

**A Roadmap for Advocacy, Policy Development,
and Programming:**
Protection in Mixed Movements along the Central
and Western Mediterranean Routes 2021



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Foreword



Bram Frouws
Head of the Mixed Migration Centre

Over the course of three days in February 2021, the Mixed Migration Centre (MMC) partnered with the United Nations High Commissioner for Refugees (UNHCR) to bring together 41 speakers at a joint virtual Policy Workshop on Protection Challenges on the Central and Western Mediterranean Migration Routes.

A diverse group of speakers, moderators and participants – from different countries, organisations and backgrounds – actively engaged in three days of sharing experiences, lessons learned, ideas and intense discussions on how the protection of people on the move may be ultimately improved.

The diversity of experiences and backgrounds the participants brought with them to the workshop ensured a wide and rich array of perspectives, reflected in the various papers contributed by the participants, which we are pleased to present in this volume. On behalf of the MMC and, in particular, MMC's team in North Africa, I would like to thank all the participants for sharing their time and ideas so generously with us. I am also grateful to UNHCR for their support in making this workshop possible. MMC and the Danish Refugee Council are committed to continuing our close cooperation with UNHCR and all other partners that share the same overarching objective of ending all forms of violence against refugees and migrants. It is now up to policy makers and practitioners to translate the findings and recommendations from the workshop, as well as the papers in this volume, into action on the ground, into policy and advocacy. We hope that by convening the workshop and publishing these papers, we are collectively able to push the discussion forward towards evidence-based, nuanced, rational and, crucially, humane migration policies.

This discussion is as timely as ever. In fact, it remains desperately needed. In July 2020, UNHCR and MMC launched a joint report, offering compelling evidence on the scale of violations faced by refugees and migrants engaged in mixed migration, where these violations are happening and who the perpetrators are. Such reliable data are needed as a first step towards effective action. We still witness grave abuses along the various migration routes towards the Mediterranean coast. We still witness, on a daily basis, people intercepted at sea and brought back to Libya, with many ending up in detention and in horrific conditions.

Instead of real solutions, a sense of political panic and ad-hoc actions to contain movements pervade. What we need are more humane and smarter approaches to mixed migration in line with our principles and moral values, leading to far less human suffering. It is possible. It requires courage, accountability, leadership and innovation, but it is possible.

This volume is the culmination of three days of discussions, years of participants' experience and high-quality research. It is yet another call to action and a call for change. It offers concrete recommendations on, for example, the important role of local authorities; community-based approaches; the need for a stronger focus on children and youth on the move; more sustainable approaches to combatting trafficking in persons; and more nuanced approaches to stem the phenomenon of migrant smuggling.

We hope that this report will stimulate concrete action for improving protection for all people on the move. As MMC, we will continue to contribute to evidence-based migration policies, responses and public debate, always placing the human rights and protection of all people on the move at the centre.

Foreword



Vincent Cochetel
*UNHCR Special Envoy for the
Central Mediterranean Situation*

Over the last five years, mixed movements of refugees and migrants across the Mediterranean Sea have attracted more international and national public

attention than similarly dangerous, more massive movements by land. This disproportionate focus on sea crossings has been politically instrumentalised on both sides of the Mediterranean, feeding apocalyptic and xenophobic rhetoric disconnected from the complex realities of displacement along long and dangerous routes. Despite significant efforts to reconcile interests north and south under a mosaic of cross-regional and bilateral fora, such as the balanced Joint Valletta Action Plan of 2015, the focus and scope of “managing mixed movements” are still often reduced by States to a simplistic “containment agenda.”

The Policy Workshop co-hosted by UNHCR and the Mixed Migration Centre provided valuable up-to-date perspectives towards sustainable, protection-centred approaches to asylum and migration management by States. The papers and discussions usefully reminded us that combatting irregular migration (often wrongly labelled as illegal migration) has been forcefully presented to public opinions in Europe as the priority. Reductions in the number of successful irregular sea crossings seems to serve as the key performance indicator of whether migration policies work. However, participants in the workshop underlined that such a narrow approach, ignoring the underlying causes of mixed movements, their depth and different forms, is bound to fail. They emphasised that, long-term, broad-based partnerships are needed with all countries concerned along the routes in a combined and coherent approach.

Participants emphasised that, even if better border management systems which recognise the diverse reasons why people cross borders and move onwards are needed, effective solutions are more complex and must be multi-faceted. They must address the root causes of primary and secondary movements. They should also recognize that credible alternatives to dangerous journeys are still lacking for both refugees in some countries of first asylum, and for potential migrants.

The discussions helped uncover the fact that the challenges experienced by different States along the

routes are similar. Gaps in protection and service delivery for refugees and migrants in States along the routes place smugglers and traffickers at a unique advantage to ply their criminal business models. With no visible, and thus no credible alternatives to dangerous journeys in many places, smugglers and traffickers can sell, unchallenged by any meaningful counter measures, their false promises of a “better life somewhere else.” And, in this context where legal pathways to mobility are greatly lacking, the distorted narrative of diaspora serves only to encourage irregular movements from countries of origin and transit, and to amplify the very false perception of an inclusive and welcoming dreamland across the desert or the sea.

The workshop also highlighted the evolving contexts in North African countries, which today are also countries of final destination and not just countries of departure or transit, but where legal frameworks for refugees and to some extent, for migrants, are still lacking, unlike in sub-Saharan Africa. The effects of the COVID-19 pandemic on mixed movements across Africa and beyond demonstrated the limits of the so-called “tolerance status” for refugees and migrants. This was notable in North Africa where their limited socio-economic inclusion highlighted the need to renew efforts to define legal frameworks which recognise that some foreigners in these countries need protection and a future where they are.

In this context, Europe has a key responsibility to ensure it shows leadership and solidarity, and helps countries along the routes to more effectively manage their migration and asylum systems. North African countries must be supported and assisted to cope with increasing pressures related to these mixed movements. However, support must be provided in a win-win manner which reinforces social cohesion for refugees and migrants, and brings tangible self-interested benefits to host States and local host communities. There cannot be an impression that building migration and asylum systems in North Africa and elsewhere is a way for European countries to offload their responsibilities.

Another important subject discussed – perhaps too briefly – was the responsibility of countries of origin. Often a taboo in inter-governmental fora, the issue of the responsibility of countries of origin vis-à-vis their citizens who are forced to flee human rights violations, wars and violence, or who leave home due to the absence of socioeconomic prospects, remains central to discussions on reducing or preventing dangerous journeys. The responsibility and initiative to address root causes must be taken up by home/origin countries and cannot just rest with other States.

With many thanks to the Mixed Migration Centre and to all the participants for their engagement over three very productive days of collective work, we hope the rich debate that we had will support renewed advocacy efforts for achieving much-needed policy and normative changes, which offer increased protection for vulnerable refugees and migrants in mixed movements on the Central and Western Mediterranean routes. The conclusions and key recommendations of the workshop, collected in this volume, provide a path forward.

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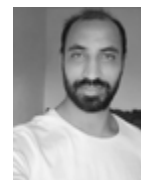
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Disclaimer: The information, views and opinions expressed in this publication are those of the authors and do not necessarily reflect the official policy or position of the Mixed Migration Centre (MMC), the Danish Refugee Council (DRC) nor the United Nations High Commissioner for Refugees (UNHCR). The policy notes, essays and first-hand accounts included in this volume were first presented at a UNHCR-MMC Policy Workshop in February 2021 and selected through a peer review process that included reviews from MMC, UNHCR and external higher education institutions.

The selection of the notes and essays, and the designations and evidence therein, do not imply endorsement on the part of MMC, DRC or UNHCR.

Note on terminology: Mixed movement is a term used by UNHCR. MMC normally applies the term “mixed migration” to refer to cross-border movements of people including refugees fleeing persecution and conflict, victims of trafficking and people seeking better lives and opportunities. See MMC’s full definition of mixed migration and associated terminology here. UNHCR applies the term “mixed movement,” defined as: 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 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). See more on UNHCR’s approach to mixed movements here. In light of the partnership between UNHCR and MMC in publishing the volume based on the policy workshop, the term “mixed movement” is used.

Having specified the preferred terminology of MMC and UNHCR, it is important to note that MMC and UNHCR have not changed the terminology employed by the authors and participants included in this volume. In this way, the terms and concepts used by the authors and participants do not reflect the positions of MMC and/or UNHCR.

The movement of refugees and migrants along the Central and Western Mediterranean routes, from sub-Saharan Africa to North Africa and onwards to Europe, often encompassing a multitude of step-wise, circular and return movements, is a longstanding, historic phenomenon. Driven by persecution, insecurity and conflict, and socioeconomic instability and stagnation in their home countries, and seeking better lives and opportunities elsewhere, thousands of people continue annually to risk their lives on dangerous, irregular journeys by land and sea on the routes, or use the limited legal pathways that are available, such as visa-free entry to countries like Morocco and Tunisia.

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Introduction

Research allows us to move beyond repetitive humanitarian assessments, planning, monitoring and evaluation, to develop a broader understanding of the experiences, concerns and needs of people on the move. Through research we can identify and map complex displacement patterns and trends and the longer-term and macro-level forces that impact the drivers of displacement and durable solutions. The Mixed Migration Centre's (MMC) North Africa Hub and the United Nations High Commissioner for Refugees' (UNHCR) Office of the Special Envoy for the Central Mediterranean Situation organised a virtual policy workshop from 15 to 17 February 2021, with the aim of highlighting protection challenges along the Central (CMR) and Western Mediterranean Routes (WMR), and identifying opportunities for advocacy, policy development and reform of asylum and protection in the context of broader migration management.

The workshop brought together more than 40 academics, researchers, humanitarian and development programming partners, policy actors and people with a displacement experience from North, West, East and the Horn of Africa as well as Europe and North America. Over three days, the event gathered the latest knowledge on:

- Protection frameworks in contexts of mixed movements, including good practices and gaps;
- The effectiveness and challenges of strategic, cross-regional cooperation on asylum and its relation to migration management; and
- Trafficking in persons and human smuggling.

This volume comprises 25 research papers and firsthand experiences aimed at informing policy, programming and advocacy, presented by workshop participants as well as a synthesis of the key recommendations debated and validated by participants (see the Annex for the live notes drawn during each of the daily wrap-up sessions). This synthesis aims to serve as a roadmap for strategic engagement with States and different asylum and migration stakeholders at the local, national and international levels.

As a part of the process of convening diverse expertise and fostering information-sharing and debate, it was crucial that we included the research and perspectives of people who themselves had experienced some form of forced or migratory displacement. Their intimate knowledge of the impact of displacement and of the needs and aspirations of persons of concern made their contributions of great value in thinking through improved policies and programming.

More broadly, the Global Compact on Refugees (GCR) and Global Compact for Migration (GCM) emphasise the importance of a whole-of-society response to forced displacement and migration, respectively. Research in support of the objectives of both compacts, including expanding access to third-country solutions; supporting conditions in countries of origin for return in safety and dignity; and reducing the risks and vulnerabilities that people on the move face at different stages of their journey by respecting, protecting and fulfilling their human rights and providing them with care and assistance; is one of the contributions academics make. This volume is a contribution to such research. The GCR and GCM also recognize the role that refugees and migrants themselves play in whole-of society response. People on the move must stand at the front lines of this research, as both subjects and investigators. It is our hope that the policy workshop and this volume contributes to this necessary re-framing.

The Policy Workshop at a Glance

6 Thematics | Over 40 Speakers | 150 Attendees

25 Research, Policy & Advocacy Notes | Voices from the Ground | Key Takeaways

“ Too often in industrialised countries, particularly in Europe, we look at countries as countries of transit. But we should keep in mind, in my opinion, that those countries of transit are hosting sizeable refugee populations on their territories. Only between 10 to 15% percent of the refugees in those countries may be tempted by those dangerous journeys leading to North Africa. ”



Vincent Cochetel,
UNHCR Special Envoy for
the Central Mediterranean
Situation

“ Advocacy around protection and refugee rights needs to be ongoing and linked to advocacy and engagement in the general rights situation. The compartmentalisation of international actions and policies are thereby not helpful. Ongoing efforts to raise awareness about the risks of abuse and violence along the migration routes are important, [...]. However, without a significant improvement in the Horn's human rights situation, people from the region will continue to flee despite the risks. A lack of human rights protection is closely linked to the lack of a future for young people's aspirations and freedoms. ”



Laetitia Bader,
Horn of Africa Director,
Human Rights Watch

“ To enter Libya with the help of smugglers, departing either from Egypt or Sudan, one has to travel through the Sahara Desert. For a fortunate few, the journey will take a few days or weeks, but for the majority, it lasts a couple of months. They travel in crowded vehicles, with limited water and food supplies, amid temperatures that rise above 40 °C, not to mention violent treatment from the smugglers. For those, the possibility of making it alive to Libya is greatly reduced. ”



Nahom Bruk Gebremeskel,
4Mi Monitor in Tunis,
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“ Risks [of travelling with a smuggler] include forgery, questionable grounds for entry into another country, scams, aggression and theft. Migrants are exposed to exhausting walks under dangerous temperatures (the weakest who cannot follow the troop are to be abandoned or killed), [and] overloaded and unsecured cars (according to testimonies, many people fall overboard and die). Some drown in the Mediterranean Sea. Many of the migrants' passports are taken away. They are often taken hostage, with ransom demanded from their families, under torture or are involuntarily subjected to unpaid, forced labour. ”

“ We believe that migration and mobility, when well-managed, can have substantial positive impact for the development of countries of origin, and yield significant benefits as well for countries of transit and destination. ”



H.E. Amira El Fadil,
Commissioner of Social Affairs,
African Union Commission



José Dogma Tebou,
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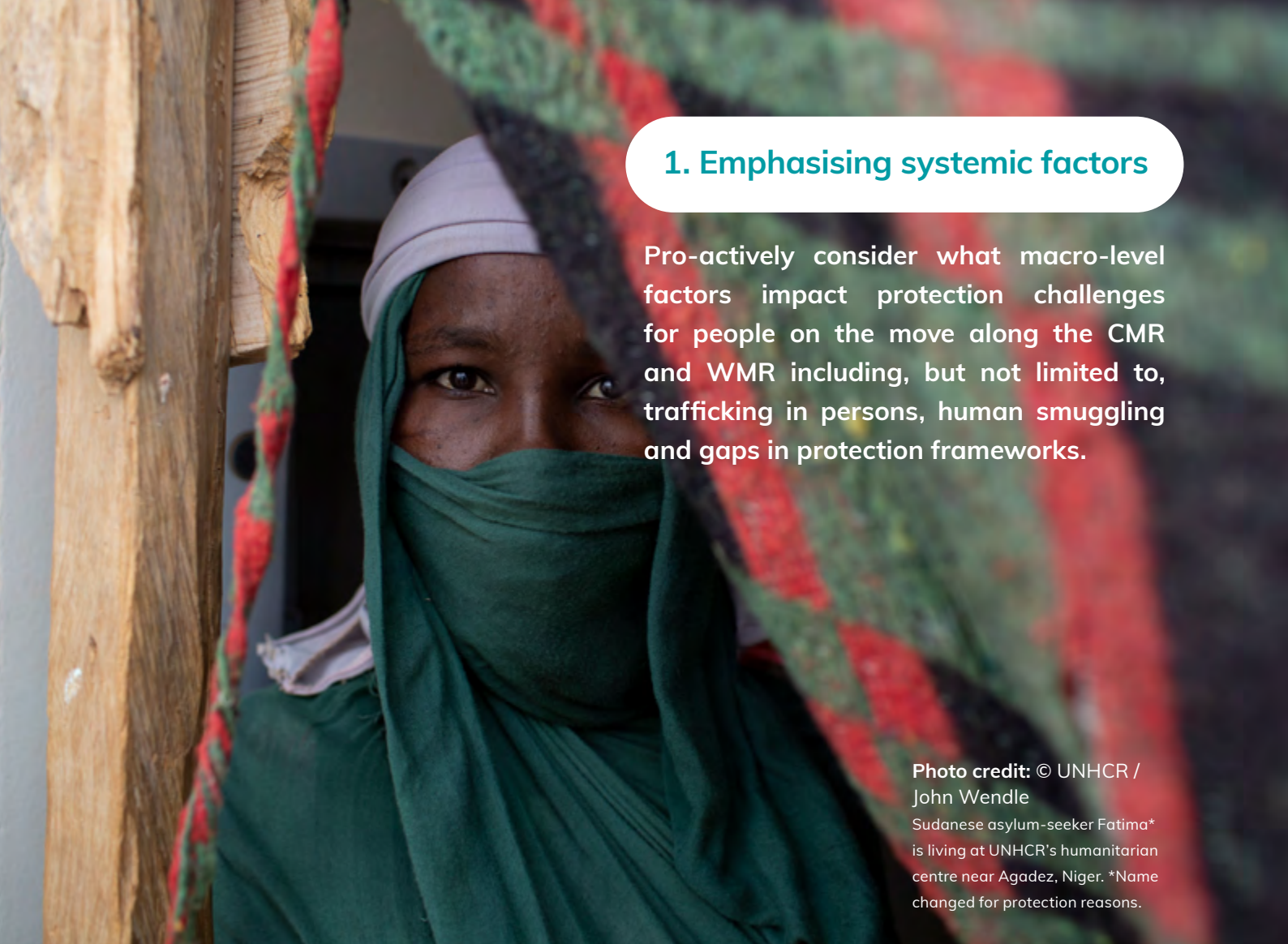
Photo credit: © MMC /
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A Roadmap for Advocacy, Policy Development and Programming on Protection in Mixed Movements

This section presents the policy and programming recommendations arising from 25 research, policy and advocacy papers as well as firsthand experiences, presented by 41 speakers at the UNHCR-MMC Policy Workshop on Protection Challenges on the Central (CMR) and Western Mediterranean Routes (WMR). It also integrates the recommendations and key issues raised by speakers and wider participants during the workshop's roundtable and discussion sessions, and do not necessarily reflect the positions of UNHCR or MMC. Speakers and participants represented a range of mixed movement stakeholders and experts, including persons of concern; humanitarian and development practitioners; local, national and regional policy actors; and researchers and academics.

Workshop insights and recommendations are structured by theme and stakeholder group, and some context is provided to situate the recommendations. This roadmap serves as a synthesis and does not aim to be fully exhaustive of all points raised and recommendations made during the workshop. The recommendations set out here shall be used as a basis for a next phase of targeted policy and programming engagement.



1. Emphasising systemic factors

Pro-actively consider what macro-level factors impact protection challenges for people on the move along the CMR and WMR including, but not limited to, trafficking in persons, human smuggling and gaps in protection frameworks.

Photo credit: © UNHCR / John Wendle

Sudanese asylum-seeker Fatima* is living at UNHCR's humanitarian centre near Agadez, Niger. *Name changed for protection reasons.

Systemic or contextual factors are the broader geopolitical, economic, ideological and social forces – among others – that impact and determine the experiences and decision-making of people on the move, as well as the ability of protection actors to design and implement effective interventions. Without an understanding of what these forces are and how they impact persons of concern, policies and programming will fail to be sustainable and may result in unintended consequences for people on the move along the CMR and WMR.

- **Stakeholders working on counter-trafficking programme design** or with survivors of trafficking should work together with **researchers and academics** to identify structural factors that lead to trafficking in persons. Understanding from a holistic perspective how socio-cultural norms, gender norms, poverty and household livelihood strategies, on the one hand, and labour markets, rights regimes and limited legal pathways for movement, on the other, affect the cycle of trafficking is key for designing durable counter-trafficking interventions.
- **Policy makers** should ensure that “policy regions,” such as those established by the Khartoum and Rabat Processes, capture and respond to actual movement patterns and dynamics, which often cross regions in non-linear ways. Within this sphere, these actors should be prompted to consider how particular labels have conditioned their understandings of and responses in these regions (e.g. focusing on “mixed movement” in the Horn of Africa and “labour migration” in the Arabian Gulf despite high degrees of interconnectedness). In other words, all intra- and inter-regional patterns of movement, even beyond the defined geographies of specific regions, should be considered in policy processes, to ensure that the drivers of movement are fully understood and reflected in informing policy decisions.
- Without increased legal pathways for regular and safe movements and the adoption or implementation of national protection frameworks in all countries on these routes, smuggling will inevitably continue to exist and flourish with impunity. **Policy actors** should consider multi-faceted approaches to disincentivise smuggling activities, which include working together with **researchers and academics** to understand how community and society-level factors impact human smuggling. In Agadez, Niger, programmes around demobilisation and amnesty have aimed at fostering opportunities in the formal economy and at disrupting smuggling and trafficking activities. So far, this has been met with mixed results, and such approaches should form an area of future research to better understand potential good practices.

2. Implementing flexible and adaptive protection programming

Implement protection programmes that are designed to respond to the changing needs and protection concerns of people on the move along the CMR and WMR.

Photo credit: © UNHCR / Hassan Gamary

Nineteen-year-old Rumaysa from the host community holds up a sign saying “I want to live in safety” during the UNHCR campaign against human trafficking in east Sudan.



It is not always evident who the most vulnerable are among people on the move along the CMR and WMR. The vulnerability of persons of concern heightens the longer they spend in transit: they are exposed to different forms of extortion and abuse, severe resource constraints and physical and mental stress, to name just a few. In addition, shifts in irregular routes, fluctuating conflict dynamics, economic volatility and, not least, the continuing effects of the COVID-19 health crisis, can suddenly change the needs, decisions and locations of persons of concern.

- **Encourage donor agencies** to design calls for proposals and fund projects that provide for flexible programming and adaptations to emerging crisis contexts. In turn, it is key that donors and programming actors work with researchers in the field to understand shifts in context. Particularly a shift in terms of needs, intentions and aspirations spurred by the outbreak and continuing impact of COVID-19 is a key contextual change in all mixed movement contexts across the regions.
- Improve the capacities of **national and local authorities, including border guards**, to identify vulnerable people on the move at borders and other points of entry, and to provide documentation and registration facilities for vulnerable individuals unable to call on their country of nationality or habitual residence. Increase the presence and coordination of **protection personnel** in dangerous border areas,

specifically on child protection and trafficking in persons.

- **Protection actors** should improve cross-sectoral coordination and information-sharing, specifically in key mixed movement hubs and gathering points, whilst always respecting the human rights of the data subject and the humanitarian principle of ‘do no digital harm’. As part of these coordination efforts, **actors as well as beneficiaries** should have a clear understanding of who does what, how and where. Greater and more systematic usage of tools such as the “4Ws” and forums, including mixed migration working groups (MMWG) or migrant and refugee platforms (MRP), would assist in these efforts.
- Within the context of flexible and effective programming, **national authorities** should enable **programming actors** to directly fund, support, partner and coordinate with **local authorities and community-based organisations**.
- **Protection actors, policy makers as well as local authorities or community liaisons** should widen their scope, taking into consideration abuses and violations that occur along mixed movement routes and through people on the move’s interactions with smugglers, particularly in key countries along mixed movement routes such as Libya, Niger and Sudan; and not solely focus on abuses in countries of origin. Protection is a continuous framework.



3. Mobilising local support for national and regional protection frameworks

Adopt community-based and “whole-of-society” approaches to support local civil society and their advocacy and solidarity efforts in calling for enhanced protection frameworks.

Photo credit: © Taha Loukil
The Medina, Tunisia, 2020.

Community-based approaches can serve as catalysts for national and regional legal developments, including asylum and migration legislation. While achieving broad policy change can take time, success often depends on the political will fostered by civil society. When inclusive practices are in place at the local level to enhance protection for people in mixed movements, bridging such legal gaps on a national level might become more tangible and politically acceptable.

- Inter- and intra-regional and university-to-university initiatives have sought to strengthen the dialogue on providing protection to people in mixed movements, often in the form of **alternative or complementary protection pathways**, including for higher education migration. Local authorities are key actors in this effort, brokering relationships with **higher education institutions** and showing how their communities can be enriched through such partnerships.
- International actors as well as national and local authorities should invest in the creation of **local public or semi-public agencies** that can function as one-stop shops, training staff in human rights principles. States should protect the right to asylum, and disseminate information on rights and access to services in languages spoken by people on the move.
- **National authorities** should involve their local counterparts and civil society initiatives in the planning and implementation of policies responding to mixed movements. **International organisations and UN agencies, including development actors through their engagement in local service planning**, should be further encouraged to engage with **local authorities** to advocate for their inclusion in the planning and implementation in these policy processes.

4. Collaborating with cities and municipalities on urban mixed movement initiatives

Increase local capacity-building and delegate more responsibilities and adequate resources to local governing bodies to improve the protection of persons of concern in communities.

Photo credit: © MMC / Clément Arbib
View of the Medina of Tunis, 2020.

In North Africa, where countries are places of origin, transit and destination, local authorities often do not have the legal authority to respond, regulate and manage the presence and stay of people on the move transiting or settling in their communities. Against this backdrop, a number of municipalities across the region, such as in Sfax in Tunisia and Oujda in Morocco, have taken a pro-active stance towards socio-economic inclusion, going beyond their legal responsibilities, recognising that policies which exclude provisions for refugees and migrants lead to segregation and impede durable solutions. Good practices exist of cities exchanging information and lessons-learned on socio-economic inclusion like the International Centre for Migration Policy Development (ICMPD)'s Mediterranean City-to-City Migration Project (MC2CM), the Mayors Migration Council and UNHCR's Cities Network.

- An extension of some actionable responsibilities from **national to local authorities, and better cooperation between the two**, could help overcome current asylum and migration governance stalemates, translating national policies into workable local outcomes.
- Foster a community-based approach aimed at building trust between persons of concern and their **local authorities** and **service providers**. This includes making information and asylum documentation available in languages other than Arabic, English and French, and offering interpretation services where needed.
- Develop **multi-level partnerships** that engage a range of stakeholders, from **local authorities to the private sector**, to increase the resilience and agility of communities to respond to crises. Partner with development actors who hold experience in operating and investing in local communities.
- **Active engagement among local authorities** to strengthen their information-sharing (**whilst upholding data protection principles**), especially on the adaptation of innovative approaches to hosting people on the move. Information-sharing could promote coordination around more equitable burden and responsibility-sharing.
- Foster solidarity between **host communities** and people on the move to promote social inclusion and combat discrimination and xenophobia, which appeared to experience a resurgence during the COVID-19 pandemic in some countries along the CMR and WMR.
- Increase opportunities on education and training for **local stakeholders** working on issues of sexual violence and discrimination, gender-based violence, trafficking, torture and forced labour, to name a few.



5. Creating more comprehensive approaches to combatting trafficking in persons

Work towards more comprehensive solutions to combat trafficking in persons, and implement long-term measures to protect victims and potential victims in their communities of origin, transit and destination or resettlement.

Photo credit: © MMC

Counter-trafficking programming often targets the prosecution of perpetrators and protection of victims through a retro-active approach, leaving aside more difficult-to-design, pro-active prevention and identification activities. When counter-trafficking interventions occur, they tend to be short-term, do not address the societal issues that contributed to the process of trafficking, and lack cross-country and cross-regional coordination mechanisms. As a result, victims remain vulnerable to re-trafficking, and exposure to new instances of trafficking and other protection violations continues.

- Bolster **support for programming** to identify victims and potential victims of trafficking, as well as their communities at risk, to better understand what factors at the individual and community levels make people vulnerable to being trafficked. As part of such efforts, design activities aimed at building trust between **local authorities** and victims and potential victims of trafficking.
- Enhance coordination among programmes and **programming stakeholders at local, national and intra-regional levels**, and in key cities along the CMR and WMR, in particular in the identification of victims and potential victims of trafficking.
- **Civil society, non-governmental organisations (NGOs) and local authorities** should coordinate on enacting long-term monitoring and follow-ups with survivors returning and reintegrating into home communities to assess the risk of re-trafficking, stigmatisation and alienation, and should ensure survivors' continued access to basic services.
- **UN agencies and governments** should support the resettlement of victims of trafficking when repatriation might not provide adequate protection, especially if trafficking is persistent within the community in question.



6. Unpacking the complex roles and dynamics within smuggling networks for more targeted policies

Develop a more nuanced policy approach on smuggling, taking into account smuggling dynamics and moving beyond the criminalisation of smugglers.

Photo credit: © UNHCR / Sylvain Cherkaoui

“We saw people fleeing and then watched the army retreat. We weren’t going to sit and wait for the threat to arrive. I fled and left everything behind. We left our fathers, our brothers, our children ... Sometimes we hear news. The news we get is okay but there are no guarantees. As women, we couldn’t sleep in Mangaize because of the insecurity there. Here we can all sleep at night.”

