



UNITED NATIONS  
**HUMAN RIGHTS**  
OFFICE OF THE HIGH COMMISSIONER



**Nowhere but Back**  
**Assisted return,  
reintegration and the  
human rights protection of  
migrants in Libya**



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of migrants in Libya



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# Executive Summary

In the Global Compact for Safe, Orderly and Regular Migration (GCM), States committed to cooperate in facilitating the safe and dignified return as well as the sustainable reintegration of migrants.<sup>1</sup> As part of this commitment, they agreed to promote gender-responsive and child-sensitive return and reintegration programmes, guaranteeing that all assisted voluntary returns effectively take place on the basis of the migrant's free, prior and informed consent, and ensuring returning migrants have equal access to justice, social protection, decent work and other human rights.

This thematic report seeks to highlight key human rights risks and protection gaps faced by migrants in Libya in the context of **assisted return and reintegration**. The key challenges highlighted in this report include:

**Lack of access to pathways for safe and regular migration.** The report finds that there is no meaningful access to human rights protection for migrants within Libya and extremely limited options for migrants to seek access to protection of their human rights when moving onwards from Libya. Migrants in Libya are overwhelmingly victims of human rights violations and abuses perpetrated by both State and non-State actors. Despite the well-known, widespread and systematic nature of these violations, migrants in Libya overwhelmingly lack access to asylum and other safe and regular pathways, including to third countries based on grounds of international human rights law, as well as compassionate, humanitarian, or other considerations. As a result, migrants are effectively trapped in Libya where they continue to face serious threats to their lives, safety and dignity.

**Lack of free, prior and informed consent.** Due to the lack of access to protection in Libya and limited pathways out of Libya, the report finds that many migrants, particularly those in Libyan detention centres, are unable to make a truly voluntary decision to return in accordance with international human rights law and standards, including the principle of free, prior and informed consent. Instead, migrants are frequently compelled to accept assisted return to escape abusive detention conditions, threats of torture, ill-treatment, sexual violence, enforced disappearance, extortion, and other human rights violations and abuses. Migrants are also virtually compelled to accept assisted return because they are effectively denied access to safe and regular protection pathways, including asylum. Collectively, these conditions have created a coercive environment that is often inconsistent with free choice.

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<sup>1</sup> The Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, para. 37.



**Returns to unsustainable situations.** Due to the lack of free, prior and informed consent and viable alternative safe and regular pathways for migration onwards from Libya, the report finds that many migrants in Libya are effectively compelled to accept returns to unsafe and unsustainable situations. Based on interviews conducted by OHCHR, most migrants in Libya are being returned to the same conditions which compelled their movement in the first place while facing additional personal, financial and psychosocial burdens as a result of their failed migration project and the severe trauma they experienced in Libya. Such returns are unlikely to be sustainable from a human rights perspective. At the same time, the amount and kind of reintegration assistance provided to individual returnees and their communities appears insufficient to sustainably address the adverse drivers and structural factors that originally compelled their migration, nor to ensure the protection of their human rights in countries of origin. As a result, returnees from Libya face significant difficulties integrating into their countries and communities of origin, and many contemplate re-migrating despite knowing the risks and precarious conditions they are likely to face.

The recommendations in this report are directed at Libyan authorities, countries of origin, the African Union (AU) and its Member States, the European Union (EU) and its Member States, United Nations (UN) entities and other stakeholders who have a role in ensuring the effective respect, protection and fulfilment of the human rights of migrants in Libya and the neighbouring region. They seek to provide guidance to ensure that assisted return and reintegration policies and practices are consistent with and uphold international law and standards.



# 1. Introduction and Methodology



The situation in Libya today is marked by a complete failure to protect the human rights of migrants.<sup>2</sup> There are virtually no safe pathways for admission to and stay in third countries for migrants in Libya and there is effectively no human rights protection in Libya from the numerous State and non-State actors who continue to abuse and exploit migrants with impunity.

There are roughly 600,000 migrants comprising more than 40 nationalities in Libya today<sup>3</sup>, though estimates are difficult to verify due to the lack of official government data. This includes approximately 43,000 registered refugees and asylum-seekers.<sup>4</sup> While Libya has long been a country of transit and destination for hundreds of thousands of migrants, the 2011 uprising and armed conflict, followed by renewed hostilities in 2014, have led to a full-blown “human rights crisis” for migrants effectively trapped inside the country.<sup>5</sup>

In 2018, the United Nations Support Mission in Libya (UNSMIL) and the Office of the United Nations High Commissioner for Human Rights (OHCHR) documented how the ongoing security, governance and humanitarian crisis in Libya has led to “unimaginable horrors” suffered by migrants throughout their transit and stay in Libya.<sup>6</sup> Due to the constant threat of human rights violations and abuses in Libya by State and non-State actors, OHCHR and others in the United Nations (UN) system have consistently held that “Libya cannot be considered a safe place for the return or disembarkation of migrants intercepted or rescued at sea and that such returns to Libya may violate the principle of non-refoulement.”<sup>7</sup>

Despite ongoing efforts to broker a political ceasefire agreement and to deliver new parliamentary and presidential elections—including through the 2020 Libyan Political Dialogue Forum and the formation of the Government of National Unity (GNU) in 2021—prolonged armed conflict and political divisions have weakened Libyan institutions, creating a climate in which human rights violations and abuses are committed against migrants by State and non-State actors, with near total impunity.

In reports submitted in November 2021 and March 2022, the Human Rights Council-mandated Independent Fact Finding Mission (FFM) on Libya found that the pattern of interceptions at sea by the Libyan Coast Guard (LCG) followed by arbitrary arrest and detention by the Department for Combating Illegal Migration (DCIM), as well as the commission of and impunity for acts of murder, enslavement, imprisonment, torture, trafficking, extortion, enforced disappearance, sexual violence and other human rights violations perpetrated against migrants, provide evidence of “a systematic and widespread attack directed at [the migrant] population, in furtherance of a State policy.”<sup>8</sup> In its follow-up report of June 2022, the FFM on Libya found reasonable grounds to believe that crimes against humanity are being committed against migrants in Libya, including by mid- to senior-level Libyan officials as part of a “cycle of violence” being systematically perpetrated against migrants.<sup>9</sup>

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<sup>2</sup> There is no universal legal definition of “migrant”. OHCHR uses the term “international migrant” to refer to “any person who is outside a State of which they are a citizen or national, or, in the case of stateless persons, their State of birth or habitual residence.” See, OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, 2014, available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_Recommended\\_Principles\\_Guidelines.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf).

<sup>3</sup> IOM, *Migrant Report Round 41*, February – April 2022, p. 4.

<sup>4</sup> See, <https://data.unhcr.org/en/country/lby>.

<sup>5</sup> UNSMIL/OHCHR, *Detained and Dehumanized: Report on Human Rights Abuses Against Migrants in Libya*, 13 December 2016, available at: [https://unsmil.unmissions.org/sites/default/files/migrants\\_report-en.pdf](https://unsmil.unmissions.org/sites/default/files/migrants_report-en.pdf).

<sup>6</sup> UNSMIL/OHCHR, *Desperate and Dangerous: Report on Human Rights Situation of Migrants and Refugees in Libya*, 18 December 2018, available at: <https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf>.

<sup>7</sup> OHCHR, “*Lethal Disregard*”: *Search and rescue and the protection of migrants in the central Mediterranean Sea*, May 2021, p. 3, available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR-thematic-report-SAR-protection-at-sea.pdf>; see also, UN, *Report of the Secretary-General on the United Nations Support Mission in Libya*, 20 May 2022, para. 106, available at: <https://unsmil.unmissions.org/reports-secretary-general>; and UNHCR, *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, available at: <https://www.refworld.org/docid/5f1edee24.html>.

<sup>8</sup> Report of the Independent Fact-Finding Mission on Libya, 1 October 2021, A/HRC/48/83, para. 61; Report of the Independent Fact-Finding Mission on Libya, 23 March 2022, A/HRC/49/4, para. 46.

<sup>9</sup> Report of the Independent Fact-Finding Mission on Libya, 27 June 2022, A/HRC/50/63, para. 75.

The Libyan legal framework criminalizes the irregular entry, stay and exit of migrants from Libyan territory, imposes mandatory detention and deportation of all foreign nationals convicted of “acts of illegal immigration”, and does not guarantee the rights of specific legal categories of migrants—such as refugees, migrant workers, victims of trafficking, or children—as provided under international law.<sup>10</sup>

Against this backdrop of widescale impunity and a lack of protection for migrants within Libya<sup>11</sup>, there is also a critical gap in the availability of safe and regular pathways for migrants to seek protection of their human rights outside of Libya. Such pathways, where they exist, remain extremely limited, difficult to access, and hindered by delays. While the UN High Commissioner for Refugees (UNHCR) has managed to evacuate nearly 8,000 refugees and asylum-seekers from Libya to the Emergency Transit Mechanisms (ETM) in Niger and Rwanda since 2017<sup>12</sup>, refugee resettlement remains available to only “a tiny minority” of all asylum-seekers and refugees in Libya.<sup>13</sup> Beyond this, a limited number of migrants have been able to secure humanitarian visas, most notably to Italy, with the support of faith-based and international humanitarian organisations.<sup>14</sup> But even taken together, these existing pathways are insufficient to meet the scale of the protection needs of migrants who are effectively trapped in Libya. As a result, many migrants feel they are either compelled to take to the sea or to accept assisted return to their country of origin, from which they may end up re-migrating in even more desperate and precarious circumstances.

Since 2015, more than 60,000 migrants in Libya have been repatriated to different countries of origin across Africa and Asia through the International Organization for Migration’s (IOM) Voluntary Humanitarian Return (VHR) programme. The programme has been characterised as providing a “critical lifeline to stranded migrants”<sup>15</sup>, however there have been concerns expressed by UN experts, academics and human rights practitioners about the extent to which such assisted return programmes uphold human rights, particularly when they are carried out from contexts where migrants’ access to protection is limited or non-existent.<sup>16</sup> Moreover, there is little analysis of such initiatives from a human rights perspective, and gaps remain in independent monitoring and understanding of the experiences of migrants who have returned through assisted return initiatives.<sup>17</sup>

The policy objective of assisting migrants to return to their countries of origin has grown increasingly relevant over the past two decades. Initially developed in Europe in the late 1970s, assisted return practices have gradually expanded to all regions of the world and are increasingly being carried out from transit countries and along

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<sup>10</sup> OHCHR, *Unsafe and Undignified: the forced expulsion of migrants from Libya*, November 2021, p. 8-9, available at: [https://www.ohchr.org/sites/default/files/2021-12/Unsafe\\_and\\_Undignified.pdf](https://www.ohchr.org/sites/default/files/2021-12/Unsafe_and_Undignified.pdf).

<sup>11</sup> Report of the Independent Fact-Finding Mission on Libya, 23 March 2022, A/HRC/49/4.

<sup>12</sup> From 2017 to December 2021, 7,490 refugees and asylum seekers departed Libya through humanitarian evacuations or resettlement to third countries with the assistance of UNHCR. See UNHCR, *UNHCR organizes humanitarian evacuation of 176 vulnerable asylum seekers out of Libya*, 10 December 2021, available at: [https://reliefweb.int/attachments/53770416-06ae-3b47-9156-537bd536caec/EN\\_PR\\_09\\_12\\_2021.pdf](https://reliefweb.int/attachments/53770416-06ae-3b47-9156-537bd536caec/EN_PR_09_12_2021.pdf).

<sup>13</sup> UNHCR, *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, footnote 87.

<sup>14</sup> See, Medecins Sans Frontieres (MSF), *Out of Libya: Opening Safe Pathways for Vulnerable Migrants Stuck in Libya*, June 2022, pp 27-31, available at: [https://www.doctorswithoutborders.org/sites/default/files/documents/Report\\_Out%20of%20Libya.pdf](https://www.doctorswithoutborders.org/sites/default/files/documents/Report_Out%20of%20Libya.pdf); See also, InfoMigrants, 48 *asylum seekers arrive in Rome via humanitarian corridors*, 1 February 2022, available at: <https://www.infomigrants.net/en/post/38245/48-asylum-seekers-arrive-in-rome-via-humanitarian-corridors>.

<sup>15</sup> IOM, *Voluntary Humanitarian Return Programme Offers Lifeline for 60,000 Migrants in Libya*, 1 April 2022, available at: <https://libya.iom.int/news/voluntary-humanitarian-return-programme-offers-lifeline-60000-migrants-libya>.

