



SEEKING SAFETY, FINDING FEAR

REFUGEES, ASYLUM-SEEKERS AND
MIGRANTS IN LIBYA AND MALTA

AMNESTY
INTERNATIONAL



Many thousand Somalis flee their war-torn country every year in search of safety. For those who reach Libya, indefinite detention, torture and other abuses await them. Many then embark on perilous sea journeys towards Europe. Those who survive often end up in Malta, where they face detention followed by isolation and poverty in cramped accommodation.



Tens of thousands of Somalis flee every year to escape the conflict that has ravaged their country since 1991. Some go to neighbouring countries, but many travel further afield to seek refuge. They take long, expensive and dangerous journeys, often through Ethiopia, Sudan and Libya. In Libya, their hopes are often shattered as they face arrest, indefinite detention, torture and other abuses – and they have no possibility to seek protection or remedy.

Many use all their savings to embark on risky journeys across the Mediterranean. Some perish at sea. Some are intercepted and returned to Libya by Italian or Libyan patrol vessels. Those who reach Europe may face detention. In Malta, for example, Somalis, like other asylum-seekers, are detained on arrival, although most are eventually recognized as needing protection, released from detention and transferred to open residential centres. There, they live on a small allowance in overcrowded and unhygienic conditions with scant chances of a better future or integration into Maltese society. Many suffer from mental health problems.

Amnesty International delegates visited Malta in September 2010 and interviewed many Somalis about their hazardous journeys and subsequent ordeals in Libya and Malta.

A dinghy in distress

On 17 July 2010, a group of 55 Somalis travelling in a dinghy from Libya to Europe found themselves in distress and were intercepted and rescued, some 45 miles south-east of Malta. Twenty-eight were taken to Malta by an Armed Forces of Malta (AFM) P-52 patrol vessel, while 27 were returned to Libya by a Libyan patrol boat.

The Maltese authorities said that the 27 – 18 men and nine women – returned to Libya voluntarily. However, some of the Somalis interviewed by Amnesty International gave a different account. They said that the first vessel to approach them was the Maltese boat: it picked up five women considered particularly vulnerable, but left everyone else in the dinghy after handing out life-jackets, water and biscuits. Shortly after, another ship approached. The Somalis were addressed in English and Italian. Thinking that they would be taken to Italy, 27 of them boarded the vessel. When one of them overheard Arabic, he

FAMILY SEPARATED

Having initially fled to Libya from Somalia, Ahmed Mahmoud and Mariam Hussein, then seven months' pregnant, decided to leave Libya because Ahmed could not find work and because they lived in constant fear of being detained. Several times, they were robbed by Libyan teenagers, but dared not complain to the police for fear of being arrested. On 17 July they were separated during their boat journey to

Europe. Mariam did not realize that the ship she was boarding was Libyan. Ahmed told Amnesty International that when he asked the Maltese personnel to be reunited with Mariam, he was told that it was too late as the Libyan ship had already left. The Maltese authorities state that Ahmed never told them that Mariam was on the Libyan ship. Mariam's baby was stillborn some two months after her return to Libya.

'It is better to die in the sea than return to Libya'

Farah Anam, Somali woman who arrived in Malta in July 2010 via Libya, interviewed at Hal Far Reception Centre, Malta, September 2010



© Associated Press

Rescued refugees, asylum-seekers and migrants being taken back to Tripoli in Libya.

attempted to jump overboard screaming "they are Libyans". Those still in the dinghy refused to board the ship once they realized it was Libyan. Some panicked, jumping into the water or threatening to commit suicide. The Maltese vessel, which was reportedly standing nearby, then picked up the remaining Somalis on the dinghy and took them to Malta.

Even though Maltese personnel took some steps to prevent families from being split up, one man told Amnesty International that he was separated from his pregnant partner who was returned to Libya (see box left). Their actions also resulted in 27 Somalis – who are eligible for international protection when fleeing central and southern Somalia

– being returned to Libya, where they lack any prospect of international protection, and where they are at risk of torture and other human rights abuses.

