyan authorities to implement the African Union Convention on Specific Aspects of the Refugee Problem in Africa.
>
> 1b. The General People's Committee for Manpower, Employment and Training would like to expand its support activities for refugees. This will require the further development of the Committee's capacities to provide language classes, computer courses and general education.
>
> 2a. Libya needs increased assistance to provide the appropriate administrative responses to manage the entry and residence of the varying migrant categories moving with mixed migration flows. Therefore, continued support needs to be given to the implementation of UNHCR's *Refugee Protection and Mixed Migration: a 10-Point Plan of Action* (see section above), in order to enable the Ethiopian government to provide adequate responses to mixed migration flows (see section 6.6).
>
> 2b. The rights of persons in detention pending deportation should be safeguarded, including access to legal counsel and due process. Organisations providing legal advice to migrants and refugees should be supported with implementing related training programmes.

5.7 Trafficking in human beings

5.7.1 Background

Libya is a transit and destination country both for men and women from Sub-Saharan Africa and Asia, although little is known about the real extent of these migration flows.[289] Sub-Saharan women seem to be trafficked via Libya to Western Europe in mixed migration flows, using the same routes as smuggled persons and refugees. Moreover, according to IOM, it was noticeable that many Asians, who were trafficked through Libya, had been recruited by "labour agencies".[290]

5.7.2 Legal and Institutional Framework

Libya ratified the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the UN Convention against Transnational Organised Crime in 2004. However, there is no specific anti-trafficking legislation in place yet, and labour law was applied to prosecute the very few trafficking cases that were put on trial.[291]

5.7.3 Challenges

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[289] US DoS Trafficking in Persons Report, http://www.state.gov/g/tip/rls/tiprpt/2007/, 2007
[290] Meeting with IOM Libya, 13.02.2008
[291] Ibid

1. Lack of data hampers the development of an effective anti-trafficking strategy and action plan.

2. The absence of a comprehensive anti-trafficking legislation criminalizing all forms of trafficking hampers the investigation, prosecution and sentencing of trafficking in human beings.

3. It can be assumed that the lacking screening capacities to determine whether a migrant is in need of protection (see section 6.3 and 7.3) also affect victims of trafficking who might not be recognised as such and be deported as illegal migrants.

5.7.4 Governmental Measures

The awareness of reality of trafficking in human beings is rising in Libya and there is readiness on the part of the Libyan authorities to engage in more anti-trafficking activities and pursue training activities on this front. "Labour agencies" engaged in trafficking of women were shut down by the authorities in an immediate reaction to hints in that regard[292].

5.7.5 International support and activities of civil society organisations

- IOM has commenced several anti-trafficking activities with a focus on awareness raising and sensitisation. In particular, IOM is delivering counter-trafficking modules for government officials, including law enforcers, as well as for representatives of charitable institutions and religious personnel.

- At present, several project proposals that aim at fighting trafficking in human beings are being considered by the EC for funding.

5.7.6 Recommendations

1. A basic precondition for developing a comprehensive national response to trafficking is the systematic collection and management of statistical data relevant to trafficking in human beings. Continued support should be given to Libya to improve the quality and reliability of data collection (including databases) and the use of collected data.

2. Libya needs a comprehensive policy targeting the elimination of trafficking, and providing guidance to and co-ordinating the efforts of different stakeholders. The legal framework should entail a comprehensive set of laws that clearly define and address the issue of human trafficking. Libya would benefit from expert advice to implement the Ouagadougou Action plan to Combat Trafficking in Human Beings, Especially Women and Children, adopted by the Ministerial Conference on Migration and Development in Tripoli in November 2006.

3. Support should be provided to the Libyan authorities to set up an identification and referral system for victims of trafficking in human beings and to provide them with protective services including medical, psychological and repatriation assistance.

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[292] Meeting with IOM Libya, 13.02.2008

6 Conclusions

Migration from the Horn of Africa and along the East Africa migration route has to be seen against the background of violent conflict and political instability. Consequently, managing migration and in particular fighting irregular migration, is not necessarily a priority in a region that faces concerns of greater importance. Ethiopia is one of the poorest countries in the world, ranking 98th among 102 developing countries of the Human Poverty Index (HPI). Kenya ranks 60th in HPI order.

There is an increased appreciation for the fact that well-managed migration benefits African countries and contributes to the achievement of the Millennium Development Goals.[293] In particular, there is an overall increased recognition of migration as generating remittances and contributing to poverty reduction, as well as the link between returned expatriates who import vital skills and expertise that positively contribute to development in their home countries. However, maximising benefits and minimising the negative impacts of migration requires appropriate migration management frameworks and human capacities.