National, regional and international policies and frameworks do little to distinguish between the varied roles of different actors within human smuggling networks and the implications for criminal law and prosecutions. Human smuggling is often subject to blanket criminalisation; and there is limited research on the diversity in profiles of smugglers, and the demographic, economic and social factors that lead to the formation of smuggling networks and on the individuals seeking out smugglers. Conceptual lines are blurred when smugglers share the same identities and experiences as those who are being smuggled, or when the wide range of activities that support the organised, irregular movement of people make it difficult to distinguish where smuggling activities start and where they end.

- **State authorities, international non-governmental organisations (INGOs) and UN agencies** should work together with researchers and academics to understand how “recruiting smugglers” target refugees and migrants, to inform people on the move on awareness-raising initiatives on smuggling, for instance in camps in Eastern Sudan and in contexts of urban displacement in countries of first asylum and migration where recruiters operate.
- **Authorities and local security forces** should prioritise finding alternatives to policies and practices focused on containment or extra-territorialisation, such as in the case of Libya through the detention and interception at sea of people on the move. These measures can unintentionally fuel the demand for smuggling or incentivise smugglers to use more precarious routes, increasing the exposure of people on the move to protection incidents.

7. Advancing child- and youth-centered mixed movement programming and policies

More research is needed on the experiences, aspirations, capabilities as well as vulnerabilities of children and youth on the move, to make screening and service provision more appropriate to their needs. At the same time, age categories should not limit service provision for children and youth.



Photo credit: © MMC / Kawakb Almaloumat

Forced displacement and mobility may be due to protection risks in the country of origin or asylum, or be a part of the coping strategies of children and youth, and their attempts to seek out educational and other opportunities not available in their home countries affected by conflict and crisis. At the same time, children and youth may experience protection violations while travelling along precarious, irregular routes and age categories used by protection actors may be misaligned with their needs. In extreme cases, as exemplified in the detention of children and youth on the move in Libya, children may transition to the age of adulthood while experiencing grave protection violations, and because of a lack of services for young people, may lose access to services they are heavily reliant on.

- **NGOs and UN agencies** should increase their vulnerability screening and monitoring of children on the move, who should not be discriminated against on the basis of their nationality and migration status, and ensure that those who are underserved benefit from specific outreach and inclusion efforts.

- **NGOs, UN agencies and civil society organisations** should develop more programming for youth up to the age of 25 to ensure that when children reach the age of 18, they do not face new risks from no longer being able to access certain forms of assistance while still being in need.
- **Work towards alternative pathways** for those who are unable or do not want to return home, especially for those who have no prospect of being able to settle in their current locations. This includes putting in place the Best Interest Procedure (BIP) for children and protection case management to meet the needs of children and others on the move.
- **Humanitarian actors** should explore alternative care and accommodation options for children and youth on the move in crisis or in conflict situations where there is no access to return or resettlement – including providing greater opportunities for foster care or, in the case of Libya, opening shelters for those with specific protection needs, and supporting individuals or groups living outside shelters.

8. Advocating for solutions to enhance the protection of people on the move

In the absence of basic legal safeguards for refugees in some North African countries, and the criminalisation of irregular migration, advocating for creative solutions to improve the protection of those on the move requires collective action and collaboration

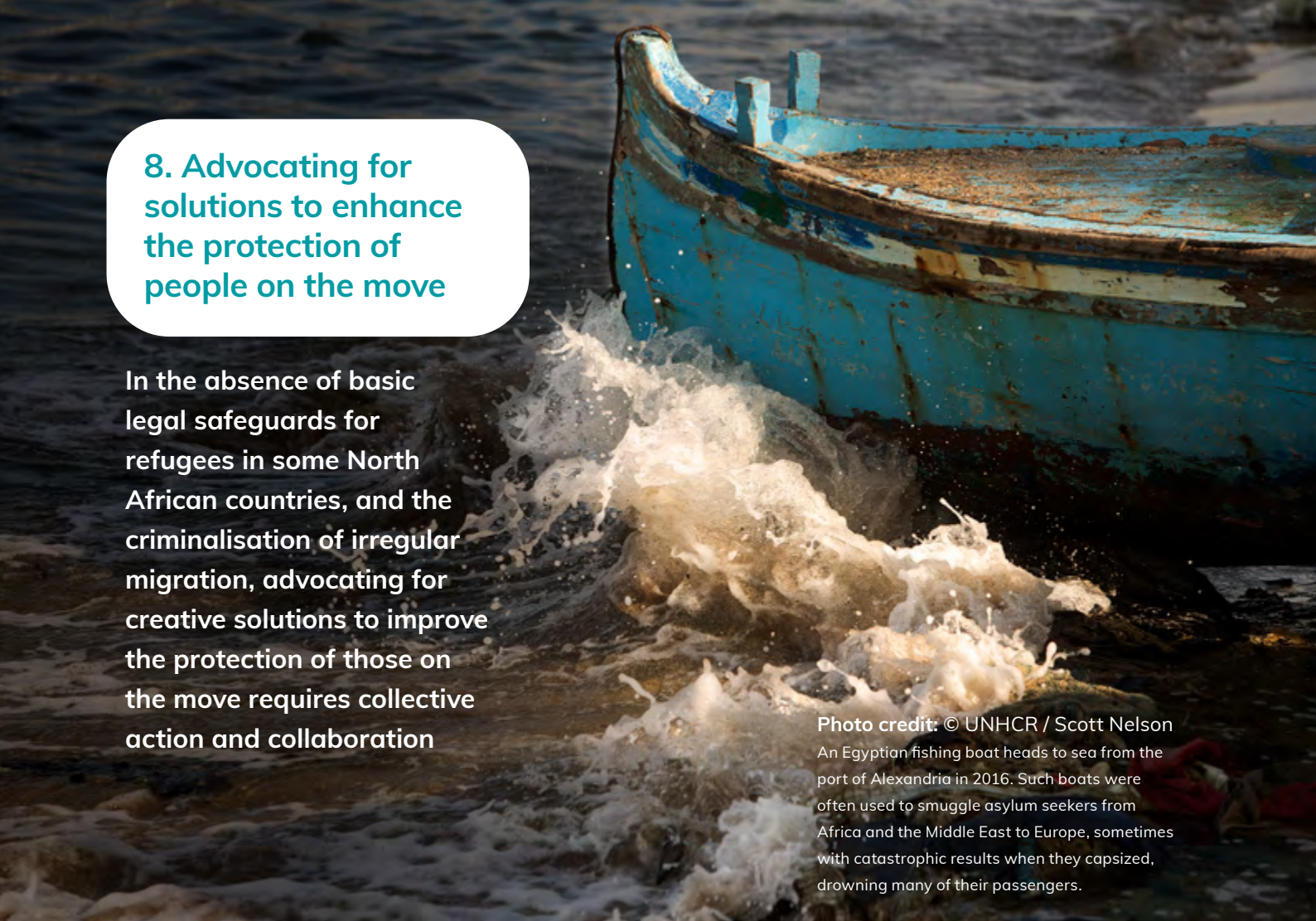
A photograph of a blue fishing boat with white splashing water, moving across the sea. The boat is weathered and has some rust on its hull. The water is dark and turbulent.

Photo credit: © UNHCR / Scott Nelson
An Egyptian fishing boat heads to sea from the port of Alexandria in 2016. Such boats were often used to smuggle asylum seekers from Africa and the Middle East to Europe, sometimes with catastrophic results when they capsized, drowning many of their passengers.

People on the move often face widespread abuses and are disproportionately affected by protection incidents, as perpetrators are well aware of their vulnerability, lack of support networks and inability to seek justice and redress. Until states adopt legal frameworks that offer protection to refugees and migrants, and move away from criminalising irregular migrants, people on the move will continue to be exposed to heightened protection risks.

- The **international community** should continue to advocate for the improvement of the protection space in national jurisdictions along the routes. This requires strong, coordinated and high-level engagement with the authorities and stakeholders (including those with de facto effective control of territory), at both national and local levels.
- **International and national humanitarian actors** should improve their coordination around a joint advocacy response, such as on interceptions at sea off the Libyan coast and arbitrary deportations taking place from countries along the routes (for example from Libya and Algeria).
- When there is a lack of legal safeguards for people on the move, **international organisations** should advocate with authorities to establish safe spaces for

refugees and migrants, and develop alternatives to arbitrary detention.

- Engage in a policy dialogue with authorities on a human rights-centered approach to migration management. This includes taking an integrated approach to search-and-rescue, which involves adherence to human rights as well as to maritime law by **States, private actors (such as NGOs and shipping companies) and international organisations**.
- The **international community** should clarify and formalise rules for disembarkation, and avoid using delayed disembarkation as a lobbying tactic for responsibility-sharing.
- The **private sector, including shipping companies**, should use their individual and collective bargaining power to pressure States to improve the regulation of search-and-rescue, and to ensure the swift and safe disembarkation of all rescued persons in a place of safety. At the same time, their practices need to be monitored to ensure their compliance with legal obligations, forming part of an integrated approach followed by all stakeholders involving adherence to human rights principles, due diligence obligations, as well as law of the sea requirements.

9. Placing evidence and research at the centre of programming and policy

While evidence and research on people on the move are growing, particularly along the Central and Western Mediterranean routes, it often risks not reaching the right audience or intended targets. This stems from a lack of coordination between research “producers” and potential “users” and, at times, a lack of incentives to use evidence and research for programme design, implementation and adaptation.

Photo credit: © Tienko Dima
Cairo, Egypt.

- **Policy and programme actors** should work together with **researchers and academics** to ensure the timely integration of evidence and research throughout all stages of policy and programming cycles, particularly on the political, economic, social and environmental macro-level factors impacting the protection of people on the move.
- Support **evidence and research** on the different roles played by individuals involved in human smuggling networks (e.g. as recruiters, intermediaries or transporters) and their interactions with people on the move to contribute to policies that move beyond simplistic labels for smugglers that do not take into account a diversity in profiles. While some smugglers are committing sanctionable abuses and grave protection violations, not all smugglers or smuggling intermediaries are committing such abuses.
- **Researchers and academics** should increase the evidence base on the characteristics of children in mixed movements and their strategic decision-making and aspirations and **engage protection organisations** working with children and youth to inform their programming.

Policy Notes

Theme 1: Critical approaches to human trafficking and policy

Photo credit: © UNHCR

Fifteen-year-old Eritrean refugee Mohamed holds up a sign saying “No to trafficking of children” at Wad Sharife refugee camp in Sudan.

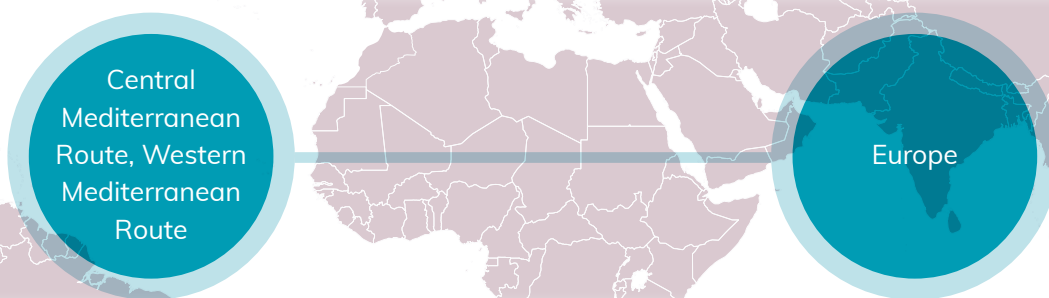


“I think we need to reframe our approach to Victims of Trafficking. [...] We need to combat the stigmatization of the Victim of Trafficking in the sense that we see him almost as guilty as the trafficker: he puts himself into that sort of danger. [...] We need to look for alternative solutions for return to the home country. We often don't realize that a person is trapped. The trafficking may not stop with the return to the home country, it may even increase. [...] We could look at Victims of Trafficking as people with important information who could help combating trafficking as key witnesses.”

Vincent Cochetel, UNHCR Special Envoy for the Central Mediterranean Situation.

Embracing Complexity: Calling for Critical Approaches in Counter-Trafficking Policy and Practice

Authors: Sarah Elliott,¹ Legal Officer, UNHCR London; Megan Denise Smith, Gender-Based Violence (GBV) Officer, IOM Bangladesh



Introduction

Counter-trafficking practitioners working along the Central and Western Mediterranean routes may be unaware that the programmes they design, implement or report on to donors – and the definition of harm that they adopt in the process² – serve particular institutional, state or individual interests, and may not be the best models for change. This is reinforced by a lack of monitoring and evaluation of counter-trafficking programmes, along with the embedding of accumulated knowledge in new policies and programming,³ and limited time, resources or willingness to shift the status quo.

Counter-trafficking is typically a state-centric affair, with non-state actors playing a supportive role to governments to achieve commitments enshrined in the Palermo Protocol on Trafficking.⁴ The “3P” paradigm of prosecution, protection and prevention is the fundamental framework for addressing trafficking at the international, regional and national levels.⁵ Counter-trafficking interventions, particularly in the context of mixed flows, can include rescue and repatriation programmes for victims; education programmes about the dangerous methods of smugglers and traffickers; development programmes for improving economic livelihoods in trafficking “hotspots”; and international and bilateral policing efforts aimed at securing borders and arresting people smugglers and traffickers.

Such interventions rarely tackle long-term development issues, leaving prevention, the third ‘P’ of the classic 3P

approach to counter-trafficking, as either the elephant in the room or a mere standalone recommendation for more research into ‘root causes’. According to Dr. Sverre Molland, “(t)he initiators of anti-trafficking activities who carried out microcredit programmes in the early 2000s would have been puzzled if they had known that, less than 20 years later, former army and police officers would replace them.”⁶ The counter-trafficking sector has shifted towards a logic of emergency in order to ‘save lives’ and rescue its victims,⁷ because developmental change is difficult to measure and less legible than the number of identified victims, operational safe shelters or secured convictions. Moreover, political questions around poverty, commercialisation of industries, migration, race and gender can be loaded, unfavourable and unwieldy.

The counter-trafficking landscape has since ballooned in the last decade to feature a multitude of UN agencies, nongovernmental organisations, philanthropists, state governments and celebrities who have jumped on the bandwagon of its moral imperative – us included. While we must acknowledge the important work being done along the Central, Eastern and Western Mediterranean migration routes to mitigate risks and improve the lives of many, given the well-known perennial challenges to addressing human trafficking effectively and the lack of progress made to date,⁸ critical thinking is required to reinvigorate counter-trafficking policy and programming in what has become one of the most violent and despairing regions of the world.

We ultimately conclude that “Complex Systems Thinking” is a crucial conceptual paradigm needed to overcome existing siloes and limitations in counter-trafficking policy and practice.

It provides a more holistic framework than the 3 (or 4) Ps, accounting for the complex interplay between the structural and proximate factors causing and contributing to human trafficking discussed below. The ten questions and sub-questions posed to policy and programme designers at the end of this brief, deliberately embrace plurality, and can be useful in scenario building/risk assessments or programme evaluation and design. It also helps identify opportunities for collaboration between humanitarian, development and peace actors, which is desperately needed to make a real inroad into the low-risk, high-profit crime of human trafficking.

Structural challenges in counter-trafficking

Admit it or not, human trafficking and the programmes to counter it are shaped by hegemonic norms and institutions, colonial legacies, asymmetric power relations and ideologies, which are often neo-liberal, racist and patriarchal.⁹ The abolition of human trafficking creates a simple moral imperative with enormous popular appeal; even as it depoliticises and absolves the state – often behind a humanitarian agenda – for its role in creating the structures that permit, if not encourage, vulnerability to trafficking.¹⁰

Abolitionism enables states, and their corporate partners, to champion the anti-trafficking cause through concerted efforts to root out the bad apples and rescue the victims, while also deeming unnecessary any commitment to addressing the underlying causes of exploitation they benefit from. These “bad apples” – traffickers, criminals, clients, pimps, corrupt immigration or police officers, specific corporations that violate labour laws or isolated national governments that oppose Western hegemony – are casted as the only perpetrators.¹¹ This framing identifies human trafficking as a crime committed by individual actors, instead of the result of systemic global disparities in wealth, social exclusion and discrimination within labour and migration frameworks. Social harm is positioned outside of the institutions of corporate capitalism and the state apparatus; big business, the state, its institutions and the police are therefore reconfigured as allies and saviours (who can pat themselves on their backs for a job well done) against these deviants, while continuing to benefit from cheap, de-regulated foreign labour.¹²

Much has been written on the US dominance over and policing of the global counter-trafficking regime, aided by its annual Trafficking in Persons (TIP) report that ranks countries according to four US “minimum standards,”

which can result in economic sanctions against those who fail to perform. These minimum standards can be found in the US Trafficking Victims Protection Act 2000 as amended, focusing on in-country efforts to punish and eliminate trafficking, rather than wider structural factors as discussed in this policy brief. In fact, the TIP report explicitly acknowledges that its rankings are not affected by development initiatives.

Such rankings have historically served as a tool to influence long-standing US foreign policy interests in Africa,¹³ the Caribbean and South Africa. Based on these standards, it comes as no surprise that “developing” countries are positioned poorly with new goals annually established based on an “old playing field.”¹⁴ McGrath and Watson¹⁵ conclude that representations of victims within the US TIP report remain racialised; questions of development are reduced to “cultural relativism”; and problematic connections between supply chains and migration, which could put the responsibility on developed countries, are managed.¹⁶

The unintended consequences, or “collateral damage,”¹⁷ of an approach to human trafficking steeped in an imperative of criminal justice, national security and moral rescue have included policies harmful to labour migrants, refugees, sex workers and other individuals at risk of exploitation. These at-risk populations find themselves again and again at the bottom of the food chain of global capitalism.¹⁸ Some of this fall out encompasses the criminalisation of undocumented workers; increased securitisation and stricter border controls; rising detentions and deportations of “illegal migrants” back to the circumstances which led them to being trafficked in the first place;¹⁹ re-traumatisation; the infantilisation of survivors; a disproportionate focus on sexual exploitation and less attention paid to labour trafficking, and so on.²⁰

Counter-trafficking programming should consider the historical and current economic and political relationship between the source, destination and donor countries involved; what cultural, social, religious and spiritual norms might motivate risky irregular outward movement or in-country exploitation; and how racism features – not just in the attitude of destination countries or humanitarian agencies, but in the desire of migrants to improve their wealth and prospects by greater proximity to “whiteness”.²¹

The trafficking of women and girls from Edo State in Nigeria to Europe is a phenomenon that exists due to all of these factors²² – factors that are equally vital to consider in the design of return and re-integration programmes for survivors to avoid re-trafficking.²³ While it is important to “appreciate where human trafficking is happening, who its victims are and who is perpetrating this crime,” as Yury Fedotov, United Nations Office on Drugs and Crime (UNODC) Executive Director, has stated, it is equally important to appreciate the normalised societal cultures that may perpetuate the problem, and just what and who

would be required to dismantle it. Current approaches in counter-trafficking often fail to understand, for example, the complex realities of gendered social norms in source countries²⁴ and the dynamics of smuggling and trafficking networks. Such networks are usually comprised of other displaced community members, often with family, kinship, community or social ties to the victims,²⁵ and whose purpose or profits may serve wider family, kinship and community interests that are extremely difficult to replace.

A better understanding is required of the demand for Nigerian prostitutes in the far reaches of Europe and other markets in the developed world – in particular, for the sexual and labour exploitation of persons originating from former colonies and the wider so-called “Global South.” Before investing in training police on anti-trafficking investigations, or considering expanding their powers to raid and rescue, know that their rent-seeking behaviour may be a colonial legacy. Changing this behaviour will require significant investment, mentorship, resources and political will, which could far surpass your budget and timeline. Colonial policing, centred upon extracting revenue and suppressing insurrection, is a culture that largely persists today among chronically underfunded and corrupt police forces in Africa.²⁶ This is also why marginalised sections of some societies avoid going to the police for protection and justice, and why that lack of trust follows their migration journeys – prohibiting self-identification as victims of crime along the way.²⁷ The increasingly non-linear, cross-border, professionalised, digital and humanitarian nature of successful anti-trafficking investigations²⁸ makes the objective of building police capacity to fight trafficking in countries along the Central Mediterranean even more challenging than anticipated.

Before we design development models addressing the root causes of trafficking, there is also a need to acknowledge the differences in how institutions like the state, the market, civil society or the legal system are shaped in different parts of the world, often in very different development stages.²⁹ In Kotiswaran’s 2019 case study on India, *Tango at the Margins*, which examines the relationship between Sustainable Development Goal 8 and target 8.7,³⁰ activists and academics working on various forms of extreme exploitation – including, bonded labour, contract labour, domestic work, inter-state and international migrant work and sex work in the country – rejected the proposed 2016 Trafficking Bill. The bill entrenched a criminal law approach to trafficking through raids, rescue and rehabilitation and the typical sensationalist, neoliberal discourse of “modern slavery.”³¹ They argued that, overall, the bill did not reflect Indian working-class realities of extreme exploitation and precarious employment, and elaborated on the systemic causes of exploitation in India. They added:³²

“We believe there is a direct relationship between distress migration and vulnerability to trafficking, forced labour and slavery.”

We oppose policies that aggravate this vulnerability caused by the agrarian and environmental crises, the displacement of tribal communities, the commercialisation and mechanization of agriculture, the militarization of entire regions in the country, pauperization and immiseration of the rural population, the informalisation of the employment relationship, and the effects of globalisation, privatisation, and contractualisation on the urban workforce.”

This case called for further exploration of alternate paradigms for addressing the structural factors that create an environment ripe for trafficking. Counter-trafficking practitioners must recognise that there is no simple correlation between the prevalence of trafficking and the score of the human development index, the rate of poverty, or the measure of income inequality.³³

Kotiswaran emphasises the need to go beyond mainstream and dominant paradigms of development and economic thinking, and to better consider how to produce contextualised and plural development approaches in counter-trafficking.³⁴ Such approaches would take into account a country’s specific development trajectory, with historical perspective as the starting point for any counter-trafficking programme or policy. These approaches engage with, rather than supplant, deep histories of local struggles as in the case of extreme labour exploitation in India.

Contrary to what Walk Free’s Global Slavery Index³⁵ and others call for, economic development will neither automatically reduce the prevalence and risk of slavery nor of human trafficking.³⁶ A simplistic view of poverty based on low-income levels does not alone explain why some people are vulnerable to human trafficking. An understanding of the non-economic elements of poverty – such as gender discrimination and the lack of human capital – also helps locate those who are most vulnerable to marginalisation within the development process, as well as governance issues that reinforce their vulnerability to trafficking related to access and allocations of resources and services in a community.³⁷ Moreover, it is not always the poorest who migrate in search of better opportunities; outward movement can demand considerable resources and information, which may increase with rising gross domestic product (GDP).³⁸ A critical examination of the systems and institutions that contribute to human trafficking is therefore not just necessary, it also requires a far broader commitment to, and a nuanced understanding of, social and economic justice, including the stage of “development,” the level of welfare available in a source country, who is benefitting and with what outcomes.

Human trafficking is a multidimensional and constantly evolving phenomenon that cannot be addressed by traditional approaches and oversimplified 3P models given its complexity. Lack of development is not simply a root cause of trafficking, and development is not the silver bullet of a solution. In attempting to wrap our heads around the structural causes and consequences of the industry of human trafficking and its abolition, the authors believe that rather than continuing with business as usual, we should embrace complexity and deliberately bring it back into programme design and policy.

Conclusion: Embracing complexity

Despite the continued and widespread public interest in abolishing one of the most lucrative and destructive international crimes to exist – and to do so along the Central Mediterranean specifically – various structural phenomena and historical underpinnings too often limit counter-trafficking efforts within a prism of piecemeal, short-sighted and cookie-cutter approaches. These can be ineffective, not properly localised, sustainable nor considerate of the wider social, cultural or economic changes necessary to get to the root of the problem.

Complex Systems Theory can help guide us through our most multifarious and ambiguous objectives without being overwhelmed in the process. It is a framework that is proving essential to chip away at some of today's most pressing global problems, such as climate change and public health crises like the COVID-19 pandemic.

Complex Systems Theorist Alex Ryan explains that if we are to make any headway on such systemic challenges which often traverse national, organisational and disciplinary boundaries at will, a fundamentally different approach must be taken. He states:³⁹

“To keep our heads above water in a sea of disruption and disorder, we cling to whatever is within reach: the organizations, processes, toolsets, mindsets, and habits we have lived with longest and are most familiar with. But if we are to make any headway on our systemic challenges—the kind that cross national, organizational, and disciplinary boundaries at will—we need to take a fundamentally different approach. The familiar approaches have been designed for sailing fast on a smooth lake. They quickly become liabilities in a white-water world.”

Complex Systems Theory suggests that a complex and ever-evolving social problem such as human trafficking, cannot be achieved by using a linear or simplified lens (i.e. the 3P approach), and requires a holistic perspective of the interactions between actors, structural and proximate factors, as well as emergent behaviour in both the criminal justice system and the human trafficking system in order to combat it effectively.⁴⁰ We would tend to agree. In fact, Complex Systems Thinking has already been applied to better comprehend the multi-stakeholder response to criminal investigations of human trafficking for sexual exploitation in South Africa.⁴¹

Figure 1: Examples of structural and proximate factors involved in trafficking. Note some structural and proximate factors apply to both source and destination countries, some apply solely to the one or the other⁴²

Structural factors	Proximate Factors
<ul style="list-style-type: none"> • Economic: Globalisation, poverty, deprivation and economic downturns and trends, free market economics, de-regulation, migratory movements • Social: Social inequality, gender discrimination, discrimination and marginalisation based on age (children and minors), gender status, disadvantaged cultural, regional and linguistic status, prostitution • Ideological: Racism, xenophobia, gender and cultural stereotyping • Geopolitical: War, civil strife, violent conflict, military bases and operations 	<ul style="list-style-type: none"> • Legal and Policy: Inadequate national and international legal regimes, poor law enforcement, immigration/migration laws and policies, inadequate and poorly enforced labour laws and standards • Rule of Law: Corruption, complicity of state in criminal activities or support of underground criminal networks, organised criminal/parallel entrepreneurship including underground sex trade, smuggling, trade in arms and drugs • Inadequate partnership between civil society and state: Weak education campaigns, low awareness among vulnerable communities, apathetic civil society, poor accountability of state organisations

Recommendations for policy

It is apparent that no number of checklists, toolkits, indicators, models, referral pathways, safe houses or police training can counter the appetite of violent economies without an honest examination and reflection of what truly drives state involvement into human trafficking, as well as what drives the practitioners, states and donors tasked to respond. It is therefore crucial that counter-trafficking practitioners and policy makers take a step back and think about what they do, why they do it and what their potential blind spots are. We believe that without this deep dive, any attempt to improve regional, state and local coordination efforts to tackle human trafficking in the focal region will remain limited in their scope and impact.

By posing the following 10 interconnected questions, the authors hope to foster more critical and self-reflexive thinking among counter-trafficking practitioners, policy makers and donors working along the Central, Eastern and Western Mediterranean routes; and spur areas for further inquiry using a Complex Systems Theory approach.

1. What definition of human trafficking do you (or your programme) adopt and why?

Consider the debate around definitions and what interests may be served by the definition adopted versus their practical utility (i.e. what is the role of the UN, corporations or states?).

2. What are the historical underpinnings of trafficking along the Central Mediterranean route that you are seeking to target, and what structural factors are driving it?

Consider here the relationship between source and destination country, with a particular focus on how legacies of and institutions of racism may inform regular and irregular migration routes between them.

3. Who is leaving and who is staying behind (and what role do they play in risky irregular migration?)

This incorporates the reality that those who embark on risky migration may in fact have more resources than those who remain, and may have been shut out of employment opportunities brought on by a rise in GDP.

4. What vulnerabilities do perpetrators and victims in fact share?

Reconsider who is “vulnerable” in the categorical dichotomy of “bad apple” and victim, and what interventions may be needed to prevent persons from trafficking as a necessary means of self-preservation, protection or livelihood.

5. Who actually relies on the profits of trafficking and why/for what?

- a. Is it supporting communities other than just the traffickers themselves?
- b. Exactly what would be required to dismantle this?

6. Who benefits from the harm caused or from exploitation (the demand)?

- a. Is it supporting powerful corporate, foreign policy or hegemonic interests? And how will an understanding of this be factored into your objectives?
- b. Are we looking hard enough at what drives the demand side of the equation in what we propose (rather than just reducing the supply)?