All 27 were immediately detained in Libya for periods ranging from a few days to a few weeks. In detention, according to reports, all males were lined up against a wall and beaten with batons, and some were given electric shocks during interrogation. Two men remain in unknown places of detention, allegedly because they are believed to have organized the crossing.

The 28 Somalis taken to Malta were all released from detention within two months and granted international protection.

The Maltese authorities continue to deny any wrongdoing. In September 2010 they told Amnesty International that, in the context of the 17 July and other similar incidents, Malta does not consider that it has international obligations towards asylum-seekers beyond ensuring the physical safety of individuals in distress at sea.

Under international law, however, states that have effective control, authority or power over third-country nationals rescued or intercepted at sea have obligations that extend outside their territories, including the high seas. At a minimum, they must:

- ensure access to a full, fair and satisfactory asylum determination procedure to assess individuals' eligibility for international protection; and
- not return any individuals, either directly or indirectly, to a country or territory where they would face a real risk of persecution or serious harm.

Misratah detention centre, Libya. It was considered a “model” centre that was visited by UNHCR and its partners prior to the closure of UNHCR’s operations in Libya in June 2010. Amnesty International visited the centre in May 2009 and collected testimonies from asylum-seekers, including Somalis, who had been detained there for over two years.



COMPLICITY OF THE EUROPEAN UNION

The EU and its member states are ignoring Libya’s dire human rights record and actively seeking its collaboration to stem the flow of people arriving in Europe from Africa. The Libyan authorities complain that the EU expects Libya to act as its “guard”, but seem to be willing to play this role for a price. In late August 2010, Libya’s leader, Colonel Mu’ammar al-Gaddafi, requested €5 billion to halt the “influx of starving and ignorant Africans” to Europe. About a month later, the European Commission signed an agreement with Libya covering “the management of migration flows” and “border control”, in return for financial assistance of €50 million until 2013.

Negotiations over an EU-Libya Framework Agreement, including on “readmission of third-country nationals” who have transited through Libya on their way to Europe, have been ongoing for the past two years. In August 2008 Libya

agreed to allow third-country nationals intercepted at sea by Italian vessels to be disembarked on its soil, and to patrol the Mediterranean with boats donated by Italy. Since then, arrivals of refugees, asylum-seekers and migrants in Europe have decreased significantly. In 2010, for example, 28 arrived in Malta, compared to about 1,500 in 2009 and 2,775 in 2008.

The Maltese authorities acknowledge the role played by Libya. For example, Foreign Affairs Minister Tonio Borg was quoted in September 2010 as supporting Libya’s request for financial assistance to better patrol its borders.

Amnesty International is deeply concerned about the impact of Libya’s “assistance” to the EU and its member states on the human rights of refugees, asylum-seekers and migrants.

LIBYA: NOWHERE TO TURN FOR HELP

More than three million “irregular migrants” are in Libya, according to the Libyan authorities. They include people who have fled conflict and persecution and need international protection. Despite this, the Libyan authorities insist that there are no refugees in Libya and resist calls to ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. They also refuse to sign a memorandum of understanding with the UN High Commissioner for Refugees (UNHCR).

UNHCR’s ability to assist people in need of international protection in Libya is extremely limited, particularly after the authorities shut down its operations in June 2010. The authorities have since allowed a limited resumption of UNHCR’s operations, but its staff is denied access to detention centres and cannot consider new asylum claims.

Libya ratified the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa in 1981, but has yet to



'The key in the reduction of new arrivals lies in Libya's hands.'

Administrator in Hal Far Hangar, Malta, September 2010, speaking about the arrivals of refugees, asylum-seekers and migrants

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introduce asylum procedures despite repeated promises over the years. Since there is no asylum system, nobody can apply for asylum. This leaves thousands of asylum-seekers and refugees in Libya, including Somalis, in a legal limbo and increases the likelihood that they will be forcibly returned to places where they face a real risk of torture or other human rights violations.

Amnesty International opposes all forcible returns to southern and central Somalia, and believes that the majority of Somalis should be granted asylum or another form of international protection. In May 2010, UNHCR stated in its Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Somalia: "In view of the serious and widespread violations of human rights and the ongoing armed conflict and insecurity in much of southern and central Somalia and some parts of Somaliland and Puntland, UNHCR considers that many Somali asylum-seekers are in need of international protection".

