



The Torture Roads

The Cycle of Abuse against
People on the Move in Africa

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This report has been written by two independent consultants, Jelila Sane, a barrister at Doughty Street Chambers (London) specialising in immigration, asylum and international law; and Maria Holmblad, founder of Holmblad Consulting, specialising in operational research in humanitarian settings and conflict-related sexual violence, without whom this study would not have been possible.

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FOREWORD

In recent years, asylum seekers, refugees and migrants have faced unacceptable and extreme forms of violence on the various routes they take to travel from East and West Africa, towards North Africa and Europe. With 30 years of experience in organisations working on human rights, in various countries of West and Central Africa, I have not seen such a level of horror and dehumanisation of men and women. The young men and women of the African continent face untold threats and tragedies in search of safety or simply a better life. Over the past decades, humanitarian and development projects have focused on awareness-raising campaigns to protect people with refugee status or to discourage irregular migration while turning a blind eye to all serious human rights violations people on the move face regardless of their status.

I would like to express my gratitude to the Secretary General of the World Organisation Against Torture (OMCT), who offered me, in 2019, to lead the ambitious project on the establishment of a working group on migration and torture in Africa. I had the honor to chair the work of this group of young African experts who were mandated to map and analyze, through a report, the patterns of torture along the migratory routes in Africa and to develop an advocacy strategy to curb this situation.

This report provides clear and solid conclusions based on nearly 250 interviews with refugees, and migrants along migration routes, as well as development and humanitarian workers and government representatives. The first observation is that Libya is not the only dangerous place for African migrants. There is an urgent need for all African governments to realize the centrality of torture along their borders, police checkpoints and migrant detention centres.

It is our common responsibility to prevent the occurrence of these attacks on human dignity. I would like to make a historic appeal to all those in power on the plight of the thousands of women, girls and young men who have shared with us stories of human trafficking, forced prostitution and rape to an incredible extent and which remain untold. Our States and human rights bodies cannot continue to abandon people on the move to smugglers, criminal gangs, detention camps in the Sahara Desert, and on unattended migration routes.

I have seen countless returning migrants and refugees left without proper care or assistance after repatriation. If support and security mechanisms are not strengthened and made available to victims, we risk increasing their vulnerability and, in some cases, pushing them to take another journey. There is no doubt that development funds under migration agreements signed with third countries, including the European Union and its member States, can be used differently to have better impacts. We have seen that these policies, instead of solving the problem, increase the exposure of migrants to more risks.

Significant reforms need to be implemented to address the current gaps observed in the protection of people on the move. This report highlights the steps that need to be taken by various actors in Africa and internationally to reduce crimes against refugees and migrants, bring those responsible to justice and provide them with adequate rehabilitation services.

I hope that this report, which is the fruit of African civil society actors on the ground, will find a favourable response from the various stakeholders and trigger a collective awareness of the immense challenges that we must meet together.

Aminata Dieye
Chairperson of the Migration and Torture Working Group

At the border, they gave us electric shocks with a stick

Lamine, Male, 39, Gambian¹

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My name is Lamine, I am 39 years old, and I come from Gambia. I was working in the tourism industry in my country, when in February 2019 I decided to set off to Europe because the tourism season lasts only six months in Gambia, and I couldn't manage to make a living like that. I am very well informed about the risks of migration and also about life in Europe, if one day I manage to make it there. I want to try to get to Europe because if I arrive there with no problems, I will get papers and find a good job. I will develop myself there and I'll be able to help my family back home, because everyone knows that you cannot compare Europe and Africa in terms of living conditions and finances. It's also hard really in Europe –that I definitely know– but however hard it is, it's better than Africa.

From Mali to Burkina, I had to pay between 5,000 and 20,000 CFA Francs at each checkpoint. I passed between 25 and 30 checkpoints in that area. I was tortured in Kantchari, a small town at the border between Burkina Faso and Niger. There, a policeman put 60 migrants in a 3m x 3m room² and asked for money. They gave us electric shocks with a stick, to force us to pay them the money. If we said we didn't have it, they would undress us and take off our trousers to see where we had hidden the money. My economic calculations to get to Libya turned out to be wrong– that's why I'm stuck here now. In Makalondi, there is a checkpoint where I paid 20,000 CFA Francs. Then we arrived in Niamey, but by then my money was gone. When I left Gambia, I had my Ecowas passport, but if you are African and a migrant, documents don't count –only the money the police ask you for counts. The policemen don't even look at your documents. I was in Niamey for one-and-a-half months with a friend who helped me pay to get here. I've been here for six or seven months now. I'm here to move forward –I can't go back like this. Of course, if I can't continue, I'll have to go back, but in the meantime I'm here, trying to make contacts... But it's dangerous! I'm not at home.

Migrants staying in Agadez also risk being prosecuted for helping other migrants. Sometimes someone writes to one of us asking us to host a brother, a friend, and [the person receiving the letter] risks being arrested. If the police or their informants see you with a new person, they follow you home, immediately report you, stop you, and at that point you risk being arrested. Last month I helped a boy from Ghana, I didn't know him, but I helped him because we got on. They told me he was in prison because his passport was fake. His brother was in Libya, and wanted to send him money, so I helped them –I took the money to the prison. But I asked myself: how is it possible that he passed all the border posts, in Burkina, in Niger, and right now when he wants to get out, the problem is that his passport is fake? He was in prison for three weeks, then he left. He managed to join his brother in Libya. Now I am working in Agadez to save enough money to continue my trip. If I don't make it, I would consider accessing the IOM programme and returning home.

”

1. Recorded at Agadez, Niger

2. The OMCT could not verify the exact size of the cell

EXECUTIVE SUMMARY

Migration is a fundamental element of humanity and has been an important constant throughout human history. For many thousands of years, long before borders as we know them today were established by modern nation States, humans migrated due to many factors, such as changing climate and landscape, conflict and strife, and food insecurity.

Today, there are more people on the move than ever before, and the drivers and patterns of contemporary mobility are varied and complex. There is no legal definition of ‘people on the move’. This report uses the term as an overarching category encompassing refugees and asylum seekers, unaccompanied and separated children, trafficking victims, migrant workers, and migrants in irregular situations outside these categories.³ People on the move generally travel irregularly, using similar routes and means, often wholly or partially assisted by migrant smugglers, in so-called ‘mixed movements’. At every step of their journey, they face extreme human rights risks, including torture and other cruel, inhuman, or degrading treatment or punishment (‘ill-treatment’).

In 2020, there were an estimated 281 million international migrants, i.e., people residing in a country other than their country of birth.⁴ According to the United Nations High Commissioner for Refugees (UNHCR), at the end of 2020, the number of people “forcibly displaced” i.e. due to persecution and human rights abuses, including torture and other ill-treatment; conflict; violence; and events seriously disturbing public order reached 82.4 million, the highest ever number on record. Of these, almost 20.7 million are refugees and 4.1 million are asylum seekers whilst a further 48 million remain displaced within their own countries. Children are disproportionately affected – despite accounting for 30% of the world’s population they constitute approximately 42% of all forcibly displaced people.⁵ In sub-Saharan Africa alone, there were 33.4 million forcibly displaced people, including 6.3 million refugees, 529,600 asylum seekers and 18.5 million internally displaced persons.⁶ In addition to those forcibly displaced, countless others, who may not qualify for international protection, migrate, willingly or unwillingly, each year for various reasons, including to reunite with family members; to access economic, educational, and other opportunities; or to escape poverty or the consequences of natural or environmental disasters and climate change.⁷ In many cases, people leave behind family and community in this search of safety, dignity and survival. As political, economic, social, and environmental factors continue to cause people to leave their homes, these figures are likely to rise.

3. The report also uses the term ‘migrant’ to mean people on the move.

4. United Nations Department of Economic and Social Affairs, Population Division (2020). *International Migration 2020 Highlights* (ST/ESA/SER.A/452), p.1, accessed at https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/undesa_pd_2020_international_migration_highlights.pdf in October 2021

5. United Nations High Commissioner for Refugees (UNHCR), (2021), ‘UNHCR’s Refugee Population Statistics Database’, accessed at <https://www.unhcr.org/refugee-statistics/> in October 2021

6. United Nations General Assembly (UNGA), Assistance to refugees, returnees and displaced persons in Africa, Report of the Secretary General, 24 August 2020 (A/75/322), accessed at <https://undocs.org/pdf/symbol/en/A/75/322> in October 2021.

7. Note that migration in irregular situations is a complex phenomenon and data on irregular migration and irregular migrants tend to be limited. Most official data systems fail to capture either the number or the circumstances of migrants, and many international data on migration do not accurately account for irregular migrants. Some data are available on those irregular migrants who are detained or otherwise subject to State action—e.g., arrests at border control points, numbers in immigration detention and return figures—but this is rarely indicative of the total irregular migrant population. Irregular migrants are very rarely included in population censuses, which remain the main statistical source of information about migrant populations.

Some of the world's deadliest migration routes are in Africa. Despite a significant reduction in the number of sea crossings from Libya to Italy since mid-2017, as well as increased border controls along parts of the route towards Libya, people have continued to travel towards North Africa from West Africa and the East and Horn of Africa.⁸ Routes through West Africa (from countries of origin such as Senegal, the Gambia, Guinea-Conakry, Mali); Central Africa (e.g., Cameroon, Gabon, Democratic Republic of Congo); Eastern and Horn of Africa (Sudan, Eritrea, Somalia, Ethiopia) converge predominantly on Libya via Sudan (for those from East Africa and the Horn of Africa) or through the Sahara desert from Niger or, to a lesser extent, Algeria (for those from West and Central Africa).⁹ The implementation of stricter border controls and anti-smuggling operations in Niger and Sudan has also resulted in the opening of new migration and smuggling routes, for e.g. Chad.¹⁰ Movements from Africa to Europe have also continued, with over 80,000 reaching the bloc's external borders in 2020, and around 13,000 in the first 6 months of 2021, increasingly via the Canary Islands¹¹.

Everyone has the right to leave any country, including their own, and a right to seek and enjoy asylum.¹² However, there is no corresponding general right of entry, and around the world, safe and legal channels for migration are limited and increasingly restrictive. Consequently, many migrants flee or leave their countries of origin irregularly. Regardless of their reason for leaving or legal status, international law places a clear obligation on all States to protect and uphold the rights of all persons under their jurisdiction and within their territory on a basis of equality and without discrimination. The right to be free from discrimination and the right to equality are fundamental norms of international law, and are directly related to the principle of universality, which affirms that every human being has fundamental rights. These rights include the absolute prohibition on torture and other ill-treatment which, beyond refoulement, applies at all stages of the migration process, including at the border and in reception and detention centres, and which requires States to act with due diligence to prevent abuses by private actors (e.g., smugglers and traffickers).

In the 2016 New York Declaration for Refugees and Migrants, UN Member States pledged to fully protect the safety, dignity, human rights, and fundamental freedoms of all migrants, regardless of their legal status, as rights holders and in full respect for international human rights norms. This was followed in 2018 by the Global Compact on Refugees and the Global Compact for Safe, Orderly and Regular Migration – soft law instruments designed respectively to improve cooperation on responsibility for refugees, and for the first time, to

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8. United Nations High Commissioner for Refugees (UNHCR) and Mixed Migration Centre (MMC), (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast', accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> in October 2021, at p. 10
 9. United Nations High Commissioner for Refugees (UNHCR) and Mixed Migration Centre (MMC), (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast'; Clingendael, Netherlands Institute of International Relations, "Multilateral damage: The impact of EU migration policies on central Saharan routes", CRU Report, September 2018.
 10. Clingendael, Netherlands Institute of International Relations, "Multilateral damage: The impact of EU migration policies on central Saharan routes", CRU Report, September 2018.
 11. UNHCR, "Operational Data Portal- Refugee Situations, Mediterranean Situation", accessed at <https://data2.unhcr.org/en/situations/mediterranean> in October 2021; UNHCR, "Arrivals in Europe from Libya- Regional Bureau for Europe", June 2021, accessed at <https://data2.unhcr.org/en/documents/details/88700> in October 2021; Mixed Migration Centre (2021) 'A Gateway Re-opens: the growing popularity of the Atlantic route, as told by those who risk it', accessed at https://mixedmigration.org/wp-content/uploads/2021/02/160_a_gateway_reopens_research_report.pdf in October 2021, p. 7
 12. See e.g., Article 14 Universal Declaration on Human Rights ('UDHR'); Article 12 African Charter on Human and People's Rights ('ACHPR'); Article 22 American Convention on Human Rights ('ACHR'); Article 4, Protocol No.4 (as amended) to the European Convention on Human Rights ('ECHR').

create a framework for cooperation on international migration. Beyond the human rights framework, legal regimes have been created to protect specific categories of migrants, including refugees, stateless persons, trafficking victims, and migrant workers, and to ensure that their rights and specific needs are upheld. Care must however be taken to avoid hierarchies of vulnerability and suffering based upon these categorisations, and fundamental rights must be respected at all times, regardless of status.

In 2019, the World Organisation Against Torture (OMCT) established a *Working Group on Migration and Torture* bringing together 10 partner organisations from Africa and southern Europe in order to evaluate and address the linkages between torture and mixed movements across multiple countries in Africa, with a focus on torture as a driver of forced displacement; on the incidence of torture and other ill-treatment against people on the move, including in connection with European Union (EU) externalisation policies; and on State practice with regards to the identification and rehabilitation of migrant torture survivors.

This report is uniquely based on field research conducted by members of the Working Group in 2020-2021 all of which work directly on migration and human rights in their countries. It documents the patterns, prevalence and risks of torture and other ill-treatment pre-flight, and along select migration routes originating in West Africa, and East Africa and the Horn of Africa, towards North Africa. It does not address in detail the conditions and routes of the Sahara Desert or the Mediterranean Sea.

The information presented in this report shows that people travelling along these routes face a continuum of violence, in their countries of origin and along their journey, at the hands of State and non-State actors. Unlawful killings, sexual and gender-based violence, extortion and discrimination are rife. Torture and other ill-treatment are pervasive. Migration-control measures based on deterrence, containment and criminalisation have driven many people straight into the hands of smugglers and traffickers and heightened their vulnerability to violence and exploitation. Many of these measures are adopted by countries of origin and transit under intense pressure from the European Union (EU) and its Member States. Reports abound of forced labour and slavery; of people asphyxiating in overcrowded trucks; being kidnapped for ransom; being detained in inhuman conditions; being thrown off boats or left to die in the desert. Some of these risks increased in 2020 and will continue to rise in 2021 because of movement restrictions and border closures implemented by States in response to the Covid-19 pandemic. Further, major challenges remain in terms of the early identification and rehabilitation of migrant torture survivors travelling as part of mixed movements. This is deeply concerning, given that according to the UN Special Rapporteur on Torture up to 76% of migrants in irregular situations have been subjected to torture and other ill-treatment, which amounts to a staggering 7 million victims/survivors globally.¹³

The purpose of this report is to contribute to the mounting body of evidence of the egregious human rights violations faced by people on the move travelling along these routes in Africa. In line with OMCT's mandate, it primarily seeks to shed light on the patterns and incidents of violations of the prohibition on torture and other ill-treatment. Equally

13. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §9.

important, the report identifies protection gaps and contains concrete recommendations on how to enhance the protection of people on the move and how to ensure that migration control measures are anchored in the full respect for fundamental rights, including the torture prohibition, regardless of legal status.

In so doing, the Working Group seeks to illustrate the ways in which torture is a central migration concern, a cause and a result at all stages of the journey, and to mobilise the OMCT SOS-Torture Network to work against torture in the context of migration. The Working Group will use the findings of this research to conduct advocacy and engage national, regional and international stakeholders on the protection of the human rights of people on the move, in particular their absolute right to be free from torture and other ill-treatment.

There are three main parts to this report. First, in **Section A**, we set out some key concepts and background relevant to torture and mixed movements. Second, in **Section B**, we analyse the migration and torture nexus. Focusing on the experience of South Sudanese refugees in Uganda, we first address torture and other ill-treatment as a driver of migration in part I. We then examine the risks of torture and other ill-treatment in transit by both State and non-State actors in part II, before considering the extent to which EU externalisation policies have led to enhanced human rights and protection risks in part III. Thirdly and finally, in **Section C**, we look at the early identification and rehabilitation of torture survivors in mixed movements in Uganda, Kenya, Tunisia, Niger, and Senegal.

LIST OF ACRONYMS

ACHPR	African Charter on Human and People's Rights
ACTV	African Centre for the Treatment and Rehabilitation of Torture Victims
AEC	Alternative Espaces Citoyens
AMSS	Association Malienne pour la Survie au Sahel
APDHE	Asociación Pro-Derechos Humanos de España
CAT	Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CRC	UN Convention on the Rights of the Child
ECHR	European Convention on Human Rights
ECOWAS	Economic Community of West African States
EU	European Union
EUCAP	European Union Capacity Building (EUCAP)
FTDES	Forum Tunisien pour les Droits Économiques et Sociaux
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRPD	International Convention for the Rights of People with Disabilities
IDP	Internally Displaced Person
IMLU	Independent Medico-Legal Unit
IOM	International Organization for Migration
LAN	Libyan Anti-Torture Network
LTDH	Ligue Tchadienne des Droits de l'Homme
OHCHR	Office of the High Commissioner for Human Rights
OMCT	Organisation mondiale contre la torture / World Organisation Against Torture
REMIDEV	Réseau Migration Développement
SGBV	Sexual and gender-based violence
UDHR	Universal Declaration of Human Rights
UNCAT	United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment
UNDP	United Nations Development Programme
UNHCR	United Nations High Commissioner for Refugees
UNODC	United Nations Office on Drugs and Crime
UNSC	United Nations Security Council

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METHODOLOGY

RESEARCH OBJECTIVES

This research seeks to map and analyse the prevalence and patterns of torture and other ill-treatment at all stages of the migration journey, namely pre-flight in countries of origin, in countries of transit and in destination countries. For this purpose, it focuses on eight countries: **Niger, Chad, Tunisia, Kenya, Uganda, Mali, Sudan and Senegal.**

The research addresses four themes, from a national and cross-border perspective. Each theme has been addressed in accordance with the (i) key issues identified in the country context (ii) expertise of the organisation/researchers (iii) level of access to relevant populations. The themes were:

(a) Torture and other ill-treatment as drivers of forced irregular migration (including to what extent people on the move flee because of a past and/or future risk of torture and/or other ill-treatment in their country of origin)

(b) Torture and other ill-treatment in flight and transit settings (including the main risks and sites of torture and other ill-treatment in flight and transit, as well as practices, policies and/or measures to combat irregular migration adopted by States which violate the prohibition of torture and other ill-treatment)

(c) The impact of border externalisation policies on torture and other ill-treatment against people on the move (including such practices, policies and measures which are supported and/or funded by the EU and/or individual Member States)

(d) Access to rehabilitation for migrant torture survivors (including measures in place for, and challenges related to, the early identification, access to protection, and rehabilitation¹⁴ of torture survivors in flight)

The research objectives were:

- 1.1. To contribute to, and frame, policy and advocacy debates around the protection from torture and other ill-treatment of people on the move and access to rehabilitation of migrant torture survivors.
- 1.2. To ensure that OMCT programming provides an adequate response to people on the move exposed to a risk of torture and other ill-treatment.

14. The right to redress for victims/survivors of torture and other ill treatment encompasses restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (see Article 14 United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment (UNCAT); UN Committee Against Torture (CAT), General Comment No. 3 (2012), Implementation of Article 14 by State parties; Principles 19 to 23 of the United Nations Office of the High Commissioner for Human Rights (2005) Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law). This study focuses on the right of access to rehabilitation

- 1.3. To formulate evidence-based recommendations for relevant stakeholders at the national, regional, and international level, including States, African and UN human rights treaty bodies and Special Procedures in order to
 - 1.3.1. Ensure that policies and measures adopted by States to address irregular migration are compatible with the absolute prohibition of torture and other ill-treatment;
 - 1.3.2. Ensure that States develop a response to migration that identifies and addresses the needs of torture survivors in flight, in line with their international obligations.

RESEARCH METHODS

Research team

The research was conducted by experts from civil society organisations (“the researchers”) in **eight** African countries (Niger, Chad, Tunisia, Kenya, Uganda, Mali, Senegal and Sudan), as well as in Italy and Spain, under the guidance of OMCT International Secretariat and two independent consultants¹⁵. These civil society experts, together with two international technical experts¹⁶ and OMCT former Executive Council member (Aminata Dieye) who served as chairperson of the group, make up the *OMCT Working Group on Migration and Torture*. The civil society organisations are part of long-standing partners of the OMCT SOS-Torture Network, a 200 members strong global network present in over 90 countries which strives to put an end to torture and to protect human rights defenders.

The member and partner organisations based in Africa were primarily responsible for collecting and analysing data in their context and producing individual country studies, whilst the two Europe based partners conducted complementary research and analysis on the relevant laws and policies adopted by the European Union (EU), Spain and Italy in the context of migration control in as much they are impacting the situation on the migration routes in Africa. As a disclaimer this report does not cover the treatment of migrants within Europe which is well documented and may be subject of further research.

This process was supported by the technical experts, who drew from their cross-contextual knowledge and legal and policy experience to provide advice and guidance to the researchers.

The Working Group held its first meeting in Lomé, Togo on 16-17th December 2019. The purpose of this meeting was to consider and agree on the key guiding principles for the research, specifically the principles of doing no harm, obtaining informed consent, and of non-discrimination, to co-design a research methodology; and to share knowledge and information on the migration and torture nexus in the countries under study.

15. The independent consultants were Jelila Sane, a barrister at Doughty Street Chambers (London) specialising in immigration, asylum and international law; and Maria Holmblad, founder of Holmblad Consulting, specialising in operational research in humanitarian settings, and conflict-related sexual violence.

16. Dr Chris Dolan, Director, Refugee Law Project, Makerere University, Kampala (Uganda); and Sarah Elliott, legal and counter-trafficking specialist, UNHCR (advising in a personal capacity).

A second Working Group meeting to collectively discuss the preliminary research findings from each country was scheduled in March 2020, in Dakar, Senegal. This meeting was cancelled due to travel restrictions imposed as a result of the Covid-19 pandemic. Instead, the Working Group members peer reviewed their findings during the course of online seminars, as well as bilateral exchanges with the independent consultants and the OMCT International Secretariat, throughout 2020 and 2021.

Based on the individual country studies produced by the member and partners of the SOS Torture Network of the OMCT, and secondary research, with the assistance of OMCT International Secretariat, the consultants authored the present overarching, cross-cutting report on the linkages between torture and other ill-treatment and forced migration.

Data collection

The researchers collected data through phone interviews, semi-structured in-person interviews, key informant interviews, focus group discussions, written exchanges, and questionnaires. They spoke with a wide range of interlocutors in the countries of study: internally displaced persons, refugees and asylum seekers; and other migrants; migrants' rights associations; civil society actors and non-governmental organisations; international organisations; government representatives; diplomatic representatives; health workers; and human rights activists. A description of the members of the Working group who collected the data can be found in **Annex I** and an anonymised overview of the interlocutors consulted in each country is available upon request.

In total, and using translators as required, the researchers interviewed approximately 197 people on the move, including refugees, asylum seekers, and returnees; 29 civil society organisations; 13 government representatives; 12 international organisations; five non-governmental organisations; two members of the media; one public institution and one representative of law enforcement.

Safeguarding

The consultants developed a safeguarding protocol to ensure safe and ethical research. The protocol was adopted during the first Working Group meeting in Lomé in December 2019. It set a common standard for the different research partners, based on existing organisational safeguarding approaches from within the group of civil society partners and the key safeguarding concerns for each context. A set of key guiding principles¹⁷ were agreed on, including e.g., do no harm, obtaining informed consent, obtaining anonymity and ensuring confidentiality, avoiding re-traumatisation of survivors of torture, etc. A

17. These were adapted from the 2003 WHO Ethical and Safety Recommendations for Interviewing Trafficked Women, and the 2012 Ethical and Safety Recommendations for Research on Perpetration of Sexual Violence, Sexual Violence Research Initiative, Medical Research Council, Pretoria, South Africa. The following publications were also consulted: (1) Rende Taylor, Lisa Maria and M Latonero (2018). Updated Guide to Ethics and Human Rights in Anti-Trafficking: Ethical Standards for Working with Migrant Workers and Trafficked Persons in the Digital Age. Bangkok: Issara Institute. (2) Ulrike Krause (2017). 'Researching forced migration: critical reflections on research ethics during fieldwork'. Working Paper Series No. 123, Refugee Studies Centre, Oxford Department of International Development, University of Oxford. (3) Christina Clark-Kazak (2017). 'Ethical Considerations: Research with People in Situations of Forced Migration', *Refuge*, Volume 33, Number 2.

safeguarding checklist¹⁸ and risk assessment template were also developed to support the researchers to prepare for the data collection process.

The researchers noted that some research participants, in particular survivors of torture, were fearful of discussing the topic due to its sensitive nature and their lived experiences. The researchers reported that several participants experienced distress during the data collection exercise, for which reason referral pathways to psychosocial support services had been identified ahead of time and the appropriate referrals were made.

18. Adapted from the 2010 European Commission Guidance Note for Researchers and Evaluators of Social Sciences and Humanities Research https://ec.europa.eu/research/participants/data/ref/fp7/89867/social-sciences-humanities_en.pdf



SECTION A. BACKGROUND: TORTURE AND OTHER ILL- TREATMENT AGAINST 'PEOPLE ON THE MOVE'



People on the move

1. Today, growing numbers of people in search of international protection, as well as safety and dignity, move through irregular channels, because of a lack of accessible safe and legal migration pathways. Many of these movements are 'mixed' in nature ('mixed movements') and frequently involve human smugglers and traffickers. People in mixed movement flows ('people on the move') have different legal statuses – and corresponding rights – and include asylum-seekers, refugees, stateless persons, trafficking victims/survivors and 'economic' migrants (see Glossary). Despite these differing statuses, hierarchies of suffering and vulnerability based on categorisation alone should be avoided – while refugees and migrants (including those in irregular situations) normatively occupy distinct legal categories, they increasingly travel along similar overland and/or maritime routes and can face extreme human rights abuses along their journey, including unlawful killing, torture and other ill-treatment, including sexual and gender-based violence, kidnapping, extortion, forced labour and slavery.¹⁹ The Global Migration Group has recognised that migrants in irregular situations were more likely to face discrimination, exploitation and abuse at all stages of the migration process.²⁰ Children, whether they are unaccompanied, separated, or together with their families or caregivers, women and LGBTQI+²¹ persons²², are particularly vulnerable. **Every person on the move enjoys fundamental rights, notably full protections from torture and other forms of cruel, inhuman or degrading treatment, which**

19. See generally, United Nations High Commissioner for Refugees 'UNHCR' and Mixed Migration Centre 'MMC' (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast' (accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html>); Women's Refugee Commission, (2019) 'More than one million pains' – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy' (accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/>); United Nations General Assembly (UNGA), Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions, 'Unlawful death of refugees and migrants' (2017) A/72/335; UN Human Rights Council (HRC), Report of the Office of the United Nations for Human Rights (OHCHR), 'Situation of migrants in transit' (2016), A/HRC/31/35.

20. Global Migration Group, Exploitation and abuse of international migrants, particularly those in an irregular situation- A human rights approach, Thematic Paper, 2013, at p. 29 (https://www.unodc.org/documents/human-trafficking/2013/2013_GMG_Thematic_Paper.pdf). The Global Migration Group is an inter-agency group comprised of 14 UN agencies, the World Bank and the International Organisation for Migration (IOM) that works to address global migration issues

21. "LGBTQI+ is an acronym for lesbian, gay, bisexual, transgender, intersex and queer, and inclusive of individuals with diverse sexual orientations, gender identities, gender expressions and/or sex characteristics who use other terms or no terms to describe themselves. It may be ordered LGBTQI+ or in other ways, depending on the geographical location and language. Additional characters may be added, such as A for asexual, agender or ally, 2S for Two-Spirit or P for pansexual. In many locations, the letter order varies, e.g., LGBTQI+ or GBLTQI+. SOGIESC-related acronyms are not static and continue to evolve over time. To ensure inclusivity and accuracy, they should be applied with careful consideration to the individuals being referenced" - International Organization for Migration (IOM) 'Guidance on Gender-Inclusive Communication', June 2021, accessed in October 2021 at <https://www.iom.int/sites/g/files/tmzbd1486/files/documents/IOM-Gender-Inclusive-Communication-Guidance-June2021.pdf>

22. See e.g. United Nations High Commissioner for Refugees (UNHCR) (2021) 'Summary conclusions: 2021 Global Roundtable on Protection and Solutions for LGBTQI+ People in Forced Displacement' (accessed at <https://www.unhcr.org/611e48144>), p. 7

must be respected by States at all times, regardless of their legal status.²³

2. There are important migration corridors within and from the African continent. At the end of 2020, there were an estimated 33.4 million forcibly displaced people in sub-Saharan Africa. Of these, 6.3 million were refugees – the vast majority of which were hosted in neighbouring countries (e.g., Uganda). 529,600 asylum seekers, and a further 18.5 million were internally displaced²⁴. West Africa (e.g., Senegal, the Gambia, Côte d'Ivoire) and Central Africa (e.g., Cameroon, Gabon, Democratic Republic of Congo) have a long history of migration, primarily characterised by intra-regional movements facilitated by regional free movement protocols. Nevertheless, the use of smugglers to cross border even within the zone is not uncommon, particularly in cases where people do not possess valid identity documents. Whilst environmental and economic factors have fuelled much of the migration flows in West Africa, conflict, insecurity, terrorism, and political instability have played a larger role in displacement in Central Africa.²⁵
3. East Africa and the Horn of Africa have also experienced high mobility patterns, both within countries and across national borders, driven in part by ongoing insecurity in South Sudan and Somalia, socio-economic factors, and communal violence. Migrant smuggling is prominent, including through Sudan and onwards to Libya or Egypt²⁶. North Africa remains a key origin, transit and destination hub and hosts millions of people on the move (e.g., in Libya, Egypt and Sudan). Despite a significant reduction in the number of sea crossings from Libya to Italy since mid-2017, as well as increased border controls along parts of the route towards Libya (e.g., in Niger), people have continued to travel towards North Africa and Europe from West Africa and the East and Horn of Africa²⁷. According to UNHCR estimates, over 80,000 reaching the bloc's external borders in 2020, and around 13,000 in the first 6 months of 2021, increasingly via the Canary Islands²⁸.
4. International law recognises a right of everyone to leave any country, including their own and a right to seek and enjoy asylum in other countries.²⁹ Moreover, refugees have a right to international protection under the 1951 Refugee Convention ('Refugee Convention') and its 1967 Protocol. Under these instruments, a refugee is someone who is outside their country of nationality and unable or unwilling to return there because of a well-founded fear of persecution for reasons of their race, religion, nationality, political opinion, or membership in a particular

23. Non-discrimination and equality are enshrined in all of the core human rights instruments, including Articles 2 and 7 UDHR; Articles 2 and 5 International Convention on the Elimination of All Forms of Racial Discrimination ("ICERD"); Articles 2 and 26 International Covenant on Civil and Political Rights ("ICCPR"); Articles 2 and 3 International Covenant on Economic, Social and Cultural Rights ("ICESCR"); Articles 1 and 2 Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW"); Article 2 UN Convention on the Rights of the Child ("CRC"); and Article 5 International Convention for the Rights of People with Disabilities ("ICRPD").

24. United Nations General Assembly (UNGA), Assistance to refugees, returnees and displaced persons in Africa, Report of the Secretary General, 24 August 2020 (A/75/322), accessed at <https://undocs.org/pdf/symbol/en/A/75/322> in October 2021.

25. International Organization for Migration (IOM) (2021), 'West and Central Africa – the Regional Migration Context', accessed at <https://www.iom.int/west-and-central-africa> in October 2021

26. Danish Refugee Council, (2017) 'Unpacking the Myths: Human smuggling from and within the Horn of Africa', accessed at <https://reliefweb.int/sites/reliefweb.int/files/resources/RMMS%20BriefingPaper6%20-%20Unpacking%20the%20Myths.pdf> in October 2021, p. 9

27. United Nations High Commissioner for Refugees (UNHCR) and Mixed Migration Centre (MMC), (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast", accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/UNHCR_report-On_this_journey%2C_no_one_cares_if_you_live_or_die.pdf in October 2021.

28. UNHCR, "Operational Data Portal- Refugee Situations, Mediterranean Situation", accessed at <https://data2.unhcr.org/en/situations/mediterranean> in October 2021; UNHCR, "Arrivals in Europe from Libya- Regional Bureau for Europe", June 2021, accessed at <https://reliefweb.int/report/libya/arrivals-europe-libya-regional-bureau-europe-june-2021> in October 2021; Mixed Migration Centre (2021) 'A Gateway Re-opens: the growing popularity of the Atlantic route, as told by those who risk it', accessed at <https://mixedmigration.org/resource/a-gateway-re-opens/> in October 2021, p. 7

29. See e.g., Article 14 Universal Declaration on Human Rights ('UDHR'); Article 12 African Charter on Human and People's Rights ('ACHPR'); Article 22 American Convention on Human Rights ('ACHR'); Article 4, Protocol No.4 (as amended) to the European Convention on Human Rights ('ECHR').

social group.³⁰ Refugee status is declaratory i.e., a person is a refugee as soon as they fulfil the criteria contained in the definition regardless of whether they are formally recognised as such by the State.³¹ Refugee status will end only when it is ceased, cancelled or revoked in accordance with Articles 1(C) (1-6) of the 1951 Refugee Convention, and not because a person has left their country of asylum.