While each of the surveyed countries face specific constraints to its migration management capacities, Ethiopia, Kenya and Libya also share a number of common challenges, namely:

- Lack of data and research on migration in and from the region;

- Lack of a coherent and institutionalised national framework to co-ordinate migration management;

- Deficiencies in the areas of staff training, technical equipment and means of communication;

- Lack of effective information sharing and co-ordination mechanism for operational activities migration-related agencies;

- Lack of capacities to provide adequate responses to mixed migration flows.

This report has put forward a number of recommendations that can form the basis for international support activities in the area of regular migration, visa, border management, irregular migration, trafficking in human beings, refugee protection and migration-development. Reasonably, it is important to begin with support activities that ensure an adequate foundation – that is, research, policy development and strengthened institutional capacities - on which further assistance can be built. Since these prerequisites often take time to establish and are thus medium- to long-term in scope, it is recommended to simultaneously initiate short-term initiatives that could yield early and visible successes. At this point, a number of general recommendations are reiterated, which should form the baseline for future migration capacity-building projects:

- Just as any international support interventions, migration-related capacity-building projects have to be placed in the broader context of sustainable development. In the Ethiopian and Kenyan context, all activities touching upon development should hence be aligned to the national poverty reduction strategies. At the regional level, international support activities need to make sure that they reflect the priorities of the New Partnership for Africa's Development (NEPAD).[294]

- Representatives of the African Union (AU) underlined the massive task lying ahead of the African countries after the conclusions of the Tripoli Ministerial Conference in 2006[295] and the EU- Africa Summit in Lisbon in 2007. While this momentum should be used to provide the needed support to African States, co-ordination and co-

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[293] See Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006
[294] The New Partnership for Africa's Development (NEPAD), October 2001
[295] Joint Africa-EU Declaration on Migration and Development, Tripoli, 22-23 November 2006

operation at regional and national level will be important to pool resources and avoid duplication.

- Regional co-operation needs to be mainstreamed in all migration-related support activities, involving in particular countries placed along one migration route.

- Data and research on migration is almost non-existent in the three countries surveyed. Strengthening data collection, data management and research capacities in all three countries would provide a sound basis for the formulation of informed migration policies and proper management planning (including resources). Formulating and implementing migration policies is another important area for support interventions.

- More international support efforts need to be devoted to develop the countries' own capacities to manage migration. As migration flows vary, routes shift and modus operandi of smugglers and traffickers change, governmental structures need to be able to adapt to the changing realities. Such long-term capacity-building support has to be considered complementary to the required short-term assistance, which provides for the needs of individuals and specific migrant categories.

- Continued international support needs to be given to the countries' immigration services to recruit, develop and equip their staff. Well-trained immigration officers are at the core of an efficient migration management system. Immigration officers need to know how to collect and analyse data, operate procedures and adequately apply the legal frameworks. Furthermore they need to be provided with and able to use the appropriate equipment to perform their tasks.
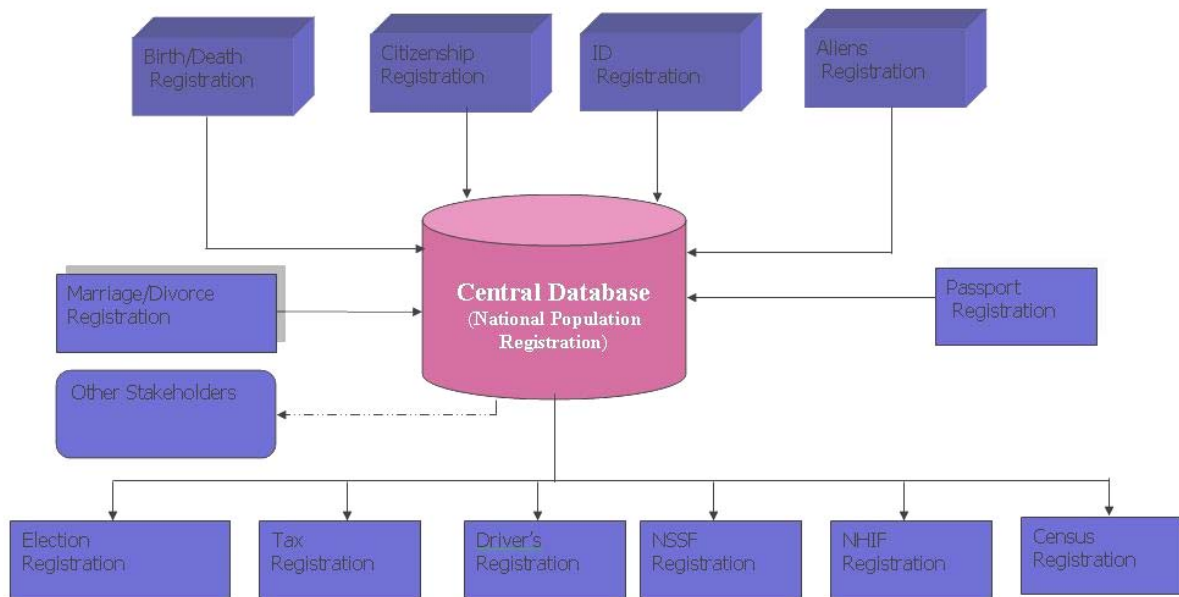
7 Annexes