Criminalization of irregular migration and detention

Any foreign national who enters, stays in or leaves Libya irregularly, for example without the appropriate visa or through unofficial border posts, faces prosecution. Libyan legislation criminalizes such people without distinguishing between migrants and refugees, victims of trafficking or others in need of international protection. In July 2010, a new law – Combating Irregular Migration – was made public. It allows for the indefinite detention, followed by deportation, of those considered to be irregular migrants. Those detained cannot challenge the grounds of their detention or of deportation decisions.

In recent years, the Libyan authorities have held thousands of individuals, including Somalis, considered to be irregular migrants in detention centres in overcrowded and unhygienic conditions. Almost all were never charged for breaching immigration regulations, nor offered a way to challenge their indefinite detention. Amnesty International has documented cases where

ABDI MAHMOUD

Abdi Mahmoud was 23 when he reached Malta in July 2010. He told Amnesty International that he left Somalia in May 2009 after his brother was killed by the al-Shabab armed group. He reached Libya, where he lived in constant fear, particularly after he was detained in Kufra in the south-east of the country. There, he was held in a cell with about 70 other men and routinely beaten. Once, in response to his request for water, the guards took him outside, forced a water hose into his mouth and turned on the tap. When he begged them to stop, he was beaten so severely with sticks that he still has marks on his back. After his release, he constantly worried that police would raid his home. He did odd jobs to support himself, but was not always paid by his Libyan employers. He had nowhere to go to seek protection. He says that he tried to approach the UNHCR office in Tripoli, but was chased away by a Libyan guard. He then felt he had little choice but to take the dangerous journey by sea to Europe, and ended up in Malta.

6 individuals were held for three years. Some of those detained had to bribe guards to secure their freedom.

It was only in July 2010 that the authorities released over 4,000 foreign nationals from detention and issued them with residence permits valid for three months. However, the people concerned feared renewed detention and deportation as soon as the permits expired. Such fears were substantiated when the Libyan authorities described foreign nationals as “temporary guests” who must eventually “return to their countries of origin”.

The lack of transparency in decision-making processes in Libya and the fact that the most vulnerable remain outside of the protection of the law leaves asylum-seekers in Libya uncertain and fearful about their future.

Impunity for torture and other ill-treatment

Torture and other ill-treatment of refugees, asylum-seekers and migrants is systematic in Libya. Most commonly, detainees are punched or hit with metal wires or batons. Sometimes, guards hit detainees to punish them for requesting medical treatment or complaining about their conditions; at other times, the beatings appear to be done for no reason at all.

The conditions in some detention centres could in themselves amount to torture or other ill-treatment. Detainees are never allowed outside. They are made to sleep on the floor with barely room to move. They are not provided with safe drinking water. They are routinely denied medical treatment.

Women are particularly vulnerable. Some women previously detained in Libya told Amnesty International that women in labour were not always taken to hospital. In one case, a woman reportedly had to cut her umbilical cord with a piece of dirty metal. Her baby was stillborn and she received no medical care.

Sa’adiya Moussa, a Somali woman, told Amnesty International in Malta that she had a miscarriage in Ganfouda detention centre in Libya after guards beat and kicked her and pushed her to the ground, causing



Zlitan detention centre, Libya. According to testimonies collected by Amnesty International, individuals believed to be irregular migrants and detained in Zlitan are never allowed outdoors, are held in overcrowded and unhygienic rooms for months on end, and are beaten and otherwise abused by guards.

severe bleeding. A week lapsed before she was taken to hospital.

The climate of impunity for Libyan officials means that torture and other ill-treatment are likely to continue.

At liberty to be abused

Foreign nationals, particularly Sub-Saharan Africans, rarely if ever feel secure in Libya. Racist insults such as “blacks”, “animals” and “slaves” are frequently shouted at them. They are attacked or robbed in the street with impunity, as their assailants know their victims dare not complain to the police. In those rare instances when foreign nationals have approached the police, investigations are not known to have taken place.

Their sense of insecurity is deepened by frequent police raids on their houses to make arrests or simply to pillage belongings. Sub-Saharan Africans are also at risk of exploitation by Libyan employers; many have told Amnesty International that they are often not paid and have no means to claim their rights.