<sup>16</sup> See, Report of the Special Rapporteur on the human rights of migrants, Study on the return and reintegration of migrants, 4 May 2018, A/HRC/38/41; Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger, 16 May 2019, A/HRC/41/38/Add.1; Jill Alpes, *Emergency returns by IOM from Libya and Niger: A protection response or a source of protection concerns?*, 2020, Brot für die Welt and Medico International; Lillo Montalto Monella & Sara Creta, *Paying for migrants to go back home: how the EU’s Voluntary Return scheme is failing the desperate*, Euronews, 22 June 2020, available at: <https://www.euronews.com/2020/06/19/paying-for-migrants-to-go-back-home-how-the-eu-s-voluntary-return-scheme-is-failing-the-de>.

<sup>17</sup> See, Jill Alpes & Izabella Majcher, *Who can and cannot be sustainably reintegrated after return? Using post-return monitoring for protection and human right guarantees*, 2020, UNU-CRIS Policy Brief Series.

precarious migration routes, particularly in Africa and the Middle East.<sup>18</sup> Combined with efforts to impose strict border controls, expand surveillance and detection of cross-border movement, and criminalize both the facilitation of migrant smuggling as well as the act of irregular migration itself, some States are now funding or supporting the implementation of assisted return programmes as a central component of their migration management aims and as part of an overall approach which seeks to prevent irregular migration.<sup>19</sup>

A defining feature of assisted return initiatives is that they are, in principle, “voluntary” and therefore not accompanied by the due process safeguards and procedural guarantees that would be required under international law if States were seeking to carry out forced return,<sup>20</sup> thus making them faster, cheaper and less onerous to carry out. When assisted return initiatives are employed in humanitarian and other contexts where migrants face dire conditions and grave human rights violations, and where access to human rights protection, asylum and other pathways for admission and stay in third countries are extremely limited or non-existent, there may be a lack of free, prior and informed consent as a result that therefore raises human rights concerns.

Against this background, this report seeks to analyse key human rights risks and protection gaps faced by migrants in Libya in the context of assisted return and reintegration. The report is part of a wider effort by OHCHR in seeking to identify, document and analyse human rights violations and protection gaps impacting migrants in Libya and the neighbouring region and to formulate recommendations to relevant governments and other stakeholders aimed at ensuring compliance with international human rights law and standards. It builds upon and complements the findings of previous reports by UNSMIL and OHCHR on the protection of the human rights of migrants in Libya.<sup>21</sup>

The report covers the period from January 2021 to June 2022 and is based on first-hand accounts and information gathered by OHCHR through monitoring, as well as through desk research, meetings with relevant government institutions and other stakeholders, official statistics, reports by national and international organisations, public statements by international and regional human rights mechanisms, and media reports. The report is structured according to three key human rights challenges and in each section the human rights legal framework is presented, followed by an analysis of the challenges and a set of recommendations.

Recognising that The Gambia is one of the primary countries of origin for migrants being assisted to return from Libya, in April 2022, an OHCHR monitoring team visited the country. Since 2017, over 3,300 Gambians have been assisted to return from Libya, including 127 returnees who arrived from Libya to The Gambia in October 2021<sup>22</sup> and an additional 160 returnees who arrived in February 2022.<sup>23</sup> In 2020, The Gambia adopted its first-ever National Migration Policy (2020-2030) which, among other things, seeks to improve coordination in the

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<sup>18</sup> In 2016, 83% of all cases of assisted return facilitated by IOM came from the European Economic Area. By 2020, this share had shrunk to 39.4%. At the same time, there has been an exponential growth of assisted returns from West and Central Africa and the MENA regions, which collectively accounted for 43% of all assisted returns facilitated by IOM in 2020. See IOM, *Assisted Voluntary Return and Reintegration: 2016 Key Highlights*, Geneva, 2017; and IOM, *Return and Reintegration Highlights*, 2020.

<sup>19</sup> While migration governance can be understood as “a process in which the combined framework of legal norms and organizational structures regulate and shape how States act in response to international migration, addressing rights and responsibilities and promoting international cooperation”, migration management is a more limited concept that can be seen as primarily concerned with control or even containment of migration. See OHCHR, *Improving Human Rights-Based Governance of International Migration*, 2014, p. 9, available at: [https://www.ohchr.org/Documents/Issues/Migration/MigrationHR\\_improvingHR\\_Report.pdf](https://www.ohchr.org/Documents/Issues/Migration/MigrationHR_improvingHR_Report.pdf).

<sup>20</sup> For an analysis of these due process and procedural guarantees in the context of forced returns from Libya, see OHCHR, *Unsafe and Undignified: the forced expulsion of migrants from Libya*, November 2021.

<sup>21</sup> UNSMIL/OHCHR, *Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya*, 18 December 2018; UNSMIL/OHCHR, *Detained and Dehumanized: Report on Human Rights Abuses Against Migrants in Libya*, 13 December 2016; OHCHR, “*Lethal Disregard*”: *Search and rescue and the protection of migrants in the central Mediterranean Sea*, March 2021; OHCHR, *A Pandemic of Exclusion: The impact of Covid-19 on the human rights of migrants in Libya*, July 2021; OHCHR, *Unsafe and Undignified: the forced expulsion of migrants from Libya*, November 2021.

<sup>22</sup> IOM, *IOM Resumes Voluntary Humanitarian Return Assistance Flights from Libya After Months of Suspension*, 22 October 2021, available at: [https://www.iom.int/news/iom-resumes-voluntary-humanitarian-return-assistance-flights-libya-after-months-suspension?utm\\_source=miragenews&utm\\_medium=miragenews&utm\\_campaign=news](https://www.iom.int/news/iom-resumes-voluntary-humanitarian-return-assistance-flights-libya-after-months-suspension?utm_source=miragenews&utm_medium=miragenews&utm_campaign=news).

<sup>23</sup> See, <https://twitter.com/IOMGambia/status/1491713280129310722?s=20&t=wawpKnjeJTbRy89xgne9Q>.



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fields of return and reintegration and to ensure rights protection for its returning nationals.<sup>24</sup> The objective of the mission was to assess the human rights situation of migrants who have returned from Libya, with a particular focus on laws, policies and practices related to assisted return and reintegration. During the visit to The Gambia, OHCHR interviewed 65 migrants that had returned from Libya between 2021 and February 2022. The Office conducted these interviews in various locations in and around Banjul as well as in communities in Janjanbureh and Basse where many migrant returnees live. During the visit, OHCHR held meetings with several government officials, including the Office of the Vice President (OVP) and the Minister for Foreign Affairs, International Cooperation & Gambians Abroad (MFA). OHCHR also held working-level exchanges with the Ministry of the Interior (MoI), Ministry of Justice (MoJ), Ministry of Health (MoH), Ministry of Agriculture (MoA), Ministry of Trade, Industry and Employment (MoTIE), Gambian Immigration Department (GID), National Youth Council (NYC), Ministry of Gender, Children and Social Welfare (MoG), and the National Agency Against Trafficking in Persons (NAATIP). The Office also met with the Gambian National Human Rights Commission (NHRC), IOM The Gambia, migrant returnee community leaders, academics and civil society organisations working on the return and reintegration of migrants in the country. OHCHR appreciates the willingness of The Gambian authorities to receive OHCHR staff, and extends her gratitude for their full support in the preparation and conduct of the mission.

<sup>24</sup> See, the Government of the Republic of The Gambia, National Voluntary Review Report on the status of implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM), April 2020, p. 6.





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## 2. Context

## The situation of migrants in Libya

Migrants move to and through Libya for a combination of complex and interrelated reasons that give rise to situations of vulnerability and human rights protection needs. These include extreme poverty, violence, persecution, family separation, gender inequality, a lack of access to health, education, decent work, food and water, the adverse effects of climate change and environmental degradation and a lack of fulfilment of the right to development.

Once in Libya, migrants risk being systematically and routinely subject to criminalization, marginalization, racism and xenophobia, and face a wide range of human rights violations and abuses by both State and non-State actors, including unlawful killings, enforced disappearance, slavery and forced labour, arbitrary detention, torture, ill-treatment, trafficking, sexual violence, and extortion. The FFM on Libya has found that these violations and abuses provide reasonable grounds to believe that migrants in Libya are being subjected to crimes against humanity.<sup>25</sup> Furthermore, it found that these acts are not limited to non-State actors or to individual low-level perpetrators within Libyan security agencies, but include the involvement or tacit approval of mid- and senior-level Libyan officials.<sup>26</sup>

The perpetration of these human rights violations and abuses stem from the Libyan legal framework. Libyan law continues to criminalize the irregular entry, stay and exit of migrants from its territory. Libyan Law No. 6 of 1987 on Organizing the Entry, Residence and Exit of Foreigners in Libya, criminalizes irregular entry, stay and exit in Libya, punishable by a mandatory sentence of imprisonment or fine, and followed by the possibility of further immigration detention while awaiting mandatory deportation from the country and an indefinite re-entry ban.<sup>27</sup> Libyan Law No. 19 on Combatting Illegal Migration (2010), imposes further penalties for smuggling and harbouring so-called “illegal immigrants”, and directs the mandatory detention and deportation of all foreign nationals convicted of “acts of illegal immigration”.<sup>28</sup> The law does not provide specific protection to different legal categories of migrants—such as refugees, migrant workers, victims of trafficking, stateless persons or children—as provided under international law. As a result of their criminalization, migrants in Libya are also systematically deprived of access to justice and economic, social and cultural rights, including health, education, social protection, decent work and an adequate standard of living.

Record numbers of interceptions and pull-backs by the Libyan Coast Guard and Navy, the General Administration for Coastal Security (GACS) and new security forces such as the Stability Support Apparatus (SSA),<sup>29</sup> as well as the continued reliance on arbitrary detention, have worked to effectively trap tens of thousands of migrants in a vicious cycle where their lives, safety and dignity are constantly at risk.<sup>30</sup> These State actions—combined with the lack of opportunities for migrants to regularize their migration status in Libya—have created an environment in which migrants in Libya are under the constant threat of arrest and detention, often for an indefinite period and in conditions amounting to torture or ill-treatment, followed by the further risk of deportation from the country.<sup>31</sup>

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<sup>25</sup> A/HRC/48/83, para. 61; A/HRC/49/4, para. 46; A/HRC/50/63, para. 75.

<sup>26</sup> A/HRC/50/63, para. 75.

<sup>27</sup> Articles 17-19 of Law No. 6 (1987) on Organizing the Entry, Residence and Exit of Foreigners in Libya, available at: <https://security-legislation.ly/node/34591> (unofficial translation).

<sup>28</sup> Articles 1-6 of Law No. 19 (2010) on Combating Irregular Migration, available at: <https://security-legislation.ly/node/32174> (unofficial translation).

<sup>29</sup> See, Samy Magdy, *A new Libyan force emerges, accused of abusing migrants*, Associated Press, 22 July 2022, available at: <https://apnews.com/article/middle-east-africa-libya-migration-7ec5d993bffc1dff597ccd1697a85b5d>; See also, Amnesty International, *Libya: Hold Stability Support Authority militia leaders to account*, 4 May 2022, available at: <https://www.amnesty.org/en/latest/news/2022/05/libya-hold-stability-support-authority-militia-leaders-to-account/>.

<sup>30</sup> In the first 8 months of 2021 alone, over 23,000 people were intercepted at and returned to Libya, which is the highest number on record and almost double the total for the whole of 2020. See, <https://reliefweb.int/report/libya/libya-record-numbers-intercepted-sea-and-detained-irc-calls-their-immediate-release>.

<sup>31</sup> See OHCHR, *Unsafe and Undignified: the forced expulsion of migrants from Libya*, November 2021.