5. States are strictly prohibited from expelling or returning, 'in any manner whatsoever' those who qualify for refugee status to countries where their life or liberty would be at risk on one or more of the grounds recognised under the Refugee Convention (*non-refoulement*).³² The protection against refoulement applies to all refugees, including those who have not been formally recognised as such, and asylum-seekers whose status has not yet been determined.³³ The Refugee Convention excludes from protection a refugee whom there are reasonable grounds for regarding as a danger to the security of the country in which they are, or who, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of that country.³⁴ Such persons may nonetheless be protected from refoulement under international human rights law, as described below. Asylum-seekers shall not be penalised for their irregular entry or stay, provided they present themselves to the authorities without delay and show 'good cause' for their irregular entry or presence.³⁵
6. The Refugee Convention is complemented by regional refugee instruments which have adopted a broader definition of who is a refugee, including the 1969 Convention Governing the Specific Aspects of Refugee Problems in Africa (OAU Convention). The OAU Convention expands upon the 1951 Refugee Convention to include those fleeing "external aggression, occupation, foreign domination or events seriously disturbing public order"³⁶.
7. Critically, international law does not, however, establish a corresponding general right of entry to another country or to safe and legal routes to international protection: States retain their sovereign power to control their borders, and to determine the criteria for the admission, residence and stay of non-nationals, subject to international law, including the principles of non-refoulement and non-discrimination. This lack of regular pathways, combined with increasingly stringent migration control measures, are driving people to travel through irregular means along land and maritime routes.³⁷ Individuals with fewer resources are disproportionately affected by the absence of safe and legal routes.³⁸

30. Article 1(A), 1951 Convention Relating to the Status of Refugees ('Refugee Convention'); 1967 Protocol Relating to the Status of Refugees. This definition has been criticised as being overly narrow, on the basis that it only applies to those outside their country of origin and in situations where there is a nexus between the fear of persecution and one of the Convention grounds. Moreover, it does not strictly speaking apply to individuals fleeing armed conflict, climate change, extreme poverty, or natural disasters, who may also be deserving international protection (see generally, International Journal of Postcolonial Studies, "Moving beyond refugees and migrants: reconceptualising the rights of people on the move", Annick Pijnenburg and Conny Rijken (2021)).

31. See e.g., United Nations High Commissioner for Refugees (UNHCR), (2015) 'Emergency Handbook – Refugee Definition', 4th Edition, accessed at <https://emergency.unhcr.org/entry/55772/refugee-definition> in October 2021

32. Article 33(1) Refugee Convention

33. As of yet, there is no consensus on whether the non-refoulement duty under the refugee law framework forms part of customary law. UNHCR is of the view that the obligation has reached customary status (see Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 2007 accessed in October 2021 at <https://www.refworld.org/docid/45f17a1a4.html>) however some academics take a different view (see T. Gammeltoft-Hansen and J. Hathaway, "Non-Refoulement in a World of Cooperative Deterrence", University of Michigan Law School, 2015, accessed in October 2021 at <https://repository.law.umich.edu/cgi/viewcontent.cgi?article=2484&context=articles>)

34. Article 33(2) 1951 Refugee Convention

35. Article 31(1) Refugee Convention

36. Article I (2) OAU Convention.

37. See for example, United Nations High Commissioner for Refugees (UNHCR), (2015) 'Situation of migrants in transit', p. 9;

38. Office of the United Nations High Commissioner for Human Rights (OHCHR), (2014) 'The economic, social and cultural rights of migrants in an irregular situation', accessed at https://www.ohchr.org/Documents/Publications/HR-PUB-14-1_en.pdf on 31st October 2021, p.8.

Understanding torture and other forms of ill-treatment in the migration context

8. Torture is defined under the **United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment (UNCAT)** as:

“any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.” (our emphasis)³⁹.

9. There is no definition under UNCAT of what constitutes ‘*other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture*’ (“ill-treatment”) and the Committee Against Torture (CAT) has recognised that *“in practice, the definitional threshold between ill-treatment and torture is often not clear.”*⁴⁰ In general terms, the purpose of the conduct, the powerlessness of the victim and the intention of the perpetrator are the decisive elements distinguishing torture from ill-treatment⁴¹. Treatment must reach a minimum level of severity to qualify as cruel, inhuman or degrading, the assessment of which will depend on all the circumstances of the case, such as the duration of the treatment, its physical or mental effects and, in some cases, the sex, age and state of health of the victim.⁴² Once this minimum standard has been met, the concept of ill-treatment should be interpreted “so as to extend...the widest possible protection against abuses, whether physical or mental”.⁴³ In the detention context, any form of physical or mental pressure or coercion constitutes at least cruel, inhuman or degrading treatment.⁴⁴ Unlike torture, ill-treatment does not need to be committed for a specific purpose.⁴⁵
10. Torture and other forms of ill-treatment are absolutely prohibited under international human rights law, including Article 2(2) **UNCAT**,⁴⁶ Article 5 of the **Universal Declaration on Human Rights (UDHR)**,⁴⁷ Article 7 of the **International Covenant on Civil and Political Rights (ICCPR)**,⁴⁸ Article 5 of the **African Charter on Human and People’s Rights (ACHPR)**,⁴⁹ and Article 3 **European Convention**

39. Article 1 United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment (UNCAT)

40. General Comment No 2 on Implementation of Article 2 by States parties (CAT/C/GC/2), 24 January 2008 at §3 (General Comment No. 2).

41. Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, UN Doc. E/CN.4/2006/6 (23 December 2005), at §39.

42. *Huri-Laws v Nigeria*, AfrCommHPR, Communication No. 225/1998, 28th session, 23 October–6 November 2000, §41, quoting the ECHR case *Ireland v UK* (1978)

43. *Media Rights Agenda v Nigeria*, AfrCommHPR, Communication No. 224/1998, 28th session, 23 October–6 November 2000, §71.

44. Nowak, Manfred and McArthur, Elizabeth, (2006) ‘The distinction between torture and cruel, inhuman or degrading treatment’, *Torture*, Vol. 16, No. 3, 2006, p. 147

45. Nowak & McArthur, *The United Nations Convention Against Torture. A Commentary*. New York City: Oxford University Press, 2008, p. 161

46. Article 2(2) UNCAT reads: “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

47. Article 5 UDHR reads “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.”

48. Article 7 ICCPR reads “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.”

49. Article 5 ACHPR reads: “Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited”.

on Human Rights (ECHR).⁵⁰ The prohibition on torture and ill-treatment forms part of customary international law and as such is binding on all States, regardless of whether they are a party to the aforementioned treaties.⁵¹ Further, it is recognised as a peremptory norm of international law, or *jus cogens*, such that it overrides any inconsistent treaty or customary law norm.⁵² Finally, torture and ill-treatment are prohibited as a matter of international humanitarian law⁵³ and may constitute war crimes and crimes against humanity under international criminal law.⁵⁴

11. The expulsion of an individual, where there is a real risk of torture or other ill-treatment in the State to which they will be returned is Absolutely prohibited under international human rights law. The prohibition against non-refoulement under customary international law shares the prohibition of torture's *jus cogens* and *erga omnes* character⁵⁵. Article 3 UNCAT notes: "*No State party shall expel, return (refouler) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture*". In **General Comment No. 4 (2017)** the **UN Committee Against Torture** (CAT Committee) emphasised that the principle of non-refoulement under UNCAT must be applied without discrimination of any kind and irrespective of an individual's legal status under national law.⁵⁶
12. Our research confirms that torture and other ill-treatment are prevalent at all stages of the migration journey, in countries of origin (often as a triggering factor for flight) and along the migration route, at the hands of State and private actors. There is a lack of official data regarding the proportion of people on the move who have suffered torture and other ill-treatment. According to UNHCR however, between 5% and 35% of refugees globally are torture survivors.⁵⁷ A 2016 study involving over 12,000 adult participants found that the prevalence of torture survivors amongst migrants in irregular situations ranged between one and 76%, with the median being 27%.⁵⁸ The United Nations Voluntary Fund for Victims of Torture (UNFVT)⁵⁹ notes that in 2020, approximately 48% of torture survivors being supported by the Fund were people on the move.⁶⁰ While this research has not undertaken a quantitative methodology, the information received in the course of

50. Article 3 ECHR reads: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

51. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 2, CAT/C/GC/2, 24 January 2008, at §1, accessed at <https://www.refworld.org/pdfid/47ac78ce2.pdf> in October 2021.

52. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 2, CAT/C/GC/2, 24 January 2008, at §1.

53. See the four Geneva Conventions of 1949 (GC I, Article 12; GC II, Article 12; GC III, Articles 13, 17 and 87; GC IV, Articles 27 and 32; GC I-IV common article 3 and arts 50, 51, 130 and 147 respectively; Additional Protocol I of 1977 (Article 75(2)(a)(ii)); and Additional Protocol II of 1977 (Art. 4(2)(a)).

54. Articles 8(2)(a)(ii) and 8(2)(c)(i) and (ii) and Article 7(1)(f) and (k) of the Rome Statute.

55. OMCT, "Seeking remedies for torture victims- A Handbook on the Individual Complaints Procedures of the UN Treaty Bodies", OMCT Handbook Series Vol.4, 2014 (2nd ed), pp. 28-29 & Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Interim Report to the General Assembly, (2004) UN Doc. A/59/324, §28 ; see also Interim Report to the General Assembly, (2005) UN Doc. A/60/316.

56. Committee Against Torture, General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, CAT/C/GC/2, 4 September 2018, at §10.

57. See e.g. Jaranson, James M. (2004) 'Somali and Oromo refugees: Correlates of torture and trauma history'. *American Journal of Public Health*; 94(4): pp. 591-598; Kinzie, J. D., Prospective one-year treatment outcomes of tortured refugees: a psychiatric approach. *Torture* (2012); 22 (1): pp. 1-10.

58. Sigvardsdotter et al, 'Prevalence of torture and other war-related traumatic events in forced migrants: A systematic review', in: *Torture*, Vol. 26, No. 2(2016), pp. 41-73.

59. The United Nations Voluntary Fund for Victims of Torture (UNFVT) was established by the United Nations General Assembly (UNGA) in 1981 through resolution 36/151. It aims to ensure that victims of torture and other cruel, inhuman or degrading treatment or punishment obtain redress and are awarded fair and adequate compensation and receive appropriate social, psychological, medical and other relevant specialized rehabilitation. The Fund awards annual grants to civil society organizations delivering these services to individuals whose human rights have been severely violated as a result of torture and to the relatives of such victims. Priority is given to aid to victims of violations by States in which the human rights situation has been the subject of resolutions or decisions adopted by either the General Assembly, the Economic and Social Council or the Commission on Human Rights. For more information, see <https://www.ohchr.org/EN/Issues/Torture/UNFVT/Pages/Mandate.aspx>

60. The OMCT received this figure via correspondence with the UNFVT on 24th September 2021

the research undertaken by the Working group indicates a significant proportion of the migrants community having been exposed to torture or ill-treatment along the journey. Even when discounting widespread underreporting – given the many barriers to disclosure faced by torture survivors – **these figures raise serious doubts as to the compatibility of current migration control measures with the absolute and non-derogable prohibition on torture and other ill-treatment.**

13. Torture and other ill-treatment can take many forms, including severe beatings; burning with cigarettes and/or hot metal objects; the application of electric shocks; poor conditions of detention including severe overcrowding, a lack of, or delayed access to, medical care, food and drinking water, and sanitation. Other recognised forms of torture/ill-treatment include the use of incommunicado detention and/or prolonged solitary confinement; and expulsion, return or extradition to another State where there is a risk of torture/ill-treatment.⁶¹ Rape and other forms of sexual violence have also been recognised as amounting to torture.⁶² Psychological torture can include threats and being forced to witness the torture of others.⁶³
14. The **UN Special Rapporteur on Torture**, the **UN Special Rapporteur on extrajudicial, summary or arbitrary executions**, and the **UN Special Rapporteur on the human rights of migrants**, have condemned the adoption by States of certain strict migration control policies and measures which all too often heighten the risk of abuse and harm and inhibit the full and effective enjoyment of the rights of people on the move who have arrived at their borders, including the right to be free from torture and other ill-treatment. These measures include *refoulement*; the criminalisation of mobility; the use of arbitrary and prolonged detention; the separation of families; excessive uses of force by border officials, collective expulsions and “pushback” and “pullback” operations.⁶⁴ Several countries (e.g., **Niger**) are pursuing these policies with support and funding from the European Union (EU) and individual Member States bilaterally, including Italy and Spain, in an attempt to “externalise” and outsource European border control. Regardless of their legal status or location, migrants have a range of fundamental rights that are undermined by these migration-control and externalisation practices.
15. The EU has stated that migration is at the top of [its] external relations priorities⁶⁵ and is increasingly conditioning access to development aid upon third countries cooperating to prevent irregular migration to Europe.⁶⁶ The EU builds the capacity

61. Centre for Justice and International Law (CEJIL) and the Association for the Prevention of Torture (APT), “Torture in International Law- A guide to jurisprudence”, 2008; OMCT, “The Prohibition of Torture and Ill-treatment in the African Human Rights System- A handbook for victims and their advocates”, OMCT Handbook Series Vol.3, 2014 (2nd ed); UNFVT, “Interpretation of Torture in Light of the Practice and Jurisprudence of International Bodies”.

62. CEDAW, e.g. in General Recommendation No. 19 (1992) on violence against women, para. 9 and more extensively in General Recommendation No. 35 on gender-based violence against women, updating General Recommendation No. 19, and the Inter-American Court of Human Rights in e.g. *Velázquez Rodríguez v. Honduras*, (series C No. 4, 29 July 1988). Similarly, the European Court of Human Rights has developed a body of jurisprudence in relation to positive obligations to effectively prevent, investigate, prosecute, punish and provide remedies for acts of violence perpetrated by non-state actors, e.g. *Opuz v. Turkey*, application no. 33401/02, 9 July 2009 (violation of article 3, both on its own as Turkey failed to protect the applicant and in conjunction with article 14 ECHR), as well as *M.C. v. Bulgaria*. Moreover, CEDAW: *Ms A.T. v. Hungary* 2005 (domestic violence)

63. Reyes, Hernán (2007) ‘The worst scars are in the mind: psychological torture’, *International Review of the Red Cross*, Volume 89, Number 867, September 2007, accessed at <https://international-review.icrc.org/sites/default/files/irrc-867-5.pdf> on 21st October 2021

64. See, amongst others: UN Special Rapporteur on extrajudicial, summary or arbitrary executions, “Unlawful deaths of refugees and migrants”, A/72/335 (2017); Report of the Special Rapporteur on torture and other cruel or inhuman or degrading treatment or punishment, A/HRC/37/50 (2018); UN Special Rapporteur on the human rights of migrants, “Report on means to address the human rights impact of pushbacks of migrants at land and sea”, A/HRC/47/30 (2021).

65. Communication from the Commission to the European Parliament, the European Council, the Council and the European Investment Bank on establishing a new Partnership Framework with third countries under the European Agenda on Migration (“Migration Partnership Framework”, COM/2016/0385 final, p. 3 (2026).

66. See e.g. Castillejo, Clare (2017) ‘The EU Migration Partnership Framework – Time for a rethink?’, German Development Institute, accessed at <https://www.gdi.de/discussion-paper/article/the-eu-migration-partnership-framework-time-for-a-rethink/> on 31st October 2021

of border and coast guard officials; concludes readmission agreements; and funds detention centres and 'voluntary' returns programmes. Militarisation and securitisation of border control are a prominent feature of the EU's border externalisation project, including through the deployment of military equipment, helicopters, patrol vehicles, ships, drones and satellite surveillance to monitor migration routes. Many of the EU's partners, such as Niger or Sudan, have extremely poor human rights records. Funding and support are thus being allocated to those State security organs most responsible for repression and abuse, without appropriate human rights guarantees or any independent evaluation and monitoring of potential human rights risks.⁶⁷

16. States supporting stronger migration controls claim that harsher migration control measures save lives, reduce the incidence of dangerous border crossings, and disrupt the business model of smuggling,⁶⁸ claims which conveniently ignore State and corporate responsibility for what pushes people to move irregularly in the first place. In reality, intensifying border control, without addressing the drivers of irregular migration, only traps people on the move in a vicious cycle – increasing numbers of deaths at sea or at land borders lead to calls to 'fight' smuggling and to adopt even more stringent border security measures which, in turn force people on the move to resort to other, even more dangerous, routes, to avoid detection. The clear and foreseeable consequence of these policies – whether deliberate or not – is to drive migration even further underground; encourage riskier smuggling activities; and heighten the risk of serious abuses against people on the move.⁶⁹
17. Torture survivors are a particularly vulnerable group amongst people on the move. Torture and other ill-treatment can have profound physical, mental, and psychosocial consequences, which can be life-long and are often intertwined⁷⁰. Physical effects can include musculoskeletal pain, hearing loss, dental pain, visual problems, cardiovascular/respiratory problems, and neurological damage.⁷¹ Chronic pain is common⁷². Torture survivors may also experience feelings of meaninglessness and suffer from nightmares, anxiety, depression, posttraumatic stress disorder (PTSD), nightmares and dissociation, with grave long-term consequences⁷³. Factors which aggravate the psychological state of victims/survivors of torture may include their personal circumstances, such as poverty, family separation or loss, difficulties integrating in the host country, and concerns about the outcomes of an asylum

67. See generally amongst others, Transnational Institute and Stop Wapenhandel, "Expanding the fortress- The policies, the profiteers and the people shaped by EU's border externalisation programme" (2018) and "Outsourcing oppression- How Europe externalises migrant detention beyond its shores"; (2021); Vladislava Stoyanova, "The right to life under the EU Charter and cooperation with third states to combat human smuggling", German Law Journal (2020) 21, pp-436-458; Amnesty International, "The human rights risks of external migration policies", (2017); Report of the Special Rapporteur on the human rights of migrants, "Banking mobility over a generation: follow up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants", A/HRC/29/36 (2015)

68. Vladislava Stoyanova, "The right to life under the EU Charter and cooperation with third states to combat human smuggling", German Law Journal (2020) 21, p. 439; see e.g. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European Agenda on Migration", COM (2015) 240 final ("EU Agenda on Migration") and the Migration Partnership Framework, p.3.

69. It is likely that in 2020 and 2021, some of the risks along the route have been exacerbated as Covid-19-related border closures or movement restrictions may lead to the use of more circuitous routes and to further exposure to abuse and exploitation.

70. Williams, A., van der Merwe, J. (2013) 'The psychological impact of torture', *British Journal of Pain*, Volume: 7 issue: 2, p.102

71. The Center for Victims of Torture, (2015) 'Effects of torture', accessed at <https://www.cvt.org/sites/default/files/downloads/CVT%20Effects%20Torture%20April%202015.pdf> on 21st October 2021

72. Williams, A., van der Merwe, J. (2013) 'The psychological impact of torture', *British Journal of Pain*, Volume: 7 issue: 2, p.102

73. The Center for Victims of Torture, (2015) 'Effects of torture', accessed at <https://www.cvt.org/sites/default/files/downloads/CVT%20Effects%20Torture%20April%202015.pdf> on 21st October 2021

74. Williams, A., van der Merwe, J. (2013) 'The psychological impact of torture', *British Journal of Pain*, Volume: 7 issue: 2, p.102

process⁷⁴. Torture may also have social consequences, including difficulties adjusting, outbursts of anger and violence towards family members, deep distrust of other people, and feelings of guilt and shame regarding their experience.

18. In cases of rape and other forms of sexual violence, as well as sexualised torture, the consequences for survivors may include “sexually transmitted infections (STIs), unwanted pregnancies, damage to the sexual organs and rectum, post-traumatic stress disorder (PTSD), and psychosomatic disorders”⁷⁵, as well as long-term psychological effects such as depression, generalised anxiety, attempted or completed suicide, diminished interest in or avoidance of sex, low self-esteem, and self-blame⁷⁶. As with other forms of torture, sexual violence may have a long-term socio-economic impact on victims/survivors. Research suggests that sexual torture is associated with a degree of stigma and silence which far exceeds that of other forms of torture.⁷⁷
19. Article 14 UNCAT establishes a right to redress for victims/survivors of torture and ill-treatment comprised of a right to an effective remedy and a right to reparation. Reparation measures include access to “*as full rehabilitation as possible*” to help victims/survivors rebuild their lives and restore their dignity and resilience, irrespective of whether judicial remedies are pursued.⁷⁸ In practice, there are many barriers to access to care. There may be a lack of torture-specific screening procedures, and officials may lack the necessary skills to identify victims/survivors. Where early identification mechanisms exist, these may be inadequate because of a lack of safe and conditional structures or adequately trained staff able to respond to signs of distress. Follow-on mental health and psychosocial support services may not always be available. Such mechanisms may also fail to consider external conditions which are conducive to disclosure, including timing and the existence of a safe and private physical environment. Further, screenings may be carried out by law enforcement officials, which may discourage disclosure from persons who have been victims/survivors of torture or other ill-treatment at the hands of State agents. Moreover, victims/survivors may find it challenging to self-identify and disclose the harm they have experienced due to shame, stigma, isolation and a lack of information and awareness. Beyond these barriers, elements of a victim’s/survivor’s identity, such as their sexual orientation, ethnicity, gender or religion, or their circumstance, such as their health or migration status, may increase their vulnerability⁷⁹ and, in turn, contribute to underreporting.

75. Einolf, C. (2018) ‘Sexual torture among Arabic-speaking Shi’a Muslim men and women in Iraq: Barriers to healing and finding meaning’, *Torture – Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Volume 28, Number 3, p. 65


76. Einolf, C. (2018) ‘Sexual torture among Arabic-speaking Shi’a Muslim men and women in Iraq: Barriers to healing and finding meaning’, *Torture – Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Volume 28, Number 3, p. 64

77. See e.g. Dehghan, R. (2018) ‘The health impact of (sexual) torture amongst Afghan, Iranian and Kurdish refugees: A literature review’, *Torture – Journal on Rehabilitation of Torture Victims and Prevention of Torture*, Volume 28, Number 3, p. 78


78. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 3 (2012), CAT/C/GC/3, at paras 3 and 15.

79. United Nations Voluntary Fund for Victims of Torture (UNVFT) and United Nations Office of the Commissioner for Human Rights (OHCHR), “Torture Victims in the Context of Migration: Identification, Redress and Rehabilitation – Report on the Third Annual Expert Workshop”, 2017, accessed at https://www.ohchr.org/Documents/Issues/Torture/UNVFT/UNVFT_ExpertWorkshop2017.pdf on 21st October 2021, p. 4

80. Amnesty International, (2014) ‘Amnesty International: Global crisis of torture exposed by new worldwide campaign’, 12th May 2014, accessed at



SECTION B. EXPERIENCES OF TORTURE IN MIGRATION: A TRAJECTORY OF VIOLENCE, ABUSE AND HARM



Part I. Torture and other ill-treatment as drivers of forced migration

20. Torture and other ill-treatment are practiced in over 140 countries worldwide according to Amnesty International⁸⁰ and are a key driver of forced migration. Testimonies collected for this research in Chad, Niger, Mali, Kenya and Uganda reveal that many people on the move in those contexts are fleeing torture and other ill-treatment often in connection with armed conflict. State security forces and non-State armed actors, including terrorist groups, are said to be responsible for widespread civilian abuses, including extra-judicial killings, torture and sexual violence. For example, in Niger, accounts were received from Sudanese and Chadian nationals who had fled torture and violence by the Janjaweed armed group. According to one survivor: *"I am Sudanese by origin and a refugee in Chad. When the Janjaweed attacked the refugee camps, they tortured us. They had come early in the morning and surrounded the whole camp. Others ran to the nearby village and others entered the forest. The Janjaweed chased them into the forest and were able to rape some women and kill others who resisted."* In Mali, a civil society representative stated that *"it is common for people on the move passing through Mali to flee their countries of origin due to torture and ill-treatment. This is the case of Central Africans who have taken refuge here and who have fled forced labour in mines controlled by armed groups"*.

The case of South Sudanese torture survivors in Uganda

21. Refugees from **South Sudan** currently make up over 60% of refugees in Uganda (over 900 000⁸¹). The vast majority are likely to have suffered gross human rights abuses and violations of international humanitarian law since the outbreak of the armed conflict in South Sudan in December 2013, which has taken a devastating toll

<https://www.amnesty.eu/news/amnesty-international-global-crisis-on-torture-exposed-by-new-worldwide-campaign-0744/> on 21st October 2021

81. United Nations High Commissioner for Refugees (UNHCR), 'Regional overview of the South Sudanese refugee population, 2021 South Sudan Regional RRRP', 30 September 2021.

on the civilian population and inflicted suffering on millions. A 2015 survey by the South Sudan Law Society and the United Nations Development Programme found high levels of PTSD and exposure to trauma – comparable to those found in post-genocide Cambodia and Rwanda – amongst the population, with symptoms more prevalent among respondents who were displaced from their homes.⁸² In 2016, Amnesty International documented the serious and significant mental health impact of the war in South Sudan on internally displaced persons (IDPs), describing the country as “a traumatised nation”.⁸³ While armed violence has declined following the adoption of the *Revitalized Agreement on the Resolution of the Conflict in the Republic of South Sudan* (R-ARCSS) in September 2018, egregious human rights abuses continue to be perpetrated by all parties to conflict with near complete impunity.⁸⁴

Torture and other ill-treatment and the conflict in South Sudan

Since the start of the conflict, torture and other ill-treatment, as well as enforced disappearances, by South Sudan’s Military Intelligence, National Security Service, and army have been widely documented.⁸⁵ State security forces are reported to have arbitrarily detained perceived government opponents. Former detainees have recounted being beaten with sticks, whips, metal bars, electric wires and rubber tubes; and being given electric shocks.⁸⁶ Others reported being detained in poor conditions, being held in cramped cells and forced to sleep next to latrines, without access to medical care, food or water.⁸⁷ One survivor told Amnesty International in 2016:

“They beat me every day. They wanted me to say that I am a rebel. At around 10pm they would bring me out and start beating me. They punched and kicked me. They kicked me till my tooth came out. They would hit me with the butt of a gun and a long metal rod... Every two nights we were given rice and beans at 11am. Water was put in a small jerry can once a week. If the water finished, we weren’t given more until the following week. Some people drank their urine.”⁸⁸

82. United Nations Development Programme (UNDP) and South Sudan Law Society, (2015) ‘A Search for a New Beginning: Perceptions of Truth, Justice, Reconciliation and Healing in South Sudan’, accessed at <https://www.africa.undp.org/content/rba/en/home/presscenter/articles/2016/01/28/search-for-new-beginning-perception-of-truth-justice-reconciliation-and-healing-in-south-sudan.html> on 21st October 2021
83. Amnesty International, (2016) ‘Our hearts have gone dark – The mental health impact of South Sudan’s conflict’, accessed at <https://www.amnesty.org/en/documents/afr65/3203/2016/en/> on 21st October 2021
84. United Nations High Commissioner for Refugees (UNHCR), (2019) ‘UNHCR Position on Returns to South Sudan – Update II, April 2019, accessed at <https://www.refworld.org/docid/5cb4607c4.html> on 21st October 2021
85. See generally, Human Rights Council, (2021) ‘Detailed Findings of the Commission on Human Rights in South Sudan’, 18 February 2021 (A/HRC/46/CRP.2); Human Rights Watch, (2015) ‘South Sudan: Arbitrary Detention, Torture - Military, National Security Service Routinely Beat detainees’, May 2015; Amnesty International, “Our hearts have gone dark- The mental health impact of South Sudan’s conflict”, 2016; Human Rights Watch (2016), ‘South Sudan: Civilians Killed, Tortured in Western Region - Provide Justice for Army Abuses in Western Regions’, accessed at <https://www.hrw.org/news/2016/05/24/south-sudan-civilians-killed-tortured-western-region> on 21st October 2021
86. Amnesty International, (2016) ‘Our hearts have gone dark – The mental health impact of South Sudan’s conflict’, accessed at <https://www.amnesty.org/en/documents/afr65/3203/2016/en/> on 21st October 2021; Human Rights Watch (2016), ‘South Sudan: Civilians Killed, Tortured in Western Region - Provide Justice for Army Abuses in Western Regions’, accessed at <https://www.hrw.org/news/2016/05/24/south-sudan-civilians-killed-tortured-western-region> on 21st October 2021
87. Amnesty International, (2016) ‘Our hearts have gone dark – The mental health impact of South Sudan’s conflict’, accessed at <https://www.amnesty.org/en/documents/afr65/3203/2016/en/> on 21st October 2021; Human Rights Watch (2016), ‘South Sudan: Civilians Killed, Tortured in Western Region - Provide Justice for Army Abuses in Western Regions’, accessed at <https://www.hrw.org/news/2016/05/24/south-sudan-civilians-killed-tortured-western-region> on 21st October 2021
88. Amnesty International, (2016) ‘Our hearts have gone dark – The mental health impact of South Sudan’s conflict’, accessed at <https://www.amnesty.org/en/documents/afr65/3203/2016/en/> on 21st October 2021

Sexual violence, including the use of rape, sexual slavery, sexual mutilation, and sexual torture for the purpose of intimidation and punishment based on perceived political affiliation has been a prominent feature of the South Sudanese armed conflict.⁸⁹ According to the United Nations sexual violence against women and girls, as well as men and boys, has been used *“as a weapon of war to humiliate, terrorise and tear apart the social fabric of families and communities, to forcibly displace civilians and to inflict individual and collective trauma”*.⁹⁰ Other documented violations include the recruitment and/or use of children by armed groups, looting and destruction of civilian property and forcible displacement.⁹¹

22. As of July 2020, the violence in South Sudan had caused the displacement of an estimated 4 million civilians. Of these, around half are internally displaced while the remainder have fled as refugees to neighbouring countries.⁹² The displacement crisis in South Sudan is the largest in Africa and the third largest in the world, after Syria and Afghanistan.⁹³
23. Between January and October 2016 alone, 350,000 South Sudanese refugees were settled in the West Nile region of northwest Uganda, which borders South Sudan and the Democratic Republic of Congo (DRC). Nine new refugee settlements were opened by the Ugandan authorities to host this population. The largest of these is Bidi Bidi which is currently home to over 230,000, mostly South Sudanese, refugees and stretches over 250 square kilometres.⁹⁴
24. In 2020, as part of this study, the **African Centre for the Treatment and Rehabilitation of Torture Victims** (ACTV) documented the experiences of torture and other ill-treatment amongst South Sudanese refugees in Bidi Bidi. ACTV is the only NGO in Uganda providing comprehensive treatment and rehabilitation services to torture survivors in the country, including asylum-seekers and refugees. ACTV is accredited by the Ugandan Ministry of Health and operates a medical referral centre that provides medical, psychiatric, and psychosocial assistance to torture victims/survivor. ACTV also conducts advocacy around torture prevention and the strengthening of service provision and provides legal information and advice to survivors on an individual basis.
25. ACTV collected the testimonies and narratives of 40 refugees who were survivors of torture in South Sudan (and, in some cases, during their journey to Uganda). 20

89. United Nations Security Council (UNSC), (2020) 'Conflict-related sexual violence, Report of the Secretary General, 3 June 2020' (S/2020/487) accessed at <https://www.un.org/sexualviolenceinconflict/wp-content/uploads/2020/07/report/conflict-related-sexual-violence-report-of-the-united-nations-secretary-general/2019-SG-Report.pdf> on 21st October 2021; United Nations Mission in South Sudan (UNMISS) and United Nations Office of the Human Rights Commissioner (OHCHR), (2020) 'Access to health for survivors of conflict-related sexual violence in South Sudan', accessed at <https://reliefweb.int/report/south-sudan/access-health-survivors-conflict-related-sexual-violence-south-sudan-may-2020> on 21st October 2021

90. United Nations Mission in South Sudan (UNMISS) and United Nations Office of the Human Rights Commissioner (OHCHR), (2020) 'Access to health for survivors of conflict-related sexual violence in South Sudan', accessed at <https://reliefweb.int/report/south-sudan/access-health-survivors-conflict-related-sexual-violence-south-sudan-may-2020> on 21st October 2021

91. See generally, for example, UN HRC, Report of the Commission on the Human Rights Situation in South Sudan, 12 March 2019 (A/HRC/40/69); Human Rights Watch, World Report 2020: South Sudan; US State Department, 2020 Country Reports on Human Rights Practices: South Sudan; UNMISS, Annual Brief on Violence Affecting Civilians, January-December 2020.

92. United Nations High Commissioner for Refugees (UNHCR), 'South Sudan emergency', accessed at <https://www.unhcr.org/south-sudan-emergency.html> on 21st October 2021 (up to date as of 31st July 2020)

93. United Nations High Commissioner for Refugees (UNHCR), (2021) 'South Sudan refugee crisis', accessed at <https://www.unrefugees.org/emergencies/south-sudan/> on 21st October 2021

94. United Nations High Commissioner for Refugees (UNHCR) and Government of Uganda (2021) 'Uganda – Refugee Statistics January 2021 – Bidibidi', accessed at <https://reliefweb.int/report/uganda/uganda-refugee-statistics-january-2021-bidibidi> on 21st October 2021

key informants, namely 13 representatives of civil society organisations and 6 public officials were also interviewed regarding their experiences of responding to the needs of survivors. All respondents identified torture and other ill-treatment as one of the main drivers of forced displacement in South Sudan. One female refugee told ACTV that *“Almost all of us here moved as a result of fear to be tortured and some of us already had past experiences of direct torture, witnessing others being tortured, killed and raped in our presence”*. This was echoed by a number of service providers who reported that between 80% and 90% of refugees living in the camp were survivors of torture, and by UNHCR.