Instead of countering the racism, Libyan officials often publicly blame “Africans” for crime and the spread of diseases.

ABBAS AHMED SAHEL

Abbas Ahmed Sahel was rescued by the AFM boat on 17 July and taken to Malta. He told Amnesty International that he fled Somalia in early 2009 after his wife was killed and he was injured during an attack by armed groups. He spent 18 months in Libya, 11 of them in various detention centres. He said that in Kufra, the guards beat him and poured boiling water on him because he had asked for food and medicine. He did not receive any medical treatment, even after his leg became swollen as a result of the burns. He had to sleep on a mattress on the floor, drink water from a hose in the toilet, and was never allowed outside.



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MALTA: DETENTION, POVERTY AND ISOLATION

Between 2002 and May 2009, when Italian patrol boats started intercepting third-country nationals at sea, around 13,000 individuals arrived in Malta by boat from Libya. Most originated from Somalia, but some were from Eritrea, Sudan and other Sub-Saharan and North African countries. According to officials, in July 2010 some 4,000 foreign nationals living in Malta originated from the African continent.

While large migration flows pose challenges for a small country like Malta, they do not free Malta from its obligations under international and regional human rights law, including the European Convention on Human Rights.

Mandatory detention

After their ordeals in Libya and dangerous sea voyages, many asylum-seekers and migrants hoped that Malta would be a safe haven. Instead, they feel they are treated like criminals as they are detained on arrival. Under Maltese legislation, anyone

arriving in an irregular manner is issued with a removal order and subject to mandatory detention. While the maximum period of detention is not specified, government policy is that asylum-seekers can be detained for up to 12 months unless their claims are determined before, while migrants who do not apply for asylum or whose claims are rejected can be detained for up to 18 months.

‘Why am I detained? I am not a thief, a killer, a criminal. We live like animals...’

Sudanese detainee in the Safi Barracks, Malta, September 2010

Vulnerable individuals, including minors and pregnant women, are released from detention once the necessary arrangements are made. However, procedures for screening individuals with less visible “vulnerabilities”, such as people with mental health problems, are inadequate, and the needs of those identified as vulnerable are not adequately addressed.

Above: Hal Far Tent Village, where conditions are appalling.

Right: At Hal Far Hangar, about 16 to 20 people share each metal container; these lack privacy and basics such as toilets.

Maltese authorities justify mandatory detention on security grounds. No alternative non-custodial measures are in place, despite international and European standards which specify that detention of asylum-seekers and irregular migrants can be justified only in the most exceptional circumstances as a last resort. Moreover, to be lawful, detention requires a thorough assessment of the situation of each individual.

Malta lacks effective legal remedies to challenge detention for individuals detained for “immigration offences”. As a result, in July 2010 the European Court of Human Rights found Malta in violation of Article 5 of the European Convention on Human Rights, in the case of *Louled Massoud v Malta*.



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Open-ended removal orders are issued from the moment someone arrives in Malta without a visa or relevant documentation. Accordingly, rejected asylum-seekers can be removed months or years after their arrival in Malta, while their right to challenge removal can be exercised only in a limited time frame. In practice, a challenge at point of enforcement is often impossible.

In mid-September 2010, 95 people were detained in Malta for “immigration offences”, including nationals from Ethiopia, Somalia and Sudan. Conditions in detention have improved due to refurbishments and the reduced number of arrivals since mid-2009. However, people held in the Safi Barracks, the only functioning detention centre for “immigration offences” in Malta, told Amnesty International that they resent being treated like criminals, suffer from mental health problems, and feel helpless to change their situation.

Inadequate asylum procedures

Between 2002 and 2010, over 6,000 individuals were granted some form of

protection by the Refugee Commissioner in Malta, the official body responsible for examining asylum claims.

The decrease in the number of arrivals since mid-2009 has reduced the time needed to process new asylum claims. For instance,

NASRA WARSAME

Nasra Warsame, a 20-year-old Somali woman, was rescued by the AFM boat on 17 July along with her baby. On arrival in Malta, she was taken to a hospital for a check-up and then detained at the Safi Barracks for about five days before being transferred to the open Hal Far Reception Centre for families. She is concerned about her future in Malta as she thinks that she will not be able to work without day care for her child.