Since OHCHR's last report on the human rights of migrants in Libya in November 2021, security agencies and affiliated armed groups have continued to carry out raids on migrant homes in the Gargaresh neighbourhood in Tripoli, as well as in Zuwara and Sabha, leading to mass arrests and alleged use-of-force violations, including several fatal shootings.<sup>32</sup> Thousands of migrants have been arrested in the streets without legal basis and subsequently arbitrarily detained in inhumane conditions under the control of DCIM as well as brigades affiliated with the Libyan Arab Armed Forces (LAAF).<sup>33</sup>

Migrants also continue to be arbitrarily detained, sometimes indefinitely, without due process and procedural guarantees.<sup>34</sup> Conditions of detention for migrants continue to be dire and inhumane, with a lack of food, water, ventilation and sanitation being a common occurrence.<sup>35</sup> Frequent power cuts and lack of electricity have caused challenges in access to clean water and sanitation inside detention facilities, which contributed to the spread of medical conditions including skin diseases such as scabies.<sup>36</sup> The UNSMIL Human Rights Service (HRS) also continues to document allegations of slavery within Libyan detention centres, including centres controlled by the newly established SSA to which UN agencies and humanitarian actors do not have access.<sup>37</sup> There have also been reports of continued shootings, use-of-force violations, sexual violence and deaths in Libyan detention centres.<sup>38</sup> Reports received by UNSMIL HRS indicate that sexual violence against migrants is widespread, particularly within Libyan detention centres, and is committed against women and girls in particular, but also against men and boys, with total impunity.<sup>39</sup> Women and girl detainees also generally lack access to sexual and reproductive health services, including menstrual hygiene products and care for pregnant or nursing women.<sup>40</sup>

## Assisted returns from Libya

At present, there are virtually no regular pathways for migrants to seek safety and dignity outside of Libya. As a result, many migrants end up taking to the sea in precarious maritime journeys marked by increasing death rates and decreasing hopes of being rescued,<sup>41</sup> or accepting assisted return to their country of origin.<sup>42</sup>

According to IOM, assisted voluntary return and reintegration is defined as “[a]dministrative, logistical and financial support provided to migrants [which may include reintegration support] who are unable or unwilling to remain in the host country, and who volunteer to return to their countries of origin.”<sup>44</sup> While assisted returns

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<sup>32</sup> See, <https://reliefweb.int/report/libya/unicef-libya-flash-update-1-migrant-raids-and-detention-4-october-2021>. See also Statement of the United Nations Assistant Secretary-General Resident and Humanitarian Coordinator for Libya, *UN extremely concerned about reports of Killing and Excessive Use of Force against Migrants and Asylum Seekers in Gargaresh, Tripoli*, 2 October 2021, available at: <https://unsmil.unmissions.org/statement-united-nations-assistant-secretary-general-resident-and-humanitarian-coordinator-libya>.

<sup>33</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>34</sup> Report of the Independent Fact-Finding Mission on Libya, 1 October 2021, A/HRC/48/83; Report of the Independent Fact-Finding Mission on Libya, 23 March 2022, A/HRC/49/4.

<sup>35</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>36</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>37</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>38</sup> See, <https://www.rfi.fr/en/africa/20210627-msf-suspends-work-in-libyan-detention-centers-in-protest-over-violence-migration-doctors-without-borders>; and <https://www.msf.org/people-dead-and-injured-following-libya-detention-centre-shooting>.

<sup>39</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>40</sup> Information received from UNSMIL HRS, 25 July 2022.

<sup>41</sup> See, OHCHR, “*Lethal Disregard*”: *Search and rescue and the protection of migrants in the central Mediterranean Sea*, May 2021.

<sup>42</sup> For the purposes of this report, “assisted return” does not include the voluntary repatriation of refugees, which is typically a distinct process for which robust normative and operational standards exist. See, e.g. UNHCR Excom Conclusions 18 (XXXI); 40 (XXXVI) and 74 (XLV) available at: <https://www.unhcr.org/53b26db69.pdf>; See also, UNHCR, *Handbook - Voluntary Repatriation: International Protection*, January 1996, available at: <https://www.refworld.org/docid/3ae6b3510.html>.

<sup>43</sup> See, IOM, *Glossary on Migration*, 2019.

<sup>44</sup> For example, in 2014 only 354 migrants were assisted to return to their countries of origin. See, <https://www.iom.int/news/iom-provides-voluntary-return-home-stranded-migrants-libya>.

from Libya were relatively limited in the years immediately following the so-called “Arab Spring”,<sup>45</sup> the practice has expanded exponentially in recent years and especially in 2017-2018, following revelations of migrants being sold as “slaves” in Libya. In response to these revelations, an AU-EU-UN Tripartite Task Force on migration in Libya<sup>46</sup> was established with the stated objective of protecting and saving lives of refugees and other migrants along the routes to, and within, Libya.<sup>47</sup> Among the core policy and operational objectives of the Task Force was “accelerating voluntary returns to countries of origin.”<sup>48</sup> This led to the launch of a new assisted return initiative implemented by IOM under the auspices of its “Voluntary Humanitarian Return” (VHR) programme.<sup>49</sup> The VHR programme was first launched in 2016 as part of the EU-IOM Joint Initiative on Migrant Protection and Reintegration.<sup>50</sup> Funding for VHR in Libya is provided through the EU Emergency Trust Fund for Africa (EUTF) as part of their support to the EU-IOM Joint Initiative.<sup>51</sup> According to IOM and the EU, this Joint Initiative “enables migrants who decide to return to their countries of origin to do so in a safe and dignified way, in full respect of international human rights standards” and “provides assistance to returning migrants to help them restart their lives in their countries of origin through an integrated approach to reintegration that seeks to address returnees’ economic, social and psychosocial needs while at the same time including communities in the reintegration process.”<sup>52</sup>

Since 2017, more than 106,700 migrants have been repatriated from countries in North Africa, Horn of Africa, and the Sahel and Lake Chad region to at least 46 countries of origin across Western, Central and Eastern Africa, as well as Central, South and South-East Asia through the EU-IOM Joint Initiative.<sup>53</sup> This includes more than 35,000 VHR repatriations carried out from Libya during 2017<sup>54</sup> and 2018<sup>55</sup>, of which nearly 25,000 were carried out from Libyan detention centres.<sup>56</sup> VHR repatriations from Libya decreased significantly in 2020 (3,391) and 2021 (4,332), due in part to travel restrictions imposed by Libyan authorities in response to the COVID-19 pandemic.<sup>57</sup> However, these numbers are increasing again in 2022 with the lifting of many COVID-19 related travel restrictions. There were at least 7,093 VHR repatriations from Libya in the first half of 2022, the vast majority of which (approx. 90%) took place from urban locations outside of Libyan detention centres.<sup>58</sup> According to IOM’s figures, the top 10 countries of origin for migrants repatriated from Libya through the VHR programme are Nigeria, Mali, Niger, Bangladesh, Guinea, Sudan, The Gambia, Côte d’Ivoire, Ghana and Senegal.<sup>59</sup>

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<sup>45</sup> See CNN, *People for sale: Exposing migrant slave auctions in Libya*, available at: <https://edition.cnn.com/specials/africa/libya-slave-auctions>.

<sup>46</sup> The Task force is comprised of representatives of the AU Commission, the European Commission, IOM and UNHCR, and meets periodically at the political, strategic and operational levels. Note on file with OHCHR, Meeting with AU-EU-UN Tripartite Task Force coordinator, 27 June 2022.

<sup>47</sup> See, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_17\\_5029](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_5029)

<sup>48</sup> See, [https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_17\\_5029](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_17_5029)

<sup>49</sup> See, <https://libya.iom.int/voluntary-humanitarian-return-vhr>.

<sup>50</sup> IOM, *IOM Voluntary Humanitarian Returns Continue in Libya as Number of Detained Migrants Soars*, 10 August 2018, available at: <https://www.iom.int/news/iom-voluntary-humanitarian-returns-continue-libya-number-detained-migrants-soars>.

<sup>51</sup> See, <https://www.migrationjointinitiative.org/>.

<sup>52</sup> EU-IOM Joint Initiative Factsheet, available at: [https://www.migrationjointinitiative.org/sites/g/files/tmzbd261/files/files/EU-IOM%20Joint%20Initiative\\_Factsheet.pdf](https://www.migrationjointinitiative.org/sites/g/files/tmzbd261/files/files/EU-IOM%20Joint%20Initiative_Factsheet.pdf).

<sup>53</sup> See, <https://returnandreintegration.iom.int/en/spotlight/article/eu-iom-joint-initiative-marks-five-years-supporting-migrants-and-their>

<sup>54</sup> IOM, *Return and Reintegration Highlights, 2017*

<sup>55</sup> IOM, *Return and Reintegration Highlights, 2018*

<sup>56</sup> Information received from IOM Libya, 15 July 2022.

<sup>57</sup> Ibid.

<sup>58</sup> Ibid.

<sup>59</sup> Ibid; See also IOM, *Return and Reintegration Highlights, 2020*.

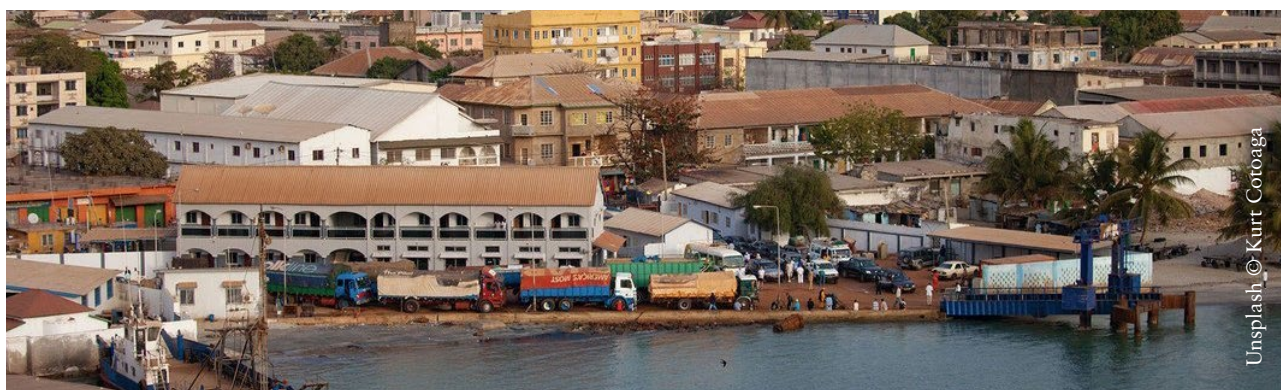


## SPOTLIGHT: THE GAMBIA

On 19 May 2022, 148 Gambian migrants were repatriated from Libya, together with 45 Gambian migrants repatriated from Niger.<sup>60</sup> According to IOM, this represented the highest number of Gambian migrants assisted to return in a single day since IOM first opened their country office in The Gambia in July 2017.<sup>61</sup>

Following 22 years of authoritarian rule by former President Jammeh, The Gambia underwent a peaceful democratic transition with the election of President Barrow in 2016. The Gambia currently has an estimated population of 2.2 million of which approximately two-thirds are under the age of 30 and nearly half live in poverty.<sup>62</sup> According to the International Labour Organization (ILO), the official unemployment rate in The Gambia is currently around 11% and expected to rise to 12% by the end of 2022.<sup>63</sup> Life expectancy in The Gambia is around 63 years, fully 10 years below the global life expectancy average.<sup>64</sup> The COVID-19 crisis resulted in a sharp economic downturn with a decline in tourism and trade disruptions leading to a contraction in economic growth and reversing previous gains in poverty reduction.<sup>65</sup>

The UN classifies The Gambia as a least developed country.<sup>66</sup> According to a joint World Bank-IMF debt sustainability analysis,<sup>67</sup> The Gambia was in debt distress prior to the pandemic. In its Fourth Review under the Extended Credit Facility Arrangement (June 2022),<sup>68</sup> the IMF noted that the country's public debt is sustainable, but risks of external and overall debt distress remain high. Low levels of economic growth and revenue generation coupled with high levels of debt constrain fiscal space in general, and often result in the crowding out of social spending for economic and social rights. For example, in 2019 public spending on basic education was 2.4% of GDP and 1.1% of GDP on health.<sup>69</sup> The UN estimated that 41.6% of the population were multi-dimensionally poor, while an additional 22.9% were classified as vulnerable to multidimensional poverty.<sup>70</sup>



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<sup>60</sup> See, <https://twitter.com/IOMGambia/status/1530861590236614656?s=20&t=L099iHNY0t26x53-c68epw>.

<sup>61</sup> See, <https://www.iom.int/news/iom-facilitates-voluntary-return-193-gambians-libya-and-niger>.

<sup>62</sup> World Bank, Indicators, available at: <https://data.worldbank.org/country/gambia-the>.

<sup>63</sup> ILO, Country Profiles, available at: <https://ilostat.ilo.org/data/country-profiles/>.

<sup>64</sup> World Bank, Indicators, available at: <https://data.worldbank.org/country/gambia-the>.

<sup>65</sup> See, BTI, Gambia Country Report, available at: <https://bti-project.org/en/reports/country-report/GMB>.