26. Refugees and service providers stated that people, including children, were subjected to severe beatings, rape, including gang rape, and other forms of sexual violence, and genital mutilation, amongst others, often in the presence of family members. Victims/survivors reported being targeted for refusing to join an armed group, or on the basis of a perceived affiliation with a particular group. Accounts were also received of torture in detention by government forces: *“if they arrest you, they use different torture methods. At times they just cut your body with the panga and leave you to suffer with the sustained injuries.”*
27. According to one health service provider (International Rescue Committee, IRC), many refugees seeking medical attention presented with visible physical wounds of torture. He reported that:

“A [patient] of mine once told me that he worked for the military in South Sudan and he retired. [He said that] “When the war broke out, the rebels attacked me at my home, I was severely beaten, my family members and my wife were raped as I watched; this was done because they wanted some military information from me. Due to the severe pain suffered, I gave the information. In the following days, the government military found out that I was the source of the information and started following me. I was scared for my life and family; therefore I had to flee to Uganda for fear of being tortured.””

28. Another health provider (Médecins du Monde, MDM) similarly reported that the vast majority of South Sudanese refugees in Bidi Bidi were torture survivors and had fled because of a fear of being subjected to further torture and other forms of ill-treatment. The majority of refugees wishing to access mental health services had directly experienced torture or been forced to witness the torture of their loved ones. A high number of female refugees were victims/survivors of rape, often in the presence of other family members including children. According to this health provider:

“[The patient] narrated to me her ordeal where she said “we were in our house with my husband and children, the rebels surrounded the village looking for Nuers⁹⁵. They killed my husband, gang raped me as my children watched and those who were desisting from watching were beaten and stabbed with knives. This pains a lot and I do not want to think about it because when I do, I want to kill myself””.

29. Other studies similarly suggest that there is a high prevalence of torture victims/survivors amongst South Sudanese refugees settled in Bidi Bidi. A 2019 assessment by the Center for Victims of Torture (CVT) on the mental health needs of South Sudanese refugees living in Bidi Bidi found that 45% of respondents

95. Tribe in South Sudan

(out of a sample size of 502) disclosed having been tortured in their country of origin.⁹⁶ The majority of survivors were men aged 30 or above. Additionally, 31% of respondents stated that a member of their family or household had been tortured, and over 50% reported that they felt that many people in their community had experienced torture. Service providers interviewed by the CVT similarly perceived a high rate of torture survivors amongst refugees living in Bidi Bidi.⁹⁷

30. In 2018, researchers from the University of Cape Town (South Africa) and the University of Coventry (United Kingdom) conducted a field study into the health and justice service responses to the needs of South Sudanese refugees settled in Northern Uganda, including in Bidi Bidi, who had been subjected to torture, including sexual and gender-based violence, in their country of origin.⁹⁸ 61 survivors (20 men and 41 women) and 37 key informants, including public officials and representatives from international and non-governmental organisations, were surveyed.⁹⁹
31. 75% of male survivors disclosed being beaten and/or tortured, including being burnt on the face and head with a red-hot knife or metal instrument.¹⁰⁰ One respondent said that *"Most refugees have been captured and tortured in South Sudan and held in military barracks. There is extensive torturing and robbing and anyone could be a rebel. Most of us were threatened with our lives and experienced atrocities, for instance removing our fingernails, tying penises, being shot; even girls were tortured and shot."*¹⁰¹ Another male refugee recounted that *"when I was in South Sudan, the soldier services have arrested me, they tortured me, they bite me, and now I am feel in pain, my neck here is in pain, and even my head, I just feel in pain. I was put inside the throne for one week (tied to a chair), outside under the sun."*¹⁰² Men, women and children had been subjected to SGBV. According to one government official *"SGBV is used as a weapon of war, even small girls are gang raped and as a result are crying. Children, women and men are raped. It causes lots of emotional distress and the whole family is affected. Survivors are often raped in front of family members. To those forced to witness it is psychological torture."*¹⁰³

96. The Centre for Victims of Torture (CVT) is a US-based international non-governmental organisation that provides direct and specialised rehabilitation and care to survivors of torture. See, CVT 'Assessing Mental Health in Bidi Bidi, Uganda: A representative survey of South Sudanese refugees in Zone 5' (March 2020), p. 40

97. CVT 'Assessing Mental Health in Bidi Bidi, Uganda: A representative survey of South Sudanese refugees in Zone 5' (March 2020), p. 40

98. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>,

99. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>, p.3

100. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>, p.4

101. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>, p.5

102. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>, p.3

103. Liebling, H., Barrett, H., & Artz, L. (2020). South Sudanese Refugee Survivors of Sexual and Gender-Based Violence and Torture: Health and Justice Service Responses in Northern Uganda. *International journal of environmental research and public health*, 17(5), 1685. <https://doi.org/10.3390/ijerph17051685>, p.4

Part II. Torture and other ill-treatment in flight and transit settings

32. This section examines the risks of torture and other ill-treatment faced by migrants travelling respectively from **West Africa**, and from **East Africa** and the **Horn of Africa**, towards **North Africa**. It is not meant to be exhaustive, nor does it address in detail the conditions and routes of the Sahara Desert and the Mediterranean Sea (the so-called “Central Mediterranean route”). The egregious violence and harm inflicted upon migrants travelling along this route has been the subject of extensive documentation and reporting, with a particular focus on Libya. However, as observed by one health provider working with sub-Saharan refugees and migrants in Italy *“the whole journey is traumatic. Libya is just [the] icing on the cake”*.¹⁰⁴

Key legal protections

33. **States must respect and ensure the human rights of all persons within their territory and under their jurisdiction on a basis of equality and without distinction of any kind, including the right to be free from torture and other ill-treatment.** The right to be free from discrimination and the right to equality are fundamental norms of international law,¹⁰⁵ and are directly related to the principle of universality, which affirms that every human being has fundamental rights.¹⁰⁶ Whilst immigration status is not an expressly prohibited ground of discrimination,¹⁰⁷ human rights treaty monitoring bodies have consistently found that the principles of non-discrimination and equality apply to regular and irregular migrants. For example, in considering the protective scope of the ICCPR, the **Human Rights Committee** (HRC) has stated that *“the rights set forth in the Covenant apply to everyone [...] irrespective of his or her nationality or statelessness [...] the general rule is that each one of the rights of the Covenant must be guaranteed without discrimination between citizens and aliens.”*¹⁰⁸ The **Committee on Economic, Social and Cultural Rights** (“ESCR Committee”) has affirmed that the term *“other status”* in the non-discrimination clause under the ICESCR *inter alia* prohibits discrimination on the grounds of **nationality**, irrespective of an individual's legal status in the host country, and that *“Covenant rights apply to everyone including non-nationals, such as refugees, asylum-seekers, stateless persons, migrant workers and victims of international trafficking, regardless of legal status and documentation.”*¹⁰⁹

104. Women's Refugee Commission, (2019) “More than one million pains” – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/> on 20th October 2021, p. 15

105. Non-discrimination and equality are enshrined in all of the core human rights instruments, including Articles 2 and 7 UDHR; Articles 2 and 5 International Convention on the Elimination of All Forms of Racial Discrimination (“ICERD”); Articles 2 and 26 International Covenant on Civil and Political Rights (“ICCPR”); Articles 2 and 3 International Covenant on Economic, Social and Cultural Rights (“ICESCR”); Articles 1 and 2 International Convention on the Elimination of All Forms of Discrimination against Women (“CEDAW”); Article 2 UN Convention on the Rights of the Child (“CRC”); and Article 5 International Convention for the Rights of People with Disabilities (“ICRPD”).

106. Article 1 UDHR.

107. The following grounds are expressly recognised and prohibited under the international treaties cited above: race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth and other status.

108. OHCHR, CCPR General Comment No. 15: The position of aliens under the Covenant, adopted at the Twenty-seventh session of the Human Rights Committee, on 11 April 1986, paras 1-2.

109. Committee on Economic, Social and Cultural Rights, General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2, of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/20, 2 July 2009, at para. 30.

34. Thus, **the fundamental rights of all migrants, including the right to be free from torture and other ill-treatment, must be respected, protected and fulfilled throughout the migration cycle, by countries of origin, transit and destination, irrespective of their legal status.** There are very few and narrowly defined exceptions to this rule, relating to certain political and freedom of movement rights and even in such cases, procedural safeguards must be respected.¹¹⁰ No such exceptions apply to the prohibition on torture and ill-treatment, which is non-derogable.¹¹¹ No exceptional circumstances may be invoked by a State, such as a state of armed conflict or a threat thereof, internal political instability, or any other public emergency, as a lawful justification for torture and/or ill-treatment. The **UN Special Rapporteur on Torture** has expressly stated that a public emergency '*triggered by a large and sudden movement of migrants*' does not constitute a lawful justification for torture and/or ill-treatment.¹¹²
35. The UNCAT specifies a range of measures that States must take in order to adequately prevent, prohibit and redress torture and ill-treatment, and guarantee non-recurrence.¹¹³ States must take effective legislative, administrative, judicial or other measures to prevent acts of torture and ill-treatment in any territory under their jurisdiction.¹¹⁴ The obligation to prevent is wide-ranging and applies at all stages of the migration process, including at the **border**, in **detention**, on **reception** and in the context of **returns**.¹¹⁵ States must take effective measures to prevent public officials and other persons acting in an official capacity from directly committing, instigating, inciting, acquiescing in or otherwise participating or being complicit in acts of torture and/or ill-treatment. Preventive measures include enacting domestic legislation criminalising torture *as such* (i.e., as distinct from common assault or other crimes)¹¹⁶; investigating de officio, in a prompt and impartial manner, wherever there is a reasonable basis to believe that torture and other ill-treatment may have been perpetrated by State and/or non-State actors; and prosecuting and punishing those responsible.¹¹⁷ In practice, many States fail to comply with these obligations and have altogether failed to adopt adequate legal frameworks to criminalise and sanction torture and other ill-treatment. This is the case e.g., in **Mali**, which prohibits torture and other ill-treatment but does not provide a definition thereof, or adequate sanctions for perpetrators.¹¹⁸

110. For example, Article 25 ICCPR restricts the right to vote and to take part in public affairs to citizens; and Article 12 ICCPR provides that the right to freedom of movement within a country applies to 'everyone lawfully within the territory of the State'.

111. Article 2 (2) UNCAT; Article 4 ICCPR; the African Commission has confirmed the non-derogable nature of the prohibition of torture and ill-treatment as enshrined in Article 5 of the African Charter, see for instance African Commission, Media Rights Agenda and Constitutional Rights Project v Nigeria, Communications 105/93, 128/94, 130, 94, 152/96, paras. 67-69.

112. Report of the Special Rapporteur on torture and other cruel or inhuman or degrading treatment or punishment, A/HRC/37/50, at §12 (UNSR Migration and Torture Report).

113. The focus of the analysis is on the UNCAT given that it represents the most detailed international codification of standards and practices regarding the torture prohibition; analogous provisions exist under the ACHPR, which have been identified where relevant. See also, African Commission on Human and People's Rights Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 2002.

114. Articles 2(1) and 16 UNCAT

115. United Nations Voluntary Fund for Victims of Torture (UNFVT) and United Nations Office of the High Commissioner for Human Rights (OHCHR), "Torture Victims in the Context of Migration: Identification, Redress and Rehabilitation- Report on the Third Annual Expert Workshop", 2017.

116. Article 4 UNCAT; See also Article 2(2) ICCPR.

117. Articles 12 and 13 UNCAT; CAT Committee, General Comment No. 2; ACHPR, Sudan Human Rights Organisation and COHRE v. Sudan, Comm. Nos. 279/03 & 296/05, para. 150. To that end, international standards on the effective investigation and documentation of torture and ill-treatment are set out in the 1999 UN Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ('Istanbul Protocol').

118. Article 3 of Malian constitution (1992) and article 209 of the Criminal Code (1961)

36. General Comment No. 4 further provides (at §14) that: **“States parties should not adopt dissuasive measures or policies**, such as detention in poor conditions for indefinite periods, refusing to process claims for asylum or unduly prolong them, or cutting funds for assistance programs to asylum seekers, **which would compel persons in need of protection under Article 3 of the Convention to return to their country of origin** in spite of their personal risk of being subjected there to torture and other cruel, inhuman or degrading treatment or punishment.”
37. The CAT Committee has expressly acknowledged that **the protection of certain minority or marginalised individuals or groups particularly at risk of torture is part of the obligation to prevent**. Measures taken to prevent torture must be applied to all persons, regardless of race, ethnicity, and national origin, amongst others, and regardless of the basis for detention, including detention based on asylum-seeking or refugee status. The CAT has called on States to ensure the protection of those at particular risk of torture, including by fully prosecuting and punishing acts of abuse and violence against them.¹¹⁹ As the findings in this report starkly illustrate, people on the move, including migrants in irregular situations, are at particular risk of torture and therefore require protection.
38. The Office of the High Commissioner for Human Rights (OHCHR) has produced guidance for States on how the international human rights framework may be operationalised in order to ensure the effective protection of migrants who are particularly vulnerable to human rights abuses, including because of the risks faced along the journey. Principle 5 of the **‘Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations’** (2018) provides that States should *‘ensure that all border governance measures protect human rights’* including by (i) ensuring that no migrant is criminalised for crossing a border irregularly or with the help of a facilitator; (ii) prohibiting border management measures that lead to human rights violations or make them more likely and prohibiting dangerous border control practices; (iii) ensuring that border officials are properly trained and understand their obligation to respect the human rights of migrants and do not confiscate migrants’ personal property unless authorised to do so by law; and (iv) promptly and properly investigate human rights abuses at the border.¹²⁰

119. CAT Committee, General Comment No. 2, §21

120. United Nations Office of the High Commissioner of Human Rights (OHCHR) and Global Migration Group (2018), “Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations” accessed at <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> in October 2021; see also, OCHR, “Recommended Principles and Guidelines on Human Rights at International Borders” (2014), accessed at https://www.ohchr.org/Documents/Issues/Migration/OHCHR_Recommended_Principles_Guidelines.pdf in October 2021

Routes

39. Current trends in migration routes indicate that people from **West Africa** and **Central Africa** usually travel through either **Mali** and/or **Niger** before attempting to cross the Sahara.¹²¹ In Mali, people will generally travel through **Bamako** to reach **Timbuktu** or **Gao** before making their way to **Algeria** or **Niger** and on to **Libya**. Gao remains an important transit point, however recent reports suggest that increased security risks in Northern Mali have caused many to shift their routes and attempt to enter Libya or Algeria through Niger, rather than Mali.¹²² This shift places **Burkina Faso** at the centre of various converging routes, bringing together people coming from countries to the west (Senegal, Gambia, Guinea) and south (Côte d'Ivoire, Ghana). Traditionally, there are two main routes from Niger to North Africa, both of which originate in **Agadez**, the last major city before Libya and Algeria. People on the move travelling to Algeria take the route through **Arlit** and **Assamaka**, whereas those heading to Libya take the **Dirkou-Seguedine** route.¹²³ Following the entry into force of a strict anti-smuggling law in Niger in 2015 (see Part III below), a multitude of informal routes in the desert have emerged, bypassing Agadez altogether as well as the main axes connecting the city to Libya and Algeria.
40. Routes originating in western and central Africa fall within the ECOWAS (Economic Community of West African States)¹²⁴ free movement zone. Under the ECOWAS free movement protocols, nationals of ECOWAS member States may travel visa-free within the regional zone for up to 90 days, provided they hold valid identification documents and an international health certificate.¹²⁵ The implementation of ECOWAS free movement policies is reportedly uneven across the region. One key limitation is that member States under the free movement protocols retain a broad discretion to deny entry to any Community citizen under their domestic law – which provides broad scope to States to undermine the purpose of the protocols through overly restrictive immigration laws.¹²⁶ Additionally, migrants from ECOWAS Member States reportedly face harassment, verbal abuse, extortion and physical violence by state security forces at numerous border points in the region even when in possession of the required documents.¹²⁷ This is particularly the case on routes heading northwards, where deteriorating security environments have enhanced the risks, as in Niger and Mali.¹²⁸

121. In 2020, a sharp increase was reported in departures from the coast of West Africa to the Canary Islands, according to the Mixed Migration Centre: <https://mixedmigration.org/resource/a-gateway-re-opens/>. The so-called Atlantic route is beyond the scope of this report.

122. Danish Refugee Council (2017) 'Before the Desert: Conditions and Risks on Mixed Migration Routes through West Africa – Insights from the Mixed Migration Monitoring Mechanism Initiative (4Mi) in Mali and Niger', accessed at <https://reliefweb.int/report/mali/desert-conditions-and-risks-mixed-migration-routes-through-west-africa> on 20th October 2021, p. 9

123. International Organization for Migration (IOM) (2020), 'Migration trends from, to and within the Niger, 2016-2019' accessed at <https://publications.iom.int/system/files/pdf/iom-niger-four-year-report.pdf> on 20th October 2021, p. 7

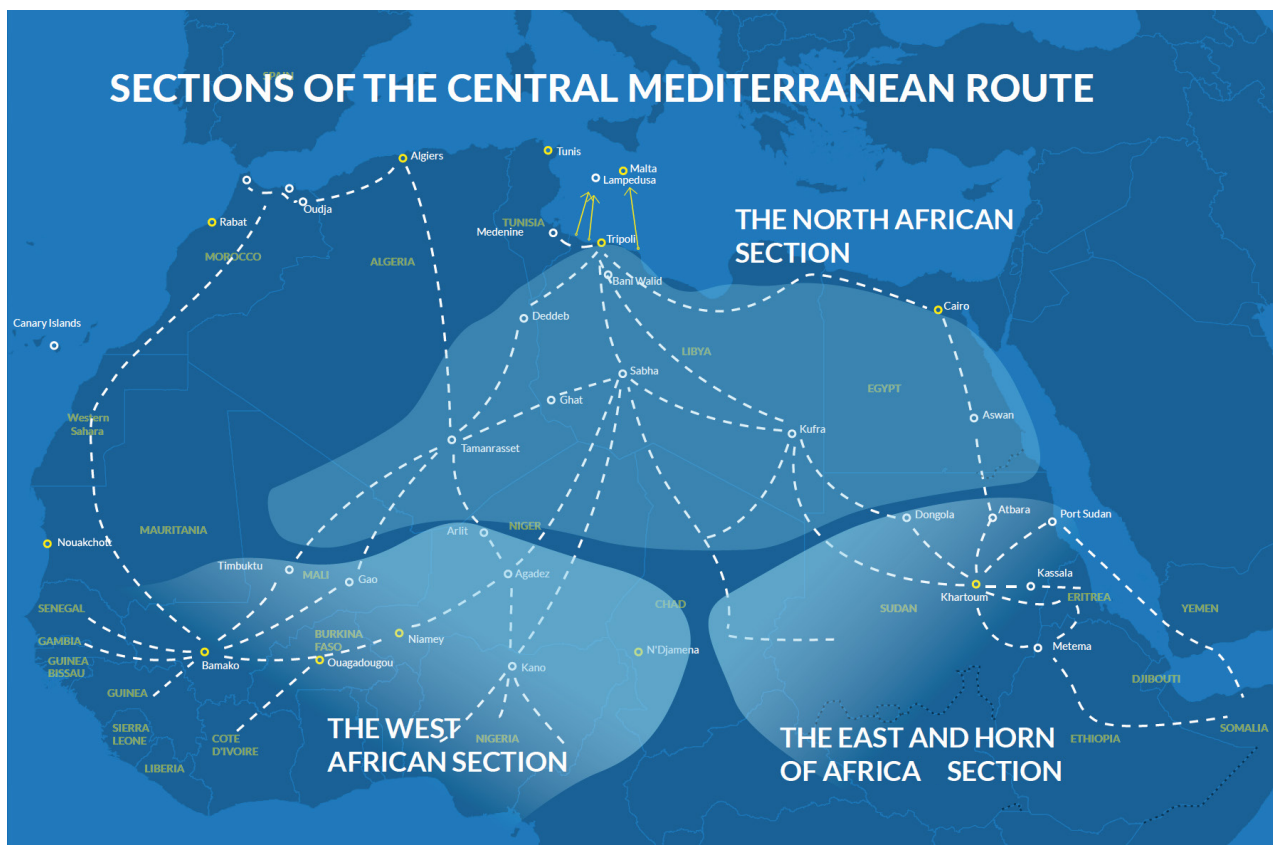
124. ECOWAS is an economic and political treaty-based union established in 1975 (Revised Treaty of the Economic Community of West African States (ECOWAS) (1993) and comprised of the following 15 countries (as of October 2021: Benin, Burkina Faso, Cabo Verde, Cote d'Ivoire, The Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, and Togo.

125. 1979 Protocol on the Free Movement of Persons, the Right of Residence and the Right of Establishment and (A/P.1/5/79) and its four Supplementary Protocols.

126. Devillard, A. et al. (2016), 'A Survey on Migration Policies in West Africa: Second Edition' ICMPD Report, p 36; UNHCR, New Issues in Refugee Research, Research Paper No.150, Promoting integration through mobility: free movement and the ECOWAS Protocol, December 2007 p.3;

127. United Nations High Commissioner for Refugees (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast', accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24/06/21, p. 13; Danish Refugee Council (2017) 'Before the Desert: Conditions and Risks on Mixed Migration Routes through West Africa – Insights from the Mixed Migration Monitoring Mechanism Initiative (4Mi) in Mali and Niger', accessed at <https://reliefweb.int/report/mali/desert-conditions-and-risks-mixed-migration-routes-through-west-africa> on 20th October 2021, p.8

128. Danish Refugee Council (2017) 'Before the Desert: Conditions and Risks on Mixed Migration Routes through West Africa – Insights from the Mixed Migration Monitoring Mechanism Initiative (4Mi) in Mali and Niger', accessed at <https://reliefweb.int/report/mali/desert-conditions-and-risks-mixed-migration-routes-through-west-africa> on 20th October 2021, p. 9



Source: UNHCR, 'On this journey, no one cares if you live or die'. Abuse, protection, and justice along routes between East and West Africa and Africa's Mediterranean coast, July 2019

41. Migrants travelling in the **East and Horn of Africa**, which is not a free movement zone, are heavily reliant on smugglers to cross borders, including through **Sudan**¹²⁹. The main transit points in Sudan are the eastern towns of **Gedaref** and **Kassala** and from there, **Khartoum**. From Khartoum, refugees and migrants generally travel northwards in pickup trucks or buses to El Shemaliya State, arriving in towns such as **Dongola** or **Al Dabba** from where they prepare to cross to Libya or Egypt.¹³⁰
42. Migrants attempting to cross the desert in **North Africa** are usually entirely dependent on smugglers. For those crossing via the north of Niger, journeys are mostly on the back of overcrowded trucks, with no ventilation and often little access to food and water. Those crossing from Sudan are usually handed over to Libyan smugglers in the border regions and from there smuggled north towards Tripoli and the coast.^{131 132}

129. There are other important routes in the region, which are beyond the scope of this report, namely: within the Horn of Africa itself (Somalia, Ethiopia and Djibouti); through Yemen and the Arab Peninsula; and through Kenya, Tanzania and further onwards to South Africa. See generally, IOM, 'A Region on the Move - 2018 Mobility Overview in the Horn of Africa and the Arab Peninsula', May 2019.

130. United Nations High Commissioner for Refugees (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24/06/21, p.13

131. United Nations High Commissioner for Refugees (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24/06/21, p.13.

132. According to information gathered for this report by the Libya Anti-Torture Network, the main routes into Libya are as follows: migrants are smuggled into Libya via the desert up to the area of **Qatrun** and from there to **Brak** (al Shattii District) via **Sabha**. Those who manage to avoid arrest in Brak continue towards Tripoli and cities west of Tripoli.

Risks of torture and other ill-treatment and other abuses

43. First-hand accounts of e.g., rape, physical violence (e.g., severe beatings, application of electric shocks); deprivation of food and water; prolonged and/or arbitrary detention; kidnapping and forced labour and exploitation were collected in several of the countries along these routes. These findings are corroborated by UNHCR, which in 2020 reported that the risks faced by migrants moving from West and East Africa and the Horn of Africa towards North Africa include loss of life; sexual and gender-based violence; trafficking, severe physical abuse, and kidnap for ransom; risks in detention; death or injury from conflict; and arrest and expulsion. Although deaths in the Mediterranean receive considerable media attention, the International Organization for Migration (IOM) estimates twice as many migrants die in the desert¹³³. Many will never be found or accounted for. **Both State and non-State actors, including smugglers and traffickers and armed groups, are reportedly responsible for this egregious violence.**
44. Key informants, including people on the move, civil society actors, and government representatives identified a wide range of **sites** of torture and ill-treatment in flight and transit across the countries studied. **Borders** and **checkpoints** were noted as particularly dangerous, including Libya's borders with Algeria, Chad, Niger, and Sudan, as well as between Sudan and Chad, Sudan and Egypt, and Niger and Nigeria. Places of **detention** are one of the most common sites and will be considered separately, below.

Sites of abuse

- **Along the road:** It was reported that torture and ill-treatment occur along many of the the roads used by people on the move, including roads in isolated areas, or in conflict areas controlled by non-State armed groups (e.g., in Mopti or Gao, Mali) controlled by non-State armed groups.
- **Roadblocks/ checkpoints:** Migrants were reportedly exposed to a risk of torture and ill-treatment at roadblocks and check points. According to UNHCR, in West Africa the bribery of migrants by State officials frequently occurred at roadblocks¹³⁴. Information gathered for this study in e.g., Mali and Niger found that checkpoints are a common site of torture for migrants. According to research carried out in Mali by UNHCR in 2018-2019, security forces, police, military, immigration officials and border guards at checkpoints were responsible for 78% of the reported incidents of physical violence¹³⁵.

133. Miles, Tom and Nebehay, Stephanie. 'Migrant deaths in the Sahara likely twice Mediterranean toll: U.N.' Reuters, October 12th 2017, accessed at <https://www.reuters.com/article/us-europe-migrants-sahara/migrant-deaths-in-the-sahara-likely-twice-mediterranean-toll-u-n-idUSKBN1CH21Y> on 20th October 2021

134. United Nations High Commissioner for Refugees (2020) 'On this journey, no one cares if you live or die' – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast', accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24/06/21, p. 13

135. United Nations High Commissioner for Refugees (2020) 'On this journey, no one cares if you live or die' – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast', accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24/06/21, p. 10

- **Unofficial border crossings:** It was reported that torture and other ill-treatment is perpetrated along border points not under government control, where migrants can cross without the requirements present at a formal border crossing. For example, in Kenya migrants face the risk of torture and ill-treatment from armed groups as they enter the country through porous borders or attempt to use Kenya as a point of transit.
- **Official border crossings:** Official border crossings are a common site for torture and ill-treatment, as reported in e.g., Kenya, Tunisia and Senegal. The testimonies gathered in Senegal describe border officials in Kantchari, on the border between Burkina Faso and Niger, who systematically use violence towards migrants in order to extort money from them. These reports give accounts of migrants who, when unable to pay the money asked of them, have been electrocuted, beaten and wounded in the leg, as well as forcibly undressed in order to cause humiliation.
- **Refugee reception points and refugee camps:** Both refugee reception points and refugee camps reportedly expose migrants to risks of torture and ill-treatment. For example, in Chad, there is a risk of acts of sexual and gender-based violence such as sexual assault or rape on the part of the military, fellow refugees and strangers living near the camps. The Committee Against Torture has expressed its serious concerns at the extent of sexual violence, including rape, against women and children, particularly in and around sites for displaced persons and refugee camps, committed with impunity whether by militias, armed groups, the armed forces or any other person. (CAT/C/TCD/CO/1, §20). In Uganda, a respondent from a health facility noted that refugee reception points also are sites for torture and ill-treatment.

Other documented sites include bus stations (e.g., in Mali); forest and bush areas (e.g., in Uganda); private dwellings and compounds run by smugglers and traffickers (e.g., in Libya, Niger and Mali).

STATE ACTORS

Criminalisation and detention

45. Many countries, such as **Libya, Mali**¹³⁶ or **Niger, criminalise** irregular migration and resort to detention as a routine or even mandatory response¹³⁷. There are two types of detention: criminal detention as punishment for a criminal offence, and administrative detention to ensure that an administrative measure (such as deportation) can be implemented.¹³⁸ In many States, migrants are subjected to administrative detention, including while they wait for a decision on their admission to or removal from the host State or for a determination of their asylum claim.¹³⁹ In others (e.g. in **Niger**, as detailed in Part III below) they may be detained under criminal law provisions relating to irregular entry. Detention can take place in a range of locations, including prisons, purpose-built detention centres, closed reception or holding centres, land and sea borders, in the “international zones” at airports, in offshore facilities, and in closed refugee camps. The place of detention may be administered by public authorities or private contractors¹⁴⁰.
46. International human rights law prohibits *arbitrary* detention. Detention is arbitrary if it is not in accordance with the legitimate purpose and procedures established by law, or is otherwise inappropriate, unjust, unreasonable or unnecessary in the circumstances. There are three purposes for which recourse to detention may exceptionally be necessary and proportionate in an individual case, and which are generally in line with international law, namely the protection of public order, public health or national security. Decisions to detain must be based on a detailed and individualised assessment.¹⁴¹ Arbitrary detention has been expressly recognised as carrying a heightened risk of torture and other ill-treatment.¹⁴²
47. The Working Group on Arbitrary Detention has confirmed that the administrative detention of migrants in irregular situations (i.e., migrants crossing the border of a country in an irregular manner or without proper documentation, or having overstayed a permit of stay, and hence being liable for removal) is not

136. In Mali, Law 04-058 AN RM, on the conditions of entry, stay and establishment of foreigners in Mali (Loi 04-058 AN RM, Conditions d'entrée, de séjour et d'établissement d'étrangers au Mali, 25 November 2004) criminalises irregular migration and provide for the detention of migrants including migrant workers. Immigration offences are considered as ordinary crimes and migrants in detention are not separated from ordinary prisoners. Article 20 of the Law 04-058 AN RM imposes prison sentences of between 3 months and 3 years on foreign nationals who stay or live in Mali without the required permit or after a permit has expired. Accessed at <https://mali.eregulations.org/media/Loi%20n04-058%20du%2025%20novembre%202004.%20relative%20aux%20conditions%20d'entree.%20de%20sejour%20et%20d'etablissement%20des%20etrangers%20au%20Mali.pdf>

137. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §17.

138. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §17.

139. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §21.

140. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §18.

141. United Nations High Commissioner for Refugees (UNHCR), (2012) 'Detention Guidelines - Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention', Guideline 4, pp.15-19 available at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>, 2012,

142. See Human Rights Committee in CCPR, F.J. et al. v. Australia (No.2233/2013, 22.03.2016), §10.6; CCPR, F.K.A.G. et al. v. Australia (No.2094/2011, 26.07.2013), §9.8; CCPR, M.M.M. et al. v. Australia (No.2136/2012, 25.07.2013), §10.7 (“the combination of the arbitrary character of the [...] detention, its protracted and/or indefinite duration, the refusal to provide information and procedural rights to the [detainees] and the difficult conditions of detention are cumulatively inflicting serious psychological harm upon them, and constitute treatment contrary to article 7 of the Covenant”)

automatically unlawful as a matter of international law provided it serves a legitimate purpose. **Detention imposed solely as a penalty for irregular entry and/or deterrent to seeking asylum is inconsistent with international law**¹⁴³.

48. Vulnerable persons, including victims/survivors of torture or trauma, sexual violence, trafficking or smuggling, should not be detained. Where such detention occurs, there should be an enhanced requirement to ensure that detention conditions are appropriate and that the detainees have access to the healthcare and support they need.¹⁴⁴
49. The detention of children should always be a measure of last resort and be used for the shortest appropriate period, and their best interests must be assessed and treated as primary consideration. Unaccompanied or separated children should generally not be detained, and detention cannot be justified solely on the basis of their unaccompanied or separated status. All efforts should be made to allow for their immediate release from detention and placement in other forms of appropriate accommodation.¹⁴⁵
50. Detained asylum-seekers and migrants must be treated humanely and with respect for their inherent dignity (Article 10 ICCPR) regardless of the economic and budgetary resources of the State. States are responsible for ensuring humane detention conditions even in privately run facilities. Any detention of migrants must 'take place in appropriate, sanitary, non-punitive facilities and should not take place in prisons.' The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) covering specific needs of detainees, such as clothing, bedding, food, personal hygiene, medical services, exercise and sport, books and religious worship, apply in the migration context. States should ensure that all reception and/or detention centres provide appropriate food and sufficient drinking water; adequate clothing and change of clothing, bedding, blankets and toiletries; separate accommodation and sanitation for men, women and unaccompanied minors. They must also secure the health and well-being of detainees, by providing regular medical attention and specialised care.¹⁴⁷
51. The UN Special Rapporteur on Torture has highlighted that:

"...any detention regime which, as a matter of deliberate policy, or as a consequence of negligence, complacency or impunity, subjects or exposes migrants to treatment or conditions of detention grossly inconsistent with universally recognised standards (...) is incompatible with the prohibition of torture and ill-treatment (...) As a general rule, the threshold of prohibited ill-treatment will be reached sooner with regard to migrants with an irregular status or with other vulnerabilities. Moreover, ill-treatment or grossly

143. United Nations High Commissioner for Refugees (UNHCR), (2012) 'Detention Guidelines - Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention', Guideline 4, p. 19 available at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>, 2012; Article 31, Refugee Convention

144. United Nations High Commissioner for Refugees (UNHCR), (2012) 'Detention Guidelines - Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention', Guideline 9, pp.33-39, available at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>, 2012;

145. Committee on the Rights of the Child, Treatment of unaccompanied and separated children outside their country of origin, General Comment n. 6, 1 September 2005, CRC/GC/2005/6, para. 61.

146. United Nations, Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; see also, African Commission on Human and People's Rights Resolution on Guidelines and Measures for the Prohibition and Prevention of Torture, Cruel, Inhuman or Degrading Treatment or Punishment in Africa (Robben Island Guidelines), 2002.