Despite this, she is glad to have escaped from Libya, where she had been held in Agdebia, Zlitan, Ganfouda and Az-Zawiya detention centres. She described conditions there as “appalling”, but singled out Zlitan which she said felt like a grave. She was pregnant at the

the 28 Somalis who arrived in Malta in July 2010 were all granted international protection within two months.

In another positive development, the Refugee Commissioner decided to reconsider a number of rejected claims of nationals

time, and shared her windowless cell with 40 other women. They could not go outside, and had to drink water and wash from the same tap in the toilet inside their cell. She said that women were not provided with any medical care or sanitary products. Nasra Warsame said that on one occasion her cellmates asked the guards for help because she was vomiting. The guards responded by dragging her into the yard, then insulted and beat her for about an hour. She was released after paying a guard US\$1,000 with money sent by her family. After giving birth, she decided to leave Libya but had to travel without her husband because they could not afford the US\$1,200 passage fee for both of them.



Above: At Hal Far Hangar, hundreds of foreign nationals were assigned places in this vast windowless metal hangar, where conditions lacked basic hygiene. The hangar is no longer used to house people.

Right: A man at Hal Far shows Amnesty International delegates the marks on his legs left by rats that bit him as he slept in the large plane hangar.

Far right: Inside a tent in Hal Far Tent Village, showing holes in the canvas and the cramped living conditions.

from the Democratic Republic of Congo, Ethiopia and Sudan in light of developments in their countries of origin.

However, concerns remain around the right of rejected asylum-seekers to appeal effectively. For instance, negative decisions are not sufficiently reasoned, depriving rejected asylum-seekers of the opportunity to challenge successfully the decision. Moreover, asylum-seekers and their lawyers are not granted full access to the case file.

Further, the Refugee Appeals Board holds its sessions behind closed doors and is reported to have reversed decisions in only four cases between 2002 and 2008.

Open centres and poor conditions

After they have spent the maximum period allowed in detention or have been granted some form of protection, individuals are assigned places in open centres. Most centres are run by the Agency for the Welfare of Asylum Seekers and include specialized facilities for single women, families, and unaccompanied minors. None of the centres is adequately staffed; in particular, they lack medical and social care workers. Residents also complain about overcrowding, poor sanitation, the lack of privacy and the absence of recreational activities.

Amnesty International saw the deplorable conditions in the Hal Far Hangar and Hal Far Tent Village, which jointly house over 1,000 people. Between 16 and 20 people live in each metal container or tent with no direct access to running water. There are no proper sanitation facilities and the residents

share about 15 toilets and showers in each centre. The estimated 45 tents in Hal Far Tent Village are torn and provide inadequate shelter from rain and cold.

These conditions cannot be justified by a lack of resources. Government officials told Amnesty International that open centres should not be “pull factors” that “entice” people to stay indefinitely and depend on hand-outs. At the same time, however, no effort is made to integrate such people into Maltese society.

Most residents who would be allowed to work cannot find employment and are offered few training opportunities. They have to survive on a monthly allowance of about €130 which they receive on condition that they register three times a week. Since centres are often located far from commercial centres, this condition further impedes their ability to search for work. In what seems to be a punitive measure, the allowance is reduced to €80 per month for those who return to Malta after attempting to apply for asylum in other EU member states.



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Although official policy stipulates that residents are entitled to stay in open centres for up to a year, several Maltese officials assured Amnesty International that no residents are expelled, arguing that they do not want them to become “a burden on Maltese society”. Maltese authorities are actively trying to find resettlement places in the USA or relocation opportunities in other EU member states for residents recognized as refugees or otherwise in need of international protection, but do not make an effort in ensuring their economic, social and cultural rights within Malta. Thousands are left with a bleak future.

SOMALI HUMAN RIGHTS DEFENDER

Mohamed Ismail (not his real name), a human rights defender, left Somalia in July 2008 following death threats from the al-Shabab armed group. He was scared because several Somali human rights defenders had been killed. After a long journey through Kenya, Uganda, Sudan and Libya, he finally reached Malta in January 2009. He was rescued at sea by a Maltese military patrol vessel and then transferred to a detention centre in Ta’Kandja.