<sup>66</sup> See, Least Developed Country Report, available at: <https://www.un.org/ohrrls/sites/www.un.org.ohrrls/files/the-gambia-eradicating-poverty-enhancing-agriculture-food-security-and-rural-development.pdf>

<sup>67</sup> See, Joint World Bank-IMF Debt Sustainability Analysis, available at: <https://openknowledge.worldbank.org/bitstream/handle/10986/32561/Gambia-The-Joint-World-Bank-IMF-Debt-Sustainability-Analysis-May-2019.pdf?sequence=1&isAllowed=y>

<sup>68</sup> See The Gambia Fourth Review, available at: <https://www.imf.org/en/Publications/CR/Issues/2022/06/26/The-Gambia-Fourth-Review-under-the-Extended-Credit-Facility-Arrangement-Request-for-a-520003>

<sup>69</sup> See the World Bank Public Expenditure Review, available at: <https://documents1.worldbank.org/curated/en/783451591241640332/pdf/Key-Messages.pdf>

<sup>70</sup> See the Human Development Report, available at: <https://hdr.undp.org/sites/default/files/Country-Profiles/GMB.pdf>. The multidimensional poverty index identified multiple overlapping deprivations suffered by individuals in three dimensions: health; education; and standard of living.

The lack of adequate investments in education, health and social security within the framework of the maximum available resources obligation and resulting poor outcomes contribute to the adverse drivers and structural factors that compel people to leave their country of origin.

The Gambia is also suffering the adverse impacts of climate change, including extreme climate and weather conditions, coastal erosion and flooding, which have compelled many Gambians to leave their villages and towns. The Gambian agricultural sector is especially under pressure to sustain the population and is challenged by accelerated destruction of forest reserves, soil impoverishment, poor sanitation, and a persistent pattern of drought.<sup>71</sup>

With approximately 6% of its total population living abroad, The Gambia has one of the highest emigration rates per capita across all of Africa<sup>72</sup> and has consistently been among the top nationalities of migrants transiting through Libya, often traveling along precarious migration routes known as the “backway”.<sup>73</sup>

The country’s economy remains significantly dependent on remittances, which account for approximately 22% of The Gambia’s total GDP.<sup>74</sup> As a result, many youth face family and community pressures to migrate.

The Gambia is a State Party to all of the nine core international human rights treaties.<sup>75</sup> In Concluding Observations to The Gambia in 2018, the Human Rights Committee noted with appreciation the steps taken by The Gambia since the peaceful transition of power, but expressed concern that Covenant rights still had not been adequately enshrined in law or implemented in practice, including in relation to non-discrimination; violence against women; sexual and reproductive rights; counter-terrorism; enforced disappearance; arbitrary arrest, detention and fair trial rights; human trafficking, labour and sexual exploitation; and rights to freedom of expression and peaceful assembly.<sup>76</sup> In The Gambia’s latest Universal Periodic Review (UPR) in 2019, the country also received numerous recommendations, including to take greater steps to eradicate poverty, address food insecurity and malnutrition, ensure access to basic health care, clean water and sanitation, and to combat discrimination.<sup>77</sup>

In 2020, The Gambia adopted its first-ever National Migration Policy (2020-2030), which seeks to improve coordination between stakeholders to “address challenges of irregular migration and maximize the benefits of well-managed migration”.<sup>78</sup> With a focus on gender mainstreaming, the Policy includes measures relating to collecting migration data, promoting regular migration pathways, strengthening border management, ensuring rights protection in The Gambia, developing return and reintegration mechanisms, and facilitating migration in the context of climate change adaptation.<sup>79</sup> The National Migration Policy is linked to The Gambia’s 2018-2021 National Development Plan, which highlighted a commitment to support the return of Gambians in line with international human rights obligations and pledged to support returning migrants and their communities to build resilience.<sup>80</sup>

<sup>71</sup> See, Third National Communication of the Gambia under the FCCC, July 2020, available at <https://unfccc.int/sites/default/files/resource/The%20Gambia%20Third%20National%20Communication.pdf>.

<sup>72</sup> Omar N. Cham & Ilke Adam (2021) The politicization and framing of migration in West Africa: transition to democracy as a game changer?, Territory, Politics, Governance, DOI: 10.1080/21622671.2021.1990790.

<sup>73</sup> For example, between 2009 and 2019, a total of 46,199 Gambians entered Europe through the Mediterranean Sea, which represents 3.85% of the country’s total population. The overwhelming majority of these arrived via the Central Mediterranean Route, from Libya to Italy. Kebba Jammeh, *No one leaves home unless home is the mouth of a shark*, 18 December 2019, available at: <https://blogs.worldbank.org/peoplemove/no-one-leaves-home-unless-home-mouth-shark>.

<sup>74</sup> World Bank, Indicators, available at: <https://data.worldbank.org/country/gambia-the>.

<sup>75</sup> See, <https://indicators.ohchr.org/>.

<sup>76</sup> CCPR/C/GMB/CO/2.

<sup>77</sup> See, <https://www.ohchr.org/en/hr-bodies/upr/gm-index>.

<sup>78</sup> See, the Government of the Republic of The Gambia, National Voluntary Review Report on the status of implementation of the Global Compact for Safe, Orderly and Regular Migration (GCM), April 2020, p. 6.

<sup>79</sup> Ibid., p. 7.

<sup>80</sup> See, the Government of the Republic of The Gambia, The Gambia National Development Plan (2018-2021).



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### **3. Key human rights challenges in the context of assisted returns from Libya**



Focusing on the laws, policies and practices impacting the human rights and protection of migrants in the context of assisted return and reintegration, OHCHR identified the following set of selected human rights challenges and protection gaps. These have been identified on the basis of applicable norms and standards of international human rights law, as well as other relevant norms and standards of international law.<sup>81</sup>

## A. Lack of access to pathways for safe and regular migration

### LEGAL FRAMEWORK

There is no universal legal definition of the term “protection”, however, it can be understood to refer to “all activities aimed at obtaining full respect for the rights of the individual in accordance with the letter and the spirit of the relevant bodies of law (i.e. international human rights, humanitarian and refugee law).”<sup>82</sup> While refugees are entitled to specific protection under international and regional refugee law,<sup>83</sup> everyone, including all migrants, regardless of status, have the right to seek asylum<sup>84</sup> and to enjoy protection under international human rights law and related standards. International human rights law provides all persons, regardless of their nationality or migration status, protection of all civil, political, economic, social, and cultural rights, without discrimination,<sup>85</sup> and entails heightened obligations to protect the rights of migrants in vulnerable situations.<sup>86</sup> Migrants may find themselves in vulnerable situations due to the reasons for leaving their countries of origin; the situations they encounter in transit or destination; or for reasons related to their identity, condition or circumstances.<sup>87</sup>

In addition to asylum, regular pathways for admission and stay based on international human rights law, as well as compassionate, humanitarian, or other considerations, ensure the protection of migrants and their rights, including migrants in situations of vulnerability.<sup>88</sup> Pathways for safe and regular migration are understood to be legal, policy and/or administrative mechanisms that provide for regular travel, admission and/or stay in the territory of a State.<sup>89</sup> Pathways for admission and stay can include both discretionary and non-discretionary

<sup>81</sup> Libya is a State party to eight of the nine core international human rights law instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); International Covenant on Civil and Political Rights (ICCPR); International Covenant on Economic, Social and Cultural Rights (ICESCR); Convention on the Elimination of All Forms of Discrimination against Women (CEDAW); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); Convention on the Rights of the Child (CRC); International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICMW); and Convention on the Rights of Persons with Disabilities (CRPD). See, <https://indicators.ohchr.org/>. At the regional level, Libya has also ratified the Arab Charter on Human Rights (Arab Charter), the African Charter on Human and Peoples’ Rights (African Charter) and the Protocol to the African Charter on the establishment of the African Court on Human and Peoples’ Rights.

<sup>82</sup> Inter-Agency Standing Committee, Policy on Protection in Humanitarian Action, 2016.

<sup>83</sup> See, UNHCR, *Persons in need of international protection*, June 2017, citing UN General Assembly, *Note on International Protection*, 7 September 1994, A/AC.96/830, available at: <https://www.refworld.org/docid/596787734.html>.

<sup>84</sup> UDHR, Art. 14.

<sup>85</sup> ICCPR, Art. 2.1; ICESCR, Art. 2.2.

<sup>86</sup> “Migrants in vulnerable situations” are persons who are unable effectively to enjoy their human rights, are at increased risk of violations and abuse and who, accordingly, are entitled to call on a duty bearer’s heightened duty of care. UN, *Recommended Principles and Guidelines on the Protection of the Human Rights of Migrants in Vulnerable Situations* (2018), p. 5-7, available at: <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>.

<sup>87</sup> Ibid.

<sup>88</sup> See, UN, *Guidance Note: Regular Pathways for Admission and Stay of Migrants in Situations of Vulnerability*, July 2021, available at: <https://migrationnetwork.un.org/resources/guidance-note-regular-pathways-admission-and-stay-migrants-situations-vulnerability-0>. See also, OHCHR, *Admission and Stay Based on Human Rights and Humanitarian Grounds: A Mapping of National Practice*, December 2018, available at: [https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR\\_DLA\\_Piper\\_Study.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Migration/OHCHR_DLA_Piper_Study.pdf)

<sup>89</sup> See, UN, *Guidance Note: Regular Pathways for Admission and Stay of Migrants in Situations of Vulnerability*, Op. Cit., para. 14.

pathways.<sup>90</sup> Non-discretionary pathways give effect to international human rights law obligations and principles.<sup>91</sup> These can include, *inter alia*, mechanisms for admission and stay based on the principle of *non-refoulement*,<sup>92</sup> the rights to private and family life and family unity, the principle of the best interests of the child, the right to rehabilitation for victims of torture, and the right to health.<sup>93</sup> Discretionary pathways based on compassionate, humanitarian, or other considerations, are not strictly required by international law but may be adopted as an exercise of discretion, international cooperation and solidarity.<sup>94</sup> These can include, *inter alia*, pathways for migrants compelled to move and/or unable to return in the context of disasters, the adverse effects of climate change and environmental degradation; migrants subjected to aggravated forms of smuggling; survivors of forced labour or other forms of labour exploitation; or survivors of crime, including in the context of transit migration.<sup>95</sup>

Both discretionary and non-discretionary pathways for admission and stay are effective tools to ensure the protection of migrants and their rights, including migrants in situations of vulnerability.<sup>96</sup>

As previously noted, the FFM on Libya has found that migrants in Libya are systematically and routinely subject to criminalization, marginalization, racism and xenophobia, and face a wide range of human rights violations and abuses by both State and non-State actors, including unlawful killings, enforced disappearance, slavery and forced labour, arbitrary detention, torture, ill-treatment, trafficking, sexual violence, and extortion. According to the FFM on Libya, this cycle of violence without meaningful access to protection inside the country represents a human rights crisis indicative of crimes against humanity.<sup>97</sup> At the same time, the pathways available for migrants to seek protection of their human rights outside of Libya are extremely limited.

While Libya is a party to several international human rights instruments which contain provisions relevant for the protection of migrants, including the 1969 OAU Convention<sup>98</sup>, Libya is not a signatory to the 1951 Convention relating to the Status of Refugees or its 1967 Protocol, and has no functioning asylum system. Libya also has not adopted any other regular pathways for admission and stay based on international human rights law, as well as compassionate, humanitarian, or other considerations. The Government does not officially recognize UNHCR in Libya, which is limited to considering the refugee protection claims of asylum seekers from nine nationalities approved by the Libyan authorities<sup>99</sup> and faces persistent legal, administrative and operational hurdles to exercise its protection mandate in the country.<sup>100</sup>

<sup>90</sup> Ibid., para. 15.

<sup>91</sup> Ibid., para. 19.

<sup>92</sup> CAT, Art. 3, 1; CPED, Art. 16, 1. The principle of non-refoulement has also been interpreted to be an implicit obligation of States parties to the ICCPR, the CRC, the ICMW, ICERD, the CEDAW and the CRPD.

<sup>93</sup> See, UN, *Guidance Note: Regular Pathways for Admission and Stay of Migrants in Situations of Vulnerability*, Op. Cit., para. 19.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid., para. 8.

<sup>96</sup> Ibid., para. 15.

<sup>97</sup> See, e.g. A/HRC/48/83, para. 61; A/HRC/49/4, para. 46.

<sup>98</sup> Organization of African Unity (OAU), Convention Governing the Specific Aspects of Refugee Problems in Africa (“OAU Convention”), 10 September 1969, 1001 U.N.T.S. 45.

<sup>99</sup> Migrants able to be registered by UNHCR are limited to nationals of Ethiopia, Eritrea, Iraq, Somalia, South Sudan, Sudan, Syrian Arab Republic, Yemen, as well as of the State of Palestine. Outside of these nine nationalities, UNHCR exceptionally registers small numbers of persons from other countries based on the identification of specific protection needs. UNHCR, *UNHCR Position on the Designations of Libya as a Safe Third Country and as a Place of Safety for the Purpose of Disembarkation Following Rescue at Sea*, September 2020, footnote 25.