147. United Nations High Commissioner for Refugees (UNHCR), (2012) 'Detention Guidelines - Guidelines on the applicable criteria and standards relating to the detention of asylum-seekers and alternatives to detention', Guideline 8, pp.29-32, available at <https://www.unhcr.org/publications/legal/505b10ee9/unhcr-detention-guidelines.html>, 2012;

inadequate detention conditions can even amount to torture if they are intentionally imposed, encouraged or tolerated by States for reasons based on discrimination of any kind, including based on immigration status, or for the purpose of deterring, intimidating, or punishing migrants or their families, coercing them into withdrawing their requests for asylum, subsidiary protection or other stay, agreeing to “voluntary” return, providing information or fingerprints, or with a view to extorting money or sexual acts from them.”¹⁴⁸

52. Key informants reported that migrants were frequently subjected to prolonged and arbitrary detention, in poor conditions, in direct contravention of the international human rights norms outlined above. Malnutrition, overcrowding, and inadequate access to water for both drinking and hygiene purposes were among the concerns reported, as well as physical abuse and sexual and gender-based violence.
53. Many of the accounts received relate to **Libya**, which remains a key transit country for people on the move wanting to reach Europe. The overwhelming majority of Senegalese, Nigerien, and Malian nationals interviewed during the course of this study attempted to gain access to Libyan territory, some successfully.
54. Libyan law criminalises irregular migration and does not recognise or prohibit *refoulement*.¹⁴⁹ According to the Libyan Anti-Torture Network (LAN) , most of the migrants in Libya have been arrested and detained, without any due process guarantees (including e.g., access to legal assistance) in police stations, in prisons, in centres run by the Department for Combatting Illegal Migration; in secret prisons; or in private houses (“Guidan Bachi”) operated by militias. The families of these detainees are mostly not informed that a family member is detained, nor are the detainees allowed to inform their families or communicate with anyone. Many detainees remain imprisoned without any judicial authorities or consular representative being informed of their detention.
55. The use of immigration detention has dramatically increased. Between January to August 2021 the number of migrants in detention rose from 1000 to close to 6000; of these around 90% are male (IOM & UNCHR Libya figures).¹⁵² This can be explained by the decision taken by the Libya’s Directorate for Combatting Illegal Migration (DCIM) to suspend all voluntary return for almost a year¹⁵³. Most are detained in Sabha and Tripoli. Detention conditions fall significantly short of international standards, with thousands of individuals being held in warehouses characterised by severe overcrowding, poor ventilation, a lack of sanitation, inadequate food and a lack of access to potable drinking water. Extortion in detention centres, often accompanied by physical violence, is rife. In the period 2019 – 2020, the Libyan Anti-Torture Network (LAN) established by the OMCT documented 87 cases of torture of

148. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §20.

149. Mixed Migration Centre, (2019) ‘What makes refugees and migrants vulnerable to detention in Libya? A microlevel study of the determinants of detention’, accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/082_determinants_of_detention.pdf on 20th October 2021, p. 10

150. The Libyan Anti-torture Network (LAN), is a group of five Libyan civil society organizations from different regions/towns established by OMCT office in Tunis. The mandate of LAN is to advance the documentation, victim assistance, and advocacy for institution-building, protection and prevention against torture in Libya mainly in the context of immigration detention.

151. “Guidan Bachi” is a Hausa word for an informal gang prison, in other words, a place where people of foreign nationality are sequestered and kept.

152. Libyan Anti-Torture Network (LAN)

153. Libya: Humanitarian Access Snapshot - Migrants and Refugees (September 2021), accessed at <https://reliefweb.int/report/libya/libya-humanitarian-access-snapshot-migrants-and-refugees-september-2021>, on 08th November 2021

individuals who had been arrested in southern Libya. According to LAN, torture is widely under-reported because victims/survivors are often afraid to come forward: *"There are hundreds of victims in the south but they are so terrified. The migrants state that they are so terrified to report any incident or torture"*. All of the migrants interviewed by the OMCT and its research partners reported being tortured in detention, and only managed to secure their release upon paying a bribe and ransom.¹⁵⁵

56. A 39-year-old Senegalese migrant who was returned to Senegal shared the following account of his experience in Libya with the researchers for this report:

"A week after my arrival in Libya, I was arrested in Sabha and jailed by the Medina Police. They beat me with their weapons every day. We barely had any food. I was only allowed a chunk of bread and a glass of water each evening. After three days, I was freed, having paid 200,000 CFA francs, which I had received from my family, and I returned to a migrants' shelter in Tripoli. On 16 November 2015, the shelter was attacked by the police and the Libyan army. All the migrants were transferred to the Misrata prison for three months, where we were beaten every day with whips."

57. Similar testimony was received from another, 31-year-old, Senegalese migrant who said that:

"I was arrested by the Libyan navy and imprisoned in Zawiya for 12 days. We were beaten every day with electrical power cables. After 12 days, I had to pay 150,000 CFA francs to get released: my sister had sent me the money. After my release, I returned to Tripoli where I spent seven months doing odd jobs, like tiling and painting. I was then arrested again in the shelter where I was staying and was imprisoned in Tajoura. In the end, I had to pay 200,000 CFA francs to a Libyan policeman to be released."

58. Women and children are particularly vulnerable in this context. According to the Libyan Anti-Torture Network (LAN)¹⁵⁶:

Children and women are not always kept in the same groups they travel with. In many cases, children who are detained in detention centres inform the local civil society organisations that they were taken from their mothers or families. This is due to the fact that women are taken to prostitution camps or because they are taken to different detention centres. Mostly smugglers or detention guards forbid migrants from communication means such as mobile phones. Therefore, many migrants including minors lose contact with their families for months or years. All the time.

59. Similar accounts were received from other contexts. In **Chad**, it was noted that the threat of being arrested and arbitrarily detained is omnipresent all along the migratory routes. According to a representative of IOM in Chad, returnees are often further detained on suspicion of having been members of a rebellion.

154. Mixed Migration Centre, (2019) 'What makes refugees and migrants vulnerable to detention in Libya? A microlevel study of the determinants of detention', accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/082_determinants_of_detention.pdf on 20th October 2021, p. 9

155. For an overview, see Report of the Secretary General, Smuggling of migrants and trafficking in persons in the Mediterranean Sea off the coast of Libya, S/2020/876, 2 September 2020.

156. Libyan Anti-Torture Network (LAN)

Measures adopted in place as part of the fight against terrorism put migrants at risk of torture and ill-treatment. For example, internally displaced persons and migrants from Nigeria and Niger fleeing Boko Haram and arriving at the lake Chad Bassin are reportedly subjected to ill-treatment in order to extract confessions by Chadian soldiers as they are accused to be either terrorist or their accomplice.

60. In Niger, referring to the Algerian authorities¹⁵⁷, a migrant shared the following experience: *“As for me, we were arrested by the police who recorded our names. They transferred us to a house where we were imprisoned for two days without food. Some of us were beaten. After two days in custody, we were transferred to Garber. They finally gave us some food in this town.”*

157. The practice of arrest and mass expulsion of Nigerien and other sub-Saharan migrants by Algeria is summarised in Section C below.



Please can you get me out of here?

Innocent, 35, Nigerian (male)¹⁵⁸



I connected with someone in Nigeria. I didn't know him. He told me he would be able to get me to Europe: I would travel by land to Libya and then fly to Europe by plane. That was the plan. I travelled through the desert. I went through Niger, Agadez, and then to Gatroun and Sabha. I went through the desert and then to Tripoli. I was taken to many different houses, maybe 10 different houses. They were small places, sometimes we were held with 80-100 other people. They beat us a lot. It was very dirty, there was no fresh water –the water was very salty– and there was no food other than a small piece of bread a day. People were dying, everywhere. There were dead bodies lying everywhere. They were dead when I woke up. They died from lack of food. People were hurt –very badly.

In all the houses I went to, there were only Nigerians. We never spoke to anyone; they just took us from one place to another. No-one knew what was going on, no-one had information. No-one knew where we were; we don't know Libya. Then we saw the sea! We didn't know anything about the sea! They took us to the sea –that was not the plan. They were very bad people.

From there, they took us by boat. There were 120 of us. It was a rubber boat. The engine stopped [it broke down], we couldn't go on. There were 70 men and 50 women (the women weren't brought to Tariq Al Matar). We embarked at Garabulli, we left at 4am in the morning. We spent six hours at sea before we were rescued. We called for help. We had a phone on board –they had given us a phone. The Libyan authorities came to our rescue. They came with a big ship, it was called "Maritime" something. One fishing boat was also there. They took us to land, they treated us all right. [There was] no violence.

They took us to the Illegal Immigration office of the Interior Ministry. From there, we went to Tariq Al Matar. They took us there at night. I was afraid that it might be a forced disappearance. They didn't set us free: they sold us. In the middle of the night [the guards] came and took 20 men. I was scared they would take me!

I spent three weeks in Bani Walid, in a room in a very large house. We wore dirty clothes and were very smelly. They beat us. People died. Oh, so many people died. Please can you get me out of here?



158. Interview realized in Hamza Tariq Al Matar Detention Center, Libya

Violence, physical abuse and extortion by border officials

61. The OMCT and its partners received multiple accounts of physical abuse, including beating, wounding, and the use of electric shocks, often in connection with extortion by State actors.
62. Despite the existence of the ECOWAS free movement laws and policies, many returnees in **Senegal** reported that migrants originating from West African countries are subjected to systematic extortion practices by defence and security forces (police and gendarmerie) along checkpoints between Mali, Burkina Faso, Niger and Libya. Beyond the transport costs, migrants were asked to pay between 5000 and 25,000 FCFA or risk being disembarked from the bus, stripped naked, beaten, detained (for several days) or suffer torture via electrocution. According to the testimonials gathered, police officers in **Kantchari** (at the border between Burkina Faso and Niger) frequently use violence against migrants in order to extract money from them. For example, a migrant from Kolda (Senegal) told researchers he was struck by the police when detained at the police station (for 30 minutes), and subsequently electrocuted when refusing to pay upon his release. When he arrived in Niamey, he was bedridden for three days and did not seek hospital care.
63. It was further reported that when migrants on this route are unable to pay, they are subjected to serious abuse ranging from slaps and baton strikes, to forced nudity. The situation is aggravated by the complicity of the drivers who sometimes play the role of informants for the security forces. Another migrant testified to having suffered this same ordeal in Kantchari, when the border police had demanded 25,000 FCFA from him. Unable to pay, he was severely beaten causing a thigh injury. In the end, he was forced to call a brother in Senegal to collect the money in order to secure his release.
64. In **Niger**, the research revealed that State actors subject migrants, refugees and asylum seekers to ill-treatment such as extortion, humiliation and verbal abuse at check-points across the country. As recounted by one research participant: *"The security forces impose heavy fines on migrants. Those who do not have any money are detained or turned back or even whipped in the checkpoint hangars. Migrants from Nigeria or other countries, coming from Algeria are stripped of their belongings. The same is true for those coming from Libya."* Another participant reported that:

"More often than not, the migrants are taken by the smugglers to "Guidan Bashi" (informal gang prisons). They are ill-treated and ransoms are demanded for their release. This is mental, physical and economic torture. It's complicated but I think it depends. The harassment that takes place at the borders needs to stop. This attitude is embedded in the mindset of our security forces, and if they cannot - even occasionally - act in accordance with their professional conduct rules, it's difficult to resolve. There has to be a genuine political will so that firm instructions are given, and monitoring is conducted to ensure the security forces comply with professional conduct rules."



I was sold like an animal

Baldé, 33 years old, Guinean¹⁵⁹



My name is Baldé. I am 33 years old and come from Guinea. I am a medical doctor. After eight years of medical studies, I also completed a Master's degree in Sustainable Development – Agroforestry. I left my country because of unemployment in 2013.

When I arrived in Niamey, Niger, I had run out of money for travel due to extortion on the road. After working for a while in Niamey, I got the money to reach Agadez. I tried to reach Libya, but I was extorted by my driver –he was a smuggler who sold me to some Libyans, like an animal. Finally, with the help of some friends, I managed to pay for my release (713,000 CFA Francs). After my release, I worked for a bit in a Senegalese garage in Libya. Finally, I saved some money and reached Tripoli, where I stayed for four months. I paid 1,500 USD to go to Italy by boat, but unfortunately the captain was bad –he got lost en route, and we had to return to Libya, with no reimbursement, of course. Then I moved to Algeria, where I worked for a year on construction sites and saved some money. I moved to Morocco, and on 25 December 2015 I tried, along with almost 400 other migrants, to enter the Spanish enclave of Ceuta, through the wall. Some other migrants tried to cross by swimming. Two migrants died, and 12 others were injured. Only 200 managed to enter Ceuta. I couldn't make it, so decided to go back to Algeria and after that to Agadez.

In Agadez, I met an NGO that worked in network marketing, and I worked for them until they left. I eventually decided to open a restaurant in Tabelot (roughly 120 km NE of Agadez) for a year before going back to Agadez. Two weeks ago, I opened a new restaurant near the bus station. I have decided not to travel anymore, after everything I experienced and everything I spent on the road –if I had that money today, I could set up a company with employees.



159. Interview realized in Agadez, Niger

NON-STATE ACTORS

65. Multiple accounts were received of the horrific abuse inflicted by non-State actors along the routes studied, some of which engage the torture prohibition. States are under a **due diligence** obligation to **protect** persons under their jurisdiction from torture and ill-treatment by **private** and **non-State actors**.¹⁶⁰ The CAT Committee in General Comment No. 2 (2007) emphasised the importance of the due diligence principle, noting that **indifference or inaction by the State can provide encouragement or de facto permission for torture and ill-treatment**, in particular as regards sexual and gender-based violence, including trafficking.¹⁶¹ States are responsible for sexual violence perpetrated by private and non-State actors where they fail to exercise due diligence to prevent or punish such acts, and where they fail to provide reparations to victims/survivors.¹⁶²

Smuggling, kidnapping and physical abuse

66. Restrictive visa regimes and air carrier sanctions mean that many people attempting to reach safety are compelled to use land and/or maritime routes, which are typically operated by smugglers. The United Nations Protocol against the Smuggling of Migrants by Land, Sea and Air defines migrant smuggling as *"the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident"*.¹⁶³ The purpose of the Protocol is to prevent and combat migrant smuggling, while protecting the rights of smuggled migrants (Article 2). States must not criminalise migrants for having been the object of the crime of smuggling (Article 5).
67. According to the United Nations Office on Drugs and Crime (UNODC) migrant smuggling activities along the routes from East Africa towards Europe tend to take place through organised criminal groups, whereas migrant smuggling from West Africa towards Europe tends rather to be opportunistic and ad-hoc, involving both local and transnational actors¹⁶⁴. The Women's Refugee Commission has further observed that *"transnational criminal networks, including terrorist groups with links to the Islamic State and al-Qaeda, rely heavily on migrant smuggling, trafficking, and torture-based extortion to fund weapons and support their activities"*.¹⁶⁵

160. CAT Committee, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 at §18; Similarly, the African Commission has confirmed that Article 5 ACHPR applies to the acts of State and non-State actors and that a State liability can arise in this context *"not because of the act itself, but because of the lack of due diligence [on the part of the State] to prevent the violation or for not taking the necessary steps to provide the victims with reparations"* (ACHPR, *Zimbabwe Human Rights NGO Forum v. Zimbabwe*, Comm. No. 245/02, 39th Ordinary Session (15 May 2006), para. 142). This is also the case under Article 7 ICCPR- see Human Rights Committee, *CCPR General Comment No. 20: Article 7 (Prohibition of Torture, or Other Cruel, Inhuman or Degrading Treatment or Punishment)*, 10 March 1992, at para. 13.

161. CAT Committee, *General Comment No. 2: Implementation of Article 2 by States Parties*, 24 January 2008, CAT/C/GC/2 at §18

162. In the case of *Njamba and Balikosa v. Sweden*, the Committee against Torture highlighted the State's due diligence obligation to prevent rape and sexual violence perpetrated by private actors. In this regard, the Committee established that when the State fails to comply with its due diligence obligation to arrest and punish the perpetrators and offer redress to victims of torture committed by private actors, the State is responsible under the Convention for authorizing or inciting these acts (CAT, *Njamba and Balikosa vs. Sweden*, no. 322/2007 §§ 2.1, 2.2 y 3.1.); see also, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016 (A/HRC/31/57), at paras. 11-12

163. Article 3(a), Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime (2000)

164. For an overview of the regional patterns, see generally, United Nations Office on Drugs and Crime (UNODC), 'Global Study on Smuggling of Migrants-Africa' (2018).

165. Women's Refugee Commission, (2019) "More than one million pains" – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy' accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/>, on 21st October 2021, p. 14

68. Migrant smuggling places individuals at the mercy of criminal networks, who are often acting in collusion with border officials, and creates increased vulnerability to abuse, including abduction, torture, sexual assault and extortion, at every step of the journey.¹⁶⁶ For example, a returnee from Senegal interviewed for this study who transited through Libya reported that:

"In Libya I was arrested by the police at the border and they beat me with a cow hide whip because I didn't have any documentation or money. They then held me in custody. I was beaten when I asked for something to eat or drink. The Tuareg came to ask the police if there were any women among the detained migrants, but there weren't any. One of the Tuareg spoke to me directly and offered me work as a go-between to bring back female migrants. He explained that he was looking for African women. I had seen several African women in cars that he controlled going in an unknown direction. He gave me money equivalent to 3 million CFA francs to go to the border and get female migrants. I took this money to escape and pass through Agadez to return to Senegal."

69. A young Sudanese migrant interviewed at the UNCHR reception centre in Niger provided a chilling account of the violence inflicted by smugglers in Libya:

*"I had to escape to cross the Niger and reach Algeria. The crossing was far from easy and we had to cope with many hardships, including **a lack of water, food,** and sometimes vehicles breaking down. **When we arrived in Libya** we were faced with great challenges since **we were kidnapped and the kidnappers demanded a significant amount of money for our release.** We were all transported to a large house where we met lots of people of different nationalities. Each morning, a sum of money was requested, and those with none were beaten throughout the day. The others helped me escape from this place. Many others were injured but none were given medical attention. They did not have access to medical facilities or any form of treatment. Only seriously wounded casualties were given minimum medical attention. When I escaped a driver took me to Agadez. I was put in contact with the HCR."*

70. Similarly, according to LAN:

"Mostly smugglers or detention guards forbid migrants from communication means such as mobile phones. Therefore, many migrants including minors lose contact with their families for months or years. The smugglers do not take care of food and drink or provide necessities or life basics; therefore, many migrants die in the desert or in detention, and smuggling points due to bad nutrition or hunger. Most of the testimonies of migrants say that they witnessed the death of people while crossing from the desert."

71. Another case of a young migrant from Kolda (Senegal) travelling to **Algeria** by car with others further illustrates the risks faced. Having passed through Sévaré - Gao - Kidal - Toumbouctou in 2018, the young man was arrested and imprisoned for three weeks by an armed group in Timiaouine, at the Algerian border. He stated that the driver was collaborating with this armed group who demanded 200,000 FCFA of each traveler and subjected them to ill-treatment to coerce them to pay. For example, one of the migrants in the group had plastic burned on his body,

166. United Nations Office on Drugs and Crime (UNODC), 'West Africa, North Africa and the Central Mediterranean: Key Findings on the Characteristics of Migrant Smuggling in West Africa, North Africa and the Central Mediterranean' report, accessed at https://www.unodc.org/res/som/docs/Observatory_Storymap_1_Final_2021.05.19.pdf on 21st October 2021, p. 15

another was beaten with wooden clubs, and a third who tried to escape was beaten with rubber shoes. The young migrant was forced to call his family who sent him 130,000 FCFA in order to secure his release. After his release, he worked in Ouargla before being imprisoned again, following a 5 AM police raid on their home. Thus, more than 30 migrant buses (containing a minimum of 70 people per bus) were transported and detained in a camp, before being deported at the exit of Tamanrasset (more than 15 km from the border). In the end, IOM came to collect them in Tamanrasset before sending them to Arlit and then Agadez.

72. Smuggled migrants may also be susceptible to exploitation and trafficking once in the destination country. For example, the Libyan Anti-Torture Network (LAN)¹⁶⁷ documented cases of migrants in Libya being offered work cleaning houses after having been smuggled into the country. Thereafter, their identification documents and/or passports would be taken from them, and they were forced to work without pay.
73. Returnees from Libya and the Central African Republic, who were Chadian nationals, experienced very difficult conditions during their return to **Chad**. They are often transported by smugglers in vehicles not adapted for the transport of people, and the return journey can last ten days or more. Upon their arrival in Chad, many were dehydrated, suffered from infections, injuries or stomach problems, and sometimes trauma from having been detained for long periods of time (some for up to 27 months) and having witnessed or experienced violence.
74. In **Tunisia**, the researchers spoke with a migrant who had been kidnapped by smugglers, after paying them 600 Tunisian dinar to be taken from Niger to Algeria by car, together with 18 other passengers. Instead, he was taken to a prison in Bani Walid, Libya, where the guards took away his money and phone. He was then subjected to torture by the prison guards, in order to extort money from the migrant's family (reportedly 2000 EUR). Family members received phone calls and videos evidencing the torture. Several migrants with whom the researchers spoke confirmed having experienced this while in detention.

167. Libyan Anti-Torture Network (LAN)



I have been either kidnapped or in prison

Isaac, Ghana, Male, 20¹⁶⁸

“

I left Ghana on 29 March 2017. Before I set off on the journey, I paid half of the money. It was meant to get me all the way to Italy. I paid the other half in Sebha, when I arrived in Libya.

I was caught in the desert by the Asma boys¹⁶⁹. They demanded money (\$3,000) from my family. That was in Beni Walid. They beat me every morning and then gave me the phone to call my family. There were many of us there. We drove through the desert in two Helios cars -there were 20 of us. They caught all of us and took us to the same house. I was there for three months and three weeks. We were beaten every day. My family eventually got the money together by selling all their property.

We received a piece of bread once a day. I had no strength at all. I could not even walk. Every day I just sat in the same place. Then I was taken to Sabratha, to a camp, waiting to be pushed at sea to Italy. I spent four days there, in Ginabou's camp. I had no strength. We got pushed at sea. In the boat, there were more than 130 of us, from many countries –mainly Ghana and Nigeria. We spent two or three hours in the water. The 'police' caught us, but I don't think they really were the police. That was on 21 July 2017. The police kept us at some sort of police station. We stayed there for three months, until 2 October 2017. On 2 October they brought us here –to Qasr Bin Gashir detention centre (QBG). They told us we would be repatriated. But it has been more than a month now. It has been a long journey. I do not know where my family thinks I am.

Here, in QBG, we get a small plate of food to share with five people. No pepper or salt. There is no food. It gives you psychological problems.

We are not murderers. We do not deserve to be treated like this. They treat us like we have committed a crime. Unless Médecins Sans Frontières (MSF) visit us, we are always inside. After eating, we go straight inside. For three or four days, they do not let us bathe or go to the bathroom. We pee against the wall. Right next to where we sleep. I cannot sleep. My head, my eyes – I have a headache. I often have a bloody nose, because of the beatings. I have seen many people getting beaten because they cannot afford to pay them money. I will go back to Ghana and tell young people that this is not a good journey to make. I have experienced it. It is bad. I want to tell the youth. They should appreciate what they have in their country –make the most of it.

Of my many months in Libya, I have spent only two weeks free. The rest of the time, I have been either kidnapped or in prison. Always stuck in one place.

”

168. Interview realised at the Qaser bin Gashir Detention centre, Libya

169. A term used to describe those in the business of holding migrants, for ransom. They can belong to either criminal gangs, militias or the Libyan police

Trafficking

75. Trafficking is “the recruitment, transportation, transfer, harbouring or receipt of person, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation”.¹⁷⁰ Refugees and migrants, including those who have been the object of smuggling, are particularly vulnerable to trafficking. Trafficking can occur at any point of the migration journey and for a wide variety of purposes, including **forced labour, slavery or servitude and sexual exploitation**.
76. Anti-torture standards can provide strong protections to victims of trafficking. Human trafficking in all of its forms inherently involves the intentional infliction of severe mental or physical pain or suffering. Although the primary purpose of trafficking is exploitation, the infliction of pain and suffering is always instrumentalised for intermediate purposes such as coercion, intimidation, punishment and discrimination, all of which fall under the definition of torture. In the absence of one these elements, human trafficking generally will meet the threshold of other ill-treatment.¹⁷¹ Accordingly, **where human trafficking is carried out by or at the instigation or with the consent or acquiescence of State officials, it will violate the absolute and non-derogable prohibition of torture and ill-treatment**. Recognising that human trafficking may amount to torture and other ill-treatment means that States would be required to take measures to prevent this crime and to provide redress to victims/survivors, including access to legal remedies and to reparations.¹⁷²
77. In **Senegal**, accounts were received of trafficked migrants who were exploited for labour (in e.g., masonry or agriculture) under the threat of violence and in dangerous conditions in **Libya**. This is consistent with publicly available information on Libya that migrants are routinely being forced to work in farms, as domestic workers, construction and road paving workers, and rubbish collectors. Working conditions are said to be unbearable, with little or no protection against the elements, inadequate food and a lack of drinking water.¹⁷³ Moreover, it was reported that migrants in Libya were often viewed as commodities and sold, either into forced labour or to be held hostage until a ransom was paid by their families. A 35-year-old returnee described his ordeal:

“When I reached Sabha, the driver sold us to a Libyan who detained us in a private property and demanded 300,000 CFA francs for our release. He tortured us for several days. Whilst being tortured, I called my family to ask for money. As soon as my family picked up the phone, the jailers hit me to put pressure on them. My family sent me money and I was released after eight days in detention. Upon my release, I attempted to get to Italy through Sabrata. In the end, militias known as the “Asma boys” (or bandits) caught me and I was once again sold to a militia network. I was taken to a prison in Sakaheddine (Tripoli) where more than 400 migrants were held. The prison conditions were dreadful: we only ate once a day, dates, bread and water”.

170. Article 3 (a), Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime (Palermo Protocol), 2000.

171. Human Rights Council, Report by Nils Melzer, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 26th February 2018, UN Doc A/HRC/37/50, at §34

172. See OMCT submission to CEDAW, Draft General Recommendation on Trafficking in Women and Girls in the Context of Global Migration, 05 June 2020.

173. United Nations Support Mission in Libya and OHCHR, ‘Desperate and Dangerous: Report on the human rights situation of migrants and refugees in Libya’, 18 December 2018, at p. 47.

78. In Chad, it was reported that some refugees in urban areas are forced into domestic servitude, and others are involved in precarious and unregulated work. Displaced children are also at risk of domestic servitude, forced begging and forced labour such as livestock farming, agriculture, fishing and itinerant trade. It was also reported that women are vulnerable to harmful coping mechanisms such as sex work, and sexual exploitation.
79. In Kenya, interviewees reported that there were some cases of child labour among migrant populations in host communities. The children were mostly engaged in child labour in flower, coffee and tea plantations and fishing. Children who are trafficked are separated from their families and may be more exploitable because they lack a protective environment and are less likely to have an adult advocating on their behalf for fair pay and acceptable work conditions. Children, particularly young girls, are especially vulnerable to such exploitation. It should be noted that it may be difficult to detect some of these cases within host communities when migrants are living outside of camps. In Kenya, it was also reported that children are often subject to physical violence in the community.



I thought I was free, but I became her property in Libya

Fatima, Nigerian, Female, 30

“

My name is Fatima. I am from Nigeria. I am married with three children. I decided to leave in November 2014, to take my family out of poverty. I'd just had a baby, and I was still in my father's house. My brother's friend hired a man who facilitated my travel. I was promised that I would have a job in Italy and that a person was waiting for me there. He said that in three months I would be able to start sending money back home. He promised that I would be working as a salesperson in a boutique in Italy.

When I asked for my passport and travel documents, he reassured me that I would receive them at the airport.

The next day, he picked me up in a car and we started the journey. I realised that other girls were also travelling with me. He took us to a place where there was a traditional occult practice, and I was asked to swear an oath during a ceremony before I travelled. I took the oath to do everything that would be asked of me, otherwise I would be cursed and die. All the other girls did the same and we started the trip in two cars.

On our way, the police stopped our cars: the drivers tried to run away, and they started shooting at us. They stopped one of the two buses we were travelling on; they arrested the girls and returned them to their families. I was in the other bus and managed to cross the border between Nigeria and Niger, at Kano. I realised then that we would be travelling to Italy by road and asked to return home. He threatened me and reminded me of my oath before the traditional practitioner and the obligation to reimburse all the money he had invested for my trip.

Then we reached Agadez in Niger, we were dressed in hijabs like Haoussa women. We spent one month in a room in Agadez where we could not go out. One night, a car came to pick us up, and we continued the journey to Libya through the desert without water or food for several days. Most of the people we were travelling with died during that trip to Libya.

Then we entered Libya and a new person came and arrested us saying that the person from Nigeria who organised our trip did not pay the money for the transport to Libya. So, we were asked to pay the money if we wanted to be released. Every morning they flogged people because they hadn't paid their money. One of the girls was sold to an Arab because she couldn't pay. A Nigerian lady came and bailed me out. I thought I was free, but I became her property in Libya. She told me I was not going to Italy but would stay there and work as a prostitute to reimburse the money she had paid for my release. She threatened to kill me several times.

Then I was taken to Sabha and was sold to another person who put me in a hotel room with

many other girls, including Nigerians who were drinking and smoking all the time. She told me she had invested 500,000 naira in my trip and that I would work as a prostitute until I had reimbursed that. I worked night and day until I'd paid more than 1.5 million naira with my body to gain my freedom.

The Nigerian lady sold me personally to an Arab to receive back what she'd spent on me. I was constantly abused, forced to have sex with all kinds of people who were sometime brutal and violent. I saw many girls suffering. When girls fell pregnant, they were forced to abort and would have to pay the fees themselves. We paid for our own medication when we were sick.

After I was able to reimburse my debt, I decided to save to be able to continue my trip to Italy, crossing the sea by boat. Unfortunately, there was a fight in my boat among some other Nigerians and the boat capsized. The police arrested us and jailed us for more than a week. There was no decent food or water to drink.

In Libya, many people are still suffering in prisons today. In the prison I was in, people were detained in cells underground but we weren't aware of that. There are migrant prisons everywhere in Libya. You can't even imagine.

Then, the ambassador of Nigeria who was visiting prisons met with us and organised our return home. I decided to return in November 2017. On our arrival in Abuja, I was given 40,000 naira by the government to help me start a new life. When I went back to Edo State, I met with Genius Hub, a local organisation that truly changed my life. They didn't judge me and they took care of me. I was taken to hospital, where they found I was safe and well with no diseases, despite all the risks that I had taken. I was trained about how to do business and received some psychological support.

I was stigmatised by my family who were disappointed that I came back with nothing. No money, no cars. I was deprived of everything –even clothes. I was even tempted to gather money and return to Libya.

Sometimes I think of all the pain, and it makes me sad. I have some flashbacks and some nightmares but I don't regret coming home. – (Statement collected in Edo State, Nigeria)



Sexual violence by State and non-State actors

Rape and other forms of sexual violence against women, men, boys and girls,¹⁷⁴ can amount to torture and other ill-treatment. Rape constitutes torture when it is carried out by, at the instigation of, or with the consent or acquiescence of State officials. States are responsible for sexual violence perpetrated by private and non-State actors where they fail to exercise due diligence to prevent or punish such acts, and where they fail to provide reparations to victims/survivors.

As part of this research, the OMCT received multiple accounts of rape and other forms of sexual violence, as well as threats thereof, along migration routes. Women and girls in transit settings are particularly affected, however cases of sexual violence against men and boys have also been reported. Incidents included **rape** (e.g., in refugee camps in Chad by military actors); **forced nudity** (e.g., by border officials in Kantchari and along checkpoints between Mali, Burkina Faso, Niger and Libya), **forced prostitution** (reported in e.g., Tunisia regarding Libya), **sexual slavery** (reported in e.g., Mali). Women and girls were perceived to be those most vulnerable to sexual violence at large, however, reports of boys being raped and men being forcibly undressed were also received.

A recent report by the UNHCR and the Mixed Migration Centre (MMC) confirms that sexual violence takes place along mixed movements routes between East and West Africa and onwards to North Africa.¹⁷⁵ People interviewed by UNHCR and the MMC reported that **smugglers** were the primary perpetrators of acts of sexual violence (45% of reported cases)¹⁷⁶ followed by **state security forces** at 19%, unknown individuals at 12%, criminal gangs at 11% and other migrants at 10%¹⁷⁷. The majority of documented cases were in the North Africa and West Africa sections of the migration route. Most incidents took place in Mali, Burkina Faso and Niger, and, in most cases, in the desert¹⁷⁸. Cases were also reported in the East and Horn of Africa section¹⁷⁹.

174. The UN Special Rapporteur on Torture has acknowledged that “While women, girls, lesbian, gay, bisexual and transgender persons, sexual minorities and gender-non-conforming individuals are the predominant targets, men and boys can also be victims of gender-based violence, including sexual violence stemming from socially determined roles and expectations. As noted by the Committee against Torture in its general comment No. 2 (2007) on the implementation of article 2 of the Convention, gender-based crimes can take the form of sexual violence, other forms of physical violence or mental torment.” Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, 5 January 2016 (A/HRC/31/57).