During his seven months in detention, he suffered from depression. He did not have access to outdoor space and was trapped with 48 other men in a cell equipped with three

showers and two toilets. Most nights he could not sleep as he was worrying about his mother, wife and six children in Somalia.

When he was granted protection and transferred to Hal Far Hangar, he slept on a mattress on the floor inside the windowless metal hangar with 450 other people. He said that sanitary conditions were so poor that rats bit him at night. Now he lives in a container with 15 other men. He is contesting the decision of the Refugee Commissioner not to recognize him as refugee. He told Amnesty International: “I defended human rights in Somalia, now I am waiting for someone to defend my rights.”

Front cover: An Italian patrol boat brings refugees, asylum-seekers and migrants back to Libya after “rescuing” them at sea. Libya has agreed to the disembarkation on its soil of third-country nationals intercepted at sea, including in international waters, by Italian patrol boats.

© AP Photo/Abdel Magid al Fergany

ACTION NEEDED

Write to the European Commissioner for Home Affairs, calling on her to:

- ensure that agreements with Libya in the area of migration and asylum, and implementation of these, fully respect the rights of asylum-seekers, refugees and migrants, and that adequate protection standards are enshrined in such agreements and observed in practice;
- ensure that Malta complies with international human rights standards, and with relevant EU law, including the Charter of Fundamental Rights, with regard to legal safeguards against arbitrary detention and removal, to reception conditions of asylum-seekers, and to effective asylum determination procedures;
- ensure that search and rescue operations comply with international human rights and refugee law and standards, in particular as regards access to asylum and protection against forcible return to places where there is a risk of persecution or other serious human rights abuses.

Write to:

Cecilia Malmström
Commissioner for Home Affairs
European Commission
B-1049 Brussels

cecilia.malmstrom@ec.europa.eu
Salutation: Dear Commissioner

Amnesty International is also making the following recommendations:

To the Libyan authorities:

- ratify the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, adopt asylum legislation consistent with international law and standards, and sign a memorandum of understanding with UNHCR without further delay;
- amend legislation to guarantee that any asylum-seeker or migrant is only detained on the basis of an individual decision which is demonstrably lawful and in line with relevant international human rights and refugee law and standards;
- guarantee the rights of refugees, asylum-seekers and migrants to legal counsel and interpretation services, and ensure that they have the right to challenge the lawfulness of their detention and expulsion;
- protect migrants from violence, threats, intimidation and abuse; conduct full, independent and impartial investigations into allegations of torture or other ill-treatment of refugees, asylum-seekers and migrants by Libyan law enforcement agents; and bring to justice all those responsible whether they are state officials or private individuals; and
- do not return, in any manner whatsoever, people in need of international protection to a country where they are at risk of persecution or other serious human rights abuses.

To the Maltese authorities:

- take the necessary steps to ensure that search and rescue operations comply with international human rights and refugee law, in particular as regards access to asylum and protection against return to a country where there is a risk of persecution or other serious human rights abuses;
- end the practice of mandatory detention of asylum-seekers and irregular migrants, and ensure effective remedies to challenge detention and removal in line with international human rights and refugee law, as well as EU standards;
- adopt and implement operating standards for detention and open residential centres that meet relevant international standards;
- provide sufficient medical staff and social workers in open centres to ensure that the needs of residents, particularly vulnerable individuals, are adequately addressed;
- ensure that decisions concerning eligibility for international protection comply with international human rights and refugee law; that appellants and their lawyers are given access to the relevant documentation; and that appeals are held in the presence of the asylum-seeker;
- ensure that asylum-seekers, refugees and migrants can exercise their economic, social and cultural rights.

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Amnesty International is a global movement of 2.8 million supporters, members and activists in more than 150 countries and territories who campaign to end grave abuses of human rights.

Our vision is for every person to enjoy all the rights enshrined in the Universal Declaration of Human Rights and other international human rights standards.

We are independent of any government, political ideology, economic interest or religion and are funded mainly by our membership and public donations.

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