<sup>100</sup> UNSMIL/OHCHR, *Desperate and Dangerous: Report on Human Rights Situation of Migrants and Refugees in Libya*, 18 December 2018, available at: <https://unsmil.unmissions.org/sites/default/files/libya-migration-report-18dec2018.pdf>.

Despite these challenges, since 2017, UNHCR has flown at least 8,611 refugees and asylum seekers out of Libya on evacuation and resettlement flights or through other safe and regular pathways.<sup>101</sup> This includes nearly 6,000 refugees and asylum-seekers evacuated from Libya to its Emergency Transit Mechanisms (ETM) based in Niger and Rwanda, from where further resettlement and other pathways are sought,<sup>102</sup> a further 1,567 refugees who have been directly resettled from Libya to third countries,<sup>103</sup> and a smaller number of people who have been granted admission and stay in third countries on grounds of humanitarian admission (280 people), private sponsorship (47 people) and family reunification (22 people).<sup>104</sup> However, existing evacuation and resettlement programmes are wholly insufficient to provide protection pathways out of Libya for migrants, including the nearly 50,000 individuals identified by UNCHR as “persons of concern”.<sup>105</sup> In addition, for nearly half of 2021 the Libyan authorities suspended UNHCR evacuation flights from the country, negatively impacting the number of evacuations able to be carried out.<sup>106</sup> Furthermore, the ETMs have been marked by long waiting times without the prospect of speedy resettlement due to a lack of resettlement pledges by States, raising concerns from some international humanitarian organizations.<sup>107</sup>

In May 2021, faith-based organisations in Italy signed an agreement with the Government of Italy and UNHCR to open a “humanitarian corridor” between Libya and Italy allowing for the possibility of up to 500 additional evacuations per year from Libya, and not limited to “persons of concern” from the nine countries of origin whose protection claims UNHCR is allowed to assess. Importantly, this humanitarian corridor provides a safe and regular pathway to migrants on broader human rights protection grounds and humanitarian considerations, including based on the right to family life and unity, the best interests of the child, as well as for survivors of violence, torture, arbitrary detention, victims of trafficking, and people at risk because of medical conditions.<sup>108</sup> While representing a promising practice, to-date these pathways have been extremely limited in number, benefitting less than approximately 300 migrants so far in 2021 and 2022.<sup>109</sup>

For refugees and other migrants who are unable to avail themselves of refugee protection under UNHCR’s mandate in Libya or to access one of the limited number of other pathways on broader human rights protection grounds or humanitarian considerations, the remaining options out of Libya are to accept assisted return or to take to the sea where they risk death, disappearance, interception and forcible return to Libya.<sup>110</sup>

At least 15 migrants interviewed by OHCHR in The Gambia alleged witnessing excessive use of force by the Libyan Coast Guard, including shooting and the use of physical violence during interception at sea operations. Those intercepted by the LCG alleged that it frequently engaged in unsafe interception practices, which put their lives and safety at risk. All interviewees who alleged being intercepted by the LCG reported being returned to arbitrary detention, torture and ill-treatment in Libya. For example, one migrant alleged “*We were shot at while trying to cross the sea, in August 2021, by Libyan Coast Guards. One migrant had a gunshot injury in his leg (...) We were all returned to Libya and taken to Ain Zara [detention centre]. Our belongings were confiscated, we were beaten with sticks and had very little food and water.*”<sup>111</sup>

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<sup>101</sup> UNHCR, UNHCR Libya Update, 02 August 2022, available at: <https://data.unhcr.org/en/documents/details/94595>.

<sup>102</sup> See <https://www.unhcr.org/rw/17295-first-evacuation-flight-of-2022-from-libya-to-rwanda-brings-over-100-asylum-seekers-to-safety.html>.

<sup>103</sup> UNHCR, Updated Risk Mitigation Strategy and 2022 Appeal, April 2022, p. 4, available at: <https://reporting.unhcr.org/document/2247>.

<sup>104</sup> Medecins Sans Frontieres (MSF), *Out of Libya: Opening Safe Pathways for Vulnerable Migrants Stuck in Libya*, June 2022, p. 15.

<sup>105</sup> Since 2017, the number of “persons of concern” identified by UNHCR has remained relatively stable at between 40,000-50,000 people. See, <https://data.unhcr.org/en/country/lby>.

<sup>106</sup> UNHCR, Updated Risk Mitigation Strategy and 2022 Appeal, April 2022, p. 60.

<sup>107</sup> See, Medecins Sans Frontieres (MSF), *Out of Libya: Opening Safe Pathways for Vulnerable Migrants Stuck in Libya*, June 2022, pp. 15-17.

<sup>108</sup> Ibid., p. 17.

<sup>109</sup> Ibid.

<sup>110</sup> Ibid., p. 5.

<sup>111</sup> OHCHR interview.

Arbitrary detention and ill-treatment in Libya were common experiences of migrants interviewed by OHCHR. Specific violations were alleged as having been committed by detention centre guards under the control of DCIM, including in al-Mabani/Ghot al-Sha'al, Ain Zara, Gharyan and Abu Salim in Tripoli, as well as al-Nasser in al-Zawiya. At least one person alleged being a survivor of an attempted escape from the Abu Salim detention centre in March 2021, where he witnessed shooting, beating and torture of detainees, resulting in the death in custody of several men.<sup>112</sup> Others reported witnessing regular torture, ill-treatment, deprivation of food and water, forced labour, and even death in DCIM detention centres. For example, one migrant detained by DCIM in Gharyan, alleged that while he was detained there four people were shot and killed by guards during an attempted escape, while at least three others died of poor physical conditions and lack of medical care.<sup>113</sup> He also alleged seeing migrants beaten with metal rods and batons, resulting in broken hands and legs, and reported that migrants were forced by DCIM to construct a detention centre in the desert for three weeks without pay.<sup>114</sup> Another person allegedly detained by DCIM in al-Nasser recounted *"In the prison they were only beating people. We were drinking from the toilet. They brought food only once a week."*<sup>115</sup>

Migrants interviewed by OHCHR also commonly reported being extorted by DCIM guards. According to several testimonies, the amount one is required to pay for release from detention is determined based on the nationality of the detained individual, with prices for sub-Saharan African migrants generally greater than those of other nationalities. The average price for Gambians to "buy their freedom" was alleged as between 35,000-60,000 Gambian Dalasi (approx. 650-1,100 Euros). Many of those interviewed alleged being detained multiple times and forced to pay this extortion each time or risk sitting in detention indefinitely without the prospect of release.

At least three returnees reported witnessing or being arrested as part of the Gargaresh raids of October 2021 (described in the above section *The situation of migrants in Libya*).<sup>116</sup> One person alleged witnessing his friend shot in the arm by police<sup>117</sup>, while another alleged he was imprisoned for two days with no food and without sufficient water.<sup>118</sup> According to one witness, *"If they saw a black person, they would just catch you. They demolished homes...locked people up in jail. They were holding 4,500 black people like dogs."*<sup>119</sup> Of the migrants interviewed by OHCHR, all alleged that they had either been a victim of, or witness to, the commission of human rights violations and abuses in Libya, including arbitrary arrest and detention, extortion, forced labour, slavery, torture and other cruel, inhuman or degrading treatment or punishment, trafficking, sexual violence, enforced disappearance and extrajudicial killing. Migrants alleged these human rights violations and abuses were suffered at the hands of both non-State and State perpetrators, including Libyan border guards, coast guards, detention centre guards, and police, whom returnees alleged were often working together with criminal trafficking and smuggling networks, militias, and armed groups to exploit and profit from their suffering.<sup>120</sup>

Given the widespread and systematic nature of the human rights violations and abuses migrants are subjected to in Libya, the lack of human rights protection from the Libya authorities, and the extremely limited number of safe and regular pathways for migrants to seek the protection of their rights outside of Libya, there is reason to believe that a significant number of migrants who ultimately accept assisted return may be in need of protection

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<sup>112</sup> OHCHR interview.

<sup>113</sup> OHCHR interview.

<sup>114</sup> OHCHR interview.

<sup>115</sup> OHCHR interview.

<sup>116</sup> See, Statement of the United Nations Assistant Secretary-General Resident and Humanitarian Coordinator for Libya, *UN extremely concerned about reports of Killing and Excessive Use of Force against Migrants and Asylum Seekers in Gargaresh, Tripoli*, 2 October 2021, available at: <https://unsmil.unmissions.org/statement-United-nations-assistant-secretary-general-resident-and-humanitarian-coordinator-libya>.

<sup>117</sup> OHCHR interview.

<sup>118</sup> OHCHR interview.

<sup>119</sup> OHCHR interview.

<sup>120</sup> See also, Libyan Anti-torture Network (LAN) and the World Organisation Against Torture (OMCT), *Libya: New patterns of human rights violations and absence of accountability*, 28 June 2022, noting that "Perpetrators of such violations and abuses are not only not prosecuted, but they are often well integrated into the Libyan State structures and allegedly mostly funded by the State budget." Available at: <https://www.omct.org/en/resources/statements/libya-new-patterns-of-human-rights-violations-and-absence-of-accountability>.



based on international human rights grounds, as well as compassionate, humanitarian, or other considerations. These include asylum-seekers from outside the nine nationalities approved by the Libyan authorities; survivors of torture and ill-treatment; victims of trafficking, survivors of slavery, forced labour and other forms of labour exploitation; survivors of gender-based violence; migrants subjected to aggravated forms of smuggling; migrants who are pursuing family unity; children; pregnant women and women providing neo-natal care; migrants with health-related needs; and migrants compelled to leave their countries of origin due to violations of economic, social and cultural rights or in the context of disasters, the adverse effects of climate change or environmental degradation.

While IOM Libya indicated they have dedicated screening and assessment teams that are trained to identify and refer asylum-seekers and other “vulnerable cases” to UNHCR,<sup>121</sup> none of the migrant returnees interviewed by OHCHR indicated that they were informed of the right to seek asylum or were provided information on other safe and regular pathways for admission and stay to third countries. As one person indicated “*It’s not possible to have asylum in Libya.*”<sup>122</sup> Another told OHCHR “*I had no chance to ask to seek protection in Libya or elsewhere! I was only offered to go back home.*”<sup>123</sup>

Almost all of the migrants OHCHR spoke with alleged that the pre-departure screening provided by IOM focused on verifying their nationality and fitness to travel, including a negative COVID-19 test, but did not explore in detail their protection needs or potential third-country pathways. Some alleged that the only protection screening they received occurred at the airport immediately prior to their departure. For example, one migrant alleged: “*I only received information at the airport. I signed a paper and saw a doctor in the airport before leaving.*”<sup>124</sup>

In the absence of a more robust individual assessment, some of these assisted returns may be leading to the “voluntary” return of migrants in vulnerable situations who would be entitled to protection from return according to the principle of *non-refoulement* and other international human rights law obligations, or who might otherwise be prioritized for pathways based on compassionate, humanitarian, or other considerations.

<sup>121</sup> Information received from IOM Libya, 15 July 2022.

<sup>122</sup> OHCHR interview.

<sup>123</sup> OHCHR interview.

<sup>124</sup> OHCHR interview.



## **RECOMMENDATIONS**

### **To the Libyan authorities:**

- Take immediate steps to protect the human rights of migrants in Libya, including by decriminalizing irregular entry, stay and exit in Libya; ensuring non-discrimination based on the nationality or migration status of migrants in Libya; undertaking search and rescue operations with the objective to save lives and deliver rescued persons to a place of safety; refraining from dangerous interception practices and the forcible return of migrants to Libya; immediately ending arbitrary detention and releasing all arbitrarily detained migrants in Libya; ensuring migrants in Libya have access to health, housing, decent work and other rights without discrimination; and investigating and ensuring accountability, including access to justice and effective remedy, for all human rights violations and abuses perpetrated against migrants.
- Adopt pathways for admission and stay based on international human rights law, as well as compassionate, humanitarian, or other considerations, including by adopting appropriate administrative and legislative mechanisms to regularize the status of migrants in an irregular situation already on the territory, and ensuring access to civil documentation, including birth registration, for all migrants in Libya.
- Expedite evacuations from Libya to third countries through UNHCR, faith-based organisations, humanitarian organisations and other protection actors in Libya, including on grounds of international human rights law as well as compassionate, humanitarian, or other considerations.
- Ratify all core human rights treaties as well as the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, remove the restriction on UNHCR to only register asylum claims from nine nationalities, and officially recognize and allow UNHCR the full exercise of its mandate in Libya.