175. United Nations High Commissioner for Refugees (UNHCR) (2020) “On this journey, no one cares if you live or die” – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast’, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 21st October 2021, p. 14

176. United Nations High Commissioner for Refugees (2020) “On this journey, no one cares if you live or die” – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast’, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 21st October 2021, p. 7

177. United Nations High Commissioner for Refugees (2020) “On this journey, no one cares if you live or die” – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast’, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 21st October 2021, p. 20

178. United Nations High Commissioner for Refugees (2020) “On this journey, no one cares if you live or die” – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast’, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 21st October 2021, p. 20

179. United Nations High Commissioner for Refugees (UNHCR) (2020) “On this journey, no one cares if you live or die” – Abuse, protection and justice along routes between East and West Africa and Africa’s Mediterranean Coast’, accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 21st October 2021, p. 20

Similarly, the Women's Refugee Commission has documented incidents of sexual violence during random stops, and in the context of kidnapping, extortion and forced labour. Acts include e.g., rape, forced witnessing, sexual abuse and exploitation, genital mutilation and sexual slavery.¹⁸⁰ According to the research, perpetrators view migrants as "commodities to exploit" and "operate with impunity"¹⁸¹. Vulnerability to sexual violence is reportedly associated with migrants' financial resources, as well as their social connections – sexual violence is regularly used as punishment for not being able or willing to pay ransom or pay to pass official and unofficial checkpoints along the journey. UNHCR, OHCHR, and Amnesty International, among others, have similarly reported that refugee and migrant men and boys traveling to Italy have suffered sexual violence at the hands of non-State actors.¹⁸² According to testimony by a Save the Children representative in 2016, 50 percent of the unaccompanied children treated by the organisation's doctors in Italy presented with a sexually transmitted infection (STI), which the medical personnel attributed to sexual exploitation during transit.¹⁸³

Sexual violence against people on the move detained in Libya has been widely documented. A recent report by the Libya Gender-Based Violence Area of Responsibility noted that migrants were repeatedly exposed to multiple forms of sexual violence by a broad range of actors in contexts of impunity. For example, men and boys were *"forced to witness sexual violence against women and girls (including lethal rape with objects) in official and unofficial centres of captivity and in the desert"*.¹⁸⁴ A 35-year-old male Senegalese migrant interviewed for this study confirmed that he had been forced to witness acts of sexual violence during his time in detention: *"I was witness to horrendous violence against women who were in the prison with us. They were taken from the cells and raped every night, before being taken back each morning. They endured this ordeal for months on end. Some fell pregnant and gave birth in prison."*

In **Tunisia**, Sub-Saharan African migrants who had transited through Libya, as well as Libyan human rights activists, reported that sexual abuse and exploitation of women and girls takes place inside detention centres: *"The guards sexually exploit and abuse the detained women by luring them with the idea to help them escape or reach Europe, tempting them to use a phone, or they also threaten them with arms"*. Women and girls were also reportedly forced into prostitution by detention centre guards.

180. Women's Refugee Commission, (2019) "More than one million pains" – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/> on 23rd June 2021, p. 14

181. Women's Refugee Commission, (2019) "More than one million pains" – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/> on 23rd June 2021, p. 14

182. United Nations High Commissioner for Refugees (2020) "On this journey, no one cares if you live or die" – Abuse, protection and justice along routes between East and West Africa and Africa's Mediterranean Coast', accessed at <https://www.unhcr.org/protection/operations/5f2129fb4/journey-cares-live-die-abuse-protection-justice-along-routes-east-west.html> on 24th June 2021, p. 7

183. Women's Refugee Commission, (2019) "More than one million pains" – Sexual Violence Against Men and Boys on the Central Mediterranean Route to Italy, accessed at <https://www.womensrefugeecommission.org/research-resources/more-than-one-million-pains-sexual-violence-against-men-and-boys-on-the-central-mediterranean-route-to-italy/> on 23rd June 2021, p. 44

184. Gender-Based Violence Area of Responsibility (AoR), Global Protection Cluster, (2019) 'Libya Gender-Based Violence AOR - Jan-Sept updates', accessed at https://www.humanitarianresponse.info/sites/www.humanitarianresponse.info/files/documents/files/jan-sept_updates_eng_web.pdf on 21st October 2021, p. 2

In **Niger**, a key informant shared the following testimony: *“We broke down in the middle of the desert, bandits attacked us, two of us inside the vehicle were women. The bandits raped my friend until she died. I survived. All the passengers in the vehicle were severely beaten and the novice driver was shot dead with live bullets. Everyone knows what happens, but I took the risk anyway to try and go to a safe place. Those responsible for torture are the rebel forces and sometimes the security forces.”*

In **Kenya**, it was reported that migrant women may be asked to pay for safe passage into the country, or as part of smuggling to another country using Kenya as a transit state, with sexual favours. This includes sexual and gender-based violence targeting women migrants in urban areas. Migrants also face possible torture and ill-treatment from militia or bandit groups as they enter the country through porous borders or attempt to use Kenya as a point of transit. The researchers received isolated reports of sexual and gender-based violence by these militia groups.



I also had to sell my body

Gloria, Nigeria, Female, 19



My name is Gloria. I am 19 years old, and I am from Delta State in Nigeria. I am the second born in a family of four children. I stopped studying at the secondary level due to lack of funds. My parents are poor peasants who struggle to raise their children. I have been exploited because of our naivety and our desire to improve our everyday lives.

I arrived in Gao in Mali from Nigeria in March 2020, accompanied by Auntie Beguy, a Nigerian pimp, who organises young girls' travel to Mali in collusion with a man who lives there and manages a brothel. When I was still in Nigeria, I had friends abroad, who gave me Beguy's contact. I met Beguy in Nigeria and wanted to travel to meet my friends and find a job to change my life and that of my family. I spoke with Beguy, who offered to take me to Dubai where she said I could find work in stores as a salesperson or as a housewife. But for that, I needed financial means which I didn't have. So, to solve the problem, Beguy offered to lend me the money for my travel, which I would reimburse after working when I arrived abroad. We agreed on the amount of 1,200,000 naira. I thought I was going to work as a salesperson. So, on 20 March 2020, I set off with Beguy and we arrived in Gao.

In Gao, Beguy left me at a place called Euro Camping, belonging to Ntola. I was surprised when I was informed about the job: it was prostitution. I immediately began to cry, praying to the Gods of my ancestors. Despite all my pain and innocence, no-one in the business was sensitive and everyone laughed at me. At that time, I was barely 18 years old. It was painful sleeping with men at Euro Camping, but I had no choice. All the girls like me had to pay for the room we were staying in. The room cost 75,000 CFA Francs and we had to pay 5,000 CFA Francs for water and electricity. It amounted to a total of 80,000 000 CFA Francs per week. That was a lot of money. A friend and I found it hard, we often spoke of our pain, in tears. She told me what she was going through and vice versa. You can't imagine having relationships with men –it is very painful. My new friend, Grace, and I were suffering from grief and hardship. We couldn't even afford to pay for the room because there were a lot of other women in Euro Camping.

One day, we went to meet the owner of Euro Camping, Ntola, to explain to him that we couldn't afford to pay this amount every week. He told us that he would make us pay. I had to pay for the room at Euro Camping, and at the same time pay back 1,200,000 CFA Francs to Beguy –a situation that made me think I was going to die. When I was sleeping with men, I had to pay all the proceeds to Beguy. When I couldn't pay, she beat me.

As a result, Grace and I decided to escape but once again, we were unfortunate and were deceived. We came across a Sierra Leonean named Aly, an acquaintance of Beguy. He took us to another city called Timiaouine. There, I also had to sell my body, as did Grace, my new friend. But in this city, Grace met another Sierra Leonean, named Foula, and they fell in love. This was a chance that God gave us. Grace's boyfriend, Foula, began arguing with Aly. He demanded that Grace be released and, above all, to stop exploiting girls for prostitution. Foula told him that if he needed to sell women, he should sell his little sisters and then he would understand what it was like. He took Grace home, and she told him about my situation. So Foula came back to free me from Aly's house.

It was not easy, because before we met Foula, we had sex with white-skinned men, and often black men. After we were freed by Foula, he took us with him to Algeria to protect us. We lived in the town of Bordj. After a while, I started to feel a stomach ache that wouldn't go away. Grace explained to Foula about my situation and asked to be taken to the hospital. So, one day he took me to the hospital, and they did an ultrasound. It revealed I was six months pregnant. I didn't know who the father was. I was young and had been sleeping with several men whom I did not know, without experience. Grace, Foula and I decided to keep the child, who is alive today, and will soon be three months old. – (Statement collected in Gao, Mali)



Part III. Externalisation of border control and its impact on the prohibition on torture and ill-treatment in Africa

80. Through a range of complex and often opaque measures, instruments and agreements, the European Union's (EU) migration policy¹⁸⁵ increasingly operates to ensure that border control takes place far beyond the external borders of the Union. Instead, it is outsourced to third countries, in exchange for financial support. This phenomenon, known as "externalisation", entails cooperating with countries of origin and transit to prevent irregular movement and contain migrants long before they ever reach European shores. Its impact on the protection of migrants along the route in Africa has been a recurring issue of concern raised by those interviewed across the continent.
81. The logic of externalisation has been a central feature of EU migration policy for over a decade. Cooperation agreements reached with third countries, by the EU and by individual Member States acting bilaterally (e.g., Spain and Italy) are varied and largely informal e.g., 'mobility partnerships'; 'common agendas'; 'action plans' and migration 'dialogues.' In most cases, African countries and officials often claim they are rarely involved in the formulation of the measures and policies which are to be implemented within their borders¹⁸⁶.
82. Externalisation is often framed as a security imperative – an approach which presumes an inherent risk stemming from irregular migration – or as a life-saving humanitarian endeavour to reduce the incidence of dangerous border crossings and combat migrant smuggling and human trafficking.¹⁸⁷ Unquestionably, saving lives and tackling organised crime are legitimate goals. However, the current approach implemented across Africa – which emphasises control and containment – ignores the reality that safe and legal routes are largely absent. The clear and foreseeable consequence of this policy – whether deliberate or not – is to drive migration even further underground; encourage riskier smuggling activities; and heighten the risk of serious abuses against migrants who are forced to embark on other, even more perilous, journeys.¹⁸⁸ There are also serious concerns that the scope of the net of bilateral or EU wide cooperation frameworks remains largely untransparent, which can undermine its legitimacy and support in the country, and that it fails to integrate human rights protections beyond rhetorical references.

185. In terms of migration policy, the European Union has a shared competence – its intervention depends on the application of the principle of subsidiarity and is closely linked to the creation of the Schengen area. Article 79(1) TFEU defines the objectives of the Union in this area: *"The Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings"*. For an overview of the EU's legal, institutional and policy framework related to migration and border management, and asylum, see A/HRC/23.46

186. D'Humières, Victoire (2018) 'European Union/African Cooperation: the externalisation of Europe's migration policies', accessed at <https://www.robert-schuman.eu/en/european-issues/0472-european-union-african-cooperation-the-externalisation-of-europe-s-migration-policies> on 21st October 2021, p.4

187. Vladislava Stoyanova, "The right to life under the EU Charter and cooperation with third states to combat human smuggling", German Law Journal (2020) 21, p. 439; see e.g. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "A European Agenda on Migration", COM (2015) 240 final ("EU Agenda on Migration") and the Migration Partnership Framework, p.3.

188. See generally, European Parliament, 'EU External Migration Policy and the Protection of Human Rights' (2020); UN Special Rapporteur on extrajudicial, summary or arbitrary executions, "Unlawful deaths of refugees and migrants", A/72/335, 2017; Amnesty International, 'The human rights risks of external migration policies' (2017); Report of the Special Rapporteur on the human rights of migrants, François Crépeau Banking on mobility over a generation: follow-up to the regional study on the management of the external borders of the European Union and its impact on the human rights of migrants (A/HRC/29/36), 8 May 2015.

83. There has been a significant growth in externalisation instruments and agreements since 2005 and a massive acceleration since 2015, a year in which over one million refugees and migrants crossed the Mediterranean¹⁸⁹, sparking a deep political crisis within the EU. These have come at the cost of investment into other legal and policy responses, including regularisation and the expansion of safe and legal pathways. Using a plethora of new instruments, in particular the **EU Emergency Trust Fund for Africa** (EUTF for Africa) and the new **Partnership Framework**, the EU and individual Member States bilaterally are providing millions of euros in funding to countries responsible for serious human rights abuses (e.g., Libya, Niger, Chad and Sudan) to stop migrants from crossing the two main physical obstacles on their way to Europe, namely the Mediterranean and the Sahara. Access to development aid is increasingly conditioned upon third countries preventing irregular migration towards Europe, an approach which is both punitive and disproportionate given that 80% of migration in West and Central Africa is internal to the region¹⁹⁰ and that a large proportion of those who do reach Europe are subsequently granted refugee or subsidiary protection.
84. The EUTF for Africa has been criticised by a number of stakeholders interviewed for lacking transparency in funding allocation and for subsuming development and poverty alleviation goals under a broader rubric of migration management. A 2020 study by Oxfam on EUTF funded projects concluded that *'development aid is increasingly used as leverage to pressure countries in Africa to cooperate with European demands to combat irregular migration or accelerate the return of migrants.'*¹⁹¹ Responding to a political priority in Europe, there is a real risk that projects will prioritise control-based approaches to migration over creating safe and legal pathways, thereby encouraging riskier and more dangerous smuggling and trafficking activities and exposing migrants to criminalisation and detention.¹⁹²
85. Externalisation measures can take various forms. These include pushing countries to adopt more stringent migration control laws (e.g. in Niger); building the capacity of law enforcement, coast guard and border officials in third States (e.g., in Libya); and funding the construction of migrant detention centres (e.g. in Tunisia). Militarisation and securitisation of border control are a prominent feature of externalisation policies, including through the deployment of military equipment, helicopters, patrol vehicles, ships, drones and satellite surveillance to monitor migration routes¹⁹³.
86. Externalisation has been described to us to us as a form of 'border imperialism', and this is a *fortiori* given that African countries are

189. International Organization for Migration, 'Irregular Migrant, Refugee Arrivals in Europe Top One Million in 2015: IOM', 22nd December 2015, accessed at <https://www.iom.int/news/irregular-migrant-refugee-arrivals-europe-top-one-million-2015-iom> on 20th October 2021

190. OM, Global Migration Data Analysis Centre, Data Briefing Series, "African migration to Europe: How can adequate data help improve evidence-based policymaking and reduce possible misconceptions?", ISSN 2415-1653, Issue No. 11, November 2017

191. Oxfam International (2020) 'The EU Trust Fund for Africa – Trapped between aid policy and migration politics', accessed at <https://oxfamlibrary.openrepository.com/bitstream/handle/10546/620936/bp-eu-trust-fund-africa-migration-politics-300120-en.pdf> on 21st October 2021, p. 10

192. In that regard, the Global Legal Action Network (GLAN), the Association for Juridical Studies on Immigration (ASGI) and the Italian Recreational and Cultural Association (ARCI) have challenged the use of EUTF funds to finance migration management programmes in Libya implemented by the Italian Interior Ministry before the European Court of Auditors and the European Parliament. The NGOs argue that such funding *'is illegal for using European development funds for the non-developmental purposes of border securitization, and for managing such funds without proper human rights safeguards and conditionality in contravention of EU law requirements'*. See, GLAN, "Petition to European Parliament Challenging EU's Material Support to Libyan Abuses Against Migrants", 11 June 2020, accessed at: <https://www.glanlaw.org/single-post/2020/06/11/petition-to-european-parliament-challenges-eu-s-material-support-to-libyan-abuses-against>

193. See generally: Report of the Special Rapporteur on the rights of migrants, Francois Crepeau, "Regional study: management of the external borders of the European Union and its impact on the human rights of migrants", A/HRC/23/46, 24 April 2013; UN Special Rapporteur on extrajudicial, summary or arbitrary executions, "Unlawful deaths of refugees and migrants", A/72/335, 2017

rarely involved in the drafting of the policies and measures which are to be implemented within their borders.¹⁹⁴ As one commentator notes:

*"Borders are walls that seek to block out a gross inequality between Africa and Europe constructed during colonialism and perpetuated by European economic and political policies today. Ultimately this violence is felt on the body, the border marking its scars across the flesh of people. It is felt in the torn skin of those who daily try to cross the fortified fences of Ceuta and Melilla in Morocco. It is felt in the violated bodies of women raped and abused by smugglers and border guards. It is there in the many undiscovered skeletons in North African deserts and the Mediterranean Sea."*¹⁹⁵

87. Humanitarian actors we spoke to have also expressed concern that the EU's prioritisation of irregular migration in its agreements with third countries leads to the instrumentalisation of the humanitarian response. Owing to measures that criminalise search and rescue and humanitarian assistance, politicise funding and impose intrusive data reporting requirements *"the space for civil society actors to provide [migrants] with support has been significantly compromised in recent years"*¹⁹⁶ According to one humanitarian actor interviewed for the purposes of this report, *"humanitarian actors are relying on funds connected to policy objectives identified by States. Rather than being driven by humanitarian needs, organisations are being instrumentalised and politicised [...] The political space within which humanitarian actors work is highly influenced by narratives that aim to reduce and discourage migration and control the flow; some projects discourage migrants from taking a migration journey. **Everybody is being used as proxies; healthcare workers, humanitarian actors, with a single goal, to return people, to stop irregular migration.** The only funding available is linked to these ultimate objectives"*.
88. In September 2020, the European Commission proposed a **New Pact on Migration and Asylum**.¹⁹⁷ The Pact highlights the need for an integrated approach bringing together policies in the areas of migration, asylum and integration, and border management, "recognising that effectiveness depends on progress on all fronts" (p.2). In the view of the Commission, the 2015-2016 refugee crisis *"revealed major shortcomings, as well as the complexity of managing a situation which affects different Member States in different ways"* (at p. 1); the proposal therefore seeks to implement *"a common European framework and better governance of migration and asylum management"* (p.3).
89. This being said, the central focus, as with previous instruments, remains on containment and deterrence of irregular migration (p.1, and section 6.6.). The document reiterates the emphasis on returns, readmissions, and the *"fight against migrant smuggling"* and pushes for cooperation with third countries, in the form of *"**tailor-made Counter Migrant Smuggling Partnerships**"* that *"prevent dangerous journeys and irregular crossings"* (pp.7-8, 14-15). This approach is to be further developed

194. D'Humières, Victoire (2018) 'European Union/African Cooperation: the externalisation of Europe's migration policies', accessed at <https://www.robert-schuman.eu/en/european-issues/0472-european-union-african-cooperation-the-externalisation-of-europe-s-migration-policies> on 21st October 2021, p. 4

195. Buxton, Nick and Akkerman, Mark. 'The Rise of Border Imperialism', 1st October 2018, ROAR Magazine, accessed at <https://www.tni.org/en/article/the-rise-of-border-imperialism> on 21st October 2021

196. International Committee of the Red Cross, EU Office, "Protecting the humanitarian space to access and support migrants", Position Paper (March 2021).

197. European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, on a New Pact on Migration and Asylum, COM (2020), 609 final, 23 September 2020 accessed in October 2021 at <https://eur-lex.europa.eu/legal-content/EN/TXT/DOC/?uri=CELEX:52020DC0609&from=EN>

under a new EU Action Plan against migrant smuggling (2021-2025) designed to strengthen the work of law enforcement in countries of origin and transit (pp.15-16).

90. Research participants, especially humanitarian and development actors have raised concerns over the impact of cooperation agreements and migration pacts and partnerships. There is a common understanding that human rights are sidelined or neglected both in their formulation and drafting stages as much as in such policies and in their implementation. Local development workers in Niger, Senegal and Tunisia explained that such policies claim to protect and save lives but fail to consider human rights as a priority. International human rights law, including the foundational norms on the prohibition of torture, do provide the primary universal protection framework. A development worker in the west African region explained that *"It is important that human rights are made a central and integrated component **both in the formulation of migration pacts and partnerships**, and in their actual implementation. Failing to do so gives a blank check to national authorities to disregard human rights in implementing migration policies and strategies. International partners shouldn't strengthen assistance, support and reinforce State structures responsible and known for serious human rights violations in their countries"*.
91. Indeed, any form of support and funding to law enforcement, military or border structures has to be human rights vetted and conditioned on concrete measures to ensure compliance with fundamental rights and should allow an effective monitoring including by national human rights institutions and civil society organisations.

The EU and fundamental rights

The **universality** and **indivisibility** of **human rights**; the promotion of democratic principles and values including **respect for human dignity and the rule of law**; and the principles of freedom, **equality** and solidarity form *'the cornerstones of the EU's ethical and legal acquis'*¹⁹⁸ which the EU must 'promote' in both its internal and external action (Articles 2 and 21 Treaty on the European Union "TEU"). The EU has undertaken *'to continue to strive to be the leading global actor in the universal promotion and protection of human rights'*¹⁹⁹, including through the advancement of and compliance with its own Charter of Fundamental Rights (CFR) and the relevant international human rights law instruments, which the Charter 'reaffirms' (Recital 5).²⁰⁰

The EU and its Member States are bound to comply with fundamental rights when acting within the scope of EU law (Articles 2 and 6 TEU; Article 51 CFR), including when cooperating on migration management on the territory of third countries. The CFR does not contain a jurisdictional clause equivalent to those under the ECHR (Article 1) or ICCPR (Article 2), it applies whenever EU organs exercise their competences and

198. European Parliament, resolution of 15 January 2020 on human rights and democracy in the world and the European Union's policy on the matter — annual report 2018 (2019/2125(INI)), (2021/C 270/03), 15 January 2020, at para. B.

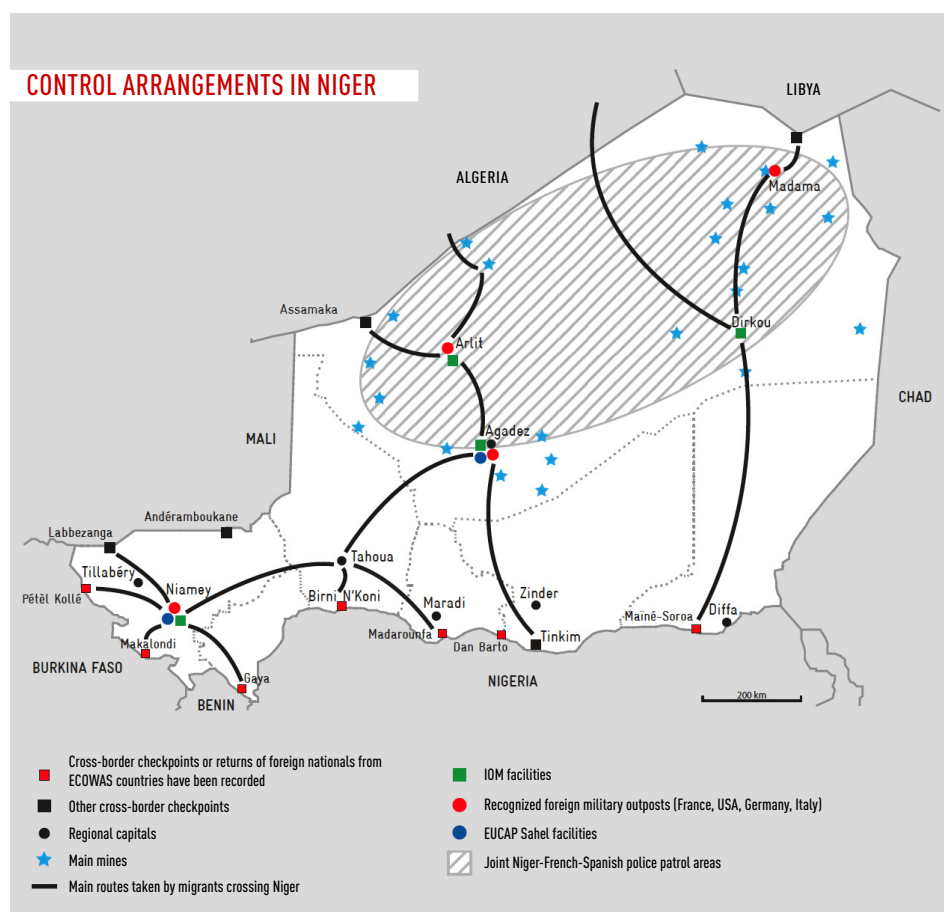
199. European Parliament, resolution of 15 January 2020 on human rights and democracy in the world and the European Union's policy on the matter — annual report 2018 (2019/2125(INI)), (2021/C 270/03), 15 January 2020, at para.B.

200. Charter of Fundamental Rights of the European Union (2000).

whenever Member States implement EU law.²⁰¹ This means that the extra-territorial nature of the measure is *'immaterial when establishing the Charter's applicability [...]* *The Charter applies whenever EU institutions, bodies and agencies exercise their powers according to the provisions of EU law'*.²⁰²

Externalisation may engage a number of rights protected by the Charter, including the right to life (Article 2 CFR); the prohibition on slavery and forced labour (Article 5 CFR); the right to liberty and security (Article 6 CFR); and the right to asylum (Article 18 CFR). In particular, Article 3(1) CFR enshrines the right of **'everyone' to respect for their physical and mental integrity**, Article 4 CFR prohibits in unqualified terms **any form of torture and inhuman or degrading treatment or punishment** while Article 19 expressly protects against **collective expulsion** and against **refoulement** ('No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.')

Externalisation in practice: the case of Niger



Source: Florence Boyer, Migreurop, Atlas of migrants in Europe. Critical approach to migration policies, Armand Colin, November 2017.

201. European Parliament, 'EU External Migration Policy and the Protection of Human Rights' (2020), at p.20

202. European Parliament, 'EU External Migration Policy and the Protection of Human Rights' (2020), at p.20.

Context

92. Niger has been the site of migration flows across the Sahel region for centuries, due to its location at the crossroads of major trans-Saharan trading routes. The city of Agadez in particular, the last large commercial centre before crossing the desert into Algeria and Libya, has traditionally played a pivotal role in the trans-Saharan trade.²⁰³
93. Migration in Niger has historically been regional, temporary, and circular, as is the case in most of West and Central Africa. In the framework of the ECOWAS free movement protocols, Nigeriens have migrated to West African countries to study and work, and vice versa.²⁰⁴ In recent years, Niger has become a major transit country for migrants travelling towards North Africa and the Mediterranean. According to the IOM, in 2016 alone, over 330,000 refugees and migrants transited through Niger; the overwhelming majority were then smuggled towards Libya and Algeria.²⁰⁵
94. Niger is the least developed country in the world, according to the 2020 UNDP Human Development Index.²⁰⁶ Conflicts in Libya, Mali and Burkina Faso, and attacks by Boko Haram in Chad and Nigeria, as well as within Niger, have created significant security and humanitarian challenges. According to UNHCR, as of September 2021 the country hosted over 250.000 refugees and asylum-seekers and 280.000 internally displaced persons.²⁰⁷
95. Niger has ratified all the core international human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR) and the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Punishment (UNCAT) and the Optional Protocol to the Convention against Torture. It is also a party to the 1951 Refugee Convention, the United Nations Convention against Transnational Organised Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol). Regionally, Niger is a party to the African Charter on Human and People's Rights (ACHPR) and the African Union Convention Governing the Specific Aspects of Refugee Problems in Africa and is a member of ECOWAS.
96. Niger is considered a priority partner by the EU in the fight against irregular migration. According to the United Nations Special Rapporteur on the human rights of migrants, *'migration management in Niger [is] heavily influenced and guided primarily by the demands of the European Union and its member States to control migration in exchange for financial support'*.²⁰⁸ The country has received considerable funding and assistance from the EU for border control and security activities *'turning it into a virtual external border of the European Union'*.²⁰⁹

203. International Organization for Migration (IOM), 'Migration trends from, to, and within Niger- 2016-2019' (2020), at p. 5

204. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p. 2

205. IOM, Displacement Tracking Matrix, Statistical report, Niger Flow Monitoring Points (FMP), Reporting period: 1 January – 31 December 2016, 2017; UNODC, 'Global Study on Smuggling of Migrants-Africa' (2018), pp.84-85.

206. United Nations Development Programme (UNDP), (2020) 'Latest Human Development Index Ranking' accessed at <http://hdr.undp.org/en/content/latest-human-development-index-ranking> on 21st October 2021

207. United Nations High Commissioner for Refugees (UNHCR), (2021) 'Operational Data Portal – Refugee Situations, Niger' accessed at <https://data2.unhcr.org/en/country/ner> on 21st October 2021

208. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p.10

209. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p. 9

97. Niger is one of 16 priority countries of the Partnership Framework. It is among the main beneficiaries of the EUTF for Africa and has been described as *'the most advanced laboratory of externalisation policies'*.²¹⁰ By 2021, the Niger had received 279.5 million euros in funds for migration management and border security projects.²¹¹ The EU's intervention is based around: (i) protecting migrants and providing advice and assistance in relation to returns and reintegration; (ii) creating economic opportunities in transit zones (e.g., Agadez) as an alternative to commercial activities around irregular migration; (iii) combating smuggling and trafficking by strengthening the justice and security sectors, as well as border management.
98. Niger is also a priority country in the European Union Strategy for Security and Development in the Sahel²¹² and receives EU assistance through the European Union Capacity Building (EUCAP) Sahel mission, as mentioned above. The EUCAP Sahel Niger is a civilian mission launched in 2012 under the Common Security and Defence Policy²¹³. Its mandate is to provide training, strategic advice and equipment to the Nigerien authorities in relation to counterterrorism and organised crime.²¹⁴ Since 2016, the mission, which has a field office in Agadez, has played a key role in border management and is assisting the Nigerien central and local authorities, as well as security forces, *'in developing the procedures and techniques to better control and address irregular migration'*.²¹⁵ The mission was extended in 2020 for another two years, until 2022.²¹⁶

Italy in Niger

In 2017, Italy established the Italian Fund for Africa to target irregular migration from the continent. Niger is one of the 13 priority countries identified by the Fund and since 2017 the Italian government has funded, to the tune of millions of euros, anti-trafficking efforts in the country, the IOM's assistance and voluntary returns programme, as well as the creation, via the EUTF for Africa, of specialised border control units and reception centres.²¹⁷

On 15 September 2018, the Bilateral Support Mission in Niger (MISIN) was launched. According to the Italian Ministry of Defence, the mission "is aimed at supporting Niger's military apparatus, contributing to border surveillance activities and strengthening

210. Arci, (2018), 'The dangerous link between migration, development and security for the externalisation of borders in Africa – Case studies on Sudan, Niger and Tunisia' accessed at <https://www.statewatch.org/media/documents/news/2018/jul/report-frontiere-2018-english-.pdf> on 20th October 2021, p. 12

211. European Commission (2021), 'EU Emergency Trust Fund for Africa – Niger', accessed at <https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/niger> on 20th October 2021

212. European Union External Action Service (EEAS), (2011) 'Strategy for Security and Development in the Sahel', accessed at http://www.eeas.europa.eu/archives/docs/africa/docs/sahel_strategy_en.pdf on 21st October 2021

213. European Union External Action Service (EEAS) (2016), 'Common Security and Defence Policy – The EUCAP Sahel Niger civilian mission' accessed at https://eeas.europa.eu/archives/docs/csdp/missions-and-operations/eucap-sahel-niger/pdf/factsheet_eucap_sahel_niger_en.pdf on 21st October 2021

214. Council of the European Union, Council Decision 2014/482/CFSP of 22 July 2014 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

215. Council of the European Union, 'EUCAP Sahel Niger: Council extends the mission for two years', press release, 18 September 2018 accessed at <https://www.consilium.europa.eu/en/press/press-releases/2018/09/18/eucap-sahel-niger-council-extends-the-mission-for-two-years/#>

216. Council of the European Union, Council Decision CFSP) 2020/1254 of 7 September 2020 amending Decision 2012/392/CFSP on the European Union CSDP mission in Niger (EUCAP Sahel Niger)

217. For an overview, see ActionAid, 'Il compromesso impossibile-Gestione e utilizzo delle risorse del Fondo per l'Africa', November 2017, accessed at https://www.actionaid.it/app/uploads/2017/12/Fondo_Africa_Il-compromesso_impossibile.pdf

the territorial control capabilities of the G5 Sahel countries”.²¹⁸ It is envisaged that up to 295 military personnel, 160 ground assets and 5 air assets will be deployed to Niger as part of this mission. Italian military forces have been assigned the area of Madama in northern Niger, close to the Libyan border. In February 2019, Italy renewed the MISIN. According to the country’s then Defence Minister, the ‘war on migrants and migration’ was a priority for the military mission given ‘the phenomenon of illegal trafficking and the threats to security’ and the need to reduce ‘the uncontrolled flow of migrants’ towards the country.²¹⁹

In August 2019, the Ministry of Foreign Affairs granted 11 million euros to the project “Protection and sustainable solutions for migrants and refugees along the Central Mediterranean route”, managed by the EU, IOM and the UNHCR, to fund voluntary repatriations managed by IOM from Libya, Niger, Burkina Faso, and Chad.²²⁰

The 2015 Law on Illicit Smuggling

99. Niger’s National Human Rights Commission has documented multiple human rights violations against migrants during their transit and stay, including physical and psychological violence and ill-treatment, threats, confiscation of documents, extortion (e.g., at checkpoints), deprivation of food and water, and restrictions on and deprivation of liberty.²²¹ Migration control measures adopted by the government of Niger in pursuance of EU externalisation policies have led to a further deterioration of the situation of migrants and a violation of their human rights, through their criminalisation, harassment, arbitrary detention and forced return.
100. The most significant of these measures is the 2015 **Law on the Illicit Smuggling of Migrants** (Loi No. 2015-36, ‘Smuggling Law’), adopted under considerable pressure as part of a broader National Migration Strategy and Action Plan.²²² The law, often referred to as the ‘Valetta Law’ by Nigerien public officials,²²³ has three stated aims: (i) prevent and combat the smuggling of migrants; (ii) protect the rights of migrant victims of smuggling (e.g., ensuring their right to compensation) and (iii) promote and facilitate national and international cooperation to prevent and combat the smuggling of migrants.²²⁴
101. In broad terms, the Smuggling Law criminalises anyone who: facilitates the illegal entry or exit into or from Niger of a person who is not a national or permanent

218. Ministero della Difesa, ‘Missione bilaterale di supporto nella Repubblica del Niger (MISIN)’, accessed at https://www.difesa.it/OperazioniMilitari/op_intern_corso/Niger_missione_bilaterale_supporto/Pagine/default.aspx.