7. Who is working on human trafficking and who is not that should be? (i.e. considering the interlinkages between the relief, rehabilitation and development fields)

- a. Are you considering the agency of those at risk and those already working on addressing human trafficking in their own communities? How are you meaningfully engaging with the lived experiences of those trafficked?
- b. Who are the organisations and local partners available to work with? (i.e. women’s organisations, local community networks, national NGOs and grassroots networks often comprised of survivors of trafficking themselves).

8. In what ways do counter-trafficking practitioners (indirectly) perpetuate trafficking?

Could the programme you implement somehow exacerbate the vulnerability of victims, either in the country of assistance (i.e. such as vis-a-vis the host community by not providing an appropriate form of residence to identified victims) or upon return to their country of origin (i.e. through the method of administering repatriation payments, or the lack of understanding of what reintegration would require)? Consider here social, cultural, gendered and other community norms, and your role in the local context, too.

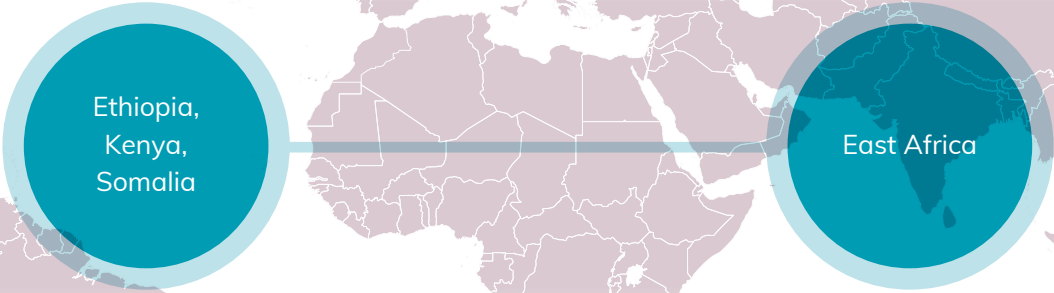
9. How can we create real, long-term and sustainable integrated migration and counter-trafficking policies that are not aimed at 'migration management' but, rather, at better global governance?

How does your programme promote a more just and equal society overall, and give respect to subaltern experience and knowledge?

10. What does an alternative framework that is lodged in a commitment to social and economic justice, decolonisation and respect for local experience and knowledge look like?

Anti-Trafficking's Blind Spot: Long-term Solutions for Victims of Trafficking

Author: Johanna Bögel, Advisor, Better Migration Management Programme, GIZ



Ethiopia,
Kenya,
Somalia

East Africa

Introduction

Long-term solutions for trafficking survivors are a blind spot in anti-trafficking. In the “4Ps” of anti-trafficking, long-term solutions are notably absent and they remain both under-theorised and underfunded. This is a humanitarian disaster and a public policy problem.

It is a humanitarian disaster because survivors, often traumatised by arduous trafficking journeys, do not receive what it says on the label: A long-term solution. When unpacking long-term solutions, the vast majority are a variation of reintegration programmes. While research on the reintegration of migrants gained traction, reintegration of trafficking survivors is more complicated due to their specific trafficking context. It also is a public policy problem. From a donor’s point of view, it does not make sense to identify trafficking survivors, provide them with emergency care, medium-term support and a reintegration package only to see them re-enter a cycle of human trafficking.

Therefore, this paper sets out to answer the following question: How effective are long-term solutions for trafficking survivors in the long-term? It argues that long-term solutions for survivors are a blind spot in anti-trafficking. Not only are they often not working, but there is little awareness of the scale to which they are failing. This paper aims to show policy makers that this is a problem to focus funds on: Without making sure that trafficking is not circular, resources spent on protection and reintegration have little impact.

This paper compares various national referral mechanisms (NRMs) for trafficking survivors. While it builds upon primary data collected in East Africa,

specifically in Ethiopia, Kenya and Somalia, its findings are applicable to the wider region. Findings are based on interviews with local non-governmental organisations (NGOs) and recent academic literature. They provide insights and recommendations for policy makers and for donors to fund more research into long-term solutions for survivors; to better target reintegration programmes to the specific needs of survivors; and to provide alternatives to reintegration.

Unpacking Long-term Solutions

Comparing NRMs for victims of trafficking from Ethiopia, Kenya and Somaliland (Somalia does not have a national-level referral mechanism), it is apparent that long-term solutions are under-theorised and reintegration is the only option discussed. In the Ethiopia NRM, return and reintegration is the only long-term solution mentioned, though a vague reference is made to “reintegration options or services that may or may not be available.”⁴³ The Kenyan NRM discusses the return and reintegration process but is vague on alternatives. While it admits that “in some cases, reunification may be neither feasible nor desired,”⁴⁴ alternatives are only mentioned in the flowchart on return, reintegration and repatriation. They are listed as “extended stay in the country/shelter, integration, resettlement, referral to appropriate service providers” but not discussed further.⁴⁵ The Somaliland referral flowchart mentions return, integration or resettlement, but gives no guidance on any of them. Local service providers in Somaliland mentioned that return and reintegration are usually the default option.^{46 47}

Having established that reintegration is the NRMs’ default option and the only option considered in any detail, we

next turn to the extent to which there is follow-up and monitoring of reintegration to ensure that reintegration works in the long-term. Among the interviewed NGOs, three NGOs stated that the period for monitoring and follow-up varied with the reintegration of the survivor, whereas two NGOs shared that they had fixed periods of monitoring for three and six months respectively. Among those with varying length of monitoring, NGOs stated that the average time of follow-ups was equally between 3-6 months, and rarely exceeded a period of one year. NGOs also noted that it was difficult to obtain funding for reintegration follow-ups and monitoring. From a funding perspective, following up with reintegrated survivors does not seem to be as “sexy” as rescuing them.

Considering monitoring in NRMs, the Ethiopian NRM explicitly discourages NGOs from following up with reintegrated adult survivors for a period exceeding one year “as this could add to the stigmatisation and be counter-productive to the normalisation.”⁴⁸ The Kenyan NRM requires follow-ups and monitoring without specifying a timeframe. The Somaliland flowchart does not mention follow-ups.

There also is a gap in the research on long-term solutions. As illustrated above, most programmes follow up with survivors for up to six months before the case is closed. The long-term success of reintegration programmes is rarely assessed beyond this timeframe. This research gap is striking, especially if we compare it with the growing body of research on survivors at pre-departure stage or en route.

The few exceptions where longitudinal research with survivors has been done indicate the scale and complexity of the problem. The 10-year longitudinal research project conducted by the Chab Dai Coalition in Cambodia and the Butterfly Longitudinal Re/Integration Research Project (BLR) gives strong indications of the long-term challenges reintegrated survivors face. While there is no comparable longitudinal data available for Africa, anecdotal evidence from East Africa collected in this paper strongly suggests similar challenges. It indicates a considerable risk of re-trafficking for reintegrated survivors.

Unaddressed long-term challenges

For analytical purposes, the challenges reintegrated survivors face can be divided into three factors:

1. Structural factors in the home community, usually pre-existing factors that directly contributed to the individual’s vulnerability to being trafficked in the first place;
2. Personal factors related to the trafficking experience such as health challenges due to the trafficking incident; and
3. Community or household factors related to how the home community responds to the trafficking survivor’s return and reintegration.

First, reintegrated survivors usually face the same challenges in their home communities that contributed to them being trafficked in the first place. This entails a strong socio-economic dimension: When survivors leave the shelter, stop receiving associated services and reintegrate into their home community, they often experience a “real sense of ‘shock’” followed by a feeling of social isolation.⁴⁹ Once services are phased out, many survivors face poverty. In East Africa, cash support for basic services such as housing is paid for by reintegration programmes for a fixed period varying between three to six months.⁵⁰ In most cases, this leaves reintegrated trafficking survivors unable to earn their own livelihoods after support ends, and they sometimes prefer to stay dependent on NGO services.⁵¹

While many reintegration programmes include economic empowerment components such as education or vocational trainings,⁵² this rarely ensures a secure livelihood after reintegration. Vocational skills taught in reintegration programmes often do not correspond to market needs.⁵³ All interviewed NGOs that provide economic empowerment programmes focused on self-employment and small-scale businesses rather than salaried employment.⁵⁴ “In the areas where the survivors come from,” one interviewee explained “there already were few options for employment to begin with”; and with survivors being traumatised and stigmatised in their home communities, salaried employment in the home community is not an option.⁵⁵

The threat of poverty after reintegration and cessation of services increases the risk of re-trafficking. In the BLR study, 68 percent of the reintegrated male survivors eventually left their home community after reintegration, 32 percent did so in search of work. The often precarious forms of remigration increase the risks of re-trafficking or of experiencing other forms of exploitation en route.⁵⁶ ⁵⁷ Interviewees from all three countries reported that reintegrated survivors in many instances eventually leave their home communities and remigrate, usually irregularly and in precarious ways, in search of better economic opportunities.⁵⁸

Yet, reintegration is the default long-term option for survivors. Throughout the interviews, there has been one example of a trafficking survivor who resettled to a different country with the help of a service provider. This option was only considered after several failed attempts to reintegrate, and the survivor repeatedly re-entering the trafficking cycle. In this case, the survivor specifically asked for resettling abroad, arguing that “people don’t know me here and I can start afresh.”⁵⁹ For the same reason, some survivors specifically ask for resettlement within their home country rather than reintegration into their home community.⁶⁰ However, this option is rarely funded under long-term solution programmes. Often, survivors are assisted to reintegrate but eventually decide to resettle unassisted.

Next to the socio-economic dimension, there is a law enforcement dimension to this factor. In surprisingly many cases, survivors are reintegrated into home communities even though their trafficker still lives freely in the community. Systematic research in the West African⁶¹ and Cambodian⁶² context, as well as evidence from East Africa, indicate that survivors reintegrating into home communities were then re-exposed to their traffickers. There have been reported instances where known traffickers from the family of underaged survivors were released on bail and known to be looking for them. Yet, reintegration went ahead regardless because there was no alternative available and the NRM did not specifically request the case worker to reconsider reintegration.⁶³

Second, the trafficking experience is per definition associated with exploitation and human rights abuses, leaving many trafficking survivors heavily traumatised. While service providers aspire to provide trauma-informed care, the fact that addressing trauma is a long-term process runs contrary to the short-term timeframe of reintegration programmes. Research shows that survivors have worse health outcomes in the decade after reintegration due to their challenges to overcome trauma.⁶⁴ However, current reintegration programmes are not designed to address these long-term medical and psychological needs.⁶⁵ This can lead to emotional health challenges, including post-traumatic stress disorder, substance abuse and a higher likelihood of coming into conflict with the law.^{66 67 68} Heavily traumatised trafficking survivors are less likely to reintegrate successfully and are thus more likely to be re-trafficked.

Third, reintegrated survivors can face stigma and pressure from their home community precisely because of their trafficking experience. When survivors prefer to keep their stories to themselves, the mental strain of keeping a secret has been shown to lead to worse health outcomes.⁶⁹ In cases where their stories are known, reintegrated survivors often face discrimination and social exclusion.⁷⁰

Many organisations attempt to address this challenge through home community sensitisation, but research shows that this carries its own risks. Well-intentioned campaigns in Ghana, which communicated health challenges of returnees to home communities, reinforced an image of reintegrating survivors having been infected with HIV due to sex work. This increased rather than decreased the stigma that returning survivors faced.⁷¹ In some cases, survivors' participation in an official reintegration programme seems to add another level of complexity: Survivors who participated in NGOs' reintegration programmes, stayed in shelters and received services are sometimes seen as compromised and "promiscuous."⁷² They experience stigmatisation precisely because they are associated with NGO reintegration programmes. In East Africa, there have been cases of survivors preferring "self-reintegration" without direct NGO contact or support once they arrived

in their home community because they were cautious of the community's reaction to the NGO's presence.⁷³

In addition to external stigmatisation, many survivors suffer from a feeling of failure after having migrated to find better opportunities and returned to their expectant families empty-handed.⁷⁴ Survivors who left to migrate for better opportunities and were trafficked along the way also often went into debt and had families and friends lend them money which they are expected to pay back upon return.⁷⁵ There also exists an expectation that family members going abroad for better opportunities will send remittances.^{76 77 78} Failure to provide the expected financial support or pay back debts often leads to financial anxieties and worse health outcomes for reintegrated survivors. These pressures can contribute to a survivor's decision to migrate again, often in precarious ways, and to willingly accept exploitation to address mounting debts.^{79 80}

As illustrated, survivors face specific challenges when reintegrating into their home communities that are not sufficiently addressed by current programmes. Sometimes, reintegration might just not be the best solution, specifically in cases where the trafficker is still living freely in the home community or even in the same household. In many cases, returned trafficking survivors struggle both socially and economically to reintegrate into their home communities. They eventually opt for remigrating – domestically or internationally – and settling elsewhere to escape stigmatisation and the circumstances that led to them being trafficked in the first place.

A circular problem: Re-trafficking

Considering the above, what do NRMs say about the risks of re-trafficking? The Ethiopian NRM explicitly mentions the need to assess the risk of re-trafficking in the reintegration plan. However, as reintegration is the only long-term solution foreseen in the NRM, the NRM gives no guidance on how to then address this risk. The Kenyan NRM requires service providers to assess the role that family members played in the initial trafficking for minors, but does not have a similar requirement for adults. The Somaliland referral flowchart does not mention any considerations on this. Addressing the risk of re-trafficking seems to be, if at all, a marginal concern.

It is difficult to obtain reliable statistics about human trafficking due to its clandestine nature. Re-trafficking suffers from the same problem. Even in cases where trafficking cases are counted or estimated, re-trafficking is not a separate category. Consequently, reliable statistics on re-trafficking are scarce. Research from the early 2000s places the re-trafficking prevalence rate vaguely between 3 to 43 percent in South-Eastern Europe,⁸¹ at about 21 percent in Great Britain⁸² and closer to 25 percent in India.⁸³ Interviewees who felt confident in estimating the percentage of reintegrated survivors who were re-trafficked placed the number at about 30 percent.⁸⁴ This does not offer a clear percentage for the

prevalence of re-trafficking in Africa, but it does suggest that it is not a negligible trend.

The existing research on causes of re-trafficking worldwide^{85 86} is coherent with anecdotal evidence gathered from interviews in East Africa. Having experienced trafficking and exploitation, especially at a young age, leaves young survivors more vulnerable to experiencing trafficking again later in life.^{87 88} Anecdotal evidence also suggests that the vulnerability to trafficking can be 'inherited' – in surprisingly many cases, trafficking survivors one of the interviewees worked with were children of reintegrated trafficking survivors.⁸⁹ Research should be done on whether children of trafficking survivors are more likely to be trafficked themselves.

The presence of the initial trafficker in the home community and, sometimes, in the household that the survivor reintegrates into is another factor that drives re-trafficking. In a recent study conducted in Ghana, the initial trafficker often was a parent or legal guardian. While sometimes the survivors themselves expressed their wish to remigrate after reintegration due to hardship, the presence of the initial trafficker in the household was a dominant factor in determining whether a child trafficking survivor would experience re-trafficking.⁹⁰ Similarly, in the BLR study, avoiding a trafficker who still lived in the home community was one frequent reason why reintegrated survivors decided to leave their home community after reintegration.⁹¹ The interviewees agreed that reintegration into home communities exposing the survivor to the initial trafficker was a factor strongly contributing to re-trafficking.⁹² "There simply are no systematic safeguards against re-trafficking once the trafficking survivor is reintegrated," said one case worker.⁹³ There has also been anecdotal evidence of reintegrated trafficking survivors themselves joining the trafficking network and recruiting new victims of trafficking from their home community.⁹⁴

Often, the structural factors in the home community, which contributed to the initial instance of trafficking, have not changed upon a survivor's return. In addition, the abuse that survivors experience during their trafficking journey can render them less able to cope with these challenges. Feelings of disappointment, the failure to live up to the family's financial expectations, indebtedness and stigmatisation by the community make the trafficking survivor's situation upon return yet more difficult. These factors contribute to the trafficking survivor's vulnerability to re-trafficking, "pushing people back into the same vicious cycle of trafficking and re-trafficking."⁹⁵

Policy implications

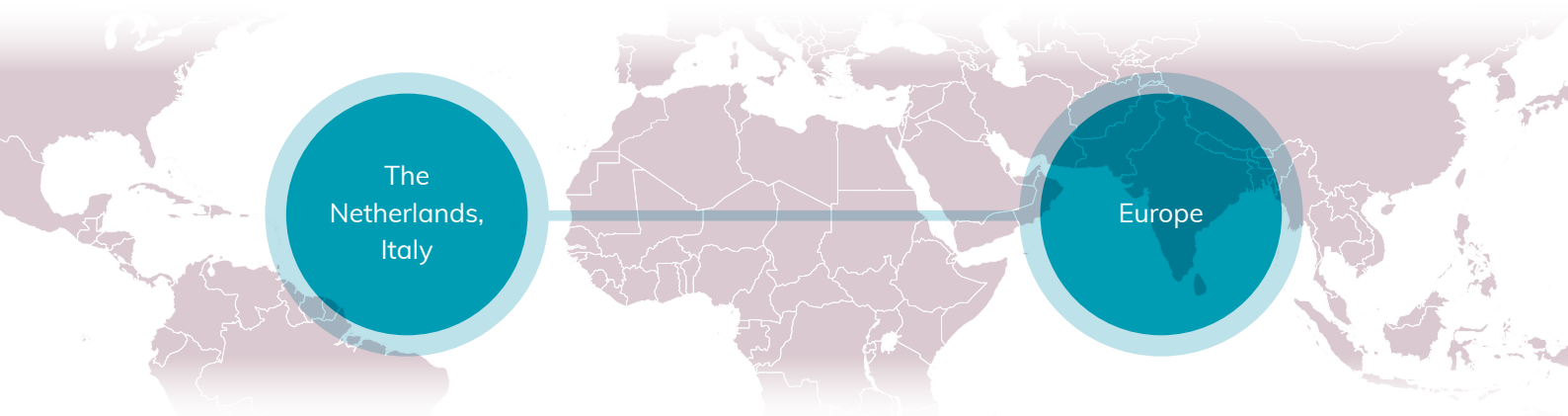
The discussion above illustrates first and foremost that long-term solutions for victims of trafficking are a blind spot in the anti-trafficking sector. Not only are the available long-term solutions – mostly reintegration – not working for many survivors, there also is little awareness of the scale and complexity of this problem.

From a donor's perspective, addressing this blind spot makes financial sense: If trafficking is indeed in many cases a circular problem, resources spent on reintegration programmes that lead to re-trafficking are wasted. In a re-trafficking context, a well-targeted long-term solution and thorough follow-ups with reintegrated survivors are likely more effective in preventing human trafficking than money spent on blunt awareness-raising campaigns. As one interviewee explained, "organisations working in this sector need to realise that sustainable, long-term reintegration is costly and complex, and to only do half the job might in fact make the situation worse".⁹⁶

A necessary first step could be to conduct more research into long-term solutions for survivors. Here, it is important to not automatically equate long-term solutions with reintegration but to broaden the debate to the full spectrum of rehabilitation.⁹⁷ Where reintegration is the preferred choice, reintegration programmes should be better targeted to address the specific long-term needs of survivors. What makes a reintegration programme successful not over 6 months but over a generation? Which survivors might benefit from a well-targeted reintegration programme? And which realistic alternatives might there be for survivors who are unwilling to participate in and unlikely to benefit from reintegration programmes? Providing alternatives to return and reintegration will also require destination countries to open more legal and safe pathways to migration.

Fit no More: Victims of Trafficking of Human Beings Negotiating Vulnerabilities and Protection gaps

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Introduction

The Central Mediterranean route is important for “people on the move”⁹⁹ – broadly defined as irregular migrants using identical routes and modes of transport, who pay the same human smugglers exorbitant sums.¹⁰⁰ In particular, this is due to a lack of protection frameworks that take into consideration all groups of irregular migrants, as well as the failure of destination countries, such as those within the European Union (EU), to ratify human rights policy, resulting in increased vulnerability to trafficking in human beings (THB).¹⁰¹

For many migration scholars, it is vital to go beyond simple binaries between refugees and migrants, and to differentiate the experience of those on the move.¹⁰² As member states reinterpret (or misinterpret) the 1951 Refugee Convention, “irregular” migrants have fallen outside “the scope of international refugee protection frameworks, but... nevertheless need humanitarian assistance.”¹⁰³ Legislation governing mixed movement, based on “distinctions between migrants and refugees,” has clearly “...led to a protection gap.”¹⁰⁴ For many years, the Dutch government sought to improve the situation of victims of THB. From 2018 to August 2019, robust protective policies were in place, leading the Netherlands to become a favoured country of destination for victims of trafficking (European Council, 2018).¹⁰⁵ However, with increasing arrivals of THB victims (Dublin claimants)¹⁰⁶ from Italy, Dutch policy changed from late 2019, reinforcing a protection gap for this group of vulnerable migrants.¹⁰⁷

Limited data

At present, available statistics do not convey the nature nor the magnitude of the problem because, most often, multiple situations occur simultaneously: Death, extortion, torture, prostitution, sexual violence, slavery, smuggling and trafficking.¹⁰⁸ In terms of those who fall victim to THB while en route, Filippo Grandi, High Commissioner of UNHCR, paints a grim picture:

“The Central Mediterranean routes have blighted tens of thousands of lives over the last decade. For many, their experiences in Libya are part of a continuum that extends far beyond that country’s borders...and characterised by unspeakable brutality and inhumanity.”
(UNHCR-MMC, 2020)¹⁰⁹

While quantitative data is patchy, stories told by migrants convey persistent protection challenges. Such stories from life should inform policy debates alongside hard data. This policy note therefore considers the narratives and lived experiences of those utilising Central and West Mediterranean routes, and their implications for Dutch policy. Travelling from Libya to Italy, what begins as smuggling can end in trafficking, when people cannot afford to pay smugglers’ fees. Some are sold for labour or sexual exploitation until they can pay to leave Libya.¹¹⁰

Protection gaps for victims of THB

Prior to August 2019, non-EU trafficking victims exploited both in Libya and Italy by human traffickers received a short-term residency permit (B-8/3 permit) in the Netherlands upon their identification.¹¹¹ However, after this date, victims were required to state the full names, addresses and car number plates of traffickers. Very few victims could or would provide such information. Some could not read or write; others feared reprisals. Hence, some of those previously granted B-8/3 permits were denied them; and some were returned to Italy where it seems unlikely that they would receive protection. As Palumbo (2015) mentions, “Article 18” protection in Italy should not depend on victims’ ability to supply detailed evidence about their traffickers.¹¹² In practice, victims of THB rarely obtain a residence permit in Italy without lengthy, expensive legal procedures. NGOs and migrant associations underscore that the Italian police routinely refuse permits to those who claim to be trafficked, unless these individuals are also willing to testify against their traffickers.¹¹³

The aforementioned situation results in a protection gap arising from the return of victims of THB from the Netherlands to Italy. One stakeholder called GRETA, an Independent Committee monitoring the implementation of the Council of Europe Convention on Action against Trafficking in Human Beings, has requested that the Netherlands come up with alternative procedures for identifying THB victims that do not involve the police at all. So far, no such alternative mechanism has been put in place.

Closing the door

Following a dramatic increase in recorded victims of THB in 2019, the State Secretary for Security and Justice of the Netherlands tightened rules governing B-8 and B-9 permits. This especially reduced how many Nigerians could claim protection as victims of THB.¹¹⁴

The unproven assumption was that the rise in recorded claimants meant that some migrants were abusing the THB-protection system. However, the reverse is true. Reforms in 2018 meant victims of THB could report to the police without fear of arrest. Increased reporting marked the success of a more protective policy at the time. Yet, policy makers problematised this rise, arguing that a tougher approach was needed. By pinpointing a supposed “loophole” in migration controls, Dutch policy makers again allowed the police to suspect most victims of THB of not being in genuine need of protection.

It was estimated that, in 2018, most THB victims in the Netherlands were hiding from the authorities. From 2018 to mid-2019, more victims reported their situations to the police when it became easier to request for a B-8 or B-9 permit. Prior to that, most feared contacting the police, in case they were returned to Italy. Although “the Netherlands vigorously attempt [to] combat human trafficking in persons...it is estimated that the

Netherlands currently only detects a ninth of the victims... four years ago, estimates showed that one fourth or fifth of the victims were detected. This steep drop is worrying” (Van Voorhout, 2020, p. 95).¹¹⁵ In 2020, according to one stakeholder interviewed, as few as one in 20 THB victims may have come to the attention of the authorities.

Stories from the THB Frontlines: Victims narrate

Stories of migrants arriving in Europe show the yawning chasm between state-level definitions of forced and voluntary migration, and the perceptions of the migrants themselves.¹¹⁶ The rigidity of policy and practices displays a narrowed-down view of THB victims within irregular migratory movements. The following two migrant stories shed light on how smuggling and trafficking intertwine in the lived experiences of those who find themselves in the EU, but still caught between a rock and hard place: In a protection gap. The first story was told by a Nigerian victim of THB concerning his journey.

“I came from Nigeria. A man came to our village and took [me] to a place where a Voodoo ritual was performed on me. He then promised me a job in Europe and paid for my passage to Libya. It was a very difficult journey. They asked us to remove our shoes and I refused. They then asked me to get out of the truck, to stand up and put both my hands behind my back then punched me in the eye. I instantly felt excruciating pain and dizziness, and fell over...We [migrants] held onto each other because the truck was full and the path they took was dangerous. People fell out of the truck and the truck never stopped. I never thought we would reach Libya. Any person who helped you became your family. It was a matter of life and death. So many people also died on the way. Upon reaching Libya, they took us to what looked like an underground warehouse. They locked us there for three months in the dark...We were often beaten. During the day, we would be asked to line up, and some people would come and take us. I was sexually abused repeatedly. At times, I wished I was dead...Six months later, the smuggler told me that I will be leaving for Italy. Once I arrived, the man who paid for my travel to Libya asked me to work for him or else pay the debt he had

incurred to bring me there [Italy], which he said was €20,000...or else Voodoo will kill me. Here, again, I was forced into prostitution and physically harmed. I escaped to the Netherlands...I have been very sick lately and have lost significant weight. I was 90 kilograms before, but am now 40 kilograms, and have recently been diagnosed with HIV/AIDS. I can't return home, and I don't have papers. Life is so unfair."

(Migrant, Male, Nigerian, Amsterdam, January 2020)

Dilemmas for Dublin claimants

The complexities of the Dublin system for claimants mean that many are forced to go when their asylum claims fail. They then wait for the chance to regularise their status. The purpose of the Dublin II Regulation, adopted in 2003, was to determine which EU Member State would be responsible for examining an asylum application. Normally, this is the State where the asylum seeker first sought asylum or entered the EU. The Dublin Regulation aims to ensure that each claim gets a fair examination in one Member State. In reality, asylum legislation and practice vary widely from country to country, and this causes asylum seekers to receive very different treatment across Europe.¹¹⁷ Host states' narrow interpretation of Dublin rules, and stricter policy definitions of irregular migration, determine how migrants are treated when they enter the host country. The law sets boundaries for the burden of proof from an asylum claimant about the validity of their claim; yet, these boundaries are subject to bureaucratic agreements and varying interpretations of immigration officials. The asylum process can be marred by bureaucratic and institutional hurdles given strict asylum application procedures.¹¹⁸ For instance, one Eritrean asylum seeker found himself in an irregular position. His account of his journey shows how multiple displacements can shift someone from refugee to victim of THB.