7.1 Annex I: Second generation Kenyan ID cards
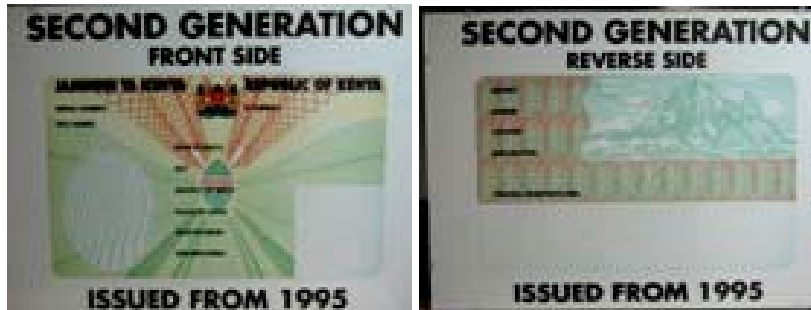
7.2 Annex II: Overview of the planned Kenyan IPRS Central Database

7.3 Annex III: List of Meetings in Ethiopia

African Union (AU)
Agency for Refugee and Returnee Affairs
EU Embassies
Institute for Security Studies (ISS)
International Committee of the Red Cross (ICRC)
International Labour Organization (ILO)
International Organization for Migration (IOM)
Main Immigration Department
Ministry of Foreign Affairs
Ministry of Labour and Social Affairs
United Nations Economic Commission for Africa (UNECA)
United Nations High Commissioner for Refugees (UNHCR)
United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA)
US Embassy

7.4 Annex IV: List of Meetings in Kenya

Children's Services Department
CRADLE – The Children's Foundation
EU Missions
Federation of Women Lawyers (FIDA)
Immigration Department
International Committee of the Red Cross (ICRC)
International Organization for Migration (IOM)
Interpol
Jesuit Refugee Services (JRS)
Ministry of Justice and Constitutional Affairs - Programme Co-ordination Office Governance, Justice, Law and Order Sector (GJLOS) Reform Programme
Ministry of Labour & Human Resource Development
Nairobi Immigration Liaison Officer Group (NAIL)
Refugee Consortium Kenya (RCK)
Serious Organised Crime Agency (SOCA)
United Nations Development Programme (UNDP)
United Nations Development Programme (UNDP) Somalia: Quest
United Nations High Commissioner for Refugees (UNHCR)
United Nations Office for the Co-ordination of Humanitarian Affairs (UNOCHA)
United Nations Office on Drugs and Crime (UNODC)

7.5 Annex V: List of Meeting in Libya

CEN-SAD
EU Missions
Gaddafi Foundation
General People's Committee for Finance - Customs authority
General People's Committee for Manpower, Employment and Training
General People's Committee for Public Security - Department for Passport investigation
General People's Committee for Public Security - Department of International Relations and Co-operation;
General People's Committee for Public Security - Drug Authority
International Organisation for Migration (IOM)
International Organisation for Peace, Care and Relief (IOPCR)
United Nations Development Programme (UNDP)
United Nations High Commissioner for Refugees (UNHCR)
United Nations Office on Drugs and Crime (UNODC)

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The European Union's Global Approach to Migration uses the concept of migration routes to develop and implement migration policy thereby highlighting the importance of operational co-operation between countries of origin, transit and destination. The East Africa Migration Route Gaps and Needs Analysis project, funded by the United Kingdom Border Agency and implemented by the International Centre for Migration Policy Development (ICMPD) is placed in the context of the Global Approach and more specifically the East Africa Migration Route Initiative (EAMRI), for which the UK has the lead.

The report at hand is the result of three field research missions to Ethiopia, Kenya and Libya, which took place between December 2007 and February 2008 within the framework of this project. A broad spectrum of migration-relevant topics are covered, ranging from legal and irregular migration, combating trafficking in human beings and smuggling of migrants, strengthening protection for refugees, enhancing migrant rights and harnessing the positive links between migration and development. The recommendations put forward include short-term actions, as well as longer-term projects to address the root causes of irregular migration.