### **To the African Union and its Member States:**

- Within the AU-EU-UN Tripartite Task Force and other appropriate forums, advocate for expanded safe and regular pathways for admission and stay to third countries for migrants currently in Libya.
- Expand safe and regular pathways for admission and stay to AU Member States for migrants currently in Libya based on grounds of international human rights protection, as well as compassionate, humanitarian, or other considerations, including but not limited to: family reunification; best interests of the child; victims of trafficking; survivors of torture and ill-treatment; survivors of gender-based violence; survivors of slavery, forced labour and other forms of labour exploitation; migrants subjected to aggravated forms of smuggling; pregnant women and women providing neo-natal care; migrants with health-related needs conditions; and migrants compelled to leave their countries of origin due to violation of economic, social and cultural rights, or in the context of disaster, the adverse effects of climate change or environmental degradation.

### **To the European Union and its Member States:**

- Expand safe and regular pathways for admission and stay to EU Member States for refugees and other migrants currently in Libya based on grounds of international human rights protection, as well as compassionate, humanitarian, or other considerations, including but not limited to the grounds outlined above.
- Condition search and rescue funding, technical assistance, coordination and cooperation with the Libyan authorities upon assurances that migrants rescued or intercepted at sea will not be disembarked in Libya but at a designated port of safety.

### **To United Nations agencies and other relevant stakeholders:**

- Strengthen human rights-based protection screening and assessment procedures to identify migrants in need of human rights or refugee protection, including migrants in vulnerable situations, and prioritise their referral to UNHCR and other protection actors in Libya for evacuation to third countries on grounds of international human rights law, as well as compassionate, humanitarian, or other considerations, including but not limited to the grounds outlined above.

## B. Lack of free, prior and informed consent

### LEGAL FRAMEWORK

The principle of free, prior and informed consent is acknowledged in various ways within international legal instruments and normative standards, for instance, with regard to health decisions<sup>125</sup>, the treatment of detained persons<sup>126</sup>, as well as regarding groups or individuals who are vulnerable to discrimination and exclusion, for example children<sup>127</sup>, women<sup>128</sup>, persons with disabilities<sup>129</sup>, racial minorities<sup>130</sup> and indigenous peoples.<sup>131</sup>

The principle of free, prior and informed consent ensures respect for one's own choices shaped by individual will and preferences, and the promotion of personal autonomy through informed decision-making. As the UN Special Rapporteur on the right to health has noted, "informed consent is not mere acceptance" of a particular intervention, but requires a voluntary and sufficiently informed decision which protects the individual's autonomy and self-determination, and which assigns associated duties and obligations to those seeking to provide the intervention.<sup>132</sup>

In the context of assisted returns, in the Global Compact for Safe, Orderly and Regular Migration, States have committed to "ensure that our nationals are duly received and readmitted, in full respect for the human right to return to one's own country" and to guarantee that all voluntary returns "effectively take place on the basis of the migrant's free, prior and informed consent."<sup>133</sup> The UN system has similarly noted that "[w]here voluntary return takes place, it must respect migrants' free, prior and informed consent to the voluntary return process."<sup>134</sup>

Based on the principle of free, prior and informed consent, returns can only be called "voluntary" when migrants are fully informed of the choice they make, they have sufficient time to consider the information and alternative options, and if consent is given free of any coercion, intimidation or manipulation. This means, *inter alia*, that migrants have access to up-to-date, accurate and objective information, including in relation to the place and the circumstances to which they will be returning;<sup>135</sup> that such information is unbiased, reliable and communicated in a language and format that is accessible and understood;<sup>136</sup> that migrants are not pressured or compelled to give

<sup>125</sup> See, e.g. CESCR, General Comment No. 14, para. 8 (right to control one's health and body); The UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health has also stated: "Informed consent is not mere acceptance of a medical intervention, but a voluntary and sufficiently informed decision, protecting the right of the patient to be involved in medical decision-making, and assigning associated duties and obligations to health-care providers. Its ethical and legal normative justifications stem from its promotion of patient autonomy, self-determination, bodily integrity and well being." A/64/272 10 August 2009, para. 9.

<sup>126</sup> See, e.g. Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 22 (the right to be free from medical experimentation).

<sup>127</sup> See, e.g. CRC, Art.12 (the child's right to be heard).

<sup>128</sup> See, e.g. CEDAW, Art. 16(b) (the right to freely choose a spouse and enter into marriage); CEDAW Committee, General Comment No. 35, para. 33 (the right to be free from sexual and gender-based violence).

<sup>129</sup> See, e.g. CRPD, Art. 25(d) (the right to highest attainable standard of health).

<sup>130</sup> See, e.g. CERD, Concluding Observations to France, CERD /C/FRA/CO/17-19, para. 14 ("voluntary" return of Roma to their country of origin).

<sup>131</sup> See, e.g. UN Declaration on the Rights of Indigenous Peoples, A/61/L.67, Art. 10 (the right not to be forcibly removed or relocated from lands or territories).

<sup>132</sup> A/64/272, 10 August 2009, para. 9.

<sup>133</sup> The Global Compact for Safe, Orderly and Regular Migration, A/RES/73/195, Op. Cit., para. 37(b).

<sup>134</sup> UN, *Position Paper: Ensuring Safe and Dignified Return and Sustainable Reintegration*, March 2021, para. 5, available at: <https://migrationnetwork.un.org/thematic-working-group-5-return-and-reintegration>.

<sup>135</sup> UN, *Recommended Principles and Guidelines on the Protection of the Human Rights of Migrants in Vulnerable Situations* (2018), Principle 6, Guideline 3.

<sup>136</sup> UN, *Position Paper: Ensuring Safe and Dignified Return and Sustainable Reintegration*, Op. Cit. para. 5.

their consent, including via threats of indefinite or otherwise arbitrary detention<sup>137</sup>, torture or ill-treatment or other physical or psychological intimidation or manipulation;<sup>138</sup> that migrants are provided sufficient time to consider other available options and to ready themselves for the return; and that there is the possibility of withholding or reconsidering one's consent if the proposed activities, circumstances, or available information change.<sup>139</sup>

The UN Special Rapporteur on the human rights of migrants has found that “[i]n general, the conditions under which migrants request assisted voluntary return do not allow for the return to be qualified as voluntary, as they do not fulfil the requirements of a fully informed decision, free of coercion and backed by the availability of sufficient valid alternatives” and that return cannot be considered voluntary if migrants accept return as their only option to avoid, inter alia, arbitrary detention, abusive or exploitative situations, or the deprivation of socioeconomic rights.<sup>140</sup> Apart from actual or implied threats, the lack of alternative options to return can also impact the ability to make a free choice.<sup>141</sup> For example, when migrants are prevented from seeking asylum or from accessing other forms of protection of their human rights, their subsequent agreement to return “voluntarily”, properly understood, may not be free of coercion.

Among the aims of Libya's State policy on migration is to cooperate in the voluntary return and repatriation of migrants from the country.<sup>142</sup> However, based on the information received by OHCHR, many of the assisted returns currently taking place from Libya would not be considered truly voluntary according to international human rights law and standards.

Examples of the lack of free choice alleged by migrant returnees interviewed by OHCHR include accepting assisted return: because it was the only option offered by Libyan authorities for their release from arbitrary detention; to avoid risks of human rights violations witnessed or already subject to, such as torture and ill-treatment, enforced disappearance, trafficking, sexual violence and other human rights violations; to avoid ongoing extortion, including by Libyan officials; due to the lack of access to economic, social and cultural rights, including health, food and water in Libya; due to the lack of access to asylum or other safe and regular pathways, including out of Libya; and due to the lack of access to justice and effective remedy for human rights violations and abuses suffered in Libya.

Many of the migrants interviewed by OHCHR indicated that arbitrary detention was a key motivating factor for accepting assisted return to their countries of origin. Those who were able to pay the extortion required by DCIM officials for their release noted that they were typically set free. However, repeated arrests, extortions and forced labour by Libyan officials, leave many migrants without sufficient money to pay for their release from detention. For example, one returnee alleged “*I was forced to work for few months [while I was] in a detention centre in Tripoli. When I refused to work because of exhaustion, I was beaten until I asked to be taken back to work. I [was taken outside where I] cleaned roads and houses, worked in farms and was never paid. I had little food and no potable water. When they offered me to return, I agreed. I wanted to stop the beating and the tough work.*”<sup>143</sup> Migrants interviewed indicated that for those who are detained and have run out of money to continue paying the necessary extortion for their release, accepting return is often the only way to escape exploitation and abuse within Libyan detention centres, including torture, ill-treatment, sexual violence, slavery and other forms of

<sup>137</sup> See, OHCHR, *Recommended Principles and Guidelines on Human Rights at International Borders*, Op. Cit. Principle 9, Guideline 3.

<sup>138</sup> UN, *Recommended Principles and Guidelines on the Protection of the Human Rights of Migrants in Vulnerable Situations*, Op. Cit., Principle 6, Guideline 3; see also UN, *Position Paper: Ensuring Safe and Dignified Return and Sustainable Reintegration*, Op. Cit. para. 5.

<sup>139</sup> UN, *Position Paper: Ensuring Safe and Dignified Return and Sustainable Reintegration*, Op. Cit., para. 5.

<sup>140</sup> A/HRC/38/41, paras. 30 and 88.

<sup>141</sup> A/HRC/38/41, para. 18.

<sup>142</sup> See, Report of the State of Libya to the Regional Review of the Global Compact for Safe, Orderly and Regular Migration, September 2020, available at: <https://migrationnetwork.un.org/sites/g/files/tmzbdl416/files/docs/libya-gcm-report-eng.pdf>.

<sup>143</sup> OHCHR interview.

forced labour, as well as the denial of adequate food, water or medical care. According to one migrant returnee: *“The guards would tell us ‘This is Libya. Here to kill someone is nothing to us.’ They would ask bribes for our release but then take the money and keep people detained anyway. I was suffering there and had no one to help me. IOM officers came to the prison and offered to send me home. The only reason I accepted is because I had no way to get out of prison.”*<sup>144</sup>

Another returnee alleged: *“I tried to cross [to Europe] three times, but when the Libyans catch you, that very day they will take you to prison. (...) They torture people there. Any mistake and they beat you. There is only bread in the prison and many go hungry because of the lack of food and clean water. Some are very sick and have wounds. You sleep on the floor. Many people develop skin diseases. They treat people like animals. The last time they captured us, they brought us to a ‘collection and return centre.’ That is when I knew they wanted to deport us. We asked them, ‘Is this a prison or what? Is this a deportation?’ (...) Then they told us that we are supposed to return to the Gambia. We must accept. Then IOM came there to interview us. They called our embassy, they wrote down our names. This is when we knew we had no choice but to go. From there they deported us. I wanted to go to Europe but didn’t feel I had another choice.”*<sup>145</sup>

Several of the returnees interviewed by OHCHR alleged that they had suffered use-of-force violations, torture or ill-treatment within Libyan detention centres before agreeing to assisted return. For example, one returnee interviewed by OHCHR recounted: *“I was then arrested [at sea] by the Libyan mafia. You cannot say they are Libyan authorities. They brought me to a prison. But even at that point I didn’t think about going back to Gambia. Then they entered the prison with a stick and were beating people like animals. Sometimes they would take your money and good clothes. They broke my teeth. So I accepted return.”*<sup>146</sup> Another man alleged: *“I didn’t want to come back home. They transferred me from one prison to another. They are all in Tripoli. I remember them beating people in the prison. Myself, I was tortured. (...) The Libyan forces told us that we would all die if we don’t agree to go home. I felt forced by the Libyan authorities. I was not forced by IOM or the Gambian embassy. I felt threatened by the commander of the prison. I never agreed but I felt I had no option.”*<sup>147</sup> Still others alleged deaths in DCIM custody and sexual violence by DCIM officials: *“I lost friends and saw people dying in al-Mabani and al-Nasser [detention centres] in al-Zawiya. I used to recite ‘al-Shahada’ for those who died. I also saw women and girls being taken away for sexual exploitation in al-Nasser in al-Zawiya. Those who came back told me.”*<sup>148</sup>

Other migrant returnees alleged that return interviews did not always provide sufficient information, including in a language and format that was well understood by them. Migrants interviewed also alleged that consular assistance and protection is difficult to access in Libya due to the ongoing political and security situation and the fact that some governments either lack consular representation in Libya or have withdrawn their consular officials from the country due to the persistent insecurity. One returnee alleged *“I did not decide to come back. I was arrested at sea and taken to prison. In that prison, UN officials came and took my information, and from that prison I was deported to the Gambia. (...) They didn’t give me any information about the return. I just knew they were deporting me. I wasn’t told what I was signing—I didn’t know. They just told me to sign here. I didn’t consider that I had any other options because there was no possibility to escape. Those who did not agree to come back are still there in prison.”*<sup>149</sup> None of the migrants interviewed by OHCHR indicated that they were informed of the right to asylum or of other safe and regular pathways by the Libyan authorities or other actors supporting assisted return. Few expressed receiving any information about the political, economic and social conditions they could expect to find upon their return to The Gambia or of the specific support they would be provided with regard to reintegration assistance.