219. Africa Express, ‘Cooperazione in mimetica: militari italiani in cattedra in Niger insegnano a fare la guerra, L’Italia collabora con le attività di formazione militare nei Paesi del G5 in Sahel’, 8 December 2019, accessed at: <https://www.africa-express.info/2019/12/08/militari-italiani-in-cattedra-in-niger-insegnano-a-fare-la-guerra/>

220. Ministero degli Affari Esteri e della Cooperazione Internazionale, ‘La Farnesina contribuisce ai rimpatri volontari assistiti da Libia, Niger, Burkina Faso e Ciad’, accessed at “https://www.esteri.it/mae/it/sala_stampa/archivionotizie/approfondimenti/la-farnesina-contribuisce-ai-rimpatri-volontariassistiti-da-libia-niger-burkina-faso-e-ciad.html”

221. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p.15

222. Loi No.2015-36 du 26 mai 2015 relative au trafic illicite des migrants (‘Loi No.2015-36’) accessed at https://sherloc.unodc.org/cld/uploads/res/document/ner/2015/loi_relative_au_trafic_illicite_de_migrants.html/Loi_N2015-36_relative_au_trafic_illicite_de_migrants.pdf; Transnational Institute and Stop Wapenhandel, “Expanding the fortress – The policies, the profiteers and the people shaped by EU’s border externalisation programme” (2018), p.51.

223. ASGI, ‘Agadez: border of Europe- A look at the EU’s externalization policies through the Niger case and the implementation of l. 36/2015’, accessed at https://www.asgi.it/33632-2/#_ftnref6

224. Article 1, Loi No.2015-36

resident of Niger; produces, procures, provides or possesses a fraudulent travel or identity document to facilitate the smuggling of migrants; uses illegal means to allow a person who is not a national or permanent resident to stay in Niger without fulfilling the conditions necessary for permanent residence. Persons convicted under these provisions face up to 10 years imprisonment and a five million CFA francs fine.²²⁵ The law also requires transporters to verify that passengers hold valid ID and travel documents, failing which they may be liable to heavy fines of up to three million CFA francs.²²⁶

102. The various State actors (e.g. law enforcement, immigration officials) responsible for implementing the Smuggling Law receive training and funding from the EU. As explained by one key informant: *"they have trained and equipped the [security forces] with sophisticated equipment and money so they can complete patrols and stop migrants from getting there"*. To facilitate enforcement, Niger has 'digitalised' its border surveillance network including through a satellite network connection and 11 border posts, to the State department of territory surveillance/oversight DST (*"Direction de la sûreté du territoire"*). This network, which is linked to an Interpol database, seeks to monitor and control migration flows. A similar approach has been adopted in the towns of Dirkou and Agadez, which are the two key transit points along the journey.
103. Individual European States are active in the country, too. In 2017, a Joint Investigation Team (JIT) based in Niamey was established under a trilateral protocol between Niger, France and Spain.²²⁷ The JIT has an allocation of 11.5 million euros, financed through the EU budget, to *'strengthen the capacities of the Nigerien police to fight against irregular immigration, document fraud, smuggling and trafficking in human beings'*.²²⁸ Beyond capacity building, JIT officials from the French and Spanish national police directly conduct operations on the ground, jointly with Niger officials. Additionally, as noted above, Italy was the first European country to bilaterally deploy a military mission to Niger in 2018, to combat smuggling and trafficking.
104. The JIT claims that its operations in Niger have contributed to a reduction of migratory flows to Libya and Algeria and led to the identification of over 30 international and national trafficking and smuggling networks and to the arrest of 221 individuals, including smugglers, touts and 'independent facilitators'.²²⁹ A progress report on the implementation of the Partnership Framework in Niger stated that as of June 2017, 79 individuals had been arrested for smuggling-related offences. During the first half of 2017, nearly 10,000 non-nationals were sent back to the border or expelled from Niger.²³⁰

225. Articles 10-12, Loi No.2015-36. Higher penalties of up to 30 years imprisonment are available in cases where these offences are found to be aggravated e.g., where the object of smuggling is a minor (articles 16-18, Loi No.2015-36).

226. Article 20, Loi No.2015-36

227. European Commission, 'Création d'une Équipe Conjointe d'Investigation (ECI) pour la lutte contre les réseaux criminels liés à l'immigration irrégulière, la traite des êtres humains et le trafic des migrants', 15.2.2017, accessed at: <https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/niger/creation-dune-equipe-conjointe-dinvestigation-eci-pour-la-lutte-contre-en>

228. European Commission, 'Création d'une Équipe Conjointe d'Investigation (ECI) pour la lutte contre les réseaux criminels liés à l'immigration irrégulière, la traite des êtres humains et le trafic des migrants', 15.2.2017, accessed at: <https://ec.europa.eu/trustfundforafrica/region/sahel-lake-chad/niger/creation-dune-equipe-conjointe-dinvestigation-eci-pour-la-lutte-contre-en>

229. European Commission, Document d'action, 'Fonds fiduciaire d'urgence de l'Union Européenne en faveur de la stabilité et de la lutte contre les causes profondes de la migration irrégulière et du phénomène des personnes déplacées en Afrique' (undated), accessed at https://ec.europa.eu/trustfundforafrica/sites/default/files/final_t05-eutf-sah-ne-05_eci_avenant_1.pdf

230. Zandonini, G. 2018. 'The Monday that changed migration in Niger', Open Migration, 15 January, accessed at <http://openmigration.org/en/analyses/the-monday-that-changed-migration-in-niger/> on 21st October 2021

The Smuggling Law and the risk of torture and ill-treatment

105. The Special Rapporteur on the human rights of migrants has criticised the Smuggling Law, emphasising that *“the EU’s role and support in the adoption and implementation of the law ... calls into question its ‘do no harm’ principle given the human rights concerns related to the implementation and enforcement of the law.”*²³¹
106. The law authorises the detention of victims of smuggling, without providing a clear legal basis for such detention (Article 30). There is a lack of clarity around who is a victim and who is a perpetrator of migrant smuggling, conflating both, which results in the criminalisation of victims. According to one key informant *“Nigerien documents and discourse regularly refer to ‘trafficking victims’, and seem to blur the lines between the two issues. Comparing smuggling with trafficking activities compounds the victimisation of moving populations”*. In that regard, the UN Special Rapporteur on trafficking in persons, especially women and children, has noted that the main challenges common to all transit countries relate to a recurrent confusion between trafficking and smuggling, and an inadequate legal framework and standard operating procedures or their correct implementation, which contribute to the non-identification and misidentification of victims and possible victims of trafficking in transit to their destination.²³²

By failing to provide a clear legal basis for detention, the law enhances the risk of arbitrary detention. The situation of immigration detainees in Niger remains unclear and little information is available regarding the number and profile of individuals detained under the 2015 Smuggling Law.²³³ Nevertheless, information and testimony collected by OMCT and its partners strongly suggests that detained migrants are at risk of human rights abuses, including ill-treatment in police custody, inadequate material conditions of detention, and a lack of access to legal assistance and advice.²³⁴ Similar concerns have been raised by the UN Special Rapporteur on the human rights of migrants, following a visit to Niger in 2018.²³⁵

107. The implementation of the law and increased border controls by the Nigerien authorities – with the support of the EU and individual Member States – has encouraged the abuse and mistreatment of people on the move. In 2019, the African Commission on Human and People’s Rights documented threats, sexual and psychological violence, and physical abuse against migrants by elements of the state security forces at border control posts.²³⁶ During the course of this study, several first-hand accounts were received regarding the use of threats, harassment and

231. Global Detention Project (2019), ‘Niger Immigration Detention Profile’, accessed at <https://www.globaldetentionproject.org/countries/africa/niger#country-report> on 21st October 2021; The core principle of ‘doing no harm’ and mutual accountability is enshrined in the Principles for Good International Engagement in Fragile States and Situations, the New EU Consensus for Development, the EU Global Strategy (Council Conclusions in October 2016), and the EU ‘Policy Coherence for Development’.

232. Report of the Special Rapporteur on trafficking in persons, especially women and children (A/HRC/38/45), 14 May 2018, at para. 30, accessed at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/133/20/PDF/G1813320.pdf?OpenElement>

233. Global Detention Project (2019) ‘Immigration Detention in Niger: Expanding the EU-Financed Zone of Suffering Through “Penal Humanitarianism”’, accessed at <https://www.globaldetentionproject.org/immigration-detention-niger-2019> on 21st October 2021, p. 6

234. See generally, OMCT, ‘Politiques et lois anti-migration au Niger: Une passerelle vers la torture et les mauvais traitements’, *Rapport alternatif soumis en application de l’article 19 de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*, Novembre 2019.

235. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at pp.8-9

236. African Commission on Human and People’s Rights (2019) ‘Pilot Study on Migration and Respect for Human Rights – Focus on the Responses Provided by Niger’ accessed at https://www.achpr.org/public/Document/file/English/Pilot%20Study%20on%20Migration_ENG.pdf on 22nd October 2021

intimidation against migrants, as well as extortion and corruption at checkpoints (see Part II). A representative from the Association Nigérienne de Défense des Droits de l'Homme stated that *“Law 2015-036 exposes migrants to all kinds of torture. Officers the state, bandits and even transporters violate the rights of those who challenge the desert. State agents sometimes tax migrants and / or refugees without conscience and mercy”*.

108. The implementation of the law has also resulted in a de facto ban of all travel north of Agadez. This was made clear by Niger’s Minister of Interior in 2018:

*“Any foreign **nationals from an ECOWAS member state**²³⁷ who have entered **Nigerian territory legally** and are discovered in a vehicle that has left the towns of Agadez or Arlit under dishonest means, bound for Algeria or Libya, lose their rights to travel freely in Niger. They are arrested and taken back to Agadez. Legal proceedings are initiated against the drivers and vehicles seized in these circumstances.”²³⁸*

109. This practice has been confirmed by Frontex, who has reported that *‘all passengers from ECOWAS countries are now systematically driven back to Agadez if they are detected above Séguédine-Dirkou line.’²³⁹* According to one key informant *“we have the impression that the European [border] starts from the city of Agadez”* and it has been reported that law enforcement and immigration officials responsible for enforcing the law do not distinguish between nationals and non-nationals.²⁴⁰

110. This criminalisation of mobility, including within Niger itself, is potentially problematic considering that many of the individuals targeted are ECOWAS nationals who have a right to travel freely within the territory of State Parties under the ECOWAS Free Movement Protocol. Additionally, it is potentially incompatible with the right to freedom of movement within a country, restrictions on which must comply with the principles of legality, proportionality, and non-discrimination.²⁴¹ The Smuggling Law may also interfere with the right to leave any country, including one’s own, and the right to seek asylum, including where they intersect with the absolute prohibition on *refoulement* and the non-penalisation clause under the Refugee Convention.²⁴²

Criminalisation of irregular entry

Under the 1951 Convention, asylum seekers shall not be penalised for their irregular entry or stay, provided they present themselves to the authorities without delay and show ‘good cause’ for their irregular entry or presence (Article 31). This is a recognition that in exercising the right to seek asylum, those fleeing persecution are

237. The Economic Community of West African States (ECOWAS)

238. Radio France Internationale, ‘Réunion migrations: le Niger expose sa méthode de lutte contre les trafics’, 16th March 2018, accessed at <https://www.rfi.fr/fr/afrique/20180316-migrations-reunion-niger-expose-methode-lutte-trafics> in October 2021.

239. Frontex, ‘Africa-Frontex Intelligence Community Joint Report (2016)’, April 2017, at p.45 accessed at https://frontex.europa.eu/assets/Publications/Risk_Analysis/AFIC/AFIC_2016.pdf

240. See e.g. Mixed Migration Centre, ‘Fixing’ people in place through policy and development? Efficacy and unintended consequences of migration deterrence in Kantché’, Briefing Paper (April 2021), accessed at https://mixedmigration.org/wp-content/uploads/2021/05/168_briefing_paper_efficacy_and_unintended_consequences_migration_deterrence_Kantche.pdf in October 2021.

241. Article 12 ICCPR.

242. Article 12 ICCPR; European Parliament, ‘EU External Migration Policy and the Protection of Human Rights’ (2020), at p.55

often forced to arrive at, or enter, a territory without prior authorisation (especially given the routine absence of safe and legal routes to international protection) and may not be in a position to comply with entry formalities (e.g. they may be unable to obtain the necessary documentation in advance of their flight because of their fear of persecution and/or the urgency of their departure). Attempting to escape persecution, torture and other ill-treatment should be considered a 'good cause', and measures that penalise refugees, *de jure or de facto*, upon arrival should be considered incompatible with this provision. As acknowledged by the Working Group on Arbitrary Detention: *"Migrants in an irregular situation have not committed any crime. The criminalisation of irregular migration exceeds the legitimate interests of States in protecting their territories and regulating irregular migration flows."*²⁴³

Even more dangerous routes

111. The Smuggling Law has pushed migrants, who live in fear of being arrested and detained by the authorities, further underground. Information gathered by OMCT suggests that migrants travelling northwards are now departing from bus stations some 50km outside of the city of Agadez. To avoid detection by law enforcement, they are living further away in very poor conditions in migrant 'ghettos' with limited access to basic services and under the control of private actors – drivers, smugglers and 'kokseurs' who arrange for their onward journey to Libya. In turn, this makes them even more vulnerable to exploitation and human rights abuses by smugglers and traffickers, including torture and other ill-treatment, and makes it more difficult for them to access food, shelter and healthcare as they fear detection by the authorities.²⁴⁴ Refugee and migrant women in particular have been rendered more vulnerable to sexual abuse and exploitation. Trapped in Agadez without the possibility of being able to move further north in their migration journey, many have been forced into prostitution as a means of survival.²⁴⁵

112. In 2019, the **CAT Committee** expressed concerns over the law, noting that it provides *"for a repressive approach to migration that has reportedly driven many migrants underground, exposing them to numerous forms of abuse. The Committee is concerned at the lack of information on procedures and responsibilities related to the identification of vulnerable persons, including victims of torture or ill-treatment, who are in need of international protection"*²⁴⁶ The Committee further warned that *"if the human rights of irregular migrants were neglected, Niger would turn into a new Libya, where the cover of humanitarianism was being used to actually block individuals who left their countries to escape poverty or war."*²⁴⁷

243. Working Group on Arbitrary Detention, A/HRC/13/30 15 January 2010, at para. 58, accessed at https://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A.HRC.13.30_AEV.pdf in October 2021.

244. OMCT, 'Politiques et lois anti-migration au Niger: Une passerelle vers la torture et les mauvais traitements', *Rapport alternatif soumis en application de l'article 19 de la convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants*, Novembre 2019, at p.24; see also, UN Human Rights Committee, Concluding observations on the 2nd periodic report of the Niger (CCPR/C/NER/CO/2), 16 May 2019, at para. 38 ('the Committee expresses its concern about Act No. 2015-36 of 26 May 2015 on trafficking in migrants, which reportedly resulted in a de facto ban on travel north of Agadez, thus forcing migrants to go underground and face conditions that expose them to many forms of abuse and human rights violations'); Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p.8

245. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger (A/HRC/41/38/Add.1), 16 May 2019, at p.14

246. CAT Committee, Concluding observations on the initial report of the Niger (CAT/C/NER/CO/1), 20 December 2019, at para. 25.

247. OHCHR, 'Committee against Torture reviews report of Niger, experts urge respect for human rights in counter-terrorism and migration contexts', accessed at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25359&LangID=E>

113. The example of Niger has been hailed as ‘emblematic of what can be achieved with a transit country’. Data from IOM indicates that the implementation of the Smuggling Law led to a sharp decrease in the number of migrants moving north from Agadez to Algeria, Libya and the Mediterranean. IOM recorded 334,000 individuals leaving Niger in 2016, including Nigerien nationals,²⁴⁹ compared to 52,000 in the first nine months of 2017²⁵⁰. The number of third country migrants entering Agadez reportedly declined from 350 per day in 2016 to 60-120 a week in 2018. At the Seguedine (also known as Segedim or Sow) checkpoint mid-way between Dirkou and the Libyan border, the number of registered people travelling north dropped from 290,000 in 2016 to 33,000 in 2017.²⁵¹
114. These figures must however be approached with caution, as the decrease in recorded departures does not equal a decrease in the overall number of migrants trying to reach Libya or Europe. **Rather than reducing irregular migration, stricter border controls under the Smuggling Law have forced migrants to take longer, more dangerous routes.** According to one key informant: *“Today, with the Nigerian government’s drive to thwart migration and with our desire to travel, we are forced to bypass all approved channels. This pushes us straight into the hands of the bandits and sometimes people in [uniform]”.*
115. These new routes skirt Agadez on all sides in an attempt to reach and follow international borders, including the Niger-Algeria border and the Niger-Chad border, up to the border with Libya.²⁵² They are far more perilous, increasing smuggling prices and heightening the risk of abuse and violence against migrants. According to a former smuggler, the cost of travel has doubled, rising from 150,000 CFA to 400,000 CFA to Libya, and 75,000 CFA to 150,000 CFA to Algeria.²⁵³ One local official in Agadez reported that *“The new road configuration set up to comply with application of the law that you know means the desert has become a new territory where several actors coexist. These actors make victims of the migrants and refugees”.*
116. Migrants have been abandoned by smugglers in the Tenere desert, which stretches from northeast Niger to western Chad and reports of deaths along these new migratory routes have become more frequent since 2015. According to the Global Migration Data Analysis Centre, the number of migrants’ deaths in the desert on the roads between Agadez and southern Libya or southern Algeria has significantly increased since the adoption of the Law on the Illicit Smuggling, rising from 71 in 2015, to 95 in 2016, and to 427 in 2017²⁵⁴. Although complete data are unavailable, deaths appear

248. European Commission, (2017) ‘Report from the Commission to the European Parliament, the European Council and the Council – Forth Progress Report on the Partnership Framework with third countries under the European Agenda for Migration’ accessed at https://eeas.europa.eu/sites/default/files/4th_progress_report_partnership_framework_with_third_countries_under_european_agenda_on_migration.pdf on 22nd October 2021

249. IOM, ‘Statistical Report - Overview: Niger Flow Monitoring Points (FMP) – 01 December 2016 to 31 December 2016’, Fact Sheet (December 2016), accessed at https://reliefweb.int/sites/reliefweb.int/files/resources/NIGER_IOM_FMP_December_2016_EN.pdf in October 2021.

250. IOM, ‘Niger Flow Monitoring Report-September 2017’, Fact Sheet (November 2017).

251. Clingaendael, Netherlands Institute of International Affairs, ‘Multilateral Damage- The impact of EU migration policies on central Saharan routes’, September 2018, at p. 24 accessed at <https://www.clingendael.org/pub/2018/multilateral-damage/2-effects-of-eu-policies-in-niger/> in October 2021.

252. Tubiana, Jérôme; Warin, Clotilde; Mohammud Saeneen, Gaffar (2018) ‘ Multilateral Damage: The impact of EU migration policies on central Saharan routes’, Clingaendael Netherlands Institute of International Relations, accessed at <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf> on 20th October 2021, p 24

253. Arci, (2018), ‘The dangerous link between migration, development and security for the externalisation of borders in Africa – Case studies on Sudan, Niger and Tunisia’ accessed at <https://www.statewatch.org/media/documents/news/2018/jul/report-frontiere-2018-english-.pdf> on 20th October 2021, p. 12

254. Tubiana, Jérôme; Warin, Clotilde; Mohammud Saeneen, Gaffar (2018) ‘ Multilateral Damage: The impact of EU migration policies on central Saharan routes’, Clingaendael Netherlands Institute of International Relations, accessed at <https://www.clingendael.org/sites/default/files/2018-09/multilateral-damage.pdf> on 20th October 2021, p. 25


to have skyrocketed, with twice as many migrants reportedly perishing crossing the Sahara Desert compared to the Mediterranean²⁵⁵. As reported by Médecins Sans Frontières (MSF), migrants crossing the Nigerien desert are at risk of exploitation, violence and death. MSF project coordinator Aiva Noelsaint stressed that *“far from stopping the flow of people, the recent criminalisation of migration by both European and non-European governments has significantly increased the vulnerability of people on the move, whether they are migrants, refugees, asylum seekers, traders or seasonal workers”*²⁵⁶. In 2017, the President of the Agadez Regional Council shared his ‘consternation and indignation’ over the number of migrants reported dead or missing since 2017, stating that this situation *“was the consequence of smugglers circumventing the official routes and usual water supply points following the implementation of the new repressive measures”*.²⁵⁷ The Nigerien Interior Minister has also recognised that the Smuggling Law has prompted smugglers to find alternative routes but stated that *“this is the price we have to pay for our security, the price to pay for the commitments we made in La Vallette”*.²⁵⁸

255. Miles, Tom and Nebehay, Stephanie. ‘Migrant deaths in the Sahara likely twice Mediterranean toll: U.N.’ Reuters, October 12th 2017, accessed at <https://www.reuters.com/article/us-europe-migrants-sahara/migrant-deaths-in-the-sahara-likely-twice-mediterranean-toll-u-n-idUSKBN1CH21Y> on 20th October 2021


256. Ansa, (2019) ‘Migrants stuck in Niger desert without food or water’, MSF, 1st August 2019, accessed at <https://www.infomigrants.net/en/post/18525/migrants-stuck-in-niger-desert-without-food-or-water-msf> on 22nd October 2021

257. Conseil régional d’Agadez, *Communiqué de presse sur la situation des migrants dans la région d’Agadez*, 30 juin 2017.

258. Le Cam, Morgane. ‘Niger: “L’Etat islamique dans le Grand Sahara est la nouvelle menace” – Le ministre de l’intérieur Mohamed Bazoum analyse l’état des forces djihadistes qui sévissent dans l’ouest et le sud-est du pays’, *Le Monde*, 15th September 2017, accessed at https://www.lemonde.fr/afrique/article/2017/09/15/niger-l-etat-islamique-dans-le-grand-sahara-est-la-nouvelle-menace_5186163_3212.html on 20th October 2021



SECTION C. ACCESS TO REHABILITATION FOR TORTURE SURVIVORS IN MIGRATION



Part I. International standards and best practice on the rehabilitation of torture victims/survivors

117. Article 14 UNCAT establishes a right to **redress** for victims/survivors of torture and ill-treatment comprised of a right to an effective remedy and a right to reparation. Reparation measures include access to “*as full rehabilitation as possible*” to help victims/survivors rebuild their lives and restore their dignity and resilience, irrespective of whether judicial remedies are pursued.²⁵⁹ Rehabilitation services should be multi-disciplinary, holistic, and survivor-centred, and seek to empower the victim/survivor and restore their inclusion and participation in society. A combination of services, including medical, psychosocial, and legal support, are required to restore the independence, physical, mental, social and vocational ability of torture survivors²⁶⁰. **States have an obligation to ensure that all victims/survivors of torture have access to rehabilitation services and programmes without discrimination and regardless of their identity or status, including asylum-seekers and refugees.**²⁶¹
118. Moreover, under the International Covenant on Economic Social and Cultural Rights (ICESCR) all individuals within the territory and under the jurisdiction of the State have a right ‘to the enjoyment of the highest attainable standard of physical and mental health’, including sexual and reproductive health,²⁶² without discrimination of any kind, regardless of legal status or nationality.²⁶³ In this context, the heightened vulnerability of refugees, stateless persons, asylum seekers and migrants in irregular situations have

259. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 3 (2012), CAT/C/GC/3, at paras 3 and 15.

260. OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Convention Against Torture Initiative (CTI) (2018) ‘Providing rehabilitation to victims of torture and other ill-treatment - UNCAT Implementation tool 5/2018’, accessed at <https://cti2024.org/resource/cti-uncat-implementation-tool-5-2018-providing-rehabilitation-to-victims-of-torture-and-other-ill-treatment/> p. 3

261. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 3 (2012), CAT/C/GC/3, at para 15.

262. Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016, at paras 5-6.

263. Articles 2(2) and 12 ICESCR; regionally, the right to equal access to health is protected under Articles 2 and 16 ACHPR.

been expressly recognised.²⁶⁴ States parties to the ICESCR have a special obligation to prevent discrimination in the provision of health care and health services, especially in relation to the core obligations of the right to health, including the right to essential primary healthcare,²⁶⁵ and to take steps to ensure access to health. Victims/survivors of conflict-related sexual violence have a right of to healthcare services, including psychosocial support; family planning services; and prevention and treatment of HIV/AIDS and other sexually transmitted infections.²⁶⁶ Article 6 Trafficking Protocol additionally provides that each State party shall implement measures to provide for the physical, psychological and social recovery of victims/survivors of trafficking.

Early identification

“He was never asked questions concerning the torture and violence he witnessed in Libya, and instead, they only asked basic questions and the reason why he left his home country.” (Key informant interview with Cameroonian refugee, Tunisia)

119. Mechanisms for the early identification of torture survivors are central to providing effective access to rehabilitation services²⁶⁷, and to safeguard the physical and mental health of the victim/survivor²⁶⁸. Individual, human-rights based screening for signs of torture and assessment procedures should take place as soon as reasonably practicable after migrants arrive²⁶⁹, endeavour to “facilitate an informed referral and avoid generating unnecessary distress and re-traumatisation”²⁷⁰. Without identification, victims/survivors may face immigration detention, and risk “flawed consideration of their asylum claim”²⁷¹.

120. Principle 5 of the OHCHR **‘Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations’** (2018) provides that States should *‘ensure that all border governance measures protect human rights’* including by implementing

264. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, at para 34; Committee on Economic, Social and Cultural Rights, General Comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/GC/22, 2 May 2016, at paras 30-31.

265. Committee on Economic, Social and Cultural Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art.12), adopted at the Twenty-second Session of the Committee on Economic, Social and Cultural Rights, on 11 August 2000, at paras. 18-19.

266. General recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, CEDAW/C/GC/30, 18 October 2013 para 52.c; see also UNSC Resolution 2467 (2019), S/RES/2467 (2019), 23 April 2019, para 16.a; General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35, para.40

267. Towers, Rachel (2013) International Rehabilitation Council for Torture Victims, ‘Recognising victims of torture in national asylum procedures – A comparative overview of early identification of victims and their access to medico-legal reports in asylum-receiving countries’, accessed at https://irct.org/assets/uploads/pdf_20161120143448.pdf on 22nd October 2021 p. 73

268. International Rehabilitation Council for Torture Victims, (2016) ‘Falling Through the Cracks – Asylum Procedures and Reception Conditions for Torture Victims in the European Union’, accessed at <https://irct.org/influencing-laws-and-policies/falling-through-the-cracks-asylum-procedures-and-reception-conditions-for-torture-victims-in-the-european-union> on 31st October 2021, p. 5

269. Office of the United Nations High Commissioner for Human Rights (OHCHR), (2018) ‘Principles and Guidelines, supported by practical guidance, on the human rights protection of migrants in vulnerable situations’, accessed at <https://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf> on 21st October 2021, p. 29

270. United Nations High Commissioner for Refugees (UNHCR) and International Detention Coalition (IDC) (2016) ‘Vulnerability screening tool - Identifying and assessing vulnerability: a tool for asylum and migration systems’ accessed at <https://www.unhcr.org/protection/detention/57fe30b14/unhcr-idc-vulnerability-screening-tool-identifying-addressing-vulnerability.html> on 22nd October 2021, p. 18

271. International Rehabilitation Council for Torture Victims, (2016) ‘Falling Through the Cracks – Asylum Procedures and Reception Conditions for Torture Victims in the European Union’, accessed at <https://irct.org/uploads/media/55a4e96eae76586a7abbc18633bd61a0.pdf> on 31st October 2021, p. 5

*"[...]individual screening and assessment procedures as soon as possible after arrival to ensure prompt identification of situations of vulnerability for all migrants without discrimination. Such screening should, as relevant, be prior to, apart from, or alongside interviews to establish an asylum claim. Ensure sufficient numbers of competent experts are present at borders to establish and deliver human rights-based screenings and referrals."*²⁷²

121. The **Istanbul Protocol** is the global standard for torture documentation and provides comprehensive instructions for the physical and psychological examinations of torture survivors. An early identification tool, the ten-point **PROTECT Questionnaire**²⁷³, provides an example of best practice for screening asylum seekers for psychological vulnerability arising from e.g., an experience of torture. A recent programmatic evaluation carried out by Médecins Sans Frontières (MSF) notes that *"it is essential to be proactive in detection and acknowledge that the most affected people are not those who actively seek help."*²⁷⁴ Rehabilitation should be provided as soon as possible after the occurrence of torture, and there must never be an obligation for a survivor to pursue judicial remedies²⁷⁵.
122. In its **General Comment N°4 (2017)** the UN Committee Against Torture provides an authoritative position on a full implementation of article 3 of the Convention. It requires States parties to *"take legislative, administrative, judicial and other preventive measures against possible violations of the principle of "non-refoulement", including... Referring the person alleging previous torture to an independent medical examination free of charge, in accordance with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol); ... Providing effective training for medical and other personnel dealing with detainees, migrants and asylum seekers in identifying and documenting signs of torture, taking into account the Istanbul Protocol"*²⁷⁶.
123. The early identification of torture survivors is essential to enable them to swiftly access their rights and the most appropriate services, including legal support for asylum and/or redress, and medical services. Studies have shown that traumatic experiences and PTSD have a direct influence on the refugee status determination process – both can have an impact on an individual's memory and therefore their ability to present a protection claim in what is perceived by decision-makers to be a credible manner. Early identification allows individuals to access the assistance and support required to document their claim and can mitigate the risk of *refoulement*. Moreover, experience shows that prompt access to rehabilitative treatment can help to prevent more long-term physical and psychological consequences of torture and other ill-treatment. Conversely, delays in accessing services can aggravate symptoms and cause further trauma.²⁷⁷

272. Office of the United Nations High Commissioner for Human Rights (OHCHR) and Global Migration Group, (2018) 'Principles and practical guidance on the protection of the human rights of migrants in vulnerable situations', A/HRC/37/34/Add.1 accessed at <https://digitallibrary.un.org/record/1472491?ln=en> on 22nd October 2021

273. Developed by six European civil society actors working on the rehabilitation of torture survivors, and funded by the European Commission

274. Médecins Sans Frontières (MSF), (2020) 'Evaluation of MSF treatment & rehabilitation of victims of torture programs in four locations', February 2020 accessed at http://evaluation.msf.org/sites/evaluation/files/attachments/evaluation_2020_msftransversalprojectforvotin4locations.pdf, 22nd October 2021 p. 10

275. OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Convention Against Torture Initiative (CTI) (2018) 'Providing rehabilitation to victims of torture and other ill-treatment - UNCAT Implementation tool 5/2018', accessed at <https://cti2024.org/resource/cti-uncat-implementation-tool-5-2018-providing-rehabilitation-to-victims-of-torture-and-other-ill-treatment/> p. 3

276. Committee Against Torture, General Comment No. 4 (2017) on the implementation of article 3 of the Convention in the context of article 22, CAT/C/GC/2, 4 September 2018, at §21-22.

277. International Rehabilitation Council for Torture Victims, (2016) 'Falling Through the Cracks – Asylum Procedures and Reception Conditions for Torture Victims in the European Union', accessed at <https://irct.org/influencing-laws-and-policies/falling-through-the-cracks--asylum-procedures-and-reception-conditions-for-torture-victims-in-the-european-union>, on 31st October 2021 p. 5

124. The identification of torture survivors can in principle take place anywhere along the migration route, provided that precautions are in place to prevent re-traumatisation, and should occur as soon as individuals cross the border. In practice, transit settings can be the most challenging, given the continuing and sometimes heightened risk of torture and other human rights abuses. In turn, this means that people on the move may not feel safe enough to disclose that they have experienced torture or other ill-treatment, and they are also unlikely to be aware of their rights as torture survivors and the legal reasons as to why disclosure is important. Early identification can take place in open settings, including in hotspots where migrants gather, which may be along the border and on docks. In such settings, relevant personnel may collect data about their journey, determine specific needs and detect early warning signs of trauma. Organisations working in these settings may deploy mobile units to spots where refugees are gathered. At this stage it may be possible to offer assistance and/or referrals to other services. The early identification of victims/survivors and the documentation of torture may take place in closed settings. Participants warned, however, that migrant detention facilities do not tend to be suitable settings for early identification and documentation. Migrants held in detention are likely to feel particularly vulnerable when they are under the control of an authority and may hesitate to come forth. Early identification and documentation can also take place in refugee camps.

Multi-disciplinary, confidential, specialised services tailored to individual needs

125. Once identified, torture survivors require swift access to specialised and holistic rehabilitation services. States should adopt a long-term and integrated approach and ensure that services for survivors of torture and other ill-treatment are **available** (i.e. that information is provided about services and survivors' rights in a language that they can understand; that there be an adequate number of trained staff providing rehabilitation services; and an adequate geographical coverage of services); **accessible** (i.e. torture survivors must be able to access services in a prompt manner; without discrimination, including of a person's immigration status²⁷⁸; without risks to their security; and without compromising confidentiality); and **appropriate** (rehabilitation services must meet the needs of torture survivors and consider specific vulnerabilities, including gender-specific torture practices; and be delivered according to the principles of medical ethics, by regularly trained personnel).

126. Rehabilitation services should include a procedure for the assessment and evaluation of individuals' therapeutic and other needs, based on, inter alia, the Istanbul Protocol, as well as medical, psychosocial, and legal support. Rehabilitation may also extend to psychotherapy, social services and integration support measures such as vocational training, education and work, as well as community and family-oriented assistance. Services should be survivor-centred, allowing the survivor to e.g. choose their service provider, and take into account the survivor's agency and resilience. In recognition of the high risk of re-traumatisation, confidentiality in service provision is key.

278. The General Comment no. 3 (2012) of the Committee against Torture on the Implementation of Article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by State parties explicitly states that refugees and asylum-seekers must not be excluded from service provision: "15. States parties shall ensure that effective rehabilitation services and programmes are established in the State, taking into account a victim's culture, personality, history and background and are accessible to all victims without discrimination and regardless of a victim's identity or status within a marginalized or vulnerable group, as illustrated in paragraph 32, including asylum seekers and refugees."