"I came to Netherlands to seek freedom and humanity...I had to find a place where I could find peace and safety. For other people, they come for economic purposes. But I didn't want to come to the Netherlands. I left my country, Eritrea, and went to Ethiopia for safety reasons. I stayed in Ethiopia for seven years and after that I went to Sudan. In Sudan, I used to be a businessman...I lived there for eight years...in 2016 conflict started...my shop and other houses were burned down by rebels. I couldn't go back to my country, and therefore had to escape and go to Libya. On the way to Libya, it was normal to see so many dead people on the way...In Libya, I suffered so much for one year and six months in the hands of

"Samsarit" – smugglers. [They] sell people to other smugglers, then to another group of smugglers... you have to pay so much money. In one camp, they sold me twice. I paid USD3,500...they asked for another USD5,000...later forced me to pay another USD8,000. In total, I paid USD16,500 or else they said they will kill me. Smugglers sell people like animals. In Libya in December, it was very cold, we were forced to work outside and we were not paid...and it's raining. When I remember these things, I feel a lot of pain...I don't want to remember these things. I experienced a lot of difficulties and a lot of bad experiences. I then left Libya by boat to Italy. It was not a normal boat... [it] is meant for fishing, not for carrying human beings. I stayed in Italy for three months. I left Italy because a lot of refugees in Italy do not get shelter nor medical help...I had to hide myself in a train...from Italy to the Netherlands. When I arrived here in Amsterdam, I didn't know what to do...Wereldhuis helped me with transport to the Ter Apel Asylum Reception Centre...but after six months I got a negative decision, because I am a Dublin [claimant]. Now I am [an] undocumented migrant. I left Ter Apel because if the police caught me, they will deport me back to Italy. Now I live in a BBB ["Bed, Bath, Bread"] shelter waiting for the Dublin Claim to cease in 18 months. Then I will start a new procedure again, and apply for asylum again."

(Migrant, Male, Eritrean, Amsterdam, September 2019)

Returning THB victims from the Netherlands to Italy

From a practical point of view, the new procedures lead to the exclusion of victims of THB. To circumvent the difficulties of regularisation procedures, which only allow THB victims to begin a procedure 18 months after their Dublin claim ceases, THB victims stay for prolonged periods in the Netherlands, awaiting a chance to seek permission to remain legally. The Dutch immigration and Naturalisation Service (IND) tends to encourage THB victims to report to the police rather than to the department. Yet, if THB victims do report to the police, their Dublin Claim will be delayed, with cases pending in court. This does not protect them from being expelled or returned to Italy. For this reason, most THB victims who are Dublin claimants tend to avoid all contact with the authorities that could result in their return to Italy. This is because existing conditions in Italy are not conducive for THB victims to be returned to.

Three gaps

A protection gap

With a harsher immigration regime in Italy, THB victims increasingly fear that the police and local authorities will expel them back to Libya. This intensifies their feelings of insecurity and vulnerability, sending them underground. There are insufficient shelters in Italy, so they are often homeless and again vulnerable to THB, as they end up on the streets. They see no future in Italy. Caught somewhere between the Dutch policies, which promise protection but often fail to deliver on these promises, and the ever-harsher climate in Italy, lies the protection gap for victims of trafficking.

An information gap

Confidentiality is often the pretext for a lack of data about trafficking among and across boundaries in the EU. Information about key players is often restricted to the police, who are supposed to investigate complaints. The lack of transparency of police operations makes it difficult for victims of THB and for local organisations that support them to have confidence in criminal justice and legal procedures in relation to victims of THB.

An identification procedure gap

For those who remain in the Netherlands, the lack of a clear victim identification procedure may lead to a lack of protection, according to a stakeholder organisation that asked to remain anonymous. At the moment, THB victims are vulnerable, often homeless and suffer from severe psychological problems. Their health problems are multilayered and may include HIV/AIDS or even tuberculosis. Clearly, they are also at high risk of contracting COVID-19. These stories offer a glimpse into their multi-layered vulnerabilities and how these shape irregular migrants' life trajectories.

In interviews, stakeholder organisations and key players in the counter-trafficking sector have echoed emerging concerns about THB victims – Dublin claimants from Italy in particular – who find that they cannot obtain proper protection, or be identified as victims in the Netherlands.

"...instead of [the Dutch authorities]...providing protection, this victim is at high risk of human trafficking again. I think the Dutch government doesn't take responsibility in this sense. Of course, the protection of victims should have the highest priority."

(Regional Care Coordinator of THB victims in the Netherlands, 2020)

The criticisms levelled at policies and practices view them as too rigid as regards the lived experiences of THB victims. A decline once again in registered and reported cases since the end of 2019 highlights the dilemmas

that emerge from seeking to fill gaps in protection. Control over numbers of recorded cases is trumped by border-control priorities, depriving THB victims of both acknowledgement and protection. This contradicts relevant EU laws and Council of Europe protocols, which stress the prioritisation of protection of trafficked persons, irrespective of their origin or nationality, once identified as victims. Regarding the 2019 stricter measures, CoMensha notes:

"We believe the Secretary of State's decision to strengthen the regulation is not in line with the EU Directive on Human Trafficking."
(CoMensha, 2020, expert interview).

Conclusion

This study has highlighted several gaps in the protection of victims of THB in the Netherlands. The challenge of identifying victims of THB among the masses of migrants and refugees who head for and arrive in EU Member States poses a dilemma to migration governance. So far, since late 2019, no impact assessment has been conducted to monitor the effects and humanitarian implications of Dutch policies on THB victims. Since THB victims are not reliably recorded in Dutch statistics as trafficked persons, their forcible return to Italy remain largely invisible. They are frequently returned to situations where they are vulnerable to further abuse and exploitation.

Most migrants are healthy young people who become increasingly vulnerable to ill health due to the conditions surrounding the migration process¹¹⁹ and their experiences of being trafficked, resulting in physical and mental health-related vulnerabilities, which tend to shape their conditions "of being unfit anymore". Current policies and procedures fail to address protection for THB victims. There is a need to simultaneously address different levels of vulnerability and the various protection gaps. Ultimately, "the importance of adopting a multi-tiered approach to respond to such challenge" must be acknowledged for alternative mechanisms that do not involve enforcement.¹²⁰ Such approach is urgently needed if the Netherlands is to live up to its pledge of combatting human trafficking under the third Sustainable Development Goal, and leave no one behind in the global economy (Van Voorhout, 2020, p. 87).¹²¹ To document this process is vital, since data are essential to inform more humane and inclusive protection policies in the future.

Recommendations for policy

Based on the conclusion drawn, this Policy Note proposes the following recommendations targeted at **national and local authorities**:

- Align practices with the EU Victims' Rights Directive by shifting priorities from a perpetrator-focused approach, which is grounded on victims cooperating with local authorities and providing personal details (i.e. name, address and number plates), towards a more victim-centered approach that addresses the vulnerability contexts and protection gaps of THB victims to safeguard lives.
- Encourage information-sharing and information accessibility among key actors. This enables space for governments and civil society actors to work together, thereby exchanging information and knowledge to inform better practices and help achieve robust protection for THBs at the local level.
- Establish a victim identification procedure with a multidisciplinary expertise or approach to THB victims. This identification procedure should extend beyond criminal investigations, which is most often the practice, and should take into account both the personal and situational (survival) conditions of THB victims, such as economic and social background. Foster a conducive environment, so that THB victims can feel secure enough to file a complaint or report to the police without fear of deportation.
- Achieve robust THB victim protection by incorporating broader aspects of THB victims' background, such as gender, culture, religion and spiritual beliefs (e.g. Voodoo). To this end, a more nuanced and holistic understanding is required, in order to offer protection mechanisms aligned with human rights considerations and social justice based on the needs and personal stories of migrants.
- Monitor and assess the humanitarian impact of policy response in light of existing data gaps since 2019 – caused by the invisibility of THB victims who remain in hiding. Under this condition, with no right to shelter and means of survival they are confronted with a problem of victimisation, they tend to fall off the cracks off the protection system and are in a highly vulnerable situation.

Identifying and Protecting Trafficked People, and People at Risk of Being Trafficked, in Mixed Migration Flows

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Introduction

I was a member of the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) from 2013 to 2020. GRETA’s core function is to monitor States’ compliance with their obligations under the Council of Europe Convention on Action against Trafficking in Human Beings (“the Convention”). These obligations essentially deal with the protection and support of trafficked people, and enforcement of the law against traffickers. Compliance is assessed by various means, but the most important part are country visits, where GRETA meets relevant ministries, civil society organisations and international organisations, as well as visiting shelters for trafficked persons and centres accommodating asylum seekers and other foreign nationals.

The Convention contains extensive measures on protection and support for trafficked people, as well as persons at risk of being trafficked. These range from providing shelter and medical and psychological support through to international protection, where a person has been trafficked to another country and cannot safely return to their home State.

The duty to identify

In order for States to meet their protection and support obligations, trafficked people, as well as those at risk, must first be identified. Such persons will not always

self-identify. They may not even fully understand their own situation or vulnerability. Moreover, they may be afraid of, or lack trust in, state authorities. States therefore need to be pro-active in identifying those at risk.

Identification is an obligation under the Convention. Article 10¹²³ provides in part:

1. Each Party shall provide its competent authorities with persons who are trained and qualified in preventing and combating trafficking in human beings, in identifying and helping victims, including children, and shall ensure that the different authorities collaborate with each other as well as with relevant support organisations, so that victims can be identified in a procedure duly taking into account the special situation of women and child victims...

2. Each Party shall adopt such legislative or other measures as may be necessary to identify victims as appropriate in collaboration with other Parties and relevant support organisations...

Identification has also been declared to be part of States' obligations under Article 4 of the European Convention on Human Rights, the prohibition of slavery, forced labour and servitude. This requires States to have in place an appropriate administrative and legal framework.¹²⁴

Successful identification is a significant challenge. Some countries, even if they have the will to do so, do not always have sufficient resources or expertise despite the duty to identify.

The risks associated with being trafficked are many, and serious. Victims may be subjected to sexual and/or labour exploitation. As part of this exploitation, they are physically, sexually and psychologically abused. The victims may not be readily visible, or they may be highly visible, for example because they are begging or working in car washes or fruit farms. They may be subjected to threats and intimidation against themselves or their families. They may face blackmail and threats of being reported to the authorities. They may be compelled to commit criminal offences. They may even be killed.

Trafficked people need to be rescued from these situations. Those at risk of being trafficked need to be spotted before they actually fall into exploitation. Some people may believe that they are being smuggled when in fact they are being trafficked. Others, owing to their very vulnerability when being smuggled, may end up being trafficked. This is a real risk for migrants and others seeking to cross the Mediterranean Sea through the Central and Western routes to Italy, Malta or Spain.

Of course, the countries from which the boats embark for Europe should also be taking steps to identify trafficked persons. They should probably be preventing these journeys in the first place. But once they are en route to Europe, the passengers will eventually fall under the jurisdiction of Spain, Italy or Malta, and the Convention is clear that the parties must seek to identify all victims or possible victims, irrespective of where they have been exploited.

State practice

GRETA has paid close attention to effective identification during its monitoring activities. In 2017, GRETA published an urgent report on Italy, outside its routine monitoring activity, focusing on the identification of victims of trafficking among migrants and asylum seekers.¹²⁵ This was the first time such action had been taken by GRETA, and it reflected its concern for the

particular vulnerability to trafficking of those crossing the Mediterranean to Italy. GRETA noted:

Victims of trafficking granted refugee status or subsidiary protection in Italy continue to face risks of re-trafficking in Italy and elsewhere in the EU. The fact that victims of trafficking arriving in Europe are increasingly young is particularly disturbing and calls for urgent action at domestic and European level to ensure effective protection of the rights of migrant and asylum seeking children and young people...¹²⁶

GRETA then specified the measures that the Italian authorities should adopt, as follows:

72. GRETA once again urges the Italian authorities to improve the identification of victims of trafficking among migrants and asylum seekers, including by: setting up clear, binding procedures to be followed and providing systematic training of immigration police officers and staff working in first aid and reception centres (CPSA or "hotspots"), accommodation centres (CDA), identification and expulsion centres (CIE) and centres for accommodation of asylum seekers (CARA); providing operational indicators to all frontline staff to enable them to effectively and pro-actively identify victims of trafficking; strengthening multi-agency involvement in victim identification by introducing a National Referral Mechanism and further involving NGOs and international organisations in the identification of victims of trafficking, including by giving them expanded access to hotspots, reception centres and CIE. In this context, GRETA welcomes the fact that the Territorial Commission for Recognition of International Protection in Rome has involved the NGO BeFree in asylum interviews of Nigerian women and considers that the Italian authorities should extend the practice of involving specialised NGOs; ensuring that there are appropriate facilities for holding confidential interviews with a view to identifying victims of trafficking in hotspots and other places where asylum seekers and migrants are held.

73. GRETA also urges the Italian authorities to mainstream prevention of trafficking in the training of all staff working with unaccompanied children and separated children and to provide them with training on indicators of trafficking. The authorities must increase efforts to identify child victims of trafficking and to set up child-specific identification procedures which involve child specialists and take into account the special circumstances and needs of child victims of trafficking.

These comments clearly indicate the seriousness of GRETA's concerns about the dangers of trafficking to which people were being exposed on their journeys. In its second monitoring report, GRETA concluded that, despite some progress, there was still much to be done. In particular, GRETA called on Italy to:

- strengthen the multi-agency involvement in victim identification by introducing into practice a National Referral Mechanism which defines the procedures and roles of all frontline actors who may come into contact with victims of trafficking, and providing guidance and training on its application to all relevant professionals ...

- provide NGOs involved in the identification of victims of trafficking amongst asylum seekers with sufficient resources to enable them to fulfil the task and enable effective co-operation with NGOs, including those engaged in rescue at sea operations;

- ensure identification of possible victims of THB at all border crossings in accordance with the OHCHR's Recommended Principles and Guidelines on Human Rights at International Borders.¹²⁷

Despite the Covid-19 pandemic, GRETA managed to conduct a monitoring visit to Malta in 2020. However, the report on that visit is unlikely to be published before late 2021, at the earliest. The previous visit took place in 2016 and I was part of the delegation. In its report on that visit, GRETA observed that the number of migrants landing in Malta had decreased considerably, with only one boat containing around 100 asylum seekers having arrived in 2015.¹²⁸ GRETA nevertheless stated that "the Maltese authorities should ensure the regular training of relevant officials in the use of trafficking indicators, including asylum officials and staff working in reception centres for asylum seekers and administrative detention centres."¹²⁹ The position has changed significantly: According to

UNHCR, in 2020, 2,281 people were rescued at sea and had disembarked in Malta.¹³⁰ There is a clear danger that people at risk or those already being trafficked may be included in these numbers.

In its most recent report on Spain, GRETA took the view that Spain could do more. It urged the Spanish authorities to:

...pay increased attention to the pro-active detection of victims of trafficking among asylum seekers and persons placed in immigration detention, as well as migrants arriving in the autonomous cities of Ceuta and Melilla, allowing sufficient time to gather necessary information and taking into account their traumatic experience. In this context, training on the identification of victims of THB and their rights should be provided to asylum officers and staff working in centres where such persons are placed.¹³¹

What is clear from these reports is that States have not been doing enough to ensure that they do actually identify trafficked persons in mixed movements, nor those at risk. This raises the following issues: How far must a State go to implement its obligation of identification? How many resources must be devoted to it? All states have finite resources, and difficult choices have to be made.

Guidance Note

In 2020, GRETA adopted a Guidance Note on the Entitlement of Victims of Trafficking, and Persons at Risk of Being Trafficked, to International Protection.¹³² This instrument provides guidance to decision-makers on how and why trafficking victims in another country may be entitled to international protection, because of the dangers they face if compelled to return to their home countries. Some countries do not necessarily consider that victims of trafficking might have such an entitlement. For example, in its response to GRETA's questionnaire for the third evaluation round, Malta stated bluntly:

The Office of the Refugee Commissioner does not collect data relating to Trafficking in Human Beings as this does not feature among the reasons why an international protection application may be filed or among the reasons why an application may be positively considered.¹³³

This attitude is very concerning and is at odds with international law, which clearly allows that some victims of trafficking may qualify as refugees, while others may qualify for other forms of international protection.

The Guidance Note calls for asylum applications to be allowed while presumed victims of trafficking are in an identification procedure.¹³⁴ It further states that the human-rights based approach of the Convention even requires States to take into account the risk of persecution of victims of trafficking. On the issue of identification, the Note asserts:

39. States have a positive obligation under Article 4 of the European Convention on Human Rights to identify presumed victims of trafficking. The positive obligation on States to identify presumed victims of trafficking arises in the context of receiving persons seeking asylum, in determining applications for asylum and in resettlement procedures. Unreasonable delays in identification and referral for assistance may heighten the risks of re-trafficking, and lead to violations of a victim's rights to specialised assistance and protection.

40. States are required to ensure that all persons responsible for determining asylum claims are trained in the identification and referral of victims of trafficking to specialised assistance. All persons involved in asylum determination, reception systems for asylum seekers, and relevant support organisations, including lawyers and civil society, should cooperate effectively to ensure timely identification of victims and referral for assistance. Identification of victims of trafficking amongst irregular migrants and asylum seekers requires also clear, binding procedures to be followed.¹³⁵

This Guidance Note is not the first instrument to address the entitlement of trafficked persons, and those at risk thereof, to international protection. UNHCR did so in 2006,¹³⁶ and there is substantial state practice recognising such.

Conclusion

As things stand, not enough is being done to ensure effective identification of trafficked persons, and persons at risk of being trafficked, in mixed movements. It is particularly concerning that some States do not even countenance the possibility that trafficked people might need, and be entitled to, international protection.

Recommendations for policy

- **Ensure effective identification:** The legal duty to identify victims of trafficking, as well as person at risk of being trafficked, must be fully respected by States when processing asylum seekers; financial and personnel resources adequate to achieve this must be allocated.
- **Respect and protect:** States should recognise that the risk of being trafficked may be a legitimate basis for a duty to provide international protection: They should accept, respect and follow the reasoning of the UNHCR Trafficking Guidelines, as well as the GRETA Guidance Note, and make international protection available in appropriate cases.

Policy Notes

Theme 2: Key links in the chain of smuggling policies: Intermediaries, people on the move and local communities



Photo credit: © UNHCR / Alfredo D'Amato

Italy / boat people / With little space in the ship's garage, young men sleep in cramped conditions. / UNHCR / A. D'Amato / June 2014 With Summer at its peak and the waves at their calmest, Italy's Mare Nostrum Rescue at Sea operation has been inundated with arrivals of asylum seekers, mostly journeying from the coast of Libya. At least 5000 were rescued at sea over the course of just 48 hours between June 28 - 29, 2014.

"The main countries of origin of smugglers in Tunisia are Ivory Coast, Nigeria, Mali, Guinea, and Cameroon. Other origin countries are DRC, Senegal, Comoros, Niger, Somalia, and Chad. Smugglers who are migrants themselves have, due to lack of money to finance their own trip, decided to work for a network of negotiators."

José Dogma Tebou, 4Mi Monitor in Tunis, Mixed Migration Centre North Africa.

Understanding Intra-Network Dynamics for non-Libyan Smuggling Intermediaries in Libya's Western Migration Corridor

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Introduction

For decades, Libya has been a destination for refugees and migrants as well as a key node for migrant smuggling from Africa to Europe. Given the fractured control over Libya's territory by various armed groups, and the geographical challenges of entering and journeying through the country, migrant smuggling has been a cornerstone of the illicit economy in Libya.¹³⁸ Migrant smuggling networks rely on an intricate system of routes and connections that adapt within the ever-evolving operating environment.¹³⁹

To date, most analyses of the smuggling sector in Libya have focused principally on Libyan actors – examining smuggling and trafficking operations vis-à-vis local governance and the conflict economy. Yet, qualitative inquiry suggests that non-Libyan smugglers are a key actor for refugees and migrants on their journey.¹⁴⁰ Although sub-Saharan intermediaries are known to take part in refugee and migrant recruitment and movement facilitation, comparatively little attention has been paid to intra-network dynamics and the varied roles of sub-Saharan African smugglers and intermediaries operating in Libya.¹⁴¹ Moreover, existing research into Libya's smuggling economy does little to examine the relationships between sub-Saharan smuggling intermediaries and Libyan smugglers, and how social and demographic factors affect the structure and nature of intra-network interactions.

In terms of policy, frameworks at the national, regional and global level similarly do little to distinguish between the varied roles in migrant smuggling. The broad definition put forward by the United Nations (UN) Protocol on Smuggling of Migrants by Land, Sea and Air – which is “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” (Article 3) – means that anyone receiving monetary benefits, be that from hosting, transporting or organising irregular transnational movements, can be charged.¹⁴²

This report draws upon 24 in-depth semi-structured interviews commissioned by the Mixed Migration Centre (MMC) with non-Libyan smugglers, of whom 23 are active smugglers and one a former smuggler, between November 2018 and April 2019. It seeks to better understand this cross-section of migrant smugglers by exploring the sector through the eyes of non-Libyan smuggling intermediaries along Libya's western migration corridor, from Agadez to Italy along the Central Mediterranean Route (CMR).

Structure of smuggling networks in Libya and intra-network dynamics

Several studies have explored the nature and structure of smuggling networks within Libya. The New-Med Research Network argues that smuggling networks across the region can be categorised in two ways – from

highly organised criminal groups to individual occasional smugglers.¹⁴³ These two categories, however, are not mutually exclusive and when in their best economic interest, can and do frequently cooperate.¹⁴⁴ Undertaking a quantitative network analysis of a smuggling operation, Campana noted that a larger network operating out of Libya across the Mediterranean had a clear tendency of clustering around certain smugglers within the network, noting that individual smugglers had various degrees of importance within the network.¹⁴⁵

Campana’s quantitative analysis also noted a difference between “organisers” and “aides,” arguing that much of this stratification is “task-based.”¹⁴⁶ The way in which nationality contributed to such stratification was not explored within the papers. Tinti and Reitano suggest that, generally, migrant smuggling in Libya, particularly within highly organised groups, is set up in a “layered pyramid structure” with high-level coordinators sitting at the top of the pyramid, far removed from the “recruiters” at the bottom.¹⁴⁷

Tinto and Reitano’s work highlights that the roles of the non-Libyan intermediaries are often the most visible, and the most interchangeable. They argue that intermediaries are the key players whom those on the move will refer to when discussing “their smuggler.” Faced with fewer opportunities for employment in Libya, non-Libyans

have utilised their contacts in their countries of origin, their language skills and their acquired knowledge of contemporary Libya to organise many of the elements of the process of transporting refugees and migrants to Libya. These intermediaries are almost always the same nationality and/or ethnicity as the refugees and migrants they are supporting, and have often also undertaken the migration journey towards Libya. Despite their key role, few if any accounts are available from sub-Saharan smugglers’ own perspectives.

Understanding intra-network dynamics along the route

To further understand the interactions between sub-Saharan smugglers and Libyan actors, this paper takes a routes-based approach and examines the Western migration corridor through Libya. Journeys through Libya were divided into three key steps also reflected in the payment structures of refugees and migrants to their smugglers. The first part of the route is generally categorised from the border crossing into the south of Libya, and primarily included the journey from Agadez, Niger to Sebha, Libya. The second part of the route includes movements from Sebha to cities in north-western coastal Libya such as Azzawya, Alkhums, Misrata, Tripoli and Zwara. For those travelling towards Europe, the final part of the journey is from coastal cities across the Mediterranean to Southern Europe (Italy or Malta).

Figure 1: Framework for understanding the stratification of migrant smuggling operations in Libya¹⁴⁸

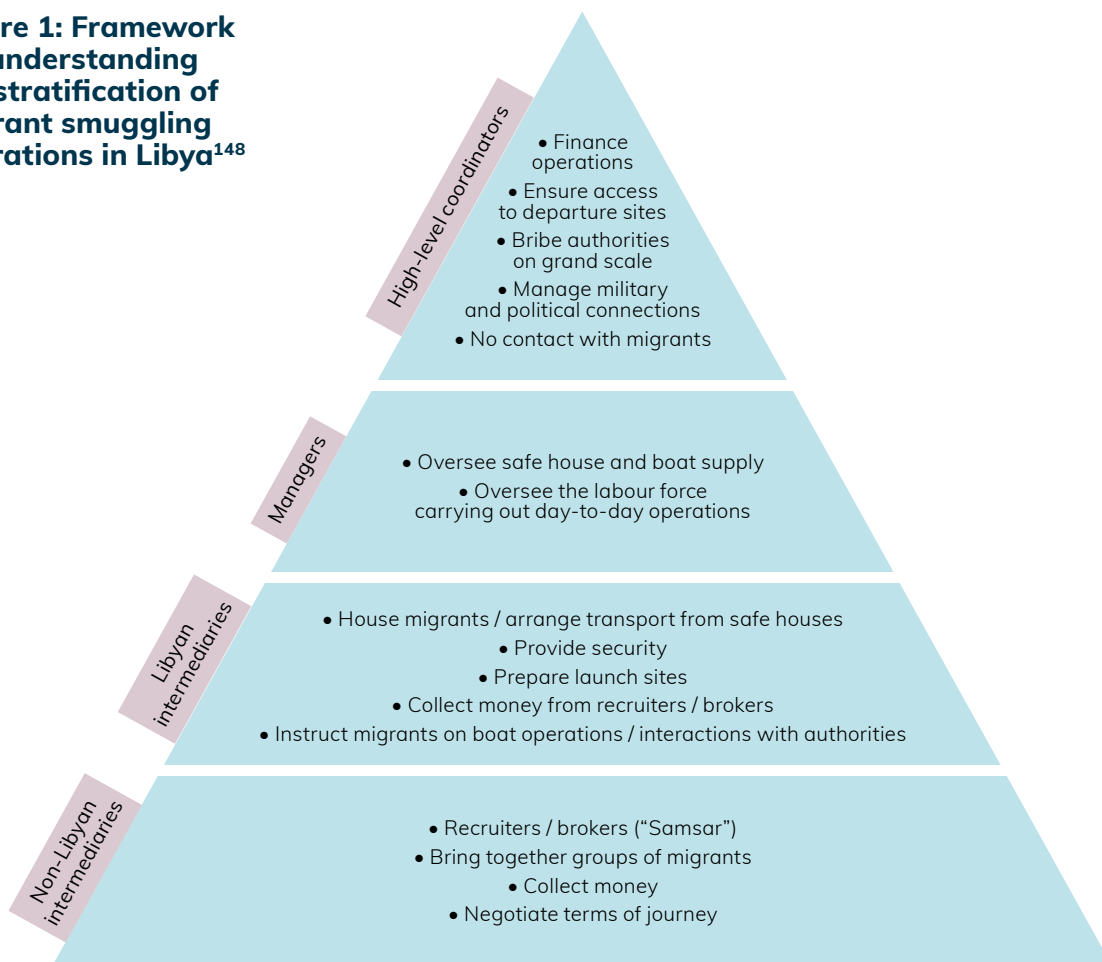


Figure 2: Smuggling route serving as geographic framework for analysis



Moving to Libya from the West (Route to Sebha)

In Libya’s borderlands moving towards Sebha, sub-Saharan smuggling intermediaries have increasingly limited movement restrictions, which they have had to adapt to over time. A Nigerian smuggler based in Sebha highlighted: “In 2015 and 2016, the flow was much more free and easy through the Niger desert...Ever since late 2016, that the Niger government has been after those drivers, [the freedom of movement for non-Libyan intermediaries] has been reducing.” The same Nigerian smuggler emphasised that while sub-Saharan co-lingual smugglers could arrange the travel and drive refugees and migrants through to Agadez, driving between Agadez and Sebha was largely conducted through Libyan or Chadian drivers:

“[S]o those drivers will deliver to Agadez the same connection, then those Libyan and Chadian drivers will bring them to Libya.”

This is likely due to the criminalisation of irregular migration within Libya, although it does not explain why those of a Chadian nationality would be acceptable, for as soon as a non-Libyan smuggler enters Libya, they may be subject to fines and detention.¹⁴⁹

Given the geopolitical control of various ethnic groups across the region between Agadez and Sebha, the ability of sub-Saharan smuggling intermediaries to broker the movement of refugees and migrants across territories is dependent on their relationship to the groups that control the area. Ethnic and tribal disputes often impact the access that non-Libyan smugglers have across southwest Libya, and, even among Libyan drivers, there are exchanges as refugees and migrants traverse regions controlled by different ethnic groups:

“...[F]rom Agadez until the border we send the Tuaregs. Then from the border to Sebha, it’s the Arabs driving the cars,”
Nigerian smuggler based in Sebha.

Beyond ethnic groups brokering movement, local authorities and militias are critical in facilitating or impeding the movement of sub-Saharan smuggling intermediaries in southern Libya. Prior to 2016, soldiers from Agadez accompanied refugees and migrants to the border in what were described as “combined” caravans:

“The soldiers would take the lead in the front, the middle, at the back because of the desert rebels.”

By contrast, when detailing his last trip through the desert, a Sebha-based smuggler noted an entirely different relationship with soldiers, stemming from increased border management of Niger's border since 2017:

"There is no way that you will follow [soldiers through] the desert...and [the] Niger government the way they are operating in the desert since 2017 was too tough and you know, people [were] losing [their] life. The soldiers are opening fire on the driver and the passengers, so it was too deadly."