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<sup>144</sup> OHCHR interview.

<sup>145</sup> OHCHR interview.

<sup>146</sup> OHCHR interview.

<sup>147</sup> OHCHR interview.

<sup>148</sup> OHCHR interview.

<sup>149</sup> OHCHR interview.





OHCHR also received information that return interviews conducted within Libyan detention centres were not always private and were sometimes conducted in the presence of DCIM officials. For example, one returnee alleged: *“On days when the UN would visit, the prison would give us better food to pretend that the conditions were better. They would ask “Do you want voluntary return?” and whoever wants to go home could go to speak with [the UN]. But the conversations were not confidential – guards were listening. If you say anything to them about the challenges in detention you will be mercilessly beaten. The only thing you can say is that you want to go home because the prison is very hard. But I really wanted to stay in Libya.”*<sup>150</sup> At least two returnees told OHCHR that they registered for voluntary return out of fear of retaliation by DCIM staff.<sup>151</sup>

OHCHR also received information that some Libyan detention centres, including Tariq al Matar in Tripoli, have designated separate areas of the detention facility for migrants who have accepted assisted return and those who have not. Those who refuse to accept assisted return are allegedly placed in an area of the detention centre with worse conditions and treatment, including overcrowding and the lack of sufficient food and clean water. Meanwhile, those who have accepted assisted return to their countries of origin are allegedly placed in an area of the detention centre with better conditions and treatment.<sup>152</sup> Several other migrants OHCHR interviewed alleged that when migrants are transferred from Libyan detention centres to the airport for their assisted return flight, they are guarded by armed Libyan authorities and escape is not possible. As one returnee interviewed by OHCHR reported: *“When you return from detention, you are only released on the day of your return flight, and you are escorted to the airport by armed guards. If you try to escape they will shoot you. If they catch you, they will take you back to detention.”*<sup>153</sup>

Such testimonies make clear that migrants within Libyan detention centres are frequently unable to accept assisted return in full accordance with the principle of free, prior and informed consent, taking into account the inherent coercion, intimidation, threat and manipulation present in a context of arbitrary detention.

But even for migrants who accept assisted return from a community setting (i.e. outside of detention), the systemic human rights violations migrants are subjected to in Libya, coupled with the extremely limited avenues for

<sup>150</sup> OHCHR interview.

<sup>151</sup> OHCHR interview.

<sup>152</sup> OHCHR interview.

<sup>153</sup> OHCHR interview.

asylum and other safe and regular pathways, including to third countries, calls into question the voluntariness of such returns. For example, even when migrant returnees indicated that they agreed to return to The Gambia from the community setting, they most often described the reasons for doing so as related to the hostile environment in Libya towards migrants, including persistent medical needs related to torture and ill-treatment suffered in detention, a lack of access to health care, insufficient money due to ongoing extortion, the threat of kidnapping and other violations of their human rights. As one returnee reported: *“When I was finally released from the prison I was sick. It was difficult to get a doctor and I was not given proper care. So then I decided to go back. I felt pressure but not from IOM.”*<sup>154</sup>

Many returnees OHCHR spoke with were thankful for IOM’s assistance, as it allowed them to escape from the often dire circumstances in Libya which they were facing. At the same time, nearly all indicated that their decision to accept assisted return came as a result of significant pressures owing to the lack of protection of their human rights in Libya, including being subjected to human rights violations and abuses there. Many expressed a desire to continue their journeys, and all of the migrant returnees interviewed by OHCHR indicated a lack of access to asylum or other safe and regular pathways, including to third countries. Collectively, these testimonies point to a decision to accept assisted return that, for most migrants, was not fully consistent with a truly free, prior and informed decision to return home.

## RECOMMENDATIONS

### To the Libyan authorities:

- Immediately put an end to all violations and abuses of migrants’ rights, in particular policies and practices which create a coercive environment inconsistent with safe, dignified and voluntary returns and the principle of free, prior and informed consent.

### To the African Union and its Member States:

- Expand access to consular protection and assistance in Libya for AU nationals, including those arbitrarily detained, ensuring that release from detention is not dependent on migrants accepting assisted return to their country of origin.

### To the European Union and its Member States:

- Exercise appropriate due diligence, including by ensuring that adequate monitoring mechanisms are in place, to ensure all funding and cooperation on assisted returns fully respect and uphold international human rights law and standards, including the principle of free, prior and informed consent.

### To United Nations agencies and other relevant stakeholders:

- Ensure all assisted returns strictly adhere to international human rights law and standards, including the principle of free, prior and informed consent.
- Increase advocacy for the release of all arbitrarily detained migrants and devote greater resources to the provision of non-custodial, community-based alternatives to detention from which safe, dignified and voluntary returns are possible. Lack of free, prior and informed consent

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<sup>154</sup> OHCHR interview.

## C. Returns to unsustainable situations

### LEGAL FRAMEWORK

The UN has defined sustainable reintegration as “[a] process which enables individuals to secure and sustain the political, economic, social and psychosocial conditions needed to maintain life, livelihood and dignity in the country and community they return or are returned to, in full respect of their civil, political, economic, social and cultural rights.”<sup>155</sup> This should include “targeted measures that enable returning migrants to have access to justice, social protection, financial services, health-care, education, family life, an adequate standard of living, decent work, and protection against discrimination, stigma, arbitrary detention and all forms of violence, and that allows returnees to consider that they are in an environment of personal safety, economic empowerment, inclusion and social cohesion upon return.”<sup>156</sup>

Under international human rights law States have a duty to respect, protect and fulfil all civil, political, economic, social, and cultural rights without discrimination, including of their returning nationals. This includes inter alia the rights to life, safety, justice, freedom of movement, private life, the highest attainable standard of mental and physical health, family life, education, decent work, social security, an adequate standard of living including housing, food, water and sanitation, rehabilitation for victims of torture or ill-treatment and participation in cultural life. It also includes individual and collective rights such as the right to a healthy environment and the right to development, which aims at the constant improvement of human well-being and entitles all individuals and peoples to contribute to, participate in, and enjoy development in all its dimensions.<sup>157</sup>

According to the right to development, States have a duty to formulate appropriate national development policies that aim at the improvement and well-being of the entire population, on the basis of their active, free and meaningful participation and in the fair distribution of its benefits.<sup>158</sup> States are also obligated to adopt measures “individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources” to progressively achieve the full realization of economic, social, and cultural rights. Although international human rights law recognizes that lack of resources may be a constraint for countries to fulfil these obligations, this does not absolve States of the obligation to take steps towards their full realization.<sup>159</sup> Each State is left a certain margin of appreciation to decide which measures it should adopt to progressively realize these rights, provided such steps are deliberate, concrete and targeted towards meeting the obligations.<sup>160</sup> Additionally, under the ICESCR, a lack of available resources cannot be considered as an objective and reasonable justification for difference in treatment “unless every effort has been made to use all resources that are at the State party’s disposition in an effort to address and eliminate the discrimination, as a matter of priority”.<sup>161</sup> No matter what level of resources are at their disposal, and even in cases of economic downturn or emergency, States are obligated to make sure that all people living within their jurisdiction are able to enjoy the minimum core obligations of the Covenant, which include essential foodstuffs, essential primary health care, basic shelter and housing, and primary education.<sup>162</sup> States should use all their available resources, including international assistance, to ensure these minimum core obligations.<sup>163</sup>

<sup>155</sup> UN, *Position Paper: Ensuring Safe and Dignified Return and Sustainable Reintegration* (2021).

<sup>156</sup> *Ibid.*

<sup>157</sup> The right to development encompasses the ability to “participate in, contribute to, and enjoy economic, social, cultural and political development, in which all human rights and fundamental freedoms can be fully realized.” UN Declaration on the Right to Development, Art. 1.

<sup>158</sup> *Ibid.*, Art. 2 (3).

<sup>159</sup> CESCR, General Comment No. 3, *The Nature of States Parties’ Obligations* (Art. 2, Para. 1, of the Covenant, para. 9).

<sup>160</sup> *Ibid.*, paras. 5 and 12.

<sup>161</sup> CESCR, General Comment No. 20, *Non-discrimination in economic, social and cultural rights*, 2009, para. 13.

<sup>162</sup> CESCR, General Comment No. 3, *Op. Cit* para. 10.

<sup>163</sup> *Ibid.*, para. 13.





In the Global Compact for Safe, Orderly and Regular Migration, States have committed “to create conducive conditions for personal safety, economic empowerment, inclusion and social cohesion in communities, in order to ensure that reintegration of migrants upon return to their countries of origin is sustainable.”<sup>164</sup> This commitment involves identifying and addressing “the needs of the communities to which migrants return by including respective provisions in national and local development strategies, infrastructure planning, budget allocations and other relevant policy decisions and cooperating with local authorities and relevant stakeholders.”<sup>165</sup>

In the 2030 Agenda for Sustainable Development, States have similarly committed “to cooperate internationally to ensure safe, orderly and regular migration involving full respect for human rights and the humane treatment of migrants,” which includes goals and targets addressing, *inter alia*, poverty eradication; decent work; equitable and universal access to quality education at all levels; health care and social protection; safe drinking water and sanitation; sufficient, safe, affordable and nutritious food; and adequate, safe and affordable housing.<sup>166</sup>

Unsustainable returns threaten migrants’ safety and dignity and heighten the risk of human rights violations and abuses.<sup>167</sup> Whereas returning to one’s country of origin can be a positive and empowering experience, when returns fail to safeguard all civil, political, economic, social and cultural rights, they can create or exacerbate situations of vulnerability and may act as an adverse driver that compels migrants to embark on new perilous journeys or lead to internal displacement. As such, where migrants are returned to situations in which the adverse drivers compelling their migration persist and where reintegration assistance or access to safe and regular pathways are not sufficient to mitigate these adverse drivers, they are often effectively returned to unsustainable situations.

<sup>164</sup> A/RES/73/195, para. 37.

<sup>165</sup> A/RES/73/195, para. 37(i).

<sup>166</sup> Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1, Resolution adopted by the General Assembly on 25 September 2015, para. 29. See also, Goal 10.7.

<sup>167</sup> See OHCHR, Expert Meeting on protecting the human rights of migrants in the context of return, Informal Summary, 6 March 2018, available at: <https://www.ohchr.org/Documents/Issues/Migration/Return/InformalSummary.pdf>.



In The Gambia, OHCHR observed that the most common explanation returnees gave for taking precarious “backway” migration routes to Libya in the first instance was out of necessity due to the lack of alternative options, including pathways for safe and regular migration. Several returned migrants reported to OHCHR they had unsuccessfully attempted to obtain visas prior to embarking on the “backway”, while others never tried because they found such applications inaccessible or unaffordable. All were painfully aware that safe and regular pathways are largely out of reach for the average Gambian. As mentioned by one returnee, *“There is only the backway. You don’t have any other option.”*<sup>168</sup>

At the same time, the Gambian returnees OHCHR spoke with largely felt compelled to migrate due to the presence of multiple and intersecting adverse drivers, including extreme poverty; persistent food insecurity; lack of access to decent work, health and education; family separation; inadequate standards of living; and denial of the right to development. As illustrated by one returnee: *“I lost my father at 10 years old. I was living with my mom, sister, brother, and sometimes even having enough food to eat was a problem. I had no education, no job in this country. I struggled.”*<sup>169</sup> In some cases, returnees indicated that the food insecurity which compelled their migration was linked to the adverse effects of climate change and environmental degradation. For example, one returnee shared: *“Sometimes you lack food because you cultivate crops that are not ready to eat, and sometimes you have no harvest, because the climate is not predictable.”*<sup>170</sup>

Many returnees also reported being compelled to migrate due to a lack of access to education, including being forced to cut their education short in order to provide for their families. Others indicated being compelled by a lack of access to health, including the desire to seek medical care abroad or the need to provide for the care of a sick family member. For example, one returnee shared: *“I met with several doctors in The Gambia but they weren’t able to help me. For over three years I was looking for a medical certificate to go abroad for treatment, but couldn’t find one.”*<sup>171</sup> Still others indicated they had family members in Europe and hoped to join them there.