127. Rehabilitation services must be free of charge for the survivor and should be funded by national governments. Current standards of best practice for service delivery notes that rehabilitation services should be either State-led (where the national health and social system directly provides specialised rehabilitation services), non-State led (where non-governmental or private services are financed by State support) or delivered according to a hybrid model (where specialised rehabilitation services delivered by non-governmental actors are integrated into the national health system)²⁸⁰.
128. Rehabilitation services should be accompanied by monitoring mechanisms in order to collect disaggregated data on e.g., the number of torture survivors who have accessed services; which services they have received; and the vulnerabilities, rights and needs of torture survivors.²⁸¹

279. This duty is outlined in the UN Committee against Torture's General Comment No. 3 (2012): Implementation of article 14 by States parties

280. OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Convention Against Torture Initiative (CTI) (2018) 'Providing rehabilitation to victims of torture and other ill-treatment - UNCAT Implementation tool 5/2018', accessed at <https://cti2024.org/resource/cti-uncat-implementation-tool-5-2018-providing-rehabilitation-to-victims-of-torture-and-other-ill-treatment/> p. 6

281. This requirement has been declared by the UN Committee against Torture in its General Comment No. 3 (2012): Implementation of article 14 by States parties.

Part II. Challenges and gaps in the identification and rehabilitation of torture survivors in migration

129. Given the high proportion of survivors of torture in current mixed movements flows, prompt and specialised responses are required to ensure the realisation of their rights to rehabilitation and redress in line with the standards identified above. The practice of the countries under study – who are all bound by the UNCAT – falls significantly short of these requirements, and the right to rehabilitation of migrant survivors of torture is often systematically and irreversibly violated. As the examples below illustrate, major challenges remain both in terms of the early identification of torture survivors and their access to adequate services – challenges which are all too often exacerbated by restrictive migration policies based around deterrence, control and containment. Across several contexts there remains a pervasive lack of understanding of the concept of torture, as well as the specific needs of torture survivors; these are too often conflated with other general protection concerns and needs. Dedicated resources for rehabilitation of, and redress for, migrant survivors of torture are scarce, despite the well-documented needs. Other reported obstacles to access include a lack of adequately trained service providers and law and/or immigration enforcement officials; shame and stigma as well as a lack of awareness amongst migrant populations of their rights and of available services; cost of rehabilitative services; and language barriers. Moreover, contrary to the recommendations of the CAT Committee, in most of the countries under study, including Senegal, Mali and Chad, access to rehabilitation is contingent upon the criminal conviction of the perpetrators.²⁸²

Uganda

130. Uganda is the largest refugee hosting country in Africa and the third in the world. According to UNHCR, as of May 2021, there were over 1.4 million asylum-seekers and refugees in the country.²⁸³ Of these, just over half were children.²⁸⁴ Most refugees live in rural settlements alongside local communities, mainly in Northern Uganda and West Nile (Adjumani, Arua, Koboko, Moyo, Lawmo and Yumbe), with smaller numbers in urban centres, particularly Kampala.²⁸⁵ Uganda has a comprehensive legislative framework on migration, and on torture and other ill-treatment,²⁸⁶ however, there are gaps in implementation, particularly in respect of the Prevention and Prohibition of Torture Act 2012.

282. Committee Against Torture, Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, General Comment 3 (2012), CAT/C/GC/3, at para 15.

283. United Nations High Commissioner for Refugees (UNHCR), (2021) 'Inter-agency Revised Uganda Country Refugee Response Plan', July 2020-December 2021 accessed at <https://reliefweb.int/report/uganda/inter-agency-revised-uganda-country-refugee-response-plan-july-2020-december-2021> on 21st October 2021; United Nations High Commissioner for Refugees (UNHCR), (2021) 'Uganda Comprehensive Refugee Response Portal' accessed at <https://data2.unhcr.org/en/country/uga> on 21st October 2021

284. United Nations High Commissioner for Refugees (UNHCR), (2021) 'Inter-agency Revised Uganda Country Refugee Response Plan', July 2020-December 2021 accessed at <https://reliefweb.int/report/uganda/inter-agency-revised-uganda-country-refugee-response-plan-july-2020-december-2021> on 21st October 2021

285. United Nations High Commissioner for Refugees (UNHCR), (2021) 'Uganda Comprehensive Refugee Response Portal' accessed at <https://data2.unhcr.org/en/country/uga> on 21st October 2021

286. Uganda adopted the Prevention and Prohibition of Torture Act (PPTA) in 2012, domesticating UNCAT. Implementing regulations (the Prevention and Prohibition of Torture Regulations) were adopted in 2017. The PPTA criminalises and provides sanctions for torture and ill-treatment, and prohibits the extradition or deportation of an individual to a country where there is a risk that they will be subjected to torture and other ill-treatment.

131. The lack of awareness and technical expertise among service providers to identify and respond to survivors of torture was cited as a key challenge for the provision of rehabilitation services to migrants. It was reported that migrants are screened upon arrival in reception centres, however, this screening is focused on the identification of individual's "special needs" a category which does not specifically mention torture. Reception centre staff often lack adequate training and thus fail to categorise torture and its effects as 'special needs'.

132. Challenges were reported around information provision, with many migrants unaware that they were entitled to rehabilitative services and of where these could be accessed.

No one has ever asked me what I went through while coming to Uganda, apart from the general interview on arrival." (Female focus group discussion participant, Uganda)

133. There is also a lack of clear and well-designated referral pathways and communication systems which would allow for cases of torture to be expertly and urgently referred and managed; and existing structures do not have the human resource capacity to respond to the needs of the sizeable population of tortured migrants. Respondents within government structures noted that reporting pathways exist, however only for forms of torture which fall within the Sexual and Gender-Based Violence Register issued by the Ministry of Health²⁸⁷. Several research participants confirmed that the State provides migrant survivors of torture with only basic healthcare services, and the majority of the non-governmental actors who interact with migrants do not provide torture-specific assessments or services. Tailored, long-term rehabilitation services are not accessible to the vast majority of torture survivors. Whereas a handful of civil society actors provide specialised rehabilitation services to torture survivors, such as psychosocial support, these do not have the resources to meet the extensive needs of all migrant survivors of torture, nor are they always able to attend to survivors promptly.

134. Fear of stigmatisation from the community reportedly acts as a barrier for migrant survivors of torture to access the required care. Moreover, cultural norms prevent in particular male victims/survivors of torture to speak openly about their feelings and experiences of vulnerability. Civil society actors noted that the majority of migrants who had experienced torture did not speak about this openly, which made it difficult for them to receive the services they need. The researchers' experience with focus group discussions on the topic, where men and women were separated in order to encourage open conversations, further confirmed this norm.

“There is stigma associated with torture and many don’t come up to report on their own, someone has to identify them and provide them with support.” (Research participant, MDM, Uganda)

287. The sexual and gender-based violence (SGBV) reporting pathway was developed by UNHCR, the Office of the Prime Minister and other non-governmental organisations which support victims of SGBV. The Ministry of Health has incorporated a register into its information system in order to track cases of SGBV and to provide appropriate care.

Niger

135. Niger is a key transit country for migrants travelling to North Africa. In recent years, Niger has also become a transit and destination country for migrants expelled from Algeria and returned (forced or 'evacuated') from Libya. These returns have put huge pressure on Niger, with some observers describing it as '*a permanent transit centre*'.²⁸⁸
136. In 2014, Niger and Algeria entered into a readmission agreement to enable the return of Nigerien women and children begging in Algeria's coastal cities. Subsequently, Algeria began the mass arrest and expulsion of undocumented Nigerien migrants and their families, within the framework of an oral bilateral agreement with the Government of Niger.²⁸⁹ Since 2016, Algeria has been conducting collective expulsions of other sub-Saharan African migrants, including from Mali, Nigeria and Cameroon²⁹⁰. Migrants are reportedly rounded up by Algerian law enforcement in their workplace or in their homes, beaten up, arrested and detained, before being loaded in buses and transported more than 2,000 kilometres away, to Tamanrasset, in the south of Algeria. Once there, Nigerien nationals are transferred to Assamaka in the north of Niger, before being transported to Agadez by the Nigerien authorities and the IOM and subsequently returned to their region of origin. In parallel, non-Nigeriens are transferred from Tamanrasset to a remote area 15km from the Niger border. According to Amnesty International, from there, migrants, including children, are forced at gunpoint by the Algerian authorities to cross the border and walk over six hours through the desert to reach Assamaka.²⁹¹ In response, as of 2016, IOM has been conducting search and rescue operations to find and assist migrants who have been abandoned in the desert.²⁹²
137. In addition to expelled persons, Niger hosts a large number of migrants who have been evacuated or returned from Libya. In 2017, the UNHCR established an Emergency Evacuation Transit Mechanism – with funding from the EU – for the evacuation of vulnerable refugees trapped in detention in Libya to Niger and, from there, for their eventual resettlement to third countries, if they qualified for refugee status.²⁹³ In this context, the EU asked the IOM to increase the scale of returns that it was already implementing under the umbrella of the EU-IOM Joint Initiative for Migrant Protection and Reintegration.
138. Migrants expelled from Algeria, returned or evacuated from Libya, and those that remain stranded in Niger following the criminalisation of smuggling, can access support

288. Report of the Special Rapporteur on the human rights of migrants, Visit to the Niger, A/HRC/41/38/Add.1, 16 May 2019, at para. 6.

289. Amnesty international (2017), 'Algeria: Mass racial profiling used to deport more than 2,000 sub-Saharan migrants'; The New Humanitarian, 'Why Algeria Is Emptying Itself of African Migrant Workers', 10 July 2018.

290. Amnesty international (2017), 'Algeria: Mass racial profiling used to deport more than 2,000 sub-Saharan migrants'; Human Rights Watch, 'Algeria: Migrants, Asylum Seekers Forced Out', 9 October 2020.

291. Amnesty International (2018), 'Forced to Leave – Stories of Injustice Against Migrants in Algeria'.

292. IOM, 'UN Migration Agency "Greatly Concerned" by Reports of Migrants Stranded at Algeria-Niger Border', 26 June 2018.

293. In December 2017, UNHCR and Niger signed a Memorandum of Understanding, "temporarily expanding the Niger asylum space to these refugees". The Memorandum provides for foreign nationals, deemed potential refugees by UNHCR, to be evacuated from Libya and transferred to Niger, where they will eventually be able to access the resettlement program or, if ineligible, returned to their country of origin. At the end of 2019 the Memorandum was then extended for another two-year duration²⁹³. As of June 2020, 27 evacuation flights had arrived in Niger from Libya, carrying a total of 3,208 people. On arrival in Niger, UNHCR conducts verification interviews. These are followed by refugee status determination procedures, conducted by UNHCR and the Niger Asylum Commission. The ETM is founded on the understanding that refugees will be resettled from Niger in the long run. However, the key contestation of the ETM is related to the slow resettlement pace which has led to refugee protests and dissent from the Nigerien state, as well as the open question of what will happen to evacuees who may not be resettled under the mechanism.

in six IOM transit centres, which are funded by the EU. In 2015, Niger was identified as a privileged territory to establish a multifunctional centre in collaboration with IOM, UNHCR and the authorities of Niger with the aim of offering “*information, local protection and resettlement opportunities to persons in need*”. Migrants who sign up for the IOM's assisted ‘voluntary’ returns programme can receive support for their return to their country of origin (i.e. shelter, food, medical and psychosocial assistance, travel and identity documents and transport). No support or protection and no alternative access to treatment is available for those who do not wish to sign up for the assisted voluntary returns programme, which casts serious doubts on the fully ‘voluntary’ nature of the scheme. A 20-year-old Senegalese returnee gave the following account:

*“Algerian police took us to the border between Algeria and Niger (50 km from Assamaka, the first town after the border in Niger). We numbered 480 people, including Senegalese, Gambians, Guineans from Conakry and Bissau, as well as other nationalities. When we reached the border, the Nigerian army informed the IOM who came and met us. **The IOM only took care of those willing to return to their home countries and abandoned the others without providing any help.** I was able to return to Tamba in Senegal thanks to the IOM who gave me 100,000 CFA francs when I arrived. I was able to receive training on cattle rearing and given three cows worth 600,000 CFA francs. This has meant I’ve been able to return to work. I did not receive any medical assistance or psychological support.”*

139. Only **short-term and limited** medical and psychosocial care services are made available by the State for migrant torture survivors, upon referral from the Regional Directorate of Civil Registration (la Direction Régionale de l’État Civile, DREC). Services are provided by an NGO, APBE, which is principally funded by UNHCR. According to one interviewee, “*Many people were injured but did not receive any medical care. They did not have access to medical care or treatment, and the seriously injured only received minimum care*” (Male refugee interviewed at UNHCR refugee camp, Niger).
140. Many men, women and children in IOM transit centres have been subjected to human rights abuses during their migration journey- including torture and other ill-treatment. Yet there is no systematic and in-depth process to identify returned migrants who have been victims of human rights abuses. The **UN Special Rapporteur on the human rights of migrants** has noted that ‘*of particular concern [...] is the lack of systematic screening and assistance to migrants who have been victims of torture and other [ill-treatment], despite the high prevalence of such violations, especially in Libya.*’. According to the Special Rapporteur, the systematic identification of torture survivors should be prioritised, including to ensure that they are not removed to a State where access to adequate rehabilitative services is unavailable.

Tunisia

141. Tunisia is increasingly becoming a country of destination for people on the move, thus gaining a “triple migration profile”²⁹⁴, given it is also a country of origin and transit. Currently, Tunisia officially hosts over 8800 refugees and asylum seekers²⁹⁵ (an increase of more than 7000 from 2018²⁹⁶) as well as approximately 10,000 other migrants in irregular situations.²⁹⁷ The growth of mixed movements and irregular sea crossings to Europe are among the country’s key migration challenges, as well as its lack of an adequate protection system for these populations. Border management is reportedly a priority within Tunisia’s migration policy, given the rise in the number of Tunisians making the sea journey to Italy, alongside significant numbers of people of other nationalities who transit through the country.²⁹⁸
142. Whilst IOM and UNHCR do collaborate with the authorities at the border, there is no torture-specific screening mechanism in place. As a result of the nationwide state of emergency²⁹⁹ and the country’s “closed-door” migration policy, migrants are generally detained or integrated into host communities, where they are unlikely to access necessary rehabilitation services.
143. Sub-Saharan migrants in “prison-like shelters” in **Tunisia** reported that access to healthcare is a major challenge, noting that accessing public hospital care is bureaucratically complex, and service providers who specialise in the treatment of torture survivors do not visit the shelters. Whilst some specialised rehabilitation services are available from private healthcare providers, survivors of torture are required to pay for such care at the point of use, and may apply for reimbursement from e.g., UNHCR at a later stage. This serves as a barrier to accessing services as migrants find themselves unable to cover these costs upfront, or unable to wait to be reimbursed. As a result, it was reported that migrants who are survivors of torture regularly develop health complications and are forced to live with their injuries.

294. German Council on Foreign Relations, (2021) ‘Walking a tightrope in Tunisia’, accessed at <https://dgap.org/en/research/publications/walking-tightrope-tunisia> on 21st October 2021, p. 6

295. United Nations High Commissioner for Refugees (UNHCR), ‘Operational data portal – refugee situations: Tunisia’, accessed at <https://data2.unhcr.org/en/country/tun> on 22nd October 2021 (correct as of 30th September 2021)

296. United Nations High Commissioner for Refugees (UNHCR), ‘UNHCR Tunisia Fact Sheet - March 2018’, accessed at <https://reliefweb.int/report/tunisia/unhcr-tunisia-factsheet-march-2018> on 20th October 2021

297. German Council on Foreign Relations, (2021) ‘Walking a tightrope in Tunisia’, accessed at <https://dgap.org/en/research/publications/walking-tightrope-tunisia> on 21st October 2021, p. 4

298. German Council on Foreign Relations, (2021) ‘Walking a tightrope in Tunisia’, accessed at <https://dgap.org/en/research/publications/walking-tightrope-tunisia> on 21st October 2021, p. 6

299. Al Jazeera, ‘Tunisia extends five-year-old state of emergency by six months’, 26th December 2020, accessed at <https://www.aljazeera.com/news/2020/12/26/tunisia-extends-five-year-state-of-emergency> on 21st October 2021

Kenya

144. Kenya is one of the most important refugee-hosting countries in Africa. The majority of the refugees and asylum seekers in the country are from Somalia (54.5%). Other important countries of origin include South Sudan (24.4%), the DRC (8.8%); and Ethiopia (5.9%). While most people fleeing from conflict in South Sudan arrive in Kakuma, in northern Kenya, most Somali refugees flee to Dadaab, in Garissa County in the east.³⁰⁰
145. The levels of trauma and torture reported among the refugees in these camps are severe. Many refugees report having experienced targeted violence as well as random atrocities of war. According to the Centre for Victims of Torture, “particularly disturbing are the high levels of rape and sexual violence reported by refugees throughout their experience, including as acts of war in their home communities.”³⁰¹
146. The National Commission on Human Rights has set up a committee of State and non-State actors who work on ensuring that there is an effective referral mechanism for human rights violations. Moreover, the Refugees Act 2006 and its subsidiary regulations, the ‘Refugees (Reception, Registration and Adjudication) Regulations’, provides procedures for the reception, handling and processing of refugees, including the provision of competent interpreters for asylum seekers and refugees by the Commissioner for Refugee Affairs. However, this legislation does not include a process for the identification of survivors of torture. This is compounded by the generalised lack of knowledge and training of border officials on how to identify and assist vulnerable migrants, including torture survivors. According to the researchers, more broadly, policy makers are said to lack understanding of the legal and policy protections afforded to migrants under national and international law. Government agencies generally lack expertise in how to document human rights violations, including torture, and are not widely trained on the Istanbul Protocol. This lack of capacity makes redress unattainable for the majority of torture survivors, for example because of poor documentation practices which entail that evidence cannot stand in court. The research in Kenya also noted that the educational and awareness-raising needs among immigration officers are high and include an improved comprehension of cultural values and dynamics of key refugee groups in order to better understand their fears of persecution and subsequent reasons for migrating.
147. The Prevention of Torture Act (2017) explicitly provides for court sanctioned rehabilitation for victims of torture, at any time, with the cost to be covered by the Victim Protection Trust Fund, which was established by the Victim Protection Act in 2014. This provides a legal basis for victims to get the support they need to address the physical and psychological consequences of torture, including prior to the conclusion of, often lengthy, legal proceedings.³⁰² However, the Victim Protection Act is yet to be fully implemented and adequately resourced. As a result, survivors of torture cannot access rehabilitative services, and civil society actors, such as the **Independent Medico-Legal Unit (IMLU)** bridge the gap by providing such services. Alternatively, victims have to fund their rehabilitation themselves.

300. United Nations High Commissioner for Refugees (UNHCR), (2021) ‘Figures at a Glance’, accessed at <https://www.unhcr.org/ke/figures-at-a-glance> on 21st October 2021

301. The Center for Victims of Torture, (2013?) ‘Dadaab, Kenya’, accessed at <https://www.cvt.org/where-we-work/africa/dadaab-kenya> on 21st October 2021

302. OSCE Office for Democratic Institutions and Human Rights (ODIHR) and Convention Against Torture Initiative (CTI) (2018) ‘Providing rehabilitation to victims of torture and other ill-treatment - UNCAT Implementation tool 5/2018’, accessed at <https://cti2024.org/resource/cti-uncat-implementation-tool-5-2018-providing-rehabilitation-to-victims-of-torture-and-other-ill-treatment/>, p. 9

Senegal

148. The legal institutional framework in Senegal does not provide for rehabilitation programmes for victims of torture “in cases where the perpetrator of the acts of torture has not been identified” (CAT/C/SEN/CO/4, §40.a) and there is a lack of information on reparation measures ordered in favour of victims of torture. That is because Senegal does not have a specific law on torture – the provisions prohibiting and punishing the practice are set out in its criminal code. This means that the restitution, compensation, and rehabilitation of torture victims is contingent upon a prior criminal conviction (article 2 & 3 of the criminal procedure code and Article 145 of the Code of Administrative Obligations). In 2019 the Committee Against Torture clearly recommended to Senegal to *“fully assess the needs of victims of acts of torture and ensure that specialized rehabilitation services are readily available, either by providing such services directly or by funding services provided by external partners, including those provided by non-governmental organizations”*. (CAT/C/SEN/CO/4, §40.b).
149. Law No. 2005-06 of 10 May 2005 on Trafficking in Persons and Assimilated Practices and Victims’ Protection prohibits the smuggling of migrants (articles 4 to 7) and provides for redress and legal assistance to victims especially when they are vulnerable (article 16). The law remains silent on other forms of assistance and rehabilitation including medical, psychological and socio-economic reintegration of migrants. Senegal has also signed bilateral agreements with European states which include the protection, repatriation and reintegration of migrants. This includes the **2007 Agreement with the Kingdom of Spain** on cooperation in the field of prevention of immigration of unaccompanied Senegalese minors, their protection, repatriation and reintegration.
150. The Assistance, Guidance and Monitoring Office (Bureau d’Assistance, d’Orientation et de Suivi) of the Ministry of Foreign Affairs Directorate is responsible for the provision of economic, social and psychosocial assistance to Senegalese nationals overseas and returnees. Such returns are generally lacking transparency – in the case of Senegalese nationals in Libya for example, it appears that they are identified by the Tunis-based consular representation for Libya, and thereafter repatriated without proper support on arrival.
151. Researchers interviewed 30 Senegalese migrant returnees in the regions of Kolda (central South) and Tambacounda (southeast), two regions in Senegal particularly affected by irregular migration. The interviewees had returned from Libya as well as other transit countries (Niger; Morocco, Algeria, etc.) and certain host countries (Spain, Italy, etc.). They all disclosed having been subjected to torture and/or other ill-treatment along the migration route, mainly at the hands of the security forces in Libya and Algeria. Twenty of the 30 individuals spoken with were repatriated to Senegal with the support of the Senegalese embassy or the assistance of IOM. Others claimed to be from another country and were returned with the assistance of the claimed State of nationality. None of the returned migrants has been formally identified as a torture victim and benefited from any kind of specialised, rehabilitative, medical and psychological support. An IOM study on returned migrants reveals that 43% in Kolda and 49% in Tambacounda said they were in need of psychological assistance, and only 9% could have access to it.³⁰³

303. Samuel Hall, Cartographie et profil socioéconomique des communautés de retour au Sénégal (Rapport de Synthèse). Bureau régional pour l’Afrique de l’Ouest et du Centre de l’Organisation internationale pour les migrations. <https://www.migrationjointinitiative.org/sites/g/files/tmzbd1261/files/files/articles/oim-senegal-rapport-de-synthese-january-2019.pdf>. Avril 2018,

- *"Along with the other Senegalese detained, we were able to call the Italian embassy to notify them of our detention. An Italian NGO came to see us in prison on behalf of the Senegalese authorities in order to send us home. I was repatriated by the Senegalese government. Upon my return, I spent three months in the main hospital where they diagnosed me with diabetes. I received a visit from the Minister in hospital, who gave me the sum of 100,000 CFA francs. When I was released from hospital, I was able to receive training as a market gardener from the NGO Lumière, but I did not have any support to start gainful employment. I would like to work in aviculture, gardening or trade. I am still sick, and I need urgent medical care. Since I returned home, I live with my three children, but I cannot make ends meet and I sometimes resort to begging to feed my family. My wife asked for a divorce just after I returned as she couldn't cope with the failure".*
- *"We managed to call the Senegalese Ambassador stationed in Tunisia who informed the Tunisian Red Cross. They came to pick us up in four buses. We were taken to Tunisia where we were given clothes, bags, soap, pull-overs, etc. The Senegalese Ambassador sent us to Dakar. I received 100,000 CFA francs when I arrived. I have not received any other type of help, be it medical, psychological or even monetary to get on with my life."*
- *"I was imprisoned in Tripoli for a week where we were malnourished. To avoid having to wait for the Senegalese authorities, I said I was Gambian and I was evacuated by the IOM to Gambia, thanks to an intervention overseen by the Gambian authorities. I received 43,000 CFA francs from the IOM while waiting to go to Dakar, where I also received 55,000 CFA francs. Once I was in Dakar, I was able to get five days training from the IOM on project management. I then filed a joint project with seven other returned migrants, and we received funding. I am a mechanic and already have a workshop: I will need to get mechanical parts to sell."*

CONCLUSIONS AND RECOMMENDATIONS

Hundreds of thousands of people in sub-Saharan Africa, including children, are embarking upon perilous journeys, in search of safety, dignity and survival. Some are fleeing persecution and human rights abuses, including torture and other ill-treatment, armed conflict, and violence. Others leave their homes and communities to escape poverty or the consequences of environmental degradation, to access better economic or educational opportunities, or to reunite with family members. As in other parts of the world, the vast majority will stay in the region, while others will seek sanctuary further afield, in North Africa and in Europe.

In the absence of safe and legal pathways to migration, these people on the move have no option but to travel along land and maritime routes often operated by smugglers and traffickers. Their journeys are characterised by unspeakable cruelty and brutality. Every day along these routes, migrants are tortured and killed; are kidnapped and detained for ransom; are subjected to rape and other forms of sexual violence; are enslaved and exploited for labour. Children, women and LGBTQI+ persons on the move are particularly vulnerable to torture and other ill-treatment, including sexual violence, both by State and private actors.

Thousands have drowned in the Mediterranean, because their boats capsized and sank or because they were forced overboard by smugglers and traffickers or coast guards in dangerous interception operations. Thousands more have perished in the desert, of asphyxiation in overcrowded trucks, of dehydration and hunger, of despair. Countless deaths go unrecorded, countless bodies are never found.

Many States in Africa have responded to this unfolding humanitarian and human rights crisis by adopting stricter migration controls and policies, based on containment, criminalisation, and deterrence. Unquestionably, these measures expose people on the move to human rights abuses, including torture and other ill-treatment. They include militarising border control; criminalising irregular entry; placing migrants in detention – often in inhumane conditions – for prolonged periods; building walls and erecting fences; conducting pushback and pullback operations; and refoulement.

In many countries on the continent, such as Niger, these measures are adopted under pressure from countries in the Global North and the international community. To prevent migrants from crossing the two main physical obstacles on their way to Europe, and contain them in situ, the EU and individual States acting bilaterally are entering into cooperation agreements with countries of origin and countries of transit pursuant to which border control no longer takes place at the physical borders of the bloc but is effectively externalised to African nations. This approach traps people on the move in a vicious cycle, forcing them to resort to even more dangerous routes to avoid detection and straight into the hands of smugglers and traffickers.

In this context, the widespread practice and prevalence of torture must be recognised and acknowledged. As documented in this report, torture is a key driver of forced migration. Torture is also pervasive along the journey, at the hands of State and non-State actors. From the research it clearly transcends that torture on the migration route are not just incidents of individual abuse through particular law enforcement or border officials. The practice is widespread and systemic, transversal and recurring across the migration journey. There may be many incarnations and diverse factors contributing to torture in migration. Among them are also weak rule of law and human rights cultures in law enforcement that are amplified through the pre-dominant if not exclusive focus on migration repression as outlined above.

All this goes with a total breakdown of the rule of law and existing protection mechanisms along the migration journey. The traditional systems of protection, such as the legal and judicial system, national human rights institutions or preventive mechanisms, but also access to local human rights organisations is largely illusory. More than this, there is no evidence that accountability for torture is wanted. The breakdown of the rule of law and of protection systems is evident from the inability to point in our research to any credible evidence, report or account of meaningful investigations into torture or even legal sanctions imposed on those responsible for torture of migrants.

The logical inference is that the prevention of torture is not seen or recognized as a key concern despite its legal status as a *jus cogens* norm binding on all States and at any moment. In real life the risk of torture appears to be seen as an unfortunate side effect. There is thus a fundamental need for a sea change in which torture is not seen in the form of incidents but as a transversal concern to be mainstreamed across any migration policy. In fact, torture intersects or is a common denominator in many of the patterns of abuse documented in this report, be it arbitrary detention, trafficking, excessive use of force or omission to provide assistance at borders, etc. Just like smuggling and trafficking in human beings, torture is a transnational serious crime and should be at least an equally important concern in any credible and legitimate migration policy.

Torture and slavery are two absolutely banned practices as they constitute the most abhorrent form of degradation and attack on the inherent dignity of the human person. If the international community and the States, from the Global North and Global South, turn a blind eye on such a systematic and widespread pattern of acts and omissions constituting torture and slavery-like practices, this not only contravenes international norms, of peremptory status, but constitutes a failure of vast magnitude to uphold the foundations of the democratic values behind the Universal Declaration of Human Rights and following treaties, which can have lasting consequences for the international order.

In fact, States' sovereign powers to control their borders are subject to international law and must be exercised compatibly with fundamental rights, including the absolute prohibition on torture and other ill-treatment. The universal standards on the prevention and prohibition of torture do provide a distinct added value to international refugee law and for migration policies as they apply anywhere on the migration routes and irrespective of any status consideration of those being on the move. They provide a foundational benchmark for laws, policies and practices in migration. This includes a clear framework for States to act in due diligence obligation to protect everyone on their territory and under their jurisdiction from human rights abuses such as torture by private actors. These

obligations are being flouted on a daily basis, in complete impunity. Death, violence and abuse along the route is increasingly normalised and tolerated as an assumed risk of irregular migration.

The consequence is that there is an alarmingly high number of torture survivors amongst migrant populations, who have a right to an effective remedy and who require special protection and specialised assistance, irrespective of their legal status. In practice, States' response has been and remains woefully inadequate in relation to victims and survivors needs. To the contrary much of the migration policies that criminalise or deter migrants risk to retraumatize survivors of torture.

As States continue to reinforce migration control without equally prioritizing human rights protection and the prevention of torture, the risks migrants face are likely to increase. Instruments, such as the New Pact on Migration and Asylum of September 2020, need to be revisited to reflect and integrate a human rights and prevention of torture perspective – as it remains focused on containment and deterrence, including through renewed cooperation with origin and transit countries, despite the well-documented devastating human rights impacts of externalisation.

The profound suffering and victimisation experienced by migrant torture survivors cannot be ignored. It demands urgent attention at the national, regional and international levels.

The following measures are recommended:

Overall recommendations:

- I. All States have to refrain from adopting laws and practices, such as blanket laws criminalising mobility or other collective measures such as “pushbacks”, that blatantly negate the human dignity of affected migrants. All migrants and persons on the move must be treated with dignity.
- II. State actors and other stakeholders in the definition and implementation of migration policies should recognize the fight against torture and other ill-treatment among the transversal priorities. Any migration law, policy or practice should mainstream an anti-torture perspective or undertake a clear safeguarding policy.

1. African States

Policy reforms and Prevention of torture and other ill-treatment against people on the move

States should take effective legislative, administrative, judicial, or other measures to **prevent any act of torture and other ill-treatment** against people on the move, including against women, children and LGBTQI+ persons who are particularly vulnerable, in any territory under their jurisdiction by State and non-State actors. States should audit their migration policies to build a coherent preventive framework on torture and other ill-treatment and to integrate support to victims and survivors' needs into their migration policies. To do so they should engage civil society, national human rights institution or national preventive mechanisms in a dialogue that will lead to the adoption of National human rights plans that integrates torture preventive laws, policies and measures and train law enforcement officials in implementing them.

(i) **Laws, policies and measures:**

- 1.1. States should ensure that immigration laws, policies and measures, including those aimed at addressing irregular migration and organised crime (including migrant smuggling and trafficking in persons) are fully compliant with international human rights law and international refugee law, **including the absolute prohibition on torture and other ill-treatment and the principles of non-discrimination and non-refoulement**. This requires not only a mere add on in human rights language but a substantive review on how efforts against smuggling and organized crime integrate policies to prevent torture and other ill-treatment.
- 1.2. The prevention of torture and other ill-treatment, including sexual violence, should be reflected in any migration framework as a distinct target the same way as smuggling or trafficking in human beings, and any framework on the dissuasion and repression of illegal migration must integrate clear anti-torture policies.

To that effect,

- 1.2.1. States should uphold the prohibition on *refoulement* at all times, and refrain from any individual or collective deportation, transfer or summary rejection of migrants without an individualised risk assessment, including through readmission agreements, border closures or “pushback operations”.
- 1.2.2. Any person found to be at risk of torture or other ill-treatment on return should be allowed to remain on the territory of the State.
- 1.2.3. States should refrain from instigating, encouraging, supporting or otherwise facilitating or participating in “pullback” operations conducted by other States or non-State actors in violation of the right of migrants to leave any country, and to seek and enjoy asylum.
- 1.2.4. States should repeal legislation criminalising irregular entry or any attempt thereof and ensure that any administrative sanction applied to irregular entry is proportionate and reasonable.
- 1.3. States should ensure the **transparency, oversight** and **accountability** of agreements adopted with third States related to migration management and border control, including readmission agreements and agreements adopted in furtherance of externalisation policies. States should **facilitate independent monitoring**, by National Human Rights Institutions and civil society organisations, of the human rights impacts of these agreements, including the impact on the prohibition on torture and other ill-treatment.

(ii) **Training and capacity-building of border officials:**

- 1.4. States should ensure that border authorities are adequately trained on applicable international human rights and refugee law and guidance, including the standards laid down in the United Nations Convention against Torture

and Other Cruel, Inhuman or Degrading Treatment or Punishment, the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, the OHCHR's *“Recommended Principles and Guidelines on Human Rights at International Borders”*, and any other applicable guidance, as well as their practical implementation. Training should expressly seek to address and **prevent corruption and extortion** by border officials as well as **discrimination** against people on the move, including as manifested in xenophobia, racism, racial discrimination, and related intolerance, and subject to regular monitoring and evaluation to assess its effectiveness in preventing human rights violations against people on the move. Border officials have a determining role in the early identification of torture survivors and setting in motion the referral process, they should receive extensive training about the risk and consequences of torture and the early warning signs of torture, as well as on the States' responsibilities with respect to migrant torture victims, to make appropriate referrals and avoid the re-traumatisation at borders of survivors of torture, violence and trauma.