The smuggler explicitly highlighted the change in border policing by armed forces along this route, and how that impacted the safety and security of those on the move:

"So the soldiers who were securing the movement before are now the enemy of the movement."

The portion of the journey across the desert from Agadez to Sebha is perilous for refugees and migrants as well as their smuggler intermediaries operating across this part of the route. This is due to the geographic dangers of the desert, the use of force by soldiers tasked with securing the border, and the targeting of refugees and migrants for ransom by rebel groups operating in the desert. When discussing the dangers for smuggler intermediaries, particularly those new to the business, one smuggler explained:

"Some drivers are very new into the business and [if they lose track of the soldier they are following] they will die together with the passengers...but people who know the route they can get lost and still survive and appear in Alcatroun."

Moving through Libya (Sebha to the coast)

Once smugglers transport refugees and migrants to Sebha, they begin the second stage of their journey through Libya, as one smuggler noted:

"First you need to arrive to Sebha. When you arrive here, you can rest for one or two days and then [smugglers] can arrange the journey to [a coastal city]."

Refugees and migrants may wait for a few days or weeks in Sebha depending on their smuggling arrangements, and may stop in various cities along the route depending on the current movement restrictions and Libyan Arab tribe brokering movement for the smuggling network,

including Bani Walid, Brak, and Mizdah among others. While critical to the smuggling operation, sub-Saharan smuggling intermediaries operating between Sebha and coastal Libyan cities work in limited ways. A large part of the smuggling work for non-Libyan smugglers centres around coordination:

"In Sebha, my brother there will go looking for the passengers, will give them food and then will send them here to Azzawya. He will give my number to the Arabs and alert them that there are some passengers arriving."

While the non-Libyan smugglers can recruit people who are looking to make the journey further north in Libya and provide them with interim support, they do not act as major transporters along this route, but rather as brokers and as "connection men and women," as suggested by Tinti and Reitano's research. A limited ability to operate cars between Sebha and Libyan coastal cities was highlighted by many non-Libyan smugglers:

"In Libya, even from the time of [Ghaddafi's] government we don't have such freedom to drive and, let me just tell you the facts, we are living not even as second-class citizens, as just workers, so we are not recognised as such....So if we are talking of driving, no, we do not drive, only our business is on a network, on calls."

The result is that Libyan drivers transport passengers while the intermediaries find passengers to undertake the route. "Even if you are British or American, you cannot drive from Sebha," said a Ghanaian smuggler. This is for "pure Libyans." Interviewees noted that the price from Sebha to Tripoli in a taxi would be LYD100 for a Libyan or a foreigner with a residency permit, yet for an undocumented migrant, the price would be LYD700. Libyan smugglers broker control with the various Libyan tribes which control movement across their territory and, subsequently, control over many of the logistics of smuggling activities.

Additionally, the roads between Sebha and coastal cities have become increasingly patrolled, creating riskier journeys for those on the move. Fees are levied by armed groups at checkpoints on major transit routes. "There are 10 to 15 checkpoints from Sebha to Tripoli," a smuggler based in Tripoli reported. "Some you pay, some take your money or take you to prison." Travellers complain that a trip from Sebha to Tripoli by road now takes at least twice as long as before. While previously the journey could take seven or eight hours, now it takes more than fourteen as a result of the proliferation of checkpoints. The search for profits by armed groups, and the legal status of refugees and migrants, including the smuggling intermediaries

within Libya, pose a specific risk to refugees and migrants on the move through Libya.

Moving out of Libya (Azzawya and Other Coastal Towns to Italy)

Once in Azzawya, sub-Saharan smuggling intermediaries largely work as brokers between refugees and migrants and more senior Libyan smugglers. Like the non-Libyans smugglers in Sebha, those in coastal Libya engage with the smuggling sector through the provision of shelter, water and communication technology. One smuggler highlighted,

"I give [refugees and migrants] a SIM card so that they can make calls, and I allow him to rest,"

while others noted:

"I arrange for them [to have] something to eat and [a] place to sleep before they go on the boat."

The non-Libyan intermediary coordinates the day-to-day aspects of the journey leading up to the sea crossing, further corroborating the smuggling framework proposed by Tinti and Reitano. The same smuggler details:

"I make money through the Arabs each time that I send them a client/passenger to go to Italy. So, after a few days, I will hand over the passenger to the Arabs (who will arrange the journey to Italy) and I receive my money from the Arabs."

Under the migrant smuggling protocol, such financial gain constitutes the crime of smuggling. This means that the recruitment of refugees and migrants, the coordination of their transportation and housing, and the provision of food and telephone access are all aspects of smuggling, in addition to the actual transportation of people on the move.

In northern Libya, non-Libyan smugglers also noted working with detention centre officials to release refugees and migrants from arbitrary detention. Two interviewed intermediaries noted making agreements with Libyan police and/or detention centre guards to release the refugees and migrants he was seeking to transport. A Nigerian smuggler operating in Azzawya stated:

"[Yes, from] Osama prison in Azzawya. Other smugglers, they accept money to free people from the prisons. I don't do that. I take them out of prison."

A smuggler from the same network went further noting his ties with detention centre officials:

"I also have two people that work for me in the prison of Azzawya who look for passengers and take them out. There were also two children in the prison that we got out of the prison."

This demonstrates the ties that exist between migrant smuggling in Libya and arbitrary detention. Whether or not detainees must pay to be released to smugglers, detained refugees and migrants must ultimately pay smugglers for transporting them after their release. Hence, during this section of the journey, we see how detention centres feature and can be a staging ground for identification and recruitment or the extortion of further payment from refugees and migrants.

Moreover, interviews with non-Libyan smugglers operating along the Western route to Northern Libya indicate that it is the Libyan smugglers who entirely control the Mediterranean crossing. Libyan smugglers own the boats and run the operations. These smugglers pay non-Libyan smugglers a percentage of the crossing fee in return for providing clients wishing to reach Europe. One non-Libyan smuggler maintained that he receives LYD200 (USD45) per person he transports, and that he usually transports people in groups of five. This smuggler said he also acts as a liaison for payment of the Libyan smuggler. If the "client" has paid all fees in advance of travel, then the smuggling network will settle the sea crossing fee. For example, a Nigerian smuggler working in Azzawya noted:

"I am responsible for collecting the clients that arrive here in Azzawya, and my colleague in Sebha processes the payments and organises the taxis that drive the clients here. So, this is how we work. My colleague calls me to tell me how many people he has sent to Azzawya and once they arrive, I pay the taxi."

This handover from non-Libyan to Libyan actors in Azzawya was highlighted in various interviews where smugglers detailed the nature of their smuggling network: "For Italy, it's my boss that sets the prices... He is Libyan my boss." Another non-Libyan smuggler highlighted, "My boss here (Arab), is in charge of organising the boats that go to Italy. And he sends the boats with his friend, but some boats have departed, and his friend is not back yet." While yet another highlighted the same trend of handing over the refugee or migrant to a Libyan smuggler to finalise the trip to Europe, stating, "We give the money to the Arabs and then they make the arrangements for the trips to Europe."

Conclusion

Most analyses of the smuggling sector in Libya have focussed principally on Libyan actors. Comparatively little attention has been paid to non-Libyan smugglers operating in Libya. This paper set out to preliminarily explore the sector through the eyes of a cross-section of non-Libyan smugglers, in order to understand their roles and to provide a more nuanced understanding of the sector. It found that intra-network dynamics change both along the route from Agadez to Italy and through time. Moreover, Libyan smugglers tended to wield control over routes and access, while non-Libyan smuggler intermediaries were more engaged in the day-to-day operational dynamics of the movement of refugees and migrants to and through Libya. Thus, while Libyan actors in smuggling networks have more stability and control within operations, there are significant limits on the activities of non-Libyan intermediaries acting along migration routes, particularly due to the criminalisation of migrants within the country and the intra-network power dynamics.

Recommendations for policy

- **Acknowledge shifting identities:** Smugglers have different profiles, which warrants a more nuanced policy approach that moves beyond criminalisation (while some smugglers are committing sanctionable abuses, not all smugglers are reported to be committing abuses). The distinction between people on the move and their smugglers is less clear cut than the way it is often portrayed in public discourse and anti-smuggling policies.
- **Increase data availability across a more nuanced understanding of smuggling:** Policy responses to mixed migration need to account for the complex and nuanced nature of movement processes, and the equally complex and nuanced smuggler structures that facilitate this movement. Furthermore, more qualitative instruments should be deployed to further understand the complexity of the many facets of migration journeys. Specific thematic data gaps requiring additional qualitative and quantitative data collection include the following: Motivations for non-Libyan smuggling intermediaries to engage with the sector; non-Libyan smuggler intermediaries' perceptions of their Libyan counterparts; and the impact of labour market opportunities on the engagement of non-Libyan within the smuggling economy in Libya ("alternatives to smuggling").
- **Move away from security and containment-focussed policies:** Stricter border measures are a factor in the rising demand for smuggling. Such policies increase the number of refugees and migrants using smugglers, the price of the journey and the use of riskier routes, thus amplifying the exposure of refugee, migrant and intermediary smugglers to protection incidents.
- **Advocate for legal change:** The criminalisation of migration in Libya will heighten refugees' and migrants' demand for smugglers when travelling to and through Libya. Liaise with Libyan authorities to first remove the provisions surrounding fines and detention of irregular migrants, and of the criminalisation of migration. Specifically, work with the Ministry of Interior and the Department for Combatting Illegal Migration to find alternatives to detention. Furthermore, encourage the Ministry of Labour and Capacity Building to continue to build legal channels and work to promote a legal framework that seeks to offer protection to refugees and migrants moving through Libya.
- **Move towards opening up legal pathways for movement:** Criminalising smuggling without increasing legal pathways for mobility overlooks the fact that the demand for mobility will continue to exist. Such legal channels for movement can be as follows: Expanding options for circular labour mobility at all skill levels; granting humanitarian visas; creating humanitarian corridors between transit countries and Europe; expanding family reunification programmes; and developing complementary protection pathways through higher education.

Voices from the Ground: Perceptions on Smuggling and Protection Risks

Author and Affiliation: José Dogma Tebou, 4Mi Monitor, Mixed Migration Centre (MMC) North Africa



Introduction

José Dogma Tebou is from Cameroon and has been residing in Tunis, Tunisia for many years. After studying in Tunis, she became an entrepreneur and set up a fashion brand. Moreover, she has been working with MMC North Africa since December 2019, conducting a high number of surveys with refugees and migrants located in various cities in Tunisia.

Smugglers are usually people who provide people on the move with mobility in exchange for money or services that generate money, often illegally. Smugglers can be part of host communities, or can be on the move themselves. They generally work in national networks (dealing with movements within a country); regional networks (dealing with movements in specific regions of a continent); or international networks. Smugglers likely infiltrate or collaborate with persons who work in certain administrations, such as the police or national guards.

Profile of the smugglers

The main countries of origin of smugglers in Tunisia are broadly Cameroon, Côte d'Ivoire, Guinea, Mali and Nigeria. Other countries of origin of smugglers can include Chad, Comoros, Niger, Senegal and Somalia. Smugglers who are people on the move themselves have, due to a lack of money to finance their own trip, decided to work for a network of negotiators. This can involve any of the following two roles:

Role of the negotiator

The negotiator looks for customers; convinces them; comes to a price; and informs the other partners. Here,

we often notice that prices are not the same for everyone, especially for the first stage of the trip. A negotiator's main goal is to take the largest profit possible, so they will set the highest price according to the customer.

Role of the smuggler

Some people make a real job out of it, becoming smugglers, or passeurs in French, themselves. The smuggler has a couple of different tasks, such as getting in touch and negotiating with their partners in the area (e.g. police and coastguards), and with the suppliers of the necessary materials (e.g. boat manufacturers and suppliers of compasses, engines, oars, gasoline and life jackets). Furthermore, a smuggler orders the necessary materials based on the number of customers, coordinates the different actors in their network (according to the different stages of the journey) and collects money from the negotiator, after which they distribute the money in accordance with the different services provided by the network.

How smugglers organise their trips

There are very few smugglers who work alone, as they are usually embedded in networks and each of them covers a specific area or route of the trip. They can simultaneously take the role of supplier of clients and of negotiator.

Negotiators target countries, thereby looking for future customers. Most of the time, their 'marketing' is based on lies. As soon as they come to an agreement with their clients, negotiators either refer the client to the smuggler, who organises the trip, or arrange the trip themselves

depending on the area they cover. Associates within in the administrative system, such as police officers and coast guards, are major elements contributing to the general success of the trip.

Marketing strategy of smugglers

In order to explain how smugglers gain customers on a daily basis, let us analyse the profiles of these potential customers. Interestingly, smugglers' businesses do not cease to flourish, even as everyone seems wary of them. We can potentially deduce that the negotiators mainly target people who are lower-skilled and/or lower-educated; are from countries that are relatively unstable and whose population no longer feels safe; are relatively young (between 15 and 50 years old); are able to work (preferably young males and females in good physical condition); or are sufficiently broken and/or disappointed by society, the system and their problems, but who are ready to rebuild themselves.

Modes of transportation

Most of the trips from West and Central Africa that are organised by smugglers go to Italy, and involve an airplane for the first part and a boat for the second. Other trips involve travelling by road in cars, pickups, buses, trucks, trains, motorcycles and even on foot. Some just travel by air directly from the country of departure to the final destination.

Risks during travel

There are several risks involved during travel with a smuggler. These risks include forgery, questionable grounds for entry into another country, scams, aggression and theft. Furthermore, people on the move are exposed to exhausting walks under dangerous temperatures (with the weakest who cannot follow the group risking to be abandoned or killed), as well as to overloaded and unsecured cars (according to testimonies, many people fall overboard from pickups and die). Some drown in the Mediterranean Sea. Many of them have their passports taken away. They are often taken hostage with a ransom demanded to their families, while under torture or subjected to unpaid forced labour.

Testimonies of people who have experienced the work of smugglers

"I paid the travel expenses to Tunisia, and half of my crossing by sea, before leaving my country. But when I arrived, my smuggler informed me that his services included accommodation and food, and these will be offered for as the journey continues. However, it was not true. I was detained against my will with a family, my passport was seized and I had to work without being paid for nine months, so I had to flee. We were put in a room by a smuggler in Sfax and [were] told that the boat would leave after two days. The next day, the police came and took all of our money, beat us and chased after us. Later, we put pressure on the smuggler whom we suspected of getting us trapped. He said that we cannot do anything against him, since even the police were on his side and [that] he was well protected by his network."

"I remember my second attempt to cross. The officer of the guard [accomplice] of the boat that left before us was in charge of diverting the security cameras, [which were] investigating smuggling at sea, but he had not done his job properly. At the border of the international waters, a navy boat came towards the boat that left before us and then turned around. Being at shore, we could clearly hear the smuggler negotiating to let them go. It resulted in no boats leaving anymore that evening."

A Telling and an Illustration of Loss, Hope and Action: Families of the Mediterranean's Missing Migrants

Author and Affiliation: Imed Soltani,¹⁵⁰ Odessa Gonzalez Benson,¹⁵¹ Vadim Besprozvany,¹⁵² Bader Albader,¹⁵³ Elena Godin,¹⁵⁴ Antonio Siciliano,¹⁵⁵ Marwen Saidi¹⁵⁶ and Gemma Baccini¹⁵⁷



Introduction

As part of migrant advocacy efforts, our action research documents and visualises the narratives of families of missing Mediterranean migrants. Action research is a collaborative, reflexive form of applied research that analyses real-world problems and contexts through the experiences of subjects, in order to ultimately better their lives. Broadly speaking, action research is the pursuit of academic knowledge and social change together.^{158 159} Our action research project has transpired in a transnational context, putting La Terre Pour Tous, a Tunisia-based migrant advocacy civil society organisation,¹⁶⁰ in conversation with a research team from the University of Michigan in the US. La Terre Pour Tous works with families of missing migrants to generate awareness, action and legal remedies to the plight of migrants and their families. Oral histories and student-created data visualisations, which we publicly exhibited at the University of Michigan in February 2020, now reside on a dedicated online platform.¹⁶¹

Narratives and visuals

Action research does not limit itself to a logocentric realm, but engages with the continuum of social ideation and production. Critically, it can be a domain where “research, politics and aesthetics are interwoven.”¹⁶² Here, art is understood as a social practice engaged in the world within which subjects find themselves, and in which they seek to intervene.^{163 164} In our case, family

narratives and visual modalities cohere into applied research – concerned not only with absence and loss, but also with advocacy and voice.

Stories and illustrations can convey something profound and seek to humanise, while delivering messages for policy change.^{165 166} Below, we share the words of seven families who engage in activism in partnership with La Terre Pour Tous. Family narratives often share intimate moments about their children’s journey: The night before they leave; how departure was planned for some, and experienced as eloping by others; how communication channels open to facilitate smuggling; and how communication channels break down into a deafening silence once Italy is reached, or not.

On smugglers

Different actors come into view from the families’ narration, and among them is the “smuggler.” “If the migrant arrives safely at the destination,” explained one family member, “the smuggler is viewed as a hero. If the migrant dies or something bad happens to him or her, the smuggler is considered solely responsible for the tragedy and he has to be punished.” Families relate to the smuggler in ways that seem to be at once personal and transactional. The relationship is personal, because the smuggler often lives among the families and is often known to them, “considered a good person who helps to achieve their

beloved's dreams," as one family member put it. However, the families' relationship with the smuggler is also transactional; if their son safely completes the journey, they are grateful for a successful business deal, but if he does not, they seek answers and punishment.

Yet, the families are also acutely aware that the smuggler is but a middle person, and that there are more powerful actors. When local policing in Tunisia recently tightened around smugglers, the families explained that boats did not cease to depart, but instead changed. The departing boats are no longer the large ones owned by smugglers, but are now small boats co-owned by those making the journey. This briefly illustrates that the plights of migration are tied up not only with the policing of Tunisian shores, but with systemic issues that thrust the subaltern into a geopolitical realm. Indeed, the families' visions and demands for policy change are not directed at the people who own the boats and who give their children means for the hopeful yet dangerous journey: Their calls for policy change are more far-reaching.

Recommendations: On rights-claiming

The families resolutely and urgently call for the following change: That their right to identify and inter their lost deceased be respected and sustained by expanding forensic capabilities and DNA data-sharing networks in Tunisia and across the Mediterranean; that their right to know the whereabouts of their loved ones not be jeopardised by forced expulsions from Italy; and that their right to the pursuit of happiness be understood as predicated upon their freedom of movement. The latter includes increased access to information about travel and immigration policies, easing visa restrictions and increasing the transparency of visa decision-making to reduce its capriciousness, especially given how arduous that process is for many applicants.

Since the Jasmine Revolution, Tunisians have sought not only employment but the good life, envisioning a future not unlike their counterparts across the sea. A different sort of relation is imagined for the lands middled by the Mediterranean Sea – one linked to common heritages and cultures¹⁶⁷ – as well as shared labor, production and consumption economies.^{168 169 170} Different models of free movement across borders – like those in the Maghreb, European Union and post-Brexit Ireland – constitute precedents for a viable long-term goal in the Mediterranean space. It is crucial that the families' call for freedom of movement be understood in tandem with the smaller, immediate actions that can be implemented along the coasts and at the cities of Tunis, Rome and Geneva. The families bring together the vision of a broader ideological, structural change with the practical, localised aims of small reform. One place to start is by forming local-regional collaborations, through participatory approaches that meaningfully include institutional and community actors across places of origin and arrival, to generate common understandings and potential solutions to the roots of the "migration crisis," and not merely its symptoms.

Conclusion: Our witness

While loss and yearning are palpable in the families' stories, what emerges is a message that is much more complex: These sentiments coalesce with perseverance, hope, anger, indignance, invocation, voice, solidarity and action. By bringing the migrant and family plights into closer view, we hope to humanise the abstract vastness of the Mediterranean. In colours and in quotations, we bear witness not only to tragedy, but also to an ethics of responsibility and care.



Figure 1. “We won’t lose hope.”

The visuals utilise the power of the portrait, here of a father: His aching face, his hands holding shoes of his son and his message of resolve in the face of personal tragedy. In a stark confrontation, the viewer-witness comes face-to-face with the stranger across the globe, no longer estranged.

– O. Nayak

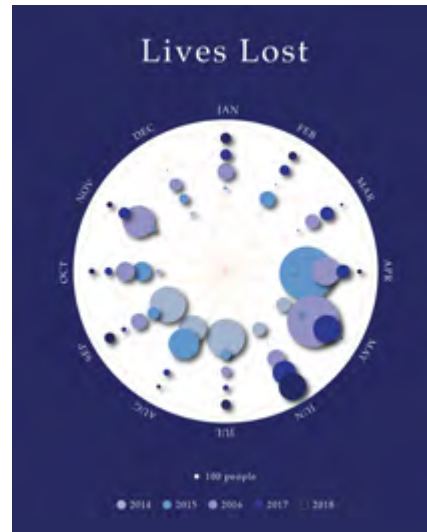


Figure 3. “Lives lost.”

The layout recycles traditional Tunisian ceramic motifs. The chosen colour palette and graphic pattern suggest a part-to-whole relationship between the lost and the world.

– A. Engel

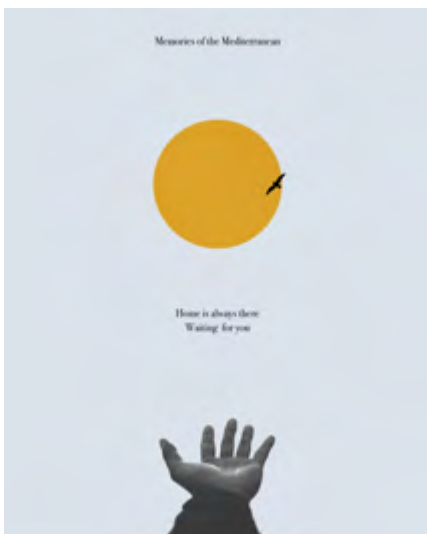


Figure 2. “Hope is always here.”

The visuals appeal to a wider symbolic context: An open palm signifies a request for help, hope, and dialogue; the sun symbolises light, warmth, hope and dream.

– Y. Wang

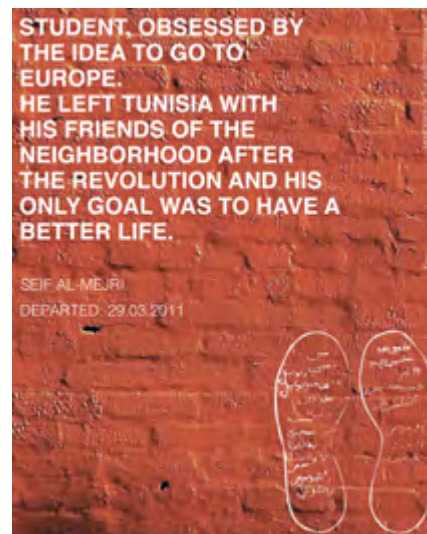


Figure 4. “Student, obsessed by...”

The words here convey profundity. “Friends” and “neighbourhood” depict the mundane and the everyday. “Revolution” and “better life” depict the aspirational.

– K. O’Sullivan



Figures 5 and 6. “Migrant Human” poster series.

The dynamic composition and a high-contrast, minimalist style combine to emphasise a verbal message, forging of fundamental intersubjective connections.

– M. Maturen

Excerpts from narratives shared by seven families

“We are burning for our children. Please set them free, it is time.”

“I will search for him for as long as I have two legs to do so.”

“Everything’s changed. There’s not an event or holiday where we don’t think of him. Even when walking the streets outside, I seem to always see his shadow.”

“It still feels new to me. It seems that it was just yesterday when he left. I won’t stop feeling this way until I see him, whether breathing or in his grave.”

“Hello, have you heard anything? Our phone calls would go. My phone doesn’t leave my hand nowadays.”

“There were no faces. There was no flesh. The fish had eaten them away. Families would identify the boys by their clothes and accessories.”

“ When I went to the morgue, I didn’t expect it to be so intense. As I walked through the mortuary door, I stepped over one of the 13 bodies that lay there. I rummaged through them, frantically looking for clothes I recognised that would belong to my son. I was throwing up everywhere. I was delirious. I didn’t find my son.”

“ Democracy and freedom are more than just ideologies. They are tangible. You see these ideologies spread on television and in the media, but when you go to touch it you’ll find nothing.”

“ If he had died, and I had the opportunity to see him in front of my eyes and bury him, I would be at peace. Death comes to every person, but we are constantly chasing – chasing him and his whereabouts.”

“ The government is neglecting our youth. They are trying to deter these young men by showing them the cases of dead migrants from the past. But how will that stop them when they already feel dead living in this country.”

“ We are willing and ready to accept our children’s fate. Dead, in jail or alive. Give us the truth. Put our unease to rest. Our cases should have been closed within six months. It has been nine years.”

“ To the international community: “Your word takes precedence internationally and is heard and respected by all. Whether through power or diplomacy, other countries will listen to you. We ask for your intervention in our circumstance. We ask you to empathise with our mothers. Feel for our children just as you would with yours.”

Policy Notes

Theme 3: Gaps and good practices in national protection frameworks



“Cities should be a lot more included when it comes to developing local, national and international protection frameworks. [...] It would strengthen outcome-orientation to start with city networks that unite cities that are interested in engaging on questions of migration and displacement.”

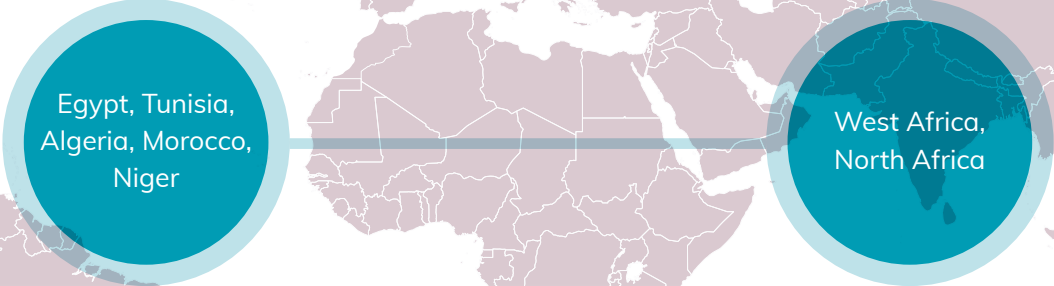
Janina Stürner, Research Fellow, University of Nuremberg

Photo credit: © UNHCR / Scott Nelson

Egyptian fishing boats at anchor in 2016 in the port of Alexandria. Such boats were regularly used--and monitored by UNHCR--to try to smuggle asylum seekers across the Mediterranean sea to Europe.

From national to local: the protection landscape for people on the move across North Africa and the Sahel

Author and Affiliation: Jim van Moorsel,¹⁷¹ Research and Reporting Officer, Mixed Migration Centre North Africa



Egypt, Tunisia,
Algeria, Morocco,
Niger

West Africa,
North Africa

Introduction

The roundtable discussion on Day 2 of the policy workshop highlighted key gaps in national protection frameworks along the Central and Western Mediterranean Routes, good practices among local protection actors and civil society organizations, and the impact of COVID-19 on existing vulnerabilities among refugee and migrant communities across the North Africa region and the Sahel. Seven participants participated in the roundtable, bringing in expertise from their respective countries in Egypt, Tunisia, Algeria, Morocco and Niger:

- **Prof. Amira Ahmed**, American University of Cairo;
- **Prof. Hassen Boubakri**, University of Sousse, President of the Tunis Centre for Migration and Asylum (CeTuMa);
- **Khaled Menna**, Soumia Bouchouk and Hanane Mansour, Centre de Recherche en Economie Appliquée pour le Développement (CREAD);
- **Abderazaq Ouïam**, Organisation Marocaine des Droits Humains (OMDH);
- **Hamissou Alasane Ibrahim**, NGO Jeunesse-Enfance-Migration-Développement.

Yadh Bousselmi, Tunisia Country Representative and Regional North Africa Programme Advisor with the Danish Refugee Council, moderated the discussions. This note aims to synthesize the rich exchanges, highlighting

the current state of protection and asylum legislation, and proposed recommendations.

Highlighting key gaps in national protection frameworks

All roundtable participants agreed that gaps in national protection frameworks stemmed from a lack of harmony between national and international legislation, and among national asylum and migration actors, resulting in inadequate protection for people on the move.