But regardless of the adverse drivers that originally compelled them to leave The Gambia, migrants who were unsuccessful in reaching their intended destination and who were ultimately assisted to return from Libya appeared to be in particularly vulnerable situations, exacerbated by the myriad physical, psychological, and financial consequences of the journeys as well as of the grave human rights violations and abuses they had suffered or witnessed in transit to and within Libya. As one survivor of gender-based violence described *“My life is very hard now. I have no money, no work. I have nobody to help me out”*.<sup>172</sup> Moreover, returnees overwhelmingly reported to OHCHR that, upon their return, they continued to face the same human rights challenges that compelled them to leave their country of origin in the first place.

To help overcome these challenges, and to support sustainable reintegration, a package of reintegration assistance is provided by IOM through funding of the EU-IOM Joint Initiative. The reintegration package forms part of a broader EU approach embodied by the EU strategy on voluntary return and reintegration, in which closer links between EU development initiatives and national strategies in third (non-EU) countries are being sought, with the aim of building the capacity and fostering ownership for countries of origin to sustainably reintegrate their nationals.<sup>173</sup> Under the EUTF at least 38 million have been provided to The Gambia<sup>174</sup> in development assistance of which employment-related projects account for 90% and migration-related projects account for 10%.<sup>175</sup> Upon returnees’ immediate arrival, the individual reintegration package operationalised by IOM offers medical screening and assistance, temporary overnight accommodation and psycho-social support. It also offers

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<sup>168</sup> OHCHR interview.

<sup>169</sup> OHCHR interview.

<sup>170</sup> OHCHR interview.

<sup>171</sup> OHCHR interview.

<sup>172</sup> OHCHR interview.

<sup>173</sup> The EU strategy on voluntary return and reintegration, available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52021DC0120&from=EN>. See also: [EU Trust Fund for Africa: EU adopts new actions \(europa.eu\)](https://europa.eu/european-council/story/eu-trust-fund-for-africa-eu-adopts-new-actions)

<sup>174</sup> The EU is the largest financial supporter to the Gambian government, with almost €350 million confirmed support since 2017.

<sup>175</sup> European Commission, EU Emergency Trust Fund for Africa: The Gambia, available at: [https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/gambia\\_en](https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/gambia_en).

support for continued education, vocational training and assistance to open a business which is tailored to the returnees' needs, skills, previous experience and existing demand and opportunities in the labour market. Whereas returnees were previously offered in-cash assistance, the reintegration package now offers primarily in-kind assistance, for example vouchers that returnees can exchange with local merchants for building supplies or materials to start a business.<sup>176</sup>

Returnees interviewed by OHCHR almost uniformly expressed their appreciation for IOM's efforts and for the reintegration assistance offered, however OHCHR observed gaps with regard to the sustainability of the reintegration efforts. For example, many of the returnees OHCHR spoke with had sold off their land, houses or belongings in order to afford the journey to Libya. Some returnees and their families were forced to take out loans to pay ransoms for their release from detention or the frequent extortions throughout the journey. Others had left jobs they were unable to reacquire. As a result, they often returned to The Gambia indebted and were in some cases compelled to sell their reintegration assistance to purchase food, provide for their families or to pay off debt. Others reported they were entirely reliant on family members for their day-to-day subsistence or that they lacked any other support outside the EU-IOM joint programme. As one returnee told OHCHR: *"I have lost all the money my family collected to pay my journey and then the prison guards (...) I was beaten and lost one eye in a prison. Now, I am back to 'phase zero' with only debts and nightmares."*<sup>177</sup>

Despite the reintegration assistance offered, accessing decent work and wages was an almost insurmountable challenge for most returnees OHCHR spoke with. This was in large part due to the persistent micro- and macro-economic challenges and lack of development that persist throughout much of The Gambia, which reintegration assistance was ill-equipped to address. While the broader employment-related development projects under the EUTF aims to ensure return and reintegration for migrants is a "sustainable positive experience"<sup>178</sup> through employment opportunities, this has yet to be realized for most returnees. According to one returnee: *"You can't even feed your family with your salary. Even as I'm here speaking to you there are people planning to go back. I'm a mechanic and I have a certificate, but I don't get any chance"*.<sup>179</sup>

Challenges in securing an adequate standard of living were also reported as significant, and in many cases worse, as compared to before returnees migrated to Libya. This was especially the case where family members had died or were no longer able to support them, or where returnees were unable or unwilling to return to their communities due to stigma tied to perceptions of "failure" from having not succeeded in their migration project.

Most returnees interviewed indicated they were not able to receive appropriate and sustained physical and mental health care. Testimonies reveal that many returnees were burdened by physical and trauma-related mental health problems as a direct result of the severe human rights violations and abuses suffered and witnessed during their transit to and stay in Libya. Vouchers provided by IOM for counselling or medical attention as part of their reintegration package did not appear sufficient to overcome structural challenges to the Gambian health care system, including a lack of health infrastructure and trained physicians skilled in dealing with trauma or torture rehabilitation.

OHCHR was also informed about cases where returnees were not able to access reintegration assistance based on where they returned from and the dates the return took place. For example, whereas those who return through the IOM VHR mechanism are registered and qualify for reintegration assistance, several people OHCHR interviewed were not able to access reintegration assistance as they had not returned through IOM, but instead returned independently. In these cases, migrants had opted to return to The Gambia on their own for a range of reasons, including because they had not been aware of the IOM VHR mechanism, because they could not afford to wait for a VHR flight due to the dire circumstances they found themselves in, or because they were collectively

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<sup>176</sup> Information received from IOM The Gambia, 22 July 2022.

<sup>177</sup> OHCHR interview.

<sup>178</sup> European Commission, EU Emergency Trust Fund for Africa: The Gambia, available at: [Building a future - Make it in The Gambia | EU Emergency Trust Fund for Africa \(europa.eu\)](#)

<sup>179</sup> OHCHR interview.

expelled from Libya and subsequently decided to abandon their migration project.

As a result of these challenges, most returnees indicated that they faced great difficulties to effectively and sustainably reintegrate back into their families and communities of origin and several returnees indicated that they intended to re-migrate via “backway” routes. For example, when asked if he would migrate again, one returnee shared “Yes, of course if I have the chance. If I go again, even though I might face the same challenges.”<sup>180</sup> Another shared, “I want to leave again. I need to be something for myself and my family. It is my feeling that I can’t be that for them here.”<sup>181</sup>

Furthermore, OHCHR noted a lack of access to justice and effective remedy for migrants after they had returned to The Gambia. While all were victims of human rights violations and abuses in Libya, none of the returnees OHCHR spoke with had been provided redress. OHCHR is also unaware of any efforts by Libyan authorities to impartially investigate, and hold accountable, those responsible for the commission of human rights violations and abuses against migrants in Libya, including through cross-border collaboration with countries of origin. This results in a situation whereby migrants who are assisted to return to their countries of origin often effectively forego their rights to justice and redress.

Finally, human rights-based monitoring of assisted return and reintegration measures, including pre-return, during return and post-return monitoring can help inform government policies in order to ensure migrants’ human rights are protected, including access to national systems of healthcare, education, social protection, justice and development. Yet a lack of adequate independent and human rights-based monitoring may be obscuring the challenges faced by a population in a particularly vulnerable situation due to the circumstances relating to their reasons for initially migrating, as well as those they encountered during their journeys to and upon return from Libya.

## RECOMMENDATIONS

### To the African Union and its Member States:

- Ensure that return and reintegration are sustainable by mitigating the risk that returnees face in their countries of origin through the implementation of policies and measures that enable returning migrants to fully enjoy their human rights.
- Prepare plans for sustainable reintegration that include targeted measures that enable returning migrants to, inter alia, have access to justice, social protection, financial services, health-care, education, family life, an adequate standard of living, decent work, and protection against discrimination, stigma, arbitrary detention and all forms of violence.
- Ensure reintegration assistance and programmes address the needs and rights of individual returnees, including on the basis of age, gender and other factors.
- Establish independent mechanisms to monitor human rights in pre-return, return and post-return processes and guarantee that all allegations of human rights violations and abuses during the process of assisted return are promptly and impartially investigated and that all returned migrants have access to effective complaint mechanisms to ensure their access to justice and effective remedy.

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<sup>180</sup> OHCHR interview.

<sup>181</sup> OHCHR interview.

### **To the European Union and its Member States:**

- Ensure that international cooperation on assisted return and reintegration is not made conditional on measures seeking to restrict or penalize migration or migrants in third countries.
- Assess the human rights impact of assisted return and reintegration policies, practices and cooperation agreements with third countries, exercising due diligence to prevent, mitigate and remedy all reasonably foreseeable human rights violations or abuses by other States and private actors as a direct result of such cooperation.
- Continually monitor the risk of human rights violations as a consequence of assisted return and reintegration policies as part of due diligence efforts and suspend or re-evaluate initiatives when risks of human rights violations are identified.
- Adopt an integrated approach to sustainable reintegration at the individual, community, and structural levels and ensure that funding is directed toward strengthening national systems, including health, education, social protection, and justice.

### **To United Nations agencies and other relevant stakeholders:**

- In facilitating assisted return and reintegration, seek to ensure migrants are not returned to the same conditions which compelled them to migrate in the first place, including to situations of vulnerability in which they are faced with lack of enjoyment of their human rights.
- Monitor human rights in pre-return, return and post-return processes, to confirm that return and reintegration efforts do not violate human rights norms and standards and that they are sustainable from a human rights perspective.
- Support efforts to ensure that reintegration is sustainable through a human rights-based and integrated approach at the individual, community, and structural levels.



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## 4. Conclusion



As the use of assisted returns has grown exponentially in recent years, it is time for greater critical reflection on the extent to which assisted return and reintegration efforts are consistent with international human rights law and standards.

In especially complex human rights and humanitarian situations such as Libya, as well as in other contexts where human rights protection and third-country pathways are limited, there is a particular risk that assisted returns may undermine effective enjoyment of migrants' human rights. As such, there is a need to exercise caution regarding when and under what circumstances assisted returns are offered, and to scrupulously uphold the principle of free, prior and informed consent in order to safeguard migrants' rights and prevent returns that create or exacerbate situations of vulnerability. This is especially true for refugees and other migrants, notably migrants in vulnerable situations, who may be in need of protection from return on human rights grounds related to the principle of *non-refoulement*, family life and unity, best interests of the child, right to health, rehabilitation of victims of torture or on account of compassionate, humanitarian, or other considerations.

Furthermore, any migrant who is returned to a country that is experiencing adverse drivers and structural factors that compel people to leave their country of origin, including human rights violations and abuses, the adverse effects of climate change and environmental degradation, armed conflict, persecution, or a combination of these reasons, may end up in an even more vulnerable situation than before if reintegration policies and assistance do not take such adverse drivers into account and offer effective, meaningful and sustainable solutions to address them. In the absence of such sustainable solutions over the medium to long-term, migrants may simply be compelled to re-migrate in even more precarious circumstances.

As expressed in the voices of migrants throughout this report, OHCHR has heard testimonies of the very real and tragic impacts of laws, policies and practices that effectively trap migrants in countries of origin or transit where they are unable to effectively enjoy their human rights. In such context, the lack of safe and regular pathways for migrants to seek safety and dignity in other countries, including on grounds of health, education, family life, and other human rights or humanitarian considerations, will continue to compel people to undertake incredibly dangerous and precarious "backway" journeys that put their lives, safety and rights at risk.

OHCHR has also heard testimonies which indicate assisted returns too often fall short in respecting migrants' rights and exacerbate situations of vulnerability by accepting consent that is not truly voluntary and that may be given under the duress of inherently coercive environments. OHCHR also heard the daunting challenges many migrants face to access their rights when they return home, exacerbated by their experiences of abuse and trauma, and often without sufficient government, community or family support in their countries of origin.

The findings and recommendations of this report reaffirm that expanded access to safe and regular migration pathways is urgently needed to prevent precarious journeys and to uphold human rights; that assisted returns must always respect human rights, including the principle of free, prior and informed consent; that those facilitating assisted returns should seek to ensure they do not send migrants back to unsafe or unsustainable situations in their countries of origin; and that expanded resources and efforts are needed to support migrants in their sustainable reintegration, which should principally be grounded in facilitating the enjoyment of all human rights for returnees and their communities.

OHCHR stands ready to assist States and other stakeholders in implementing the recommendations of this report and other practical efforts to ensure the effective respect, protection and fulfilment of the human rights of all migrants.





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