- 1.5. States should ensure that border authorities or any other authority are sensitised on the **vulnerability** of people on the move and on the range of risks and abuses they may experience during the migration process, as well as on the additional vulnerability of women, children and LGBTQI+ persons, including at the hands of smugglers and traffickers.
- 1.6. States should develop and adopt **binding codes of conduct** for border officials in accordance with international human rights and best practice, on respecting and ensuring the human rights of migrants, including their right to be free from torture and other ill-treatment.

(iii) **Detention:**

- 1.7. States should establish a **legal presumption against immigration** detention and prioritise the implementation of non-custodial, community-based alternatives to detention that respect the human rights of migrants.
- 1.8. States should not detain vulnerable migrants, **including survivors of torture** and other ill-treatment. States should **never detain children for immigration purposes**, even for short periods, whatever their status or the status of their parents.
- 1.9. In the exceptional circumstances where immigration detention is used, States should ensure that **procedural safeguards** in line with international human rights law are fully implemented and that detention conditions respect the fundamental dignity of the person and meet the minimum standards of international law.

Investigation, prosecution and punishment of torture and other ill-treatment against people on the move

States should ensure that their national legislation is fully compatible with the UNCAT and criminalises torture and other ill-treatment as such; conduct investigations de officio and in a prompt and impartial manner wherever there is a reasonable basis to believe that torture and other ill-treatment may have occurred; and prosecute and punish those responsible. To that end,

- 1.10. States must stop, sanction and provide remedies to victims of acts impermissible under the UNCAT committed by non-State actors under their de jure or de facto jurisdiction. States bear an international responsibility to exercise due diligence to prevent, investigate, prosecute and punish such non-State officials. The failure to protect migrants from recurrent and widespread violations on the part of private actors amounts to a blatant contravention of peremptory norms enshrined in the UNCAT.
- 1.11. States should ensure that all migrant torture survivors, whatever their legal status, have **access to effective remedies** for violations of the prohibition of torture and other ill-treatment perpetrated on their territory and under their jurisdiction, including at international borders. This includes effective and confidential access to independent legal advice and representation, in accordance with international standards. To facilitate reporting by migrant torture survivors, States should establish explicit and **binding firewalls** to enable migrants to access justice without fear that they will be arrested, detained, or expelled because of their migration status.
- 1.12. States should strengthen or establish official mechanisms and procedures to receive, investigate and monitor allegations of torture and other ill-treatment against migrants wherever they may occur on the territory and under the jurisdiction of the State, including at the border, in reception facilities and in detention centres.
- (i) **Monitoring of and accountability for human rights violations**
- 1.13. States should establish or strengthen independent reporting mechanisms to monitor and assess the human rights impacts of laws, policies and practices designed to address irregular migration, including potential violations of the prohibition on torture and other ill-treatment by State and non-State actors (in particular smugglers and traffickers). To that effect, States should facilitate cooperation and information-sharing between border authorities and other actors, including police, national human rights organisations, civil society and international organisations, while maintaining confidentiality.
- 1.14. States should take appropriate steps to **investigate, prosecute and punish** human rights violations against migrants by **border officials as well as their superiors in the chain of command, whether by acts of instigation, consent or acquiescence**, including the involvement or complicity of such officials in human rights violations by private actors. States should also investigate, and prosecute allegations of extortion and corruption by border officials.
- 1.15. States should ensure that all migrants who have suffered human rights violations or abuses because of border control measures and other migration control measures have access to effective remedies, including adequate and prompt reparation for the harm suffered, whatever their legal status, independent of the conviction of the perpetrator.

Prompt identification of migrant torture survivors and access to specialised responses and services

All appropriate measures should be taken to provide migrants survivors of torture, violence and trauma with adequate identification and rehabilitation programmes including referring them to medical and psycho-social services. This should also include any measures at borders and during repatriation to avoid re-traumatisation. To that end,

- 1.16. States should ensure that migrant survivors of torture and other ill-treatment, including sexual violence, are identified **as promptly as possible through adequate screening in accordance with the** the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol), and have access to redress, including as **full rehabilitation** as possible, as well as access to relevant protection measures and basic services. To that end, States should establish or strengthen operational guidelines and agreements with national protection bodies to ensure timely and effective referral of migrant torture survivors in need of rehabilitation, protection and assistance.
- 1.17. States should adopt a **trauma-informed, holistic and survivor-centred approach** to the provision of rehabilitation services, integrating medical care, sexual and reproductive health services, and psychosocial and other forms of support to promote recovery and rehabilitation.
- 1.18. States should ensure that **service providers** are trained on the early identification of signs of torture, taking into account the Istanbul Protocol, and other indicators of vulnerability, including related to gender and age, of migrant torture survivors and the human rights of people on the move affected by violence, including the right to be free from discrimination; and sensitised on their experiences pre-flight and in countries of transit and destination, including smuggling and trafficking.
- 1.19. In **transit settings**, States should implement a rehabilitation strategy focused on providing immediate access to care, material support and coping strategies, building resilience and maintaining stability. Long-term solutions should include more in-depth rehabilitation services and community-based responses.

(i) Returns

- 1.20. States should ensure that any migrant who is asked to consent to a voluntary return process has access to **accurate, reliable and objective information**, in a language that they can understand, in relation to the place and circumstances to which they will be returning. Consent must be **fully informed and freely given**. States should ensure that individuals are not subjected to violence or ill-treatment, to indefinite or arbitrary detention (or the threat thereof), or to detention in inadequate conditions, to force compliance with the returns process.
- 1.21. States should ensure that returns are carried out in accordance with international law, in safe conditions, with dignity and respect and having full regard to the protection and assistance needs of the individual.

- 1.22. States should establish or strengthen human rights-based reintegration programmes for returnees. Torture survivors should have access to redress upon return, including access to full rehabilitation.

2. The African Union, the African Commission on Human and People's Rights and the ECOWAS Commission should:

Monitor migration control measures adopted at the national level and work with States to ensure that they are fully compatible with international and regional human rights and refugee law standards. To that end,

- 2.1. Effectively and transparently evaluate the **human rights impact of the external migration policies of the EU and Member States in Africa** and ensure that migration control measures adopted by African States as a consequence are compatible with their international and regional legal obligations.
- 2.2. Ensure that regional and sub-regional migration strategies and action plans conform with international human rights norms and standards and take full account of the **vulnerabilities and needs** of people on the move.
- 2.3. Work together to ensure that States provide a **coordinated response to mixed movements** in the region based on respect for international human rights and paying particular attention to the risks of torture and other ill-treatment against people on the move by State and non-State actors.
- 2.4. Develop reliable systems of **monitoring and data collection** to better understand the incidents and patterns of torture and other ill-treatment amongst people on the move as well as its causes and consequences; the specific needs of victims/survivors; and the experiences of returnees. Data collection should be conducted in line with international human rights law standards, and States should establish firewalls between data collected for the identification of protection needs, and data collected for the purposes of law enforcement.
- 3.5. Ensure that domestic laws and/or practice in the field of migration is compatible with the **ECOWAS free movement protocols**, including by encouraging States to repeal restrictive immigration laws that undermine the freedom of movement of ECOWAS nationals and/or to ensure that officials guarantee the right to freedom of movement under the protocols.
- 3.6. Work with States to facilitate the provision of documentation to all nationals of ECOWAS member States as a means of ensuring the implementation of freedom of movement.
- 3.7. Ensure that ECOWAS nationals who are victims of collective expulsions as well as returnees have access to redress, including access to information about their legal rights, access to consular services, and access to legal representation.

3. Third States including the European Union (EU) and its Member States should:

- 3.1. Strengthen its support to local anti-torture actors and support rule of law and human rights reforms within the African countries including in the context of migration, including by making use of the EU Anti-torture Guidelines.
- 3.2. Overhaul, suspend or refrain from adopting laws, policies and entering into agreements that knowingly or deliberately subject or expose migrants to foreseeable acts or risks of torture and other ill-treatment and exclude protections against such abuse. The lack of due diligence to protect migrants in migration policies, practices and agreements with third States entails their responsibility for acquiescence or complicity in torture and ill-treatment.
- 3.3. Significantly increase the availability of **safe and legal pathways** to Europe, including through resettlement, humanitarian admissions, asylum visas, family reunification, labour mobility and other schemes, and improve on existing pathways, in order to curb migrant smuggling and trafficking.
- 3.4. Refrain from making the allocation of development aid to African states **conditional** upon cooperation with the EU and/or Member States on migration policies.
- 3.5. Ensure that EU and/or Member State migration policies and agreements with ECOWAS Member States do not infringe on the **freedom of movement** rights of ECOWAS nationals.
- 3.6. Evaluate the **human rights impact** of the implementation of external migration policies and formal and informal agreements with third countries, including support for border and security forces, in a comprehensive and transparent manner. Ensure that any such agreements include a credible component on human rights and mainstream the fight against torture and other ill-treatment in migration as one of its objectives.
- 3.7. Establish or facilitate an **independent, transparent and effective** monitoring mechanism, on the basis of international law, the EU Charter of Fundamental Rights, and the Sustainable Development Goals, which includes periodic reporting on the implementation of formal and informal agreements with third countries in the field of migration and the human rights impact thereof. Ensure that civil society and other stakeholders can contribute to the work of the mechanism.
- 3.8. Ensure **access to justice** for migrants whose human rights are affected as result of measures adopted with third countries in the field of migration, including through establishing an independent complaints mechanism.
- 3.9. Provide financial support for **durable solutions** to forced displacement and protracted refugee situations which respect human dignity and the needs of the most vulnerable.

4. Humanitarian actors should:

- 4.1. Monitor, document and report on human rights violations, including torture and other ill-treatment by State and non-State actors against people on the move within countries of operation, in order to **inform humanitarian advocacy debates and policy dialogue**, including bilateral dialogue with European Union/African Union institutions and their Member States.
- 4.2. Continue to **draw attention to the humanitarian consequences** associated with the lack of safe and legal migration routes as a result of increasingly stringent migration controls, including the risks of torture and ill-treatment, and advocate for the development of safe legal pathways.
- 4.3. Continue to **challenge security-driven migration management approaches**, and to draw attention to their adverse consequences on the **maintenance of humanitarian space** and **the delivery of a principled and needs-based humanitarian response**, inclusive of all migrants.
- 4.4. Continue to advocate with donors on the importance of **making funding available for independent humanitarian action, rather than contingent upon cooperation on migration policies**, in order to allow for the delivery of needs-based protection and assistance to people on the move, including access to rehabilitation and redress for survivors of torture and other ill-treatment, in accordance with the humanitarian mandate.

5. Civil society organisations should:

Through their various advocacy and assistance programmes, maintain and enhance their contribution to a better prevention and protection of people on the move from torture and ill-treatment in their countries by continuing to,

- 5.1. **Monitor and document** human rights violations against people on the move in their respective countries, including incidents and patterns of torture and other ill-treatment by State and non-State actors, as well as its causes and consequences; the specific needs of victims/survivors; and the experiences of returnees, and report to regional and international treaty bodies.
- 5.2. **Collaborate with States** to evaluate existing migration policies, programmes and agreements with third States aimed at curbing irregular migration, including the assessment of the human rights impacts of migration control measures, to identify where such practices may constitute an infringement on the human rights and dignity of migrants.
- 5.3. **Systematically condemn, draw attention to, and call for action** on policies or practices of their governments and third States which, under the guise of migration control, expose migrants to a risk of torture and other ill-treatment as well as other human rights violations.
- 5.4. **Bridge the gap** between the needs of torture victims/survivors, including those who are on the move, and their right to redress and reparation, including full rehabilitation, by providing specialised rehabilitation services, including medical

and psychosocial support, as well as legal and social services.

- 5.5. Advocate with States for the importance of maintaining **civic space** to allow civil society organisations to assist victims/survivors of torture access to humanitarian assistance.

6. The United Nations Committee Against Torture should:

*Recognise the **vulnerability to torture and other ill-treatment of people on the move at all stage of the migration journey** and call on all State parties that are countries of origin, transit and destination to take special measures for their protection, in full compliance with UN The UN Convention against Torture. This should include,*

- 6.1. **Adopt a General Comment on torture and other ill-treatment in the context of mixed movements**, as a follow up of General Comment No. 2 and General Comment No.4. The General Comment should address the application of the absolute prohibition on torture and other ill-treatment to laws, measures and policies adopted by States in response to irregular migration, including those connected to border externalisation policies. The General Comment should also address acts and omissions by private actors, including human trafficking and smuggling, and the due diligence obligations of State parties to prevent and punish such acts and omissions.
- 6.2. Recommending that State parties to the UNCAT comply with their obligations to respect and ensure the right of people on the move on their territory to be free from torture and other ill-treatment, including by taking effective legislative, administrative, judicial or other measures to **ensure that people on the move will not, as a consequence of migration control laws, policies and measures, be exposed to acts or risks of torture and other ill-treatment**; by exercising **due diligence** to prevent torture and other ill-treatment by private actors, in particular smugglers and traffickers; and by ensuring that migrant torture survivors within mixed movements are promptly **identified** and have access to **redress**.
- 6.3. Systematically include recommendations on combating torture and other ill-treatment within the context of mixed movements in concluding observations and recommendations to States following periodic reviews.
- 6.4. Conduct confidential inquiries under article 20 of the Convention against Torture in countries where there are well-founded allegations of the systematic practice of torture and other ill-treatment against people on the move;
- 6.5. Introduce a section in the annual report on the Committee actions to address the issue of migration and torture and other ill-treatment.

7. The International Organization for Migration (IOM), United Nations High Commissioner for Refugees (UNHCR) and the Office of the High Commissioner for Human Rights (OHCHR) should:

- 7.1.** Strengthen their **coordination, cooperation and complementarity** in order to ensure people on the move, including migrant victims of torture, have access to specialised protection and assistance.
- 7.2.** Continue to **monitor and document** human rights violations against people on the move in, including incidents and patterns of torture and other ill-treatment by State and non-State actors, as well as its causes and consequences; the specific needs of victims/survivors; and the experiences of returnees, in order to inform advocacy debates and policy dialogue, including bilateral dialogue, particularly with European Union/African Union institutions and their Member States.

Specifically, IOM should:

- 7.3.** In its organisation of voluntary returns, fully respect the principle of non-*refoulement*, enshrined in both the Refugee Convention and the UNCAT, as well as take steps to ensure such returns occur under entirely **voluntary circumstances**, free from indirectly or directly coercive elements (such as financial rewards, free transportation or other incentive schemes).
- 7.4.** **Facilitate the regular access** of independent human rights actors and oversight mechanisms to its transit centres, to allow for the early identification of migrant torture survivors, as well as victims of other human rights violations common along the migration route, in order to address their specialised assistance and protection needs.
- 7.5.** Commit to placing human rights obligations and standards at the centre of their **identification of vulnerable people on the move and in their repatriation processes**, even when such principles appear to conflict with obligations towards Member States, for whom protection and assistance to people on the move may primarily be a matter of migration control.

Specifically, UNHCR should:

- 7.6.** Continue to work with States to develop and implement human rights and asylum protection sensitive border management systems.
- 7.7.** Continue to monitor and document the impacts of externalisation policies and practices, and continue to conduct advocacy with the EU, African States and other relevant stakeholders to ensure that such policies and practices do not undermine the right to seek international protection and are conducted with the required safeguards under international refugee and human rights law.

Specifically, OHCHR should:

- 7.8.** Continue to advocate for a **human-rights based approach to migration** by providing evidence and developing and disseminating knowledge to enable key migration actors, including governments, regional bodies and the IOM to better protect the human rights of migrants, including migrant survivors of torture.

GLOSSARY³⁰⁴

- **Asylum seeker:** A general term for any person who is seeking international protection. In some countries, it is used as a legal term referring to a person who has applied for refugee status or a complementary international protection status and has not yet received a final decision on their claim. It can also refer to a person who has not yet submitted an application but may intend to do so or may be in need of international protection. Not every asylum-seeker will ultimately be recognised as a refugee, but every refugee is initially an asylum seeker.
- **Collective expulsion:** Any measure compelling non-nationals, as a group, to leave a country, except where such a measure is taken on the basis of a reasonable and objective examination of the particular case of each individual of the group. Alternative term mass expulsion is sometimes used.
- **Country of destination:** The country that is the actual or desired final destination for an asylum-seeker, refugee or migrant.
- **Country of origin:** The country where an asylum-seeker, refugee or migrant comes from and of which they possess nationality. In the case of stateless persons, the country where they have their habitual residence.
- **Country of transit (or transit country):** The country that an asylum-seeker, refugee or migrant moves through (legally or irregularly) during their journey to a country of destination or back to their country of origin or habitual residence. *Note: there is a notion of temporariness in the concept of transit. However, for many migrants and refugees, particularly those moving irregularly, the journey to an intended destination can take months or years. This challenges the very notion of transit and triggers the question on how much time needs to pass for the country of transit to be considered as a destination.*
- **Deportation (or removal):** Coerced physical removal of a person to their country of origin or a third country by the authorities of the host country. Related term removal is sometimes used. *Note: A distinction may be made between forced return and deportation insofar as a person may be deported (but not returned) to a country they have never been to before.*
- **Displacement:** The movement of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence (whether within their own country or across an international border), in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters.

304. Unless otherwise specified, the definitions provided herein are drawn from the [UNHCR Master Glossary of Terms](#) (2021) and the IOM Glossary for Migration (2019).

- **Economic migrant:** While not a category in international law, the term is sometimes used to refer to any person who is moving or has moved across an international border or within a State, solely or primarily motivated by economic opportunities.
- **Expulsion:** A formal act by a State authority with the intention of securing the removal of a non-national from its territory. Refugees lawfully on the territory of the State can only be expelled for reasons of national security and public order, and the State remains bound by its non-refoulement obligations. *Note: The terminology used at the domestic or international level on expulsion and deportation is not uniform but there is a clear tendency to use the term expulsion to refer to the legal order to leave the territory of a State, and removal or deportation to refer to the actual implementation of such order in cases where the person concerned does not follow it voluntarily.*
- **Forced displacement (or forced migration):** The movement of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence (whether within their own country or across an international border), in particular as a result of or in order to avoid the effects of armed conflict, situations of generalised violence, violations of human rights or natural or human-made disasters.
- **Forced return:** The return of foreign nationals to their country of origin or country of transit against their will.
- **Freedom of movement:** A core human right that consists of three basic elements: freedom of movement within the territory of a country; the right to leave any country; and the right to return to one's own country.
- **Host country:** The country in which a non-national stays or resides, whether legally or irregularly.
- **Internal displacement:** The involuntary or forced movement, evacuation or relocation of persons or groups of persons within internationally recognised State borders.
- **Internally displaced person (IDP):** A person who has been forced or obliged to flee from their home or place of habitual residence, in particular as a result of or in order to avoid the effects of armed conflicts, situations of generalised violence, violations of human rights or natural or human-made disasters, and who has not crossed an internationally recognised State border.
- **International protection:** The protection that is accorded by the international community to individuals or groups who are outside their own country, who are unable to return because they would be at risk there, and whose own country is unable or unwilling to protect them. Risks that give rise to a need for international protection classically include those of persecution or other threats to life, freedom or physical integrity arising from armed conflict, serious public disorder, or different situations of violence. Other risks may stem from famine linked to situations of armed conflict; disasters; as well as being stateless. Frequently, these elements are interlinked and are manifested in forced displacement.

- **Irregular movement:** Cross-border movement that takes place outside the regulatory norms of the countries of origin, transit and destination.
- **Migrant:** An umbrella term, not defined under international law, reflecting the common lay understanding of a person who moves away from his or her place of usual residence, whether within a country or across an international border, temporarily or permanently, and for a variety of reasons. The term includes a number of well-defined legal categories of people, such as migrant workers; persons whose particular types of movements are legally defined, such as smuggled migrants; as well as those whose status or means of movement are not specifically defined under international law, such as international students.
- **Migrant in an irregular situation:** A migrant who, owing to unauthorised entry, breach of a condition of entry, expiry of a visa or stay permit, or failure to comply with an expulsion order, has no legal permission to stay in a host country. *Note: UNHCR recommends that the word irregular be used only to characterise a process or a movement (irregular movement). It should not be used to characterise a person (irregular migrant), which can be read as stigmatising or criminalising. A number of other terms are also frequently used to refer to such persons, including undocumented migrant and illegal migrant.*
- **Migrants in vulnerable situations:** Migrants who are unable to effectively 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.
- **Migration:** The word migration is often used as a general term referring to the movement of people away from their place of usual residence, either across an international border (international migration) or within a State. Sometimes, migration is employed to include both 'forced' and 'voluntary' movements. In other contexts, the word migration is reserved for population movements that are considered to be solely or essentially voluntary, or not to raise refugee-protection concerns. For cross-border or internal movements that take place in circumstances where the element of compulsion (due, for instance, to persecution, conflict, violence, or disaster) preponderates over the exercise of choice, UNHCR recommends using the term displacement, rather than migration. In particular, when referring to cross-border movements with a refugee character or otherwise involving people who require international protection, terms such as cross-border displacement or refugee flight should be preferred to migration.
- **Mixed movement:** The cross-border movement of people, generally in an irregular manner, involving individuals and groups who travel alongside each other, using similar routes and means of transport or facilitators, but for different reasons. People travelling as part of mixed movements ("people on the move") have different needs and profiles and may include asylum-seekers, refugees, victims of trafficking, unaccompanied or separated children, stateless persons, and migrants (including migrants in irregular situations or migrants in vulnerable situations). All people travelling or present in a country as part of a mixed movement are entitled to the protection of their human rights, however not all require international protection, which is a specific concept closely associated with international refugee law. The United Nations High Commissioner for Refugees (UNHCR) recommends using the

phrase “refugees and migrants” to refer to people in mixed movements, particularly in contexts where some of those concerned be in need of international protection.

- **Refoulement:** The removal of a refugee to a territory where they would be at risk of persecution, or the removal of an individual who is not a refugee to a territory where they would be at risk of torture or other ill-treatment.
- **Refugee:** Any person who meets the eligibility criteria under an applicable refugee definition, as provided for in international or regional refugee instruments, or in national legislation. Under the 1951 Convention Relating to the Status of Refugees (Refugee Convention) a refugee is someone who *“owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”*.
- **Returnee:** A former refugee who has returned from a host country to their country of origin or former habitual residence, spontaneously or in an organised fashion, with the intention of remaining there permanently and who is yet to be fully integrated. Returnees include those returning as part of the operationalisation of the cessation clauses in the 1951 Convention and regional equivalents. *Note: the term returnee carries a broader meaning outside the refugee context, and may include, for example, internally displaced persons who return to their previous place of residence.*
- **Separated children:** Children, as defined in Article 1 of the UN Convention on the Right of the Child (CRC)³⁰⁵, who have been separated from both parents, or from their previous legal or customary primary caregiver, but not necessarily from other relatives. These may, therefore, include children accompanied by other adult family members.³⁰⁶
- **Smuggling (of migrants):** The Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention Against Transnational Organized Crime (2000) defines migrant smuggling as *“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the irregular entry of a person into (the territory of) a State of which the person is not a national or a permanent resident.”* (Article 3(a))
- **Stateless person:** The United Nations Convention relating to the Status of Stateless Persons (1954) defines a stateless person as “a person who is not considered as a national of any State by operation of its law” (Article 1).
- **Trafficking in persons:** The Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime defines trafficking as the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the treat or use of force or other forms of coercion, of abduction, of fraud, of

305. Article 1 CRC defines a child as “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”

306. Adapted from United Nations Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin (2005) CRC/GC/2005/6, 6.

- deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation. Such exploitation includes, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs (Article 3(a)). The consent of a victim of trafficking is considered irrelevant where any of these coercive means above have been used (Article 3(b)). *Notes: When distinguishing between smuggling of migrants and trafficking in persons it is important to note the following points: Smuggling of migrants necessarily involves an irregular border crossing and entry into another State, whereas trafficking in persons may occur within a single country. A smuggler commits a crime against the State, and the commodity involved is a service: the facilitation of an irregular border crossing for financial or other material benefit. A human trafficker commits a crime against the individual, who is the commodity. The relationship between smuggler and migrant is based on a commercial transaction, which usually ends after the border crossing, whereas the trafficking relationship often involves ongoing exploitation that generates a benefit (financial or otherwise) for the trafficker alone.*
- **Unaccompanied children:** Children, as defined in Article 1 of the UN Convention on the Right of the Child (CRC) who have been separated from both parents and other relatives and are not being cared for by an adult who, by law or custom, is responsible for doing so. In the context of migration, children separated from both parents or other caregivers are generally referred to as unaccompanied migrant children (UMC).³⁰⁷

307. Adapted from United Nations Committee on the Rights of the Child, General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside their Country of Origin (2005) CRC/GC/2005/6, 6.

ANNEX I: MEMBERS OF THE OMCT MIGRATION AND TORTURE WORKING GROUP

The civil society experts that participated to this report are:

Yahaya Badamassi, Alternative Espaces Citoyens, Niger

Alternative Espaces Citoyens (Alternative Citizens Spaces, 'AEC') is a Nigerien human rights NGO whose work includes monitoring and documenting violations of migrants' rights in Niger and advocacy before domestic institutions, including the Niger National Human Rights Commission. AEC is a member of several networks and coalitions on the human rights of migrants in West Africa, including MADE Africa (Migration and Development Civil Society Network) including the Observatory of Migrants in Distress and the Made Africa Network.

Data collection took place in Agadez (Niger). 15 migrants and refugees were interviewed (men, women and children) as well as 36 other key informants, including representatives of civil society organisations (e.g., Alarm Phone Sahara and the International Rescue Committee) and local government officials.

Baldal Oyamta, Ligue Tchadienne des Droits de l'Homme (LTDH), Chad

The Ligue Tchadienne des Droits de l'Homme (Chadian League for Human Rights, 'LTDH') is one of the oldest human rights organisations in Chad and a member of the OMCT SOS-Torture Network. The LTDH's work includes conflict prevention, peace-building and human rights. The LTDH monitors and documents violations against Chadian returnees and IDPs, as well as refugees and asylum-seekers in Chad, including in the context of the Lake Chad displacement crisis.

50 Chad based key informants were interviewed by the LTDH, including refugees and internally displaced persons (IDPs), public officials, and migrants' rights organisations.

Alaa Talbi, Forum Tunisien pour les Droits Économiques et Sociaux (FTDES), Tunisia

The Forum Tunisien pour les Droits Économiques et Sociaux (Tunisian Forum for Economic and Social Rights, FTDES) is a Tunisian NGO working on the protection and promotion of economic and social rights in Tunisia, as well as the human rights of migrants.

FTDS conducted 25 key informant interviews, including with sub-Saharan refugees and migrants who had transited through Libya before arriving in Tunisia; with Libyan activists and NGOs working on migration related issues on Libya; and representatives from international organisations and NGOs in Tunisia.

Kevin Mwangi, Independent Medico-Legal Unit (IMLU), Kenya

The Independent Medico-Legal Unit (IMLU) is a governance, health and human rights non-profit organisation. IMLU's work is underpinned by a holistic approach involving litigation, medical and psychosocial rehabilitation of survivors of torture, monitoring government adherence to its human rights obligations and advocacy for policy, legal and institutional reforms. Over the last two decades, the organisation has assisted over 5,000 victims/survivors of torture, cruel, degrading and inhuman treatment through the support of a national network of professionals that include doctors, trauma counsellors, lawyers, human rights monitors and journalists. IMLU is engaged in activities to treat victims/survivors of torture, including migrants, as well as working actively to prevent the occurrence of torture.

IMLU conducted key informant interviews with representatives of NGOs providing support to refugees and migrants in Kenya, including the Refugee Council of Kenya and the HIAS Refugee Trust of Kenya.

Esther Nabwire, African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV), Uganda

The African Centre for the Treatment and Rehabilitation of Torture Victims (ACTV) provides rehabilitation to migrants who have suffered torture either in their home country, along the way, host country or both, without discrimination. ACTV is the only non-governmental organisation (NGO) in Uganda providing comprehensive treatment and rehabilitation services to torture survivors in the country, including asylum-seekers and refugees from the Democratic Republic of Congo, South Sudan, Somalia, Rwanda, Burundi and Angola.

ACTV documented the experiences of torture and other ill-treatment amongst South Sudanese refugees in Bidi Bidi. ACTV collected the narratives of 40 male and female refugees who were survivors of torture in South Sudan (and, in some cases, during their journey to Uganda). 20 key informants, namely 13 representatives of civil society organisations and 6 public officials were also interviewed regarding their experiences of responding to the needs of survivors.

Elmehdi Ag Wakina, Association Malienne pour la Survie au Sahel (AMSS), Mali

The Association Malienne pour la Survie au Sahel (Malian Association for Survival in the Sahel, AMSS) works on community-based initiatives to promote socio-economic development in Mali. In the field of migration, the AMSS documents protection incidents, and provides support to refugees and migrants.

The AMSS interviewed 87 refugees and migrants (70 male and 17 female) for the purposes of this study in 2020 in various locations, including in Bamako (45) Segou (15), Mopti Sévaré (12) and Timbuktu (15), as well as 14 other key stakeholders, including local officials and representatives from civil society organisations.

Moustapha Kebe, Réseau Migration Développement (REMIDEV), Senegal

The Réseau Migration Développement (Migration Development Network, REMIDEV) carries out advocacy for the establishment of national and international policies for the promotion and protection of the rights of migrants.

The organisation also monitors violations of migrants' rights in different West African countries and in the Maghreb (Mauritania, Niger, Morocco). REMIDEV has developed a strong expertise on bilateral agreements between Spain and Senegal on the return of migrants and the EU migration policies in Africa.

REMIDEV interviewed 30 Senegalese returnees in the regions of Kolda and Tambacounda, as well as representatives from civil society organisations working in the field of migration.

The Libyan Anti-torture Network (LAN), Libya

The LAN is a group of five Libyan civil society organizations from different regions/towns established by OMCT office in Tunis. The mandate of LAN is to advance the documentation, victim assistance, and advocacy for institution-building, protection and prevention against torture in Libya mainly in the context of immigration detention.

Mohammed Badawi, African Centre for Justice and Peace Studies (ACJPS), Sudan

The ACJPS is a human rights organisation dedicated to creating a Sudan committed to all human rights, the rule of law and peace, in which the rights and freedoms of the individual are honoured and where all persons and groups are granted their rights to non-discrimination, equality and justice.

ACJPS has investigated on the role of the Rapid Support militia in fighting illegal immigration in Sudan and the occurrence of human trafficking at the Sudanese borders.

Federica Brioschi, Antigone, Italy

Antigone is a human rights NGO working on the protection and promotion of human rights in the Italian penitentiary system, including in respect of migrants detained in prisons and immigration detention centres.

Antigone conducted an extensive desk review of externalisation policies and agreements adopted by the EU and by Italy to curb irregular migration from sub-Saharan Africa, with a focus on Niger and Italy. In addition, Antigone interviewed representatives of a number of migrants' rights NGOs, including the *Associazione per gli Studi Giuridici sull'Immigrazione* (Association for Juridical Studies on Immigration, 'ASGI') and the *Comitato Verità e Giustizia per i Nuovi Desaparecidos del Mediterraneo* (Truth and Justice Committee for the New Disappeared of the Mediterranean).

Maite Parejo Sousa, Asociación Pro-Derechos Humanos de España (APDHE), Spain

The Asociación Pro Derechos Humanos de España (Association Pro Human Rights of Spain, APDHE) is a human rights and strategic litigation NGO focused on the prevention of torture, including through adequate criminalisation under the Spanish legal framework. APDHE works on the criminalisation of migration from Ceuta and Melilla and on human trafficking and other serious abuses perpetrated against migrants in transit by State and non-State actors.

APDHE conducted an extensive desk review of externalisation policies and agreements adopted by the EU and by Spain to curb irregular migration from sub-Saharan Africa.

In addition, APDHE conducted key informant interviews with public officials in Spain as well as representatives of international organisations and NGOs, including Amnesty International, CEAR and the International Institute for Nonviolent Action.

The technical experts are:

Dr Chris Dolan, Refugee Law Project, Uganda

Dr Chris Dolan is the Director of the Refugee Law Project in Uganda, a university outreach project working with refugees and IDPs from the Great Lakes region. Dr Dolan has worked extensively with refugees, internally displaced persons (IDPs) and ex-combatants in post-conflict settings in sub-Saharan Africa as an academic, practitioner and activist, including on sexual violence against men and boys.

Sarah Elliott (in her personal capacity):

Sarah Elliott is a lawyer specialised in human rights, refugee law and counter-trafficking. She has worked with UNHCR for many years, particularly on building the capacity of States in North Africa to develop and implement protection sensitive entry systems and find solutions for migrants, refugees, asylum-seekers and trafficking victims.

The consultants are:

Jelia Sane, Doughty Street Chambers

Jelia Sane is a barrister at Doughty Street Chambers, London, specialising in refugee and international human rights law. She has a wealth of experience providing individual advice and representation to vulnerable claimants, including torture survivors, in asylum, trafficking and deportation proceedings in the courts and tribunals of the United Kingdom. In addition, she regularly provides legal and policy advice to non-governmental organisations working on refugee protection in Europe and is a member of the Legal Action Committee of the Global Legal Action Network.

Maria Holmblad, Holmblad Consulting

Maria Holmblad is an independent humanitarian consultant based between Gothenburg, Sweden and Yaoundé, Cameroon, specialising in operational research in humanitarian settings, and conflict-related sexual violence. She has delivered multiple operational research assignments since founding her consulting firm in 2016, acting both as technical specialist on sexual violence, as well as research and project management lead.

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