In the case of Morocco, a national migration strategy and asylum law exist, but no national procedure to receive asylum applications through State facilities or public institutions is in place. As a result, the country delegates the process of refugee status determination (RSD) to UNHCR. In Niger, a similar process is taking place, as UNHCR supports the national asylum system particularly focusing on the timeliness of registration and RSD. UNHCR also carries out RSD in the region in Algeria, Egypt, Libya and Tunisia. These countries are signatories to the 1951 Refugee Convention, but – contrary to Morocco and Niger – have not introduced their own domestic asylum legislation and asylum processing structures, which has consequences for the quality of protection. For instance, a refugee or asylum-seeker identification card issued by UNHCR might not be recognised as a piece of identification by state authorities, and particularly by administrative services and police. A lack of government-issued documentation hinders those with refugee status from having access to basic services

from official channels, sometimes with the exception of education and health care services. This in turn increases reliance on assistance from UNHCR, NGOs or civil society initiatives, and income from remittances and precarious and often irregular jobs.

Those with refugee and asylum-seeker identification cards often continue to experience limited access to the labour market. In fact, a lack of government-issued documentation will also hinder access to regular work opportunities. While assistance in many cases, especially in relatively costly cities with high rents such as Cairo, Tunis and Algiers, may often not be sufficient to cover basic living expenses, registered refugees and asylum-seekers are obliged to accept irregular job opportunities due to a lack of access to regular work. In Tunisia, a collaboration can be found between UNHCR and the Tunisian Association for Management and Stability (TAMMS), who ensure legal work opportunities and social insurance for an increasing number of refugees and asylum seekers. In such examples of good practice, refugees and asylum-seekers are able to deliver a visible contribution to the economy of the host community.

In Morocco, a current lack of political engagement to tackle incoherent and incomplete asylum procedure is likely linked to its diverging foreign policies, with on the one hand an increasing openness towards African countries, and on the other negotiating with the European Union the securitisation of borders in light of people on the move towards Europe. Tunisia is navigating a similar split, where the civil society advocating for a national asylum framework is faced with a lack of political will and support, with the current status quo with no effective asylum framework in place being further fostered by domestic political instability and ever-changing ministerial posts.

In Algeria and Niger, the narrative on a lacking protection framework for people on the move is tied to broader security concerns. Porous borders in the desert and recent terrorism activities are further feeding into policies focusing on exclusion and deportation.

Discrimination and xenophobia lead to irregular parallel services filling the gap

Participants argued that limited access to basic services in a host community generates far-reaching systemic consequences impeding the integration of refugees and migrants within societies, and might lead to unintended consequences like discrimination and xenophobia. While Tunisia and Egypt, for example, might a priori grant access to education and health care for people on the move, this does not guarantee that in practice refugees and migrants can viably access those services without experiencing instances of discrimination. The consequence is that people on the move who have settled in communities might create parallel irregular support systems such as community services and schools, a

common practice in Egyptian cities. In Algeria, where access to educational and health services for people in mixed movements is generally restrained, both reliance on assistance and self-organisation co-exist as coping mechanisms among refugee and migrant communities.

The sphere of informality in which refugees and migrants find themselves due to limited access to regularisation, can paradoxically give them the necessary space to set up such initiatives. The question remains if such communal initiatives should be seen as mere coping mechanisms to increase the viability of livelihoods on individual and communal levels, or if they could also capacitate a bottom-up approach to integration within local communities with the potential to later on lead to a policy and societal change towards more inclusive and participatory societies. Participants underlined that public opinion eventually has the power to push authorities to change and put in place new legislation.

COVID-19 and exacerbated vulnerabilities

The impact of COVID-19 around North Africa exacerbated existing vulnerabilities for people on the move. Their precarious living conditions and limited access to healthcare made them more vulnerable to contract the virus, compounded by the fact that most lost their income-generating activities and therefore had limited access to viable livelihoods. At the same time, COVID-19 spurred an increase in perceived discrimination and xenophobia towards people on the move across the region, particularly noted in Egypt, Libya, Algeria and Tunisia. Refugees and migrants reported that they refrained from accessing health services for experiencing COVID-19 symptoms or even for other health concerns, afraid of being stigmatised or exposed in public, potentially leading to arrests and deportations for those in irregular situations.

The Tunisian authorities, and particularly municipalities, became interested in gathering more knowledge on mixed movements in the contexts of their cities. They often came to a conclusion there were no adequate statistics to support mapping refugees and migrants in need due to the impact of COVID-19. In municipalities such as Sfax, Sousse and La Marsa, local authorities and particularly civil society organisations, not distinguishing host community from refugee and migrant communities but assisting based on needs, played a major role in handing out first needs packages. However, due to inadequate or lacking statistics, monitoring where aid went and if the most vulnerable refugees and migrants were reached was a challenge.

Recommendations

- **Greater and improved coordination between all stakeholders and transferring responsibilities to local institutions:** Coordination between national and local authorities on migration issues should improve. Transferring actionable responsibilities on migration from national to local authorities could pave the way towards more inclusive and whole-of-society initiatives, with municipalities taking the lead on managing the integration of mixed movement communities within societies through mapping these populations, their needs, and enhancing their access to basic services. This could pave the way for increased public support to change the legal framework, where the national authorities would come and ensure taking responsibility in addressing key gaps, including setting up a working national asylum procedure and providing regularised access to the labour market for refugees and migrants.
- **Recognition of key role of CSOs and streamlining coordination process:** Civil society organisations and initiatives should be given a key practical role within this coordination process. Such initiatives thus far have provided support to refugee and migrant communities in areas where authorities have not provided actions fully covering the protection of these communities. Yet, a State-led initiative could streamline these activities providing greater coordination among all involved actors.
- **Regional and transnational cooperation on providing safe pathways:** Border areas between North Africa and the Sahel through the Sahara remain porous and people on the move are extremely vulnerable to protection incidents along the way. COVID-19 has further exacerbated this through closed borders, leaving refugees and migrants with no other option than to resort to more dangerous routes and the services of smugglers. While across the region there is an acknowledged need for transnational migration initiatives, through engagement within the African Union, and the launch of the African Migration Observatory in Morocco, further coordination should focus on providing safe journeys for people on the move, limiting exposure to risks along the way.
- **Vastly improve access to statistics on the presence of refugees and migrants and their needs:** Numbers on people on the move, regardless of status, throughout North Africa and the Sahel remain poor. It is fundamental that national authorities cooperate with municipalities to get a better sense of the presence of mixed movements on their territory, the needs of those people on the move, and particularly the risks they encounter. Beyond this national-local link, involvement of academia and international organisations can foster evidence-based initiatives that increase the integration of refugees and migrants in local societies.

A man in a grey hoodie is shown in profile, looking out towards the sea. The background is a sunset with a bright sun low on the horizon, creating a warm, golden glow. The man's face is partially in shadow, and he has a serious expression. The hoodie has a red logo on the chest. The overall mood is contemplative and somber.

Policy Notes

Theme 4: Protection in contexts of mixed movement

Photo credit: © UNHCR / John Wessels

"In Libya there is too much war. When I arrived in Tunisia, I was a bit terrified. I told my story to the police and they transferred me here. I will try to cross the sea again because there is no other solution."

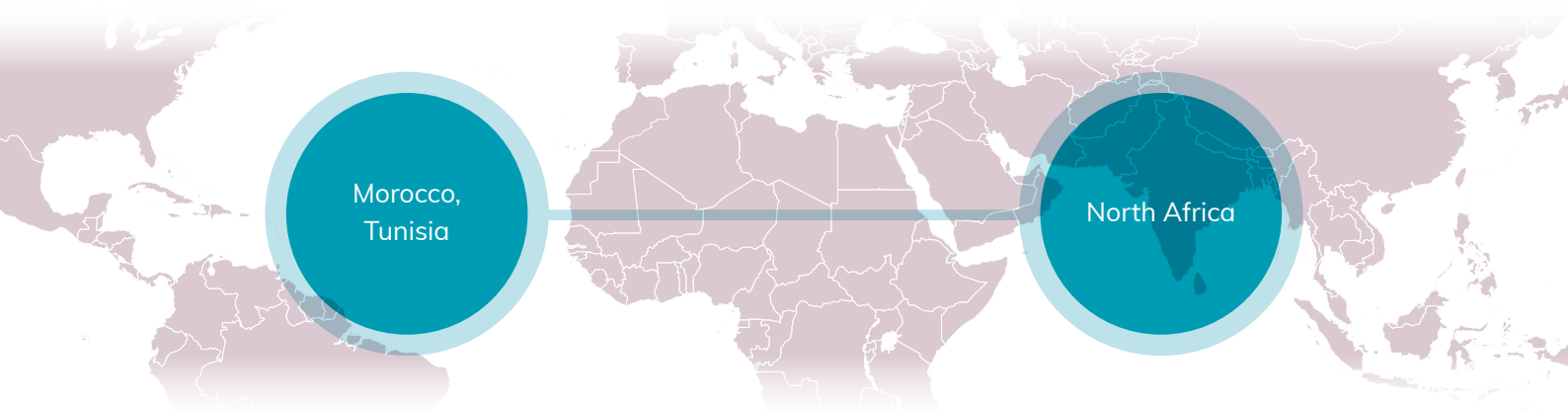
Thirty-three-year-old Sudanese asylum-seeker Mahamoud is photographed near the Zeitoun shelter in the coastal town of Zarsis, south-east Tunisia. Mahamoud left his family when he was just eight years old to escape domestic violence. For years, he moved around Sudan in search of work until he was forced to flee persecution. He used smugglers to enter Libya, where he was captured by militias and sold several times. He tried to cross the Mediterranean, but his boat sank and he was brought back to Libya and detained.

"Transnational organized criminal networks, have hijacked the otherwise historically harmless migration routes into a multi-billion criminal industry with far devastating consequences for migrants and implications for source, transit and destination countries alike. Trafficking in human beings and migrant smuggling has become the second largest criminal enterprise in the world with an estimated total revenue of US\$32 billion annually. A total of about 27 million migrants are trafficked globally, each year. 1.2 million of these are children, half of whom are Africans, ranging from ages 5 to 15 years."

H.E. Amira El Fadil, Commissioner of Social Affairs, African Union Commission

Identifying International Protection Needs: Considerations for North Africa's Mixed Movement Context

Author and Affiliation: Kim Thuy Seelinger,¹⁷² Julia Uyttewaal,¹⁷³ and Ana Belén Anguita Arjona¹⁷⁴



Introduction

The mixed movement context in North Africa presents urgent protection concerns. Increasing numbers of refugees, asylum seekers, and migrants are traveling to and through countries like Morocco and Tunisia, due in part to deteriorating conditions in Libya that restrict passage through the Central Mediterranean route to Europe. Former “transit” countries are now becoming destinations for people from different countries, backgrounds, and languages who are all in movement for different reasons. Their statuses and needs may change over time. Some may have a valid visa one day and overstay it the next. Some may start out fleeing persecution at home and end up abused en route as well. Some are simply looking for work or adventure and find it; others end up trafficked into abusive or unpaid labor.

A primary challenge in this complex mixed movement population is identifying international protection needs and reaching out to potential refugees and asylum seekers in order to ensure they have access to international protection. This requires not only effective identification of potential asylum seekers, but awareness of diverse factors that may enable or impede different individuals' disclosure of their needs for international protection. During the COVID-19 pandemic, it has also meant conducting these efforts in the context of closed borders, restricted internal mobility, and interruption or suspension of services.

In July 2020, UNHCR's Regional Office for the Middle East and North Africa commissioned the Center for Human

Rights, Gender and Migration (CHRM) at the Institute for Public Health at Washington University to conduct exploratory research on barriers identifying international protection needs in North Africa's mixed movement context. From October through early November 2020, the CHRM team conducted remote, semi-structured interviews with 60 individuals representing 47 different state entities and service providers serving refugees, asylum seekers, and migrants as part of their work. Most study participants were based in Morocco and Tunisia; additional experts provided supplemental insights on the region and neighboring countries such as Algeria. The inquiry focused on barriers to detecting international protection needs in North Africa's mixed movement context, as well as promising strategies service providers have adopted to address these barriers.

Central to the study is the concept of “disclosure.” In the context of this research, “disclosure” refers to an individual revealing their need for international protection. This can range from the general expression of a need for help to speaking in more specific detail about one's past or fear of harm back home. Disclosure may or may not occur in response to direct questioning or screening by a service provider (including as part of identification efforts); it may also occur for many reasons specific to that individual. Most importantly, disclosure focuses on the experience, perspective, and needs of a refugee or potential asylum seeker, who may be influenced by myriad personal, social, and structural or contextual forces. The concept of “disclosure” is closely related to, though distinct from, that

of “identification”. The latter refers to affirmative efforts made by governments, UNHCR, service providers, or other actors – whether by screening tool, direct questioning, or other systematic methods – to engage populations of concern and detect individuals among them who may need international protection. In a way, “identification” is the seeking of this information. “Disclosure,” on the other hand, is the offering of this information. While “identification” has long been an objective and practice of humanitarian actors, this research invites consideration of “disclosure,” as well. Shifting perspectives can help humanitarian actors and other service providers understand both the facilitators and inhibitors of help-seeking among persons of concern – including in mixed movement contexts.

Summary of findings

After describing recent trends observed in North Africa’s mixed movement, study participants indicated diverse barriers to the identification of international protection needs in this context. These can be roughly grouped into individual-level and structural-level barriers.

Individual-level barriers to identification

Study participants noted that, at the personal level, many potential asylum seekers struggle with challenges including language barriers and the impacts of trauma. This can include a person’s lack of subjective identification as a victim of persecution, which may occur if the forms of harm experienced were common in the person’s home country. This psychological state may make it unlikely that someone would come forward to seek asylum, even if they could be eligible. Study participants also cited social forces including fear of stigmatization and basic lack of knowledge about asylum as individual-level inhibitors to disclosing protection needs. For instance, even where someone may have a vague concept of refugee status, lack of knowledge about asylum eligibility may lead them to omit key details about why they left home.

Study participants also discussed fear and mistrust of strangers, be they state actors, service providers, or even members of their own communities, as impediments to help-seeking. For instance, one study participant explained that individuals from Cameroon may be reluctant to be identified as asylum seekers by their own communities. This can complicate identification of possible asylum seekers among a certain community group and their specific needs.

Study results also highlighted individual-level barriers arising for people with certain vulnerabilities or security risks, such as victims of trafficking, unaccompanied children, and individuals with diverse sexual orientations and gender identities. For victims of trafficking, the inability to leave a trafficking ring can complicate disclosure in and of itself. The community-based nature of such trafficking can also prevent victims from coming forward, particularly if they fear retaliation against their families.

For others with particular vulnerabilities, such as lesbian, gay, bisexual, transgender, and/or intersex (LGBTI) individuals, disclosing details about past or feared harm through an interpreter could be particularly daunting, as many may fear being “outed” or misrepresented due to an interpreter’s implicit bias or limited familiarity with LGBTI -specific issues. LGBTI individuals may be particularly disinclined to disclose the specifics of their protection needs if an interpreter is a member of their own community.

Structural barriers to identification

Findings also raised numerous structural or process-related impediments to identification of international protection needs. As a preliminary challenge, Moroccan and Tunisian legislatures have both drafted but not yet adopted national asylum legislation. Study participants noted that the absence of a clear legal framework has kept state actors in each country from fulfilling their potential in terms of identifying and responding to refugees and asylum seekers. This was particularly apparent at entry points. In Morocco, for instance, study participants stated that border authorities may be unaware of procedures for identifying, admitting, and referring possible asylum seekers, since border agents “need to have a law to enforce it at the borders.”¹⁷⁵ In Tunisia, authorities and international agencies including UNHCR and IOM had existing training programs and robust Standard Operating Procedures for receiving and referring refugees and migrants rescued at sea and entering by land from Libya. There, challenges arose in terms of capacity and standardizing the application of identification and referral procedures across the country.

Other barriers were found inland, in the context of contact with international, national, and community-based organizations providing services to migrants, refugees, and asylum seekers. While many study participants felt that local service providers were doing the best job possible in detecting vulnerabilities and protection needs, some did note inconsistent levels of training and capacity in profiling and intake procedures. They also pointed to varying levels of coordination and referral among service providers offering a range of services to mixed movement populations, who might be in a position to refer them to UNHCR. In Morocco, geographic constraints were a challenge, as well, with UNHCR only authorized to operate one office, in Rabat. This posed difficulty to some asylum seekers outside the capital.

Strategies to address identification challenges

Study participants presented an array of strategies to improve their own abilities to identify potential international protection needs and to enable would-be asylum seekers to disclose these needs. These included training efforts to improve staff knowledge and intake / interview skills, as well as using community liaisons and social media to spread accurate information about asylum. They also described initiatives to ease the

asylum process itself, such as providing psychosocial support, accompaniment by a community member, and application assistance from legal clinics staffed by local law students. This year, the COVID-19 pandemic spurred additional innovations. Study participants reported mobile service delivery and creative use of Facebook and WhatsApp groups to disseminate information and maintain community ties at a distance. In addition, UNHCR's country team in Morocco launched a "remote registration" system with a local partner outside the capital, to enable asylum seekers beyond Rabat to enter the process amid travel restrictions. This may be a promising practice even post-pandemic.

Discussion

Reflection on the interview data surfaced several key takeaways about "disclosure" and identification of international protection needs. These relate to the concept of "disclosure" in the context of the asylum process, the critical importance of community-based approaches to aid in identification, the need to strengthen referral and coordination to improve response, the need for more training about refugee protection and the asylum process among service providers most likely to encounter persons with international protection needs, and the critical role of the state.

First, barriers to identification of international protection needs are closely related. However, disclosure itself is a highly complex and subjective process, warranting additional consideration on the part of those serving refugees and asylum seekers. Disclosure of one's need for international protection can happen to different degrees; it may be thought of as an ongoing and potentially deepening process. First, at the most superficial level of disclosure, one might generally express a need for international protection or desire to access the asylum process - the rough equivalent of saying, "I need help," or "I am afraid to return to my country" and not much more. This degree of disclosure might be sufficient to trigger a more in-depth intake or, possibly, referral to UNHCR for pre-registration or registration as an asylum seeker. Second, an individual might reveal the basic contours of a claim for asylum - for example, roughly describing past harm in an intake interview, in conversation with a community-based outreach worker, or on any migration related application. At this level, the individual may or may not even know about the option to apply for asylum or the meaning of refugee protection. Third, one might offer greater detail about the nature, severity, motives, and impacts of past persecution or fear of return to one's homeland. This is likely to demonstrate eligibility for refugee protection for those who are indeed qualified under the 1951 Convention. It is needed at the point of eligibility interview, if not before.

Borrowing from one framework of behavioral analysis, one might ask why a would-be asylum seeker may decline or fail to disclose their international protection needs,

and does this absence of disclosure result from lack of motivation? Lack of capability? Or lack of opportunity? The answer will be different for every asylum seeker, but there may also be patterns among specific groups. For example, data related to victims of trafficking suggest unique constraints on motivation, capability, and opportunity to access either the asylum process or anti-trafficking support systems. Understanding barriers to identify of international protection needs in terms of motivation, capability, and opportunity can help key actors and policymakers prioritize and adjust their interventions at individual and population levels.

A second key takeaway from this study was that, in the mixed movement contexts of Morocco and Tunisia, UNHCR and its partners cannot identify all persons with international protection needs on their own. UNHCR works with a number of partners and communities to increase outreach to potential asylum seekers who will be referred for care and protection as needed. Most are simply more likely to move, work, and live with others from their homelands or communities of origin. For this reason, community-based approaches are critical to promote both individual-side disclosure and service provider-based identification efforts. The organizations that engaged community liaisons, especially for different linguistic or national origin groups, reported great success in learning of new arrivals as well as tracking evolving needs of longer-standing community members. These liaisons act as vessels back and forth between the organization and the community, bringing information and potential persons with international protection needs from one to the other, while three UNHCR field units are established in Tunisia. They serve outreach and trust-building functions in their communities of focus, which are both integral to identification efforts.

COVID-19 has highlighted the critical importance of community-based approaches in the delivery of services as well as the dissemination of information. As UNHCR and its partners have experienced limited mobility due to the pandemic, community liaisons have continued to connect individuals to service teams by phone and other digital methods. Similarly, the use of social media platforms to gather and connect with community members in digital spaces has taken on more utility during the pandemic. In a mixed movement context, information about the asylum process, eligibility criteria, and where to access help can be disseminated broadly and cheaply through Facebook and WhatsApp groups. This information can even spread by word of mouth to community members who do not actively use social media. In this way, it can reach potential asylum seekers, while also building social cohesion and trust in service providers. This may, in turn, also promote identification of protection needs and facilitate identification and referral to UNHCR. As promising as they are, social media-based outreach and connection strategies must be taken up with clear ground rules about confidentiality, data security, and group membership.

A third key takeaway was the importance of strengthening referral and coordination systems to strengthen response to the disclosure of international protection needs and strengthen access to asylum processes in both Morocco and Tunisia. Findings revealed positive examples where international agencies, national NGOs, and state authorities developed strong Standard Operating Procedures (SOPs) for receiving and assisting people rescued at sea. These joint profiling and intake exercises, followed by open referrals and collaboration, seemed to increase the likelihood that vulnerable individuals will be able to access processes for refugee protection. Findings suggested that similar SOPs and referral mechanisms implemented at a national scale for both state authorities and service providers would help harmonize and strengthen coordination across countries. In general, findings indicated that coordination networks in each country were strong among certain pairs or clusters of providers but had inconsistently broad reach and inclusion. Clear communication channels between organizations and procedures for referral and collaboration would help ensure that access to protection is not simply dependent on the goodwill or personal connections of a few individuals within a few organizations. Broadening systems of coordination and collaboration seems crucial for expanding access to refugee protection beyond capital or main cities, to rural and border zones. Fourth, findings also indicated that service providers and other organizations, including community-led associations and community leaders, sought training and awareness-raising on international protection generally and asylum specifically. Without a clear understanding of protection benefits, processes, and eligibility criteria, these first responders and interveners could miss important opportunities to identify people in need of protection, including particularly vulnerable groups who may be particularly hesitant to disclose experiences of harm. This, in turn, could limit an organization's ability to make necessary referrals for support and protection. A final takeaway from study findings relates to state role in protecting asylum seekers and refugees. In both Morocco and Tunisia, the lack of a comprehensive legal framework for asylum or active institutional role in the process limited the state's ability to actively participate in the identification of possible refugees and asylum seekers, or respond to their disclosure of international protection needs. Moreover, without the prospect of a recognition of asylum claim, individuals in need of protection may not be motivated to disclose those needs to state authorities. Until the adoption of comprehensive asylum legislation, several study participants suggested that regular and comprehensive trainings for state authorities may be helpful to strengthen familiarity with the 1951 Convention and principles of non-refoulement. Commendable efforts in both countries include national training programs for border authorities and police agents on refugee protection and human rights of migrants, detecting vulnerabilities and protection needs, and referring to competent agencies and service providers.

Conclusion

Mixed movement contexts are uniquely challenging for enabling access to international protection due to rapid and shifting movement, diverse needs and legal statuses among fellow travelers, and the invisibility of highly vulnerable, insecure individuals such as victims of trafficking in persons. Key actors in North Africa already make concerted, affirmative efforts to identify individuals in mixed movements who may be eligible for international protection, be it through screening tools, direct questioning, or other systematic methods. This research presents the importance of also considering the potential "disclosure" of international protection needs from the perspective of persons of concern themselves. Their disclosure may be determined by the degree to which they have sufficient motivation, capability, or opportunity to express their needs for protection. By better understanding these various barriers and developing appropriate strategies to approach diverse forms of disclosure, key actors and policymakers can strengthen access to asylum and other forms of international protection.

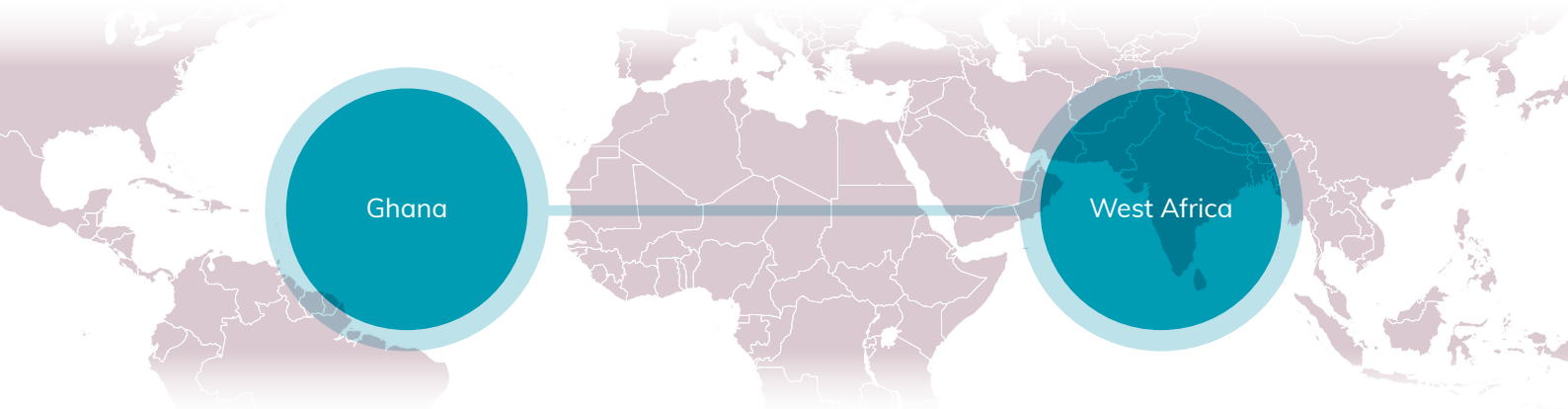
Existing good practices and recommendations

- **Continue engaging state authorities and expanding capacity building.** Expand existing training on identification of international protection needs, asylum eligibility and processes, and counter-trafficking procedures, and work to strengthen referrals to support services and access to application processes. Continue promoting a cross-sectoral approach to deepen understanding of the diverse needs and profiles of people in mixed movements and improve the quality of asylum-related information disseminated to them, taking into consideration the increasing use of digital communication channels and community outreach initiatives in the North Africa. This would enhance state authorities' and service providers' interactions with persons of concern at borders, at other ports of entry, and inland, and increase capacity to identify and refer asylum seekers upon first contact.
- **Continue reinforcing trauma-informed approaches in and training related to international protection.** Ensure sensitization of state and non-state actors on trauma-informed care and interview techniques, including psychological first aid. Integrate issues of gender-based violence, LGBTI-related violence and discrimination, working with victims of torture, working with victims of trafficking, and working with interpreters in policy and training materials related to international protection guided by existing and upcoming guidelines from UNHCR.
- **Continue to promote community-based protection approaches while linking community-based groups and service providers through local and regional coordination mechanisms.** This would help ensure the referral of potential asylum seekers and victims of trafficking to diverse support and protection resources via networks of "safe spaces" along the displacement cycle toward and through North Africa. This also requires the development and implementation of clear guidance regarding the confidentiality of referral-related communications, including use of social media.
- **Continue progress towards the adoption and implementation of comprehensive asylum legislation in the North African region.** Specifically, current efforts to develop comprehensive asylum laws in Morocco and Tunisia should be supported through advocacy and capacity building, in order to strengthen state authorities' ability to identify, refer, and assist persons in need of international protection.
- **Support the implementation of the coordination mechanisms established between refugee protection and anti-trafficking systems.** This could be through a combined working group, establishment of a liaison between systems, or the expansion of recently launched "cross-training" programs (ie, UNHCR Blended Learning Programme on Trafficking and Smuggling MENA region, Trafficking Referral Guide and Manual in Tunisia) to foster mutual learning about asylum and anti-trafficking protections and processes for all relevant actors

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Gaps in Protection for West African Refugees in Times of Crises: The role of a Multi-stakeholder Platform within a Partnership in Preparedness Model

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Introduction

As victims of persecution owing to their race, religion, nationality, social group or political opinions, refugees' rights have been protected through international conventions, protocols and compacts since the 1950s. Embedded in these international legal provisions are rights and obligations on all stakeholders throughout the forced migration trajectory – asylum seekers, countries of origin, countries of transit, migration intermediaries, host states and immigration control officials at the host society. An example includes the prohibition of wilful forced return of asylum seekers to places where they are likely to be subjected to torture, or their lives are likely to be imperilled through persecution (the principle of nonrefoulement). Another example is the obligation on an asylum seeker, who has been granted refugee status by a host state, not to use that social sphere as a launch pad to organise destabilising activities against their country of origin.

The 2020 Africa Migration Report¹⁷⁶ acknowledges that Africa hosted 7.3 million refugees (including asylum seekers) or 25 percent of the global refugee population at 28.7 million in 2019. Overall, one in every four international migrants in Africa was a refugee, compared to one in every 10 international migrants globally. This represents a significant number of vulnerable populations that are exposed to obvious challenges in host countries in times of national crisis. The report points to the bulk of refugees on the continent being hosted by countries in Eastern Africa, with relatively smaller numbers in the rest of the regions. Though comparatively smaller, Western

Africa's stock of about 383,000 refugees in 2019 has protection needs just as regions with larger populations. This policy note argues that while protection regimes broadly exist for involuntary migrants within the ambit of intergovernmental/international organisations such as UNHCR, the International Red Cross Society or even IOM during peace times, there is a yawning gap in national protection mechanisms for involuntary migrants in host countries during episodes of crisis situations. The two central questions that guide this policy note are: Are national statutory agencies, which are responsible for coordinating disaster management, adequate in protecting the rights of refugees during national crisis? How can a multi-stakeholder approach, in the form of a national platform dedicated to coordinating support specifically for migrants, better protect the rights of refugees during national crisis situations? To aid the analysis, I have adopted the conceptualisation of "crisis situations" by the Migrants in Countries in Crisis (MICIC) Initiative.¹⁷⁷ Within this context, "crises may arise when social, political, economic, natural or environmental factors or events combine with structural vulnerabilities and/or when the magnitude of those events or factors overwhelm the resilience and response capacities of individuals, communities, or countries. This interpretation sees crises as events with such a severe intensity and magnitude that they can overwhelm the capacity of the government and population to cope with them. These are crises triggered by (1) natural disasters (e.g. hurricanes, earthquakes, tsunamis, and sudden and slow-onset floods); and by (2) conflict (e.g.

civil unrest, generalised violence and/or international or non-international armed conflict).”

Though international cooperation and actions have positive broad strategic impacts on the nature, severity and scope of crises, especially in economically underdeveloped countries, the need for localised state and multi-stakeholder action before, during and after a crisis situation is critical. There is mostly a trust deficit between state agencies/state officials and refugees due to the power asymmetries that exist between the two parties. The role of non-state actors such as civil society organisations (CSOs), nongovernmental organisations (NGOs), faith-based organisations and private sector actors therefore becomes important in coordinating services for involuntary migrants, especially during a crisis situation. Targeted state-funded initiatives could be channelled through impartial non-state private actors who tend to have a physical operational presence in local communities prior to the onset of crises. This approach was also emphatically endorsed by the “Migrants in Countries in Crisis (MICIC): Supporting an Evidence-based Approach for Effective and Cooperative State Action” project, funded by the European Union (EU) and implemented by the International Centre for Migration Policy Development (ICMPD). Despite the fact that the central focus was on voluntary migrants, the guidelines and subsequent Partners in Preparedness (PiP) initiative that emerged from this broad project are equally instructive for state action in the context of refugees and other involuntary migrants.

The seventh guideline specifically recommends the need to build partnerships and establish routine coordination before a crisis breaks out, and the maintenance of such coordination at all times throughout the cycle of a crisis. This is equally consistent with the Inter-Agency Standing Committee’s (IASC) Early Warning, Early Action and Readiness Report,¹⁷⁸ which proposes pre-disaster/emergency planning requirements in order to mitigate the severity of such phenomena. Existing approaches to the protection of refugees during disasters and humanitarian emergencies, such as the IASC Emergency Response Preparedness (ERP), therefore allow the international community to complement the efforts of individual states while recognising that national governments are ultimately responsible for providing such reliefs to refugees. This statutory role is aptly captured in the UN General Assembly resolution 46/182, to the effect that each “State has the responsibility first and foremost to take care of the victims of natural disasters and other emergencies occurring on its territory. Hence, the affected State has the primary role in the initiation, organisation, coordination and implementation of humanitarian assistance within its territory.” Other initiatives, such as the Preparedness Package for Refugee Emergencies (PPRE) and the Refugee Coordination Model (RCM), also stipulate approaches to preparing for refugee emergencies.

Using Ghana as a case study, the PiP sought to address the lack of dedicated, inclusive and open structures to support dialogue, information-sharing and cooperation at the national level, in order to implement migrant-sensitive responses in times of crisis for migrants in Ghana. After three National Workshops held on 21 to 22 June 2018, 24 to 25 October 2018 and 13 to 14 December 2018 among representatives of relevant government ministries, departments and agencies, intergovernmental organisations, CSOs and academic/training institutions, a National Platform for the Protection of Migrants in Crisis (NPPMC) was launched. This platform approach, however, has broader applications across other regions in Africa and beyond, because it complements existing international attempts through a public-private partnership approach.

National platform model for protecting migrants during crisis

Ghana has a National Disaster Management Organisation (NADMO), established in 1996, by an act of parliament (Act 517) in response to the Yokohama Strategy and Plan of Action for a Safer World. It is the statutory agency mandated to coordinate all disasters in the country. The organisation coordinates all relevant civil authorities at the national, regional and district levels to respond to disaster situations. Since its founding, NADMO has depended on state subventions for funding, and it has not been permitted to attract funding from other sources. Theoretically, the situation changed with the passage of the NADMO Act of 2016 (Act 927), which now allows NADMO to source funding from bilateral and multilateral partners in addition to government subventions. In practice, however, funding shortages have constrained the ability of the organisation to take pre-emptive steps prior to the occurrence of crises, in order to either avert them, minimise their impact or to hasten the restoration of normalcy after a crisis.

While the mandate of NADMO encompasses the protection of all persons present in Ghana at any given time, peculiar challenges pertain to voluntary and involuntary migrants. Challenges could include the lack of local language proficiency; poor appreciation for local support systems; unsettled social networks; suspicion and discrimination; poor access to accommodation facilities and welfare services; and invisibility due to a deficiency in consistent formal records on migrants. As such, a national platform with specific focus on the rights of migrants during crisis situations is critical. The limitations of the NADMO highlight the enduring benefit of a public-private partnership in the area of preparedness prior to, during and after crisis situations.

The terms of reference of NPPMC primarily focus on the coordination of services specifically for migrants

during crisis, including: Access to consular services, information (e.g. disseminating crisis information, alerts), documentation (e.g. interpretation and translation services), relief and humanitarian assistance (e.g. healthcare, shelter, food, clothing, dignity kits for women); counselling or psycho-social support; referrals to relevant service providers; and support in the provision of temporary identity and travel documents (e.g. emergency travel certificates). The platform aims at **raising awareness** among different stakeholders of its existence and the specific needs of migrants in crisis situations. The platform also seeks to provide a space and means for relevant actors to **enhance their capacity** to identify, implement and review migrant-sensitive responses in crisis situations – for instance, through simulations, drills and research. In addition, it intends to **strengthen collaboration** among government ministries, departments or agencies, and between governmental and nongovernmental partners at different spatial levels (district, regional and national) through the identification of focal points. Furthermore, the platform seeks to **foster the sharing** of information, knowledge, skills and resources among relevant stakeholders.

To succeed, the platform is grounded in and guided by some enduring principles. The three core principles adopted include ensuring inclusive and meaningful participation, as well as engagement with all relevant and interested stakeholders at appropriate levels (local, regional and national) in the protection of migrants in crisis situations; facilitating multi-stakeholder partnerships, which are stimulated and kept engaged through ongoing interactions (i.e. through formal meetings and other means of communication, but also informal interactions and spontaneous exchanges); and maintaining transparency and openness of its operations to ensure mutual accountability among all stakeholders, within and outside the platform. The membership of NPPMC comprises of both primary and secondary stakeholders. Primary stakeholders are composed of all relevant government ministries and departments responsible for the management of disasters and crises, while secondary stakeholders count relevant institutions and agencies that do not necessarily play a continuous role in the functioning of the platform, but which are critical collaborators in times of crisis. Secondary stakeholders are vital to the provision of logistics, information, rescue, relief and recovery support for migrants, in collaboration with the primary stakeholders. Membership of the primary stakeholders category is based on the following criteria: Capacity or technical know-how in migration issues; access to relevant information, possession of logistics and/or equipment, which are relevant for the protection of migrants in crisis situations; synergies between the institution's core mandate and that of the NPPMC Platform; availability of appropriate human resources or staffing; and possession of expertise in dealing with the particular type of crisis or disaster in question.

Applicability of the platform model to refugee protection during crisis

Both camp-based and urban refugees are predisposed to vulnerabilities due to resource constraints in host countries. These could manifest in the form of poor sanitation, inadequate shelter, limited access to healthcare and educational facilities as well as poor nutrition. These vulnerabilities are amplified during crisis situations in host communities. Specific steps should therefore be taken to ameliorate the impact of national crisis situations on refugees.

Protection of refugees should be considered a process rather than an event. In this regard, the phases in a full cycle of disaster management – pre-disaster phase (prevention and mitigation), the disaster phase (response) and the post-disaster phase (recovery) – should be accorded equal attention. This suggests that prior to the actual occurrence of a disaster, the national platform must undertake prevention and mitigation activities that either prevent the disaster, minimise its effects or enhance the preparedness of agencies that need to be coordinated to respond to a disaster when it occurs. Practical activities within the pre-disaster phase should involve regular meetings by primary stakeholders to carry out emergency response planning. This should include an evaluation of existing plans, standard operating procedures (SOPs) and incident reports from previous disaster situations, with the focus on how they protect the rights of refugees. In addition, the platform's primary stakeholders should monitor the political climate and natural disaster risks, as well as review information and data on the stock of refugees in the country. There is also a need to devise the platform's emergency response plan, targeting refugee-populated communities such as camps and clusters in urban centres where refugees reside. Awareness of the existence of the platform will have to be raised to allow refugees, and entities that support refugees, to signpost asylum seekers, refugees and stateless persons to the range of services that are coordinated by the platform. In a pre-disaster phase, there is also a critical need for training and simulation exercises to enhance operational preparedness and capacity to respond to actual crises should they happen. The platform must, therefore, coordinate simulation exercises involving refugees, the leadership of camps, state agencies responsible for emergency response actions, non-state actors and development partners.

During the actual crisis phase, stakeholders of the platform should coordinate services in support of refugees. These services should involve field visits; collection of information and data on where refugees live; identification and assessment of the immediate needs of refugees; activation of the platform's crisis mode; and convening the platform's emergency meetings

with partners, who might be able to offer support, not only in the form of rescue but also in the provision of immediate relief services such as temporary shelter, food and healthcare. Again, this should adopt a public-private partnership approach. The response plan for crises, which ideally must have been drafted at the pre-crisis phase, should be activated by the platform to guide coordinated response processes.

Post-crisis, the platform should evaluate the level of collaboration among the various stakeholders – primary, secondary and other actors supplying services to refugees. There is also a need to evaluate and document the response operations to serve as a guide for future responses. Finally, it is essential to review the platform's objectives periodically, in order to amend them in light of response gaps, opportunities for better coordination and the dynamics of the vulnerabilities facing refugees. This approach recognises that the experiences of refugees are not static givens; also, that impacts on refugees are context-specific and that the composition of coordinating partners should be subject to change.

Conclusion

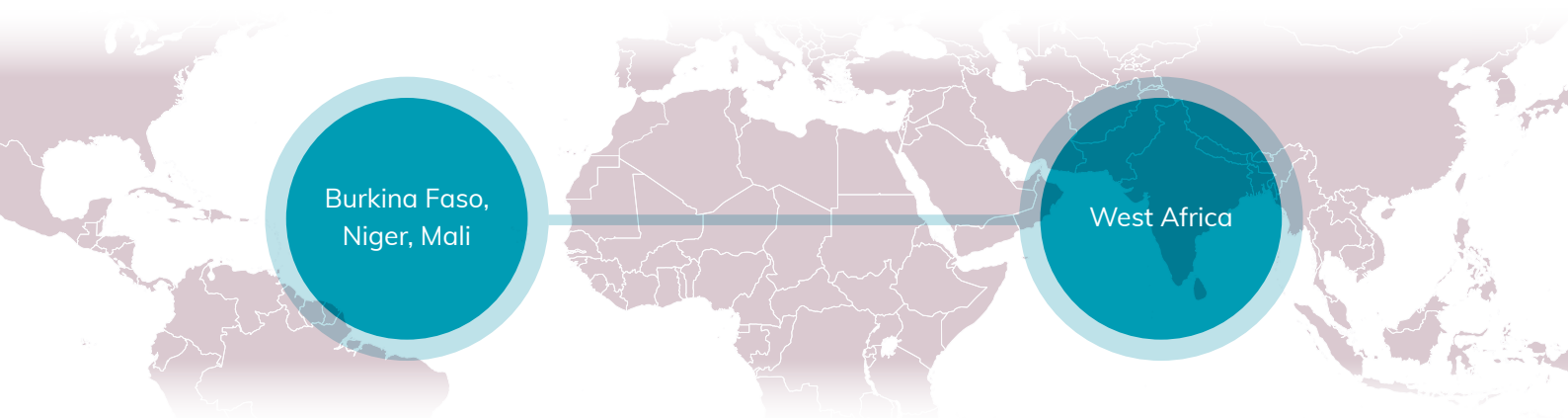
The reflections expressed in this Policy Note complement the fundamental object of the Global Compact on Refugees, which conveys that the “thorough management of a refugee situation is often predicated on the resilience of the host community.” Resilience during national crisis situations is better attained through the adoption of a “whole-of-society” approach to the management of disaster situations. The agility, human resource capacity, outreach and scope, access to flexible funding, access to equipment and communication channels of multi-stakeholders proposed in the platform model increase the potential to guarantee the protection of the rights of refugees in crisis situations. The understanding, in this policy note, of crisis and disaster management as a cyclical process allows for continuous engagement of stakeholders, including those from the private sector, civil society, NGOs, international/ intergovernmental organisations, diplomatic missions, community groups as well as mainstream government ministries, departments and agencies. The early warning, preparedness and contingency planning propositions in the Global Compact on Refugees, aimed at shaping refugee reception by nation states, are consistent with the proposed national platform model in planning for, dealing with and evaluating crises and disasters at the national spatial level.

Recommendations for policy

- **Dedicated migration platforms avoid neglect of refugees during national crisis:** Resource constraints prevent national agencies that are responsible for managing disasters from deliberately focusing limited resources on marginalised communities. Advocacy by a migrant platform highlights migrant-specific vulnerabilities that exist throughout the three main stages of the disaster management cycle into the limelight. Policies that target victims of a disaster as a homogenous group miss an important point and they need to be realigned to appreciate the diversity of needs that are embedded in the heterogenous backgrounds, experiences and life courses of migrants (voluntary and involuntary).
- **Move towards hybrid protection models:** There is a critical need for a hybrid of public-private efforts, geared towards the forecasting of the likelihood and severity of crises, together with a coherent response to both natural and man-made crises should they occur. Non-state actors have the potential to release complementary skills, technical expertise, equipment and enduring community relationships for collaborative activities as well as funding sources. Policy formulation and implementation should therefore privilege hybridity over unilateral and unifocal state actions.

Protection Programming in Transit Settings: Challenges and Recommendations on Targeting and Accessing Transit Migrants in Agadez, Gao and Ouagadougou

Author and Affiliation: Pauline Vidal,¹⁷⁹ Research Manager of the Independent Monitoring, Research and Evidence Facility (IMREF)



Introduction

People in mixed migration flows on the Central Mediterranean Route (CMR) are vulnerable to violence, physical abuse, and exploitation in their north-bound overland journeys towards North Africa and Europe. To help these transit migrants avoid, cope with, and recover from exposure or experiences of harm,¹⁸⁰ international humanitarian and development organisations have significantly increased the scope and scale of protection programming in the Sahel since 2016.

Providing direct protection assistance to transit migrants¹⁸¹ comes with specific challenges that differ from other humanitarian displacement contexts. In other humanitarian contexts, organisations will typically profile a population and consult its leaders to identify the most vulnerable members that require humanitarian assistance.¹⁸² However, in the context of the CMR, profiling mobile populations is significantly more challenging and beneficiary identification efforts are less effective, despite widespread physical, social and mental health-related vulnerabilities.

This paper looks at protection programming in transit settings, and the challenges to providing protection to transit migrants. In particular, it examines challenges in targeting migrants, and challenges in building trust with potential migrant beneficiaries.

The paper draws on insights from transit migrants and stakeholders interviewed by Independent Monitoring, Research and Evidence Facility (IMREF) in Agadez, Gao, and Ouagadougou, between September 2019 and November 2020.¹⁸³

Challenges in targeting migrants

Many stakeholders IMREF interviewed say that it is not always clear who the most vulnerable people are among transit migrants on the CMR. IMREF research suggests that migrants' vulnerability increases the longer they journey along the CMR: they are exposed to different forms of extortion and abuse, their financial resources diminish, and their physical and mental stresses

increase. This reflects the fact that vulnerability is not a simple, easily measurable characteristic of an individual, but rather the result of situational factors and personal characteristics.

While some organisations are moving away from checklist-type vulnerability assessments towards more non-static definitions to integrate the personal and situational conditions of individual migrants,¹⁸⁴ significant challenges remain in applying these in transit migration contexts. Transit migrants are highly mobile and often stay in transit hubs for a limited amount of time, aiming to move forward to the next leg of their journey as soon as they are able to. While organisations have increased their presence in migration intersections, such as bus stations and ghettos, community mobilisers, field staffs and volunteers report that they struggle to clearly spot all vulnerabilities as some are actively hidden by migrants or not visible at a first look. This includes survivors of SGBV, lesbian, gay, bisexual, and transgender (LGBT)-identifying individuals, and underaged youth.

Most stakeholders agree that improved referrals between humanitarian organisations have helped to better target vulnerable migrants. In Agadez, Gao and Ouagadougou, organisations have developed referral pathways that outline the target groups of each organisation and the services they provide, along with contact numbers that field workers can use. However, practical gaps remain in implementing effective referral mechanisms: field workers often said they are not fully familiar with the mandates and services provided by all organisations which are part of the referral mechanism; that phone numbers indicated for referral do not always work; and that some organisations may not accept referrals due to lack of funds.

Successful referrals and targeting are closely tied to access strategies and the ability to identify migrants in places they transit and live, either to access them directly or to ensure migrants receive information on the services available to them. However, unlike many displacement settings, access to migrants is not guaranteed in transit migration settings.

Challenges in accessing transit migrants: spotlight on the issue of trust in humanitarian organisations

Several migrants interviewed by IMREF in Agadez, Ouagadougou and Gao said they were unwilling to access assistance available to them. Migrants' priority is often to continue the journey, even if that leads to dependencies on smuggling actors and reduced resources, and puts them in harm's way. As a result, onward migrants do not access assistance if they feel that available services will impede or delay their north-bound journey.

Moreover, several migrants interviewed by IMREF in Agadez, Ouagadougou and Gao said a fear of deportation made them unwilling to access services and encouraged them to hide from both authorities and humanitarian organisations. These migrants expressed concerns that if they accessed humanitarian services, they would be forced to return to their country of origin either by the police or the International Organisation for Migration (IOM) through their return assistance programme, which some migrants did not view as voluntary. Perceived collaboration between organisations and the police or government amplified these concerns. Most migrants said that they did not trust the police or local authorities. Several migrants in both Gao and Agadez said that organisations gave information about them to the police leading to detention or deportation. A 31-year-old Ivorian migrant in Gao expressed concerns that NGOs would denounce him to the police:

“What makes me suspicious of organisations is that every year we see many migrants who are turned away by the authorities in the places where they are. And finally, one wonders if humanitarian organisations are not at the root of these expulsions; maybe humanitarian organisations that share our information with the local authorities.”

In some cases, fears led some migrants to actively prevent humanitarian staff from entering ghettos and engaging with them. Some smuggling actors also used these concerns to encourage migrants to remain inside the network, including in ghettos and safe houses, and to not approach humanitarian organisations that could assist them.

While other migrants did not believe organisations would forcibly deport them, they were afraid organisations would manage to manipulate them out of migrating, losing the significant investments they had already made in their journeys. A 27-year-old Ivorian migrant interviewed in Agadez articulated these concerns by saying: “It seems that there are organisations that will do everything they can to discourage you and make you give up your trip. That's why I don't even try to go because I have travelled thousands and thousands of kilometres before arriving in Niger.” In both Agadez and Gao, several respondents believed that the European Union (EU) funded humanitarian organisations to stop them from migrating. These migrants talked about a fundamental gap between the support they wanted and the support that organisations offered, arguing that support to travel to Europe would be more appropriate than any other type of support. Support activities that migrants thought would be most relevant included: transportation to cross the desert safely; creation of safe and legal pathways to Europe, including support to get visas; direct protection from security forces at border stops; and advocacy

against expulsions. While migrants were often aware that these expectations were unrealistic, this illustrates a key tension between protection needs identified by migrants themselves and constraints organisations face in providing protection.

As a result, several migrants described accessing organisations as a trade-off between their level of need and perceived risks to their journeys, which often meant that they waited until they were extremely vulnerable before seeking assistance. As a result of this dynamic, organisations often cannot provide migrants with information on how to avoid harm as they travel northward, or with items to prepare their journeys more safely (e.g. condoms, adequate clothes, hygiene kits). The inability to access migrants and help them avoid harm is thus a key gap in protection programming in transit settings.

Conclusion

The challenges of targeting migrants in transit settings create a risk that humanitarian and development programmes will not reach the most vulnerable migrants. Furthermore, the lack of trust in humanitarian organisations clearly limits transit migrants' uptake of available assistance in Agadez, Gao and Ouagadougou.

Recommendations for policymakers

Based on insights from migrants, field staffs, and on lessons learned from the literature, IMREF's research suggest preliminary steps to overcome targeting and access challenges that severely impede protection programming on the CMR. In particular, recommendations focus on trust-building and communications which are critical to effective protection programming in transit settings. Implementers should improve communications on organisations' mandates, their activities and neutrality that take into account existing concerns among migrants. Uncoordinated communications could, in contrast, lead to further suspicions among migrants and smuggling actors.

- **Implementers should develop a shared, area-based strategy and coordination plan** through existing Migration Protection Working Groups. This strategy should include, at a minimum: i) building trust with key actors in the targeted communities and beneficiary groups; ii) a mapping of the presence of community mobilisers in key migration intersections, including ghettos and bus stations; iii) clear referral pathways to cover gaps in assistance; and iv) common procedures for sharing research and analysis, approaches to detection of vulnerabilities as well as to working with smuggling actors, local government and local organisations (including migrant associations).
- **Implementers should use existing coordination platforms to organise day-to-day coverage** at bus stations, ghettos, and key neighbourhoods to clearly communicate available support assistance by different aid organisations and to prevent misconceptions and misinformation that may create suspicions among migrants.
- **Implementers should train field workers on identifying a wider range of vulnerabilities**, regardless of their organisation's specific mandate, and specifically with a view to identifying vulnerabilities less visible at a first look. This would allow for not leaving vulnerable migrants behind and improving referrals to relevant actors following detection and first contact with migrants. Alternatively, organisations could nominate a single actor that could be in charge of screening migrants in main transit intersections; leading referral processes; and staying updated on new actors, target groups and changes in focal points within organisations.

“See Migration Like Water”: An Analysis of Flow Monitoring Survey Data on Migration Flows in and through West and Central Africa

Authors: Digidiki, V., J. Bhabha, A. Bhatia, S. Peisch, V. Sattler, B. Cordaro and H. Cook. (2021) “See Migration Like Water”: An Analysis of IOM Flow Monitoring Survey Data on Migration Flows in West and Central Africa. FXB Center for Health and Human Rights at Harvard University, Boston, and International Organization for Migration, Geneva



Understanding migration in West and Central Africa

Human mobility is an inherent element of human development. In recent decades, this human imperative has frequently abutted against migration policy responses that limit access to safe and regular migration, even for sizeable constituencies for whom mobility represents an essential lifeline. Indeed, human mobility has been at the epicenter of an intensifying discussion on national security, which portrays much of mobility as a problematic threat to sovereign borders requiring firm management and restrictive regulation. As the COVID-19 pandemic leads to shutdowns of global migration pathways, the already limited safe and regular movement options have been further constrained, forcing people in need of migrating to either follow shadowy, irregular pathways or remain in overcrowded camps or transit points under precarious health and safety conditions. With the pandemic becoming an economic wrecking ball, poverty levels have increased and deep-seated inequalities within and between societies have been accelerating, generating both a public health crisis and a human rights crisis that will only increase the need for mobility, even as regular mobility options dwindle.

International law recognises that all persons have human rights, which must be respected and protected. This normative framework extends to all people on the move, irrespective of their migration status.

International law also provides international protection frameworks for well-established categories of people such as refugees and trafficked persons. Under the 2030 Agenda for Sustainable Development, UN Member States committed to facilitating orderly, safe and responsible migration and mobility while also eradicating forced labour, modern slavery and human trafficking (SDG 8.7, SDG 10.7). The Global Compact for Safe, Orderly and Regular Migration, although a non-binding agreement, represents a significant commitment to address and reduce vulnerabilities in migration, and to enhance international cooperation for the improvement of migration governance holistically and comprehensively.

Nevertheless, despite this normative framework and significant advances in recent years by states to plan concrete responses to ensure safe, orderly and regular

migration, protection measures often prove inadequate due to significant migration management capacity deficits at both national and international levels. Migrants are often subject to harm, discrimination, abuse, exploitation and other forms of human rights violations.

Strengthening and ensuring proper implementation of international protection frameworks must be a cornerstone of any response to ensure that the human rights of people on the move are upheld. However, this is not sufficient to respond to all the protection needs migrants may have, including those that may arise during extremely challenging journeys. Many migration routes within West and Central Africa – shared by the majority who are travelling within the region as well as those destined for North Africa or Europe – are complex and multi-dimensional; often characterised as “mixed migration.” Under a mixed-migration lens, migrants can belong to more than one established protection category simultaneously or shift between categories while on the move, depending on the challenges they face and their capacity to overcome them. In addition to ensuring rights to international protection are recognised and upheld, this complex reality needs to be addressed by operationalising a contextualised analysis of individual vulnerability to identify migrants who have other protection needs at early stages of their journey.

Protection measures have long been designed, with different levels of effectiveness, by governments to address the urgent needs that migrants face. However, the complexity and rapidly evolving characteristics of modern mobility, combined with the emergence of new threats and risks, such as the COVID-19 pandemic, have limited the efficacy of these frameworks, leaving many migrants unprotected. Evidence-based information about the risks and protective factors impacting migrants is critical to comprehend such a multifaceted and rapidly evolving reality and to the design and implementation of targeted, comprehensive and sustainable small- and large-scale responses tailored to the needs of different groups of migrants.

The West and Central African regions provide rich evidence of dynamic migratory patterns, including long histories of diverse intraregional and interregional migration flows (IOM, 2020b),¹⁸⁵ as well as severe protection gaps and challenges along popular migration routes (Adepoju, 2016).¹⁸⁶ The region has the highest rate of both intraregional and extra regional migration (Lombard, 2012), with 19.4 million intra-African migrants in 2018 alone (McAuliffe and Kitimbo, 2018).¹⁸⁷ During the past two years, and in the face of these substantial movements, the African Union supported the efforts of the Regional Economic Communities, such as the Economic Community of West African States (ECOWAS) and the East African Community (EAC), to enhance regional integration by adopting a continent-wide protocol on free movement (African Union, 2017).¹⁸⁸ However, migrants continue to face severe protection gaps, highlighting enduring and

significant migration management capacity deficits at the national and regional levels (Adepoju, 2016).¹⁸⁹

This report calls for a comprehensive and contextualised understanding of migrant vulnerability across the most popular West and Central African migration routes – examining risk and protective factors at the individual, household, community and structural levels – to stimulate the development of prevention-based protection frameworks to assist migrants in need.

The report is based on an analysis of DTM flow monitoring survey (FMS) data gathered from 110,402 migrants of 73 different nationalities at 39 flow monitoring points (FMP) (exit, entry and transit) in seven countries in West and Central Africa in 2018 and 2019 (namely, Burkina Faso, Chad, Guinea, Mali, Niger, Nigeria and Senegal), as well as from qualitative data gathered from 11 expert interviews in 2020 during the COVID-19 pandemic. It documents the varied and complex migration patterns occurring within West and Central Africa; the profiles of migrants; their ongoing experiences at numerous points along the migration routes; and the different protection issues and obstacles they face throughout the course of their journeys.

Driven by these data, this report aims to:

Generate an evidence-based analysis of the tightly interwoven geographic, cultural and economic patchwork that constitutes West and Central African migration for the benefit of IOM and other migration-related international organisations, the broader humanitarian community, policy makers and other relevant stakeholders;

Provide evidence-based programming recommendations on protection and assistance tailored to the specific needs, trajectories and vulnerabilities of migrants moving within and out of the region;

Advance viable harm prevention-based frameworks for assisting migrants in situations of increased vulnerability to harm, with a view to stimulating the development of policies that afford safe and regular migration opportunities for this constituency.

This report is part of the wider effort of IOM to collect and disseminate sound empirical data on migration dynamics and vulnerabilities in order to support progress towards enhancement of safe migration, including to support the implementation of the Global Compact for Safe, Orderly and Regular Migration, and realise the migration-related Sustainable Development Goals (SDGs) and targets.

The findings of this report emphasise the immediate and pressing need for a sustainable, multilayered, harm prevention-based strategy to protect migrants at a time when the mismatch between the existence of regular migration pathways and the need for mobility has become far too wide. As the world grapples with an emerging third wave of the COVID-19 pandemic, and the highest

levels of global inequality in human history, migration will continue to be a life-saving strategy for people. Human mobility, therefore, must be safe, accessible and inclusive.

Key findings

The vast majority of migrants opt to remain within the region.

A large majority, or 80.09 percent, of the study's respondents reported a country of the West and Central Africa region as their final destination, with only 19.37 percent reporting Europe and less than 0.5 percent reporting the Americas, Asia or Oceania.

Almost half of the migrant women interviewed are travelling without a relative or family member.

Women travelled alone not only as a part of a family reunification strategy, but to seek better livelihood opportunities as they are often the sole provider in their household. Many of these women will be alone at their destination and often have to leave their children behind.

The vast majority of migrants who were forcibly displaced in their home country tend to remain on the continent.

Almost nine out of 10 (87.75 percent) of respondents who were forcibly displaced from their homes intend to remain on the continent, while only 11.73 percent identified Europe as their intended destination and less than 1 percent planned to migrate to other continents. These migrants are less likely to embark upon long-distance journeys and more likely to remain close to their respective home countries than their non-forcibly displaced counterparts.

The majority of the migrants reported using their savings to finance their journeys.

A third (66.76 percent) of the respondents mentioned that they financed their journey using their own savings. Prospective migrants often liquidate personal assets to secure funds – a strategy that can severely complicate return or future migration planning.

Children travelling without parents or an adult caregiver are more likely to travel alone, rather than in groups, compared to migrants over the age of 18.

Leaving a familiar and often protective environment – to embark on travel alone – places children in highly risky situations where their physical and psychological security and well-being can be threatened.

Financial issues and food insecurity are the most common challenges reported by unaccompanied migrant children across the migration routes under study, followed by accommodation insecurity and documentation issues.

Financial issues are one of the most common challenges, reported by 46.43 percent of child migrants travelling alone, along with food and accommodation insecurity, reported by 46.43 percent and 42.86 percent, respectively. The need for financial resources to cover daily needs, including access to food and shelter while en route, or to finance the continuation of the journey forces children into illicit (and therefore dangerous) money-making activities, exposing them to deception, coercion, exploitation and abuse.

Documentation issues were mentioned by 28.57 percent of child respondents. Lack of documentation leads to a series of interconnected protection gaps for children, ranging from stressful (and often problematic) age assessments and prolonged detention to limited access to available services – challenges that increase children's vulnerability to abuse and exploitation (Terrio, 2015; UNICEF, 2002).¹⁹⁰

Drawing on data from multiple migration points and mixed migration flows, this large-scale study aimed to provide a dynamic and comprehensive understanding of West and Central African migration trends and migrant vulnerability, in order to inform the design of targeted, inclusive and rights-centred responses and a more effective harm-prevention framework.

Targeted migration responses should focus on mitigating widespread risks and dangers, and on addressing the multifaceted needs that migrants face across migration routes. These responses will not be effective if they do not consider the heterogeneity of migrants and the complexity of their mobility – both of which are factors that generate different risks, needs and vulnerabilities – even when migration routes and journey modalities are the same.

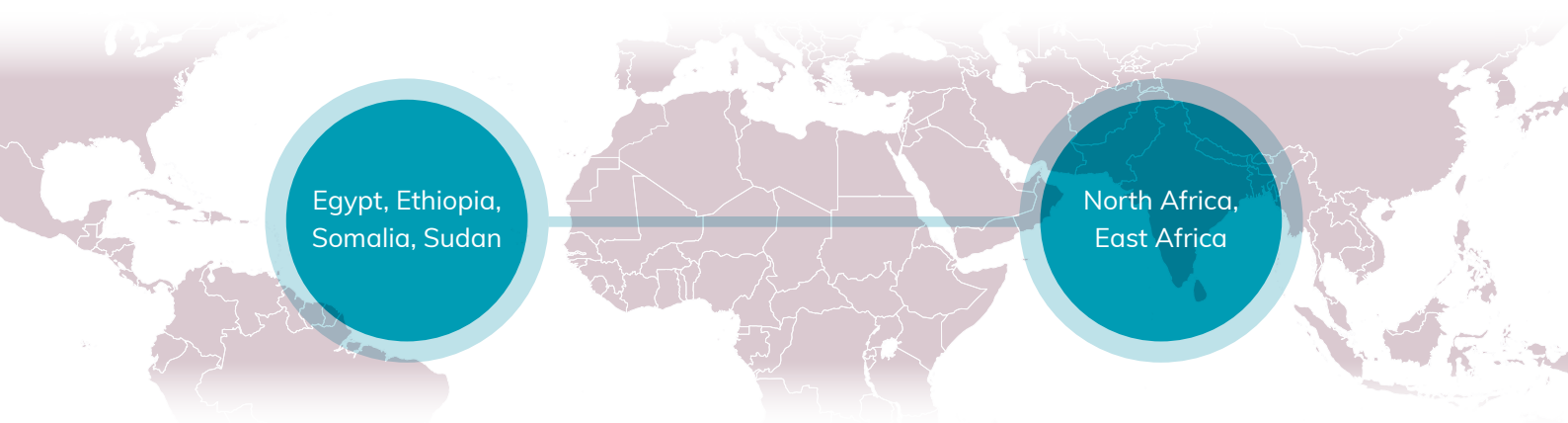
The recommendations on the next page, anchored on the objectives of the Global Compact for Safe, Orderly and Regular Migration, set out key actions for consideration by IOM and other international agencies engaged in responding to the protection challenges facing migrants, as well as national governments, in the context of West and Central African migration.

Recommendations

- **Enhance access to support services along migratory routes.** Improve access to essential services, such as health and legal assistance, establish open and accessible information points for migrants at transit points and strengthen the provision of psycho-social services along migration routes.
- **Ensure and enhance the availability of pathways for regular migration.** Strengthen international cooperation and promote bilateral and multilateral agreements that will ensure safe, orderly and regular migration, expand access to work permits, options for labour and academic mobility and exchanges, ensure the availability of visas on humanitarian grounds and ensure access to rapid family reunification procedures.
- **Awareness-raising and access to information.** Finance and support national awareness-raising campaigns in origin countries to ensure prospective migrants have access to accurate information, engage return migrants, publicise available opportunities and encourage the practice of seeking information from official sources.
- **Invest in enhancing the capacity of agencies and governmental actors.** Provide all agencies, governmental actors and stakeholders with rigorous training in human rights principles; share good practices.
- **Create livelihood opportunities in origin and neighbouring countries.** Create sustainable livelihood opportunities at the local and regional levels, ensure equal access to economic opportunities, provide skill development programmes, address unnecessary bureaucracy and red tape that prevent people from accessing job opportunities.
- **“Facilitate safe and dignified return and readmission, and sustainable reintegration”** (Objective 21 of the Global Compact for Migration). Ensure that return and readmission of migrants to their own country is safe, dignified and in full compliance with international human rights law; ensure that migrants have accurate and timely information about the return process; make available return and reintegration programmes; provide returnees with access to short-term support programmes; and ensure individual reintegration activities.
- **Collect accurate, disaggregated and in-depth data.** Conduct regular systematic studies on protection challenges that migrants face along the different migration routes.
- **Enhance efforts to prevent, combat and eradicate human trafficking in the region.** Ensure that counter-trafficking responses are incorporated in all humanitarian relief operations across the different routes, collaborate with governments at policy and assistance levels and increase prevention efforts.
- **Collaboration and coordination among stakeholders and governments.** Foster coordination and collaboration between national governments, UN agencies and local NGOs by defining roles and responsibilities, minimising redundancies and maximising constructive collaboration in delivering services.

Rethinking Responses to Migration: Evidence from Children and Young people in Egypt, Sudan, Ethiopia and Somalia

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Introduction

In the Horn and North of Africa, we are observing a rapidly evolving phase of human mobility built upon a long established and deeply embedded history of movement in the region.¹⁹² Children and families often use migration as a key coping strategy when their environment compels them to seek safety, protection and better sources of livelihood elsewhere.

Children's right to protection and safety does not change when they move, and is irrespective of the circumstances or nature of their migration. This is underscored by the Convention on the Rights of the Child (CRC), which affords rights to children in – and not of – a country. However, in practice, the protective and enabling environment often remains out of reach for children who move, particularly where the global policy setting, with imposed restrictions on mobility, leads to exclusion and greater levels of risk.

Considering these challenges, migration – especially migration of children and young people – is often framed primarily in terms of risk and the need for protection. This framing is rarely balanced by a discussion of the potential benefits that mobility and relocation might bring. It also

overlooks the agency of children and young people, which leads to a lack of support for those who are moving and the countries that are hosting them.

This paper uses data from four countries to help build a grounded picture of migration in the Horn and North of Africa that is informed by those who live and experience it. Findings of the research challenge migration policies and responses that are based on rigid dichotomies of “regular” versus “irregular” migration; “choice” versus “coercion”; and “voluntary” versus “forced” migration. The approach of this study highlights the complexity of children and young people's movement: Their reasons for moving, their experiences while travelling, their views of their current location, and their future plans. It assesses vulnerabilities and opportunities, providing indicators of some of the wider factors that constitute child well-being, including access to services and unmet demand for needed support.

Methodology and Respondent Profiles

Data used in this paper are based on face-to-face surveys with 1,634 children and young people (aged 14 to 24 years) on the move and 248 qualitative interviews with children, young people, families, community members and key informants (government officials, civil society organizations, UN agencies). The research was conducted by UNICEF-trained interviewers between April 2019 and January 2020 in sample points across Egypt, Ethiopia, Somalia and Sudan. The respondents reflected the mixed nature of migration in this part of Africa.

Respondents:

- 57% were male and 43% female;
- 40% were nationals of the country they were interviewed in and 60% were non-nationals;
- The majority (59%) were aged between 18 and 24 years old (“young people”) and the remainder (41%) were between 14 and 17 years (“children”);
- Of the latter, 22% said they were not with an adult responsible for their care, and have been classified as “unaccompanied children” – 71% of them were boys;
- 17% of the overall sample said they were living alone at the time of the interview: These were more likely to be male (70%) and 18 to 24 years (81%);
- 82% of respondents said that they were still moving;
- 17% described themselves as returnees.

Findings

Reasons for moving

Drivers of migration in the Horn of Africa are complex, interlinked and fluid. Two-thirds (67 percent) of children and young people interviewed identified economic drivers (including poverty and loss of jobs) and almost half (48 percent) security issues (including forced recruitment) as the two most important reasons for initially leaving their home area. In fact, these two concerns are drivers for nine in 10 children and young people who move. Furthermore, for a significant proportion – one in four – both reasons were given for moving.

Figure 1: Reasons for moving (n=1,634)



Economics was significantly more of a factor than security for young people (72 percent versus 44 percent), whereas these factors were more evenly balanced for children (59 percent versus 53 percent). Economic factors were particularly reported by those living alone and by those who themselves had chosen to move. Among those who left home for security reasons, one major fear was of forced recruitment.

Key protection issues children face while moving

83 percent of children and young people travelled with someone, and only 16 percent travelled alone. However, only half of those who travelled with other people were accompanied by their families, 36 percent travelled with friends and 26 percent with community members. The remainder made their journey without familiar support mechanisms: One in three travelled with people they did not know, and 8 percent travelled with smugglers.¹⁹³

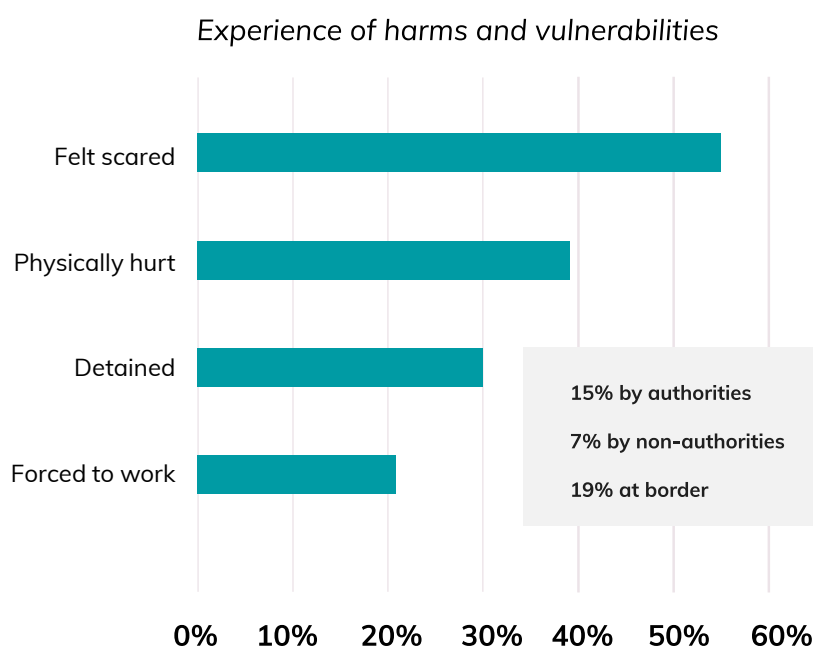
Figure 2: Children travelling alone or with someone (n=1,634)



Although only a small proportion of children and young people travelled with a smuggler as part of their journey, a greater number (19 percent) said that a smuggler helped them plan their journey. The research explored the services and opportunities that smugglers offered and provided, and the fact that almost equal numbers of respondents felt that the smuggler they used was a good person (43 percent) and a bad person (40 percent). This perception demonstrates that from the perspectives of those who move, smugglers present opportunities and help, as well as dangers and risk.

Migration is often associated with danger and harm. However, the findings show that this is only a partial view; in this study, most children and young people said they had not experienced harm. Nevertheless, two in five (39 percent) were hurt by someone they knew or by a stranger, and one in five (21 percent) was forced to do work either with or without pay. A more likely experience for children and young people was feeling scared of other people or of wild animals: Just over half of those interviewed claimed they had experienced feeling scared since leaving their home area.

Figure 3: Harms suffered by children since leaving home (n=1,634)



"I will never forget what I experienced on my journey. Worst of all, they forced us to work in private farms without any payment just like slaves. There was no one to protect you there."
17-year-old returnee, Ethiopia

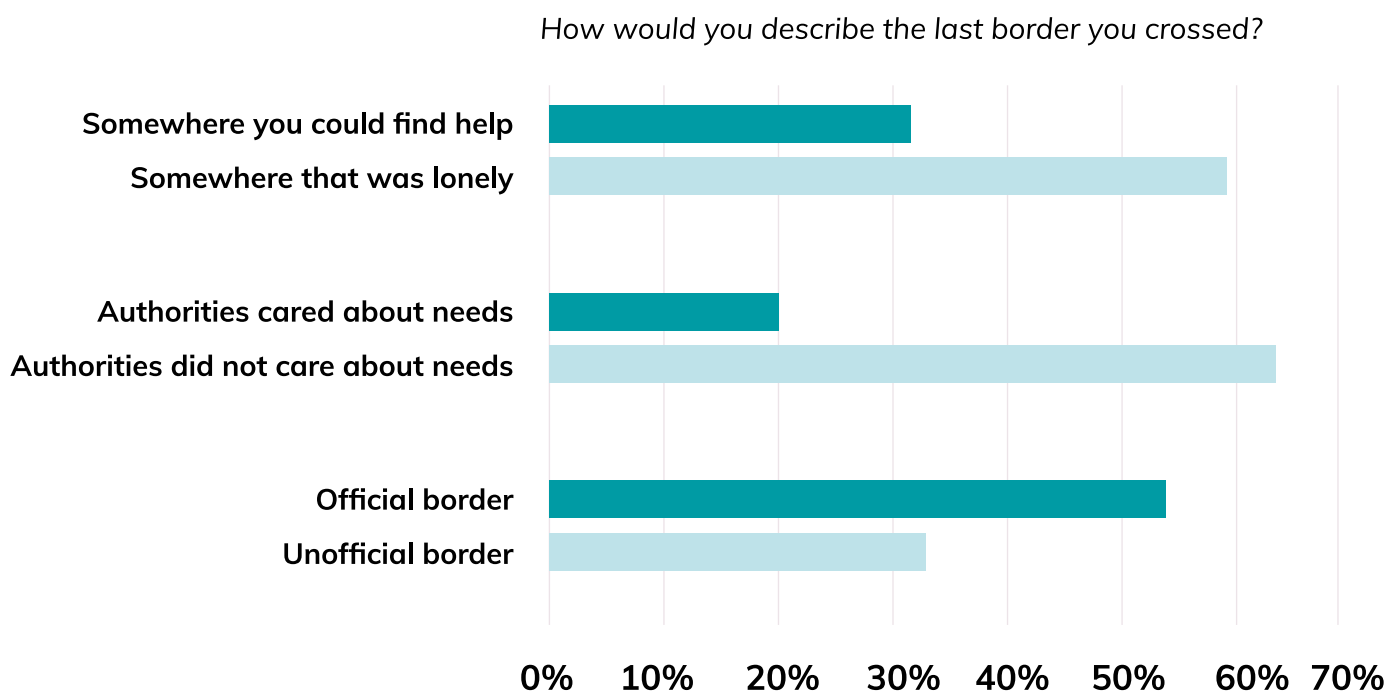
Therefore, while many children and young people do encounter harm when they move, it is important to note that not all migration is dangerous, and migration is often viewed as a safer option to remaining at home. In fact, while half said they felt safe in their home area before the moved this increased to 75 percent who felt safe in their current location after leaving their home area.

Deprivation of liberty. Detention is also a risk faced by those who move: Three in 10 said that they had experienced this, and they were twice as likely to be detained by authorities than other people. While immigration detention is never in the best interests of

the child, children are still subject to deprivation of liberty by governments and by persons or actors other than governments, indicating serious protection gaps. While both girls and boys can be subject to deprivation of liberty, more boys reported having been detained.

Children crossing borders. The majority (70 percent) of those interviewed had crossed an international border as part of their journey. Crossing borders can be associated with heightened risks, and children typically reported borders as points on the migration journey that are lonely and lacking in support from authorities.¹⁹⁴

Figure 4: Experiences of children and young people at border crossings (n=1097)

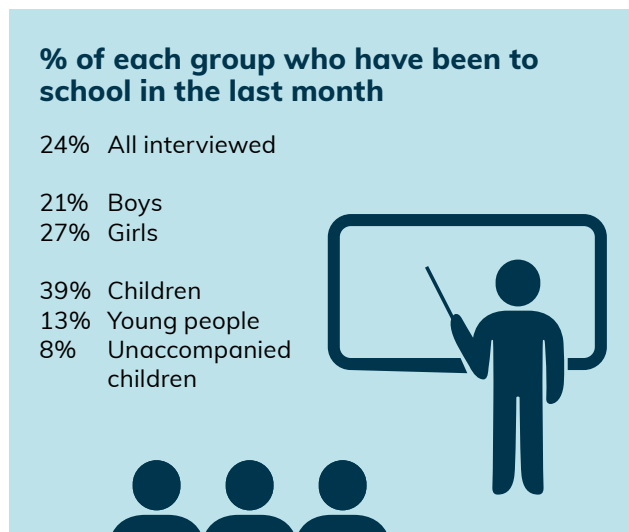


Many children and young people felt unsafe crossing borders, especially unofficial border crossings: 77 percent of those who crossed an unofficial border described it as unsafe – far higher than the 28 percent who said the official border crossing was not safe. In our sample, more boys than girls had negative experiences at borders, and were more likely to describe them as lonely and unsafe.

Access to basic services and support

While limited availability of services or associated costs are problems that confront migrant and host communities alike in many countries on migration routes, children and young people who move often face additional challenges. The research explored specific constellation of barriers among the respondents.

Figure 5: Percentage of children and young people who have been to school in the last month, by category



Findings on access to education clearly demonstrate that children often face multiple barriers in accessing services. Almost two in five respondents said they had wanted to go to school but had been unable to – the highest level of exclusion of all of the 10 services or types of support covered in the research. The main barrier to school access was cost: Twice as many gave this reason as compared to those who reported lack of availability of schools as the main barrier. Cost as a barrier was not only associated with school fees, but also other costs including the money required to pay for school items, uniform and/or travel. Findings also indicate that children often have to choose between earning and learning. Others felt too scared to

go to school as a result of xenophobia or discrimination.

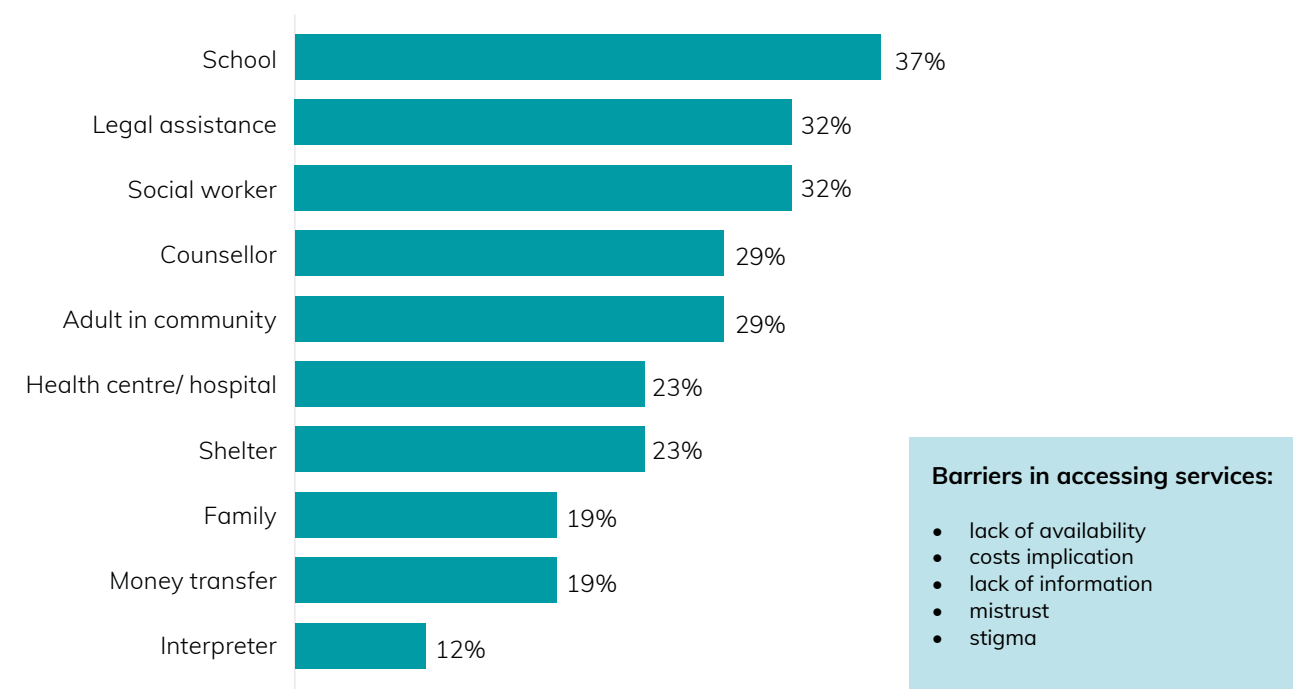
Only 39 percent of children interviewed had been to school in the last month and, in the case of unaccompanied children, only 8 percent had been to school in the last month.

“I wanted to learn, but there was no school there. Plus, it is a camp and it is so far from everything else.”
18-year-old Eritrean man, Sudan

The second highest unmet demand was for support from a social worker. Half of respondents identified lack of availability as a barrier to using a social worker, and a third said they did not know how to access social workers.

It is revealing that those living in camps – often seen as settings with a higher density of services designed specifically for those “on the move” – typically had higher levels of unmet demand for a range of services than those living elsewhere, with the exception of shelter or temporary accommodation. For instance, 20 percent of those in a non-camp setting felt excluded from using health services, but this was 30 percent for those in a camp. The gap was even more significant in relation to using schools (33 percent felt excluded in non-camps versus 45 percent of those in a camp) and accessing social workers (29 percent and 41 percent, respectively). It is wrong, therefore, to assume that those in camps are more likely to receive support and protective services than those out of camps.

Figure 6: Percentage of children and young people who had wanted to but have been unable to use each service (n=1,634)

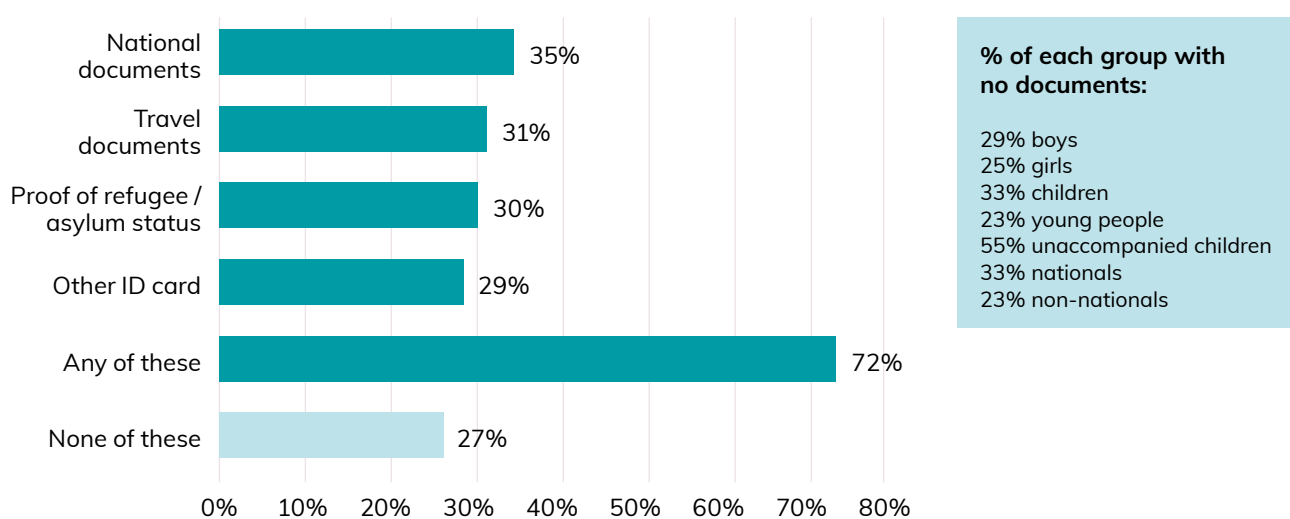


The research illustrates that many children who are classified as being “on the move” are not actually moving, either because they do not have the resources to either move on or return to their country of origin, or because they have chosen to remain in their current location. As a result, many are effectively stuck. Indeed, 45 percent of the children and young people interviewed said they had been living in their current location for more than 12 months, and 29 percent between six and 12 months. Alongside multiple reported barriers of moving elsewhere and lack of options or desire to return home, there were also barriers to local integration, which were

compounded by high levels of distrust in authorities and many local service providers.

Legal identity and its impact on accessing services. Most children and young people who were moving had some form of identification with them, but almost three in 10 did not. There was little difference between boys and girls, but somewhat more children than young people did not have documentation, particularly unaccompanied children, and more nationals than non-nationals did not have any documentation.

Figure 7: Documentation (n=1,634)



Typically, those without documentation were more likely to say they were unable to access services, as outlined below:

Table 1: Documentation and access to services (n=1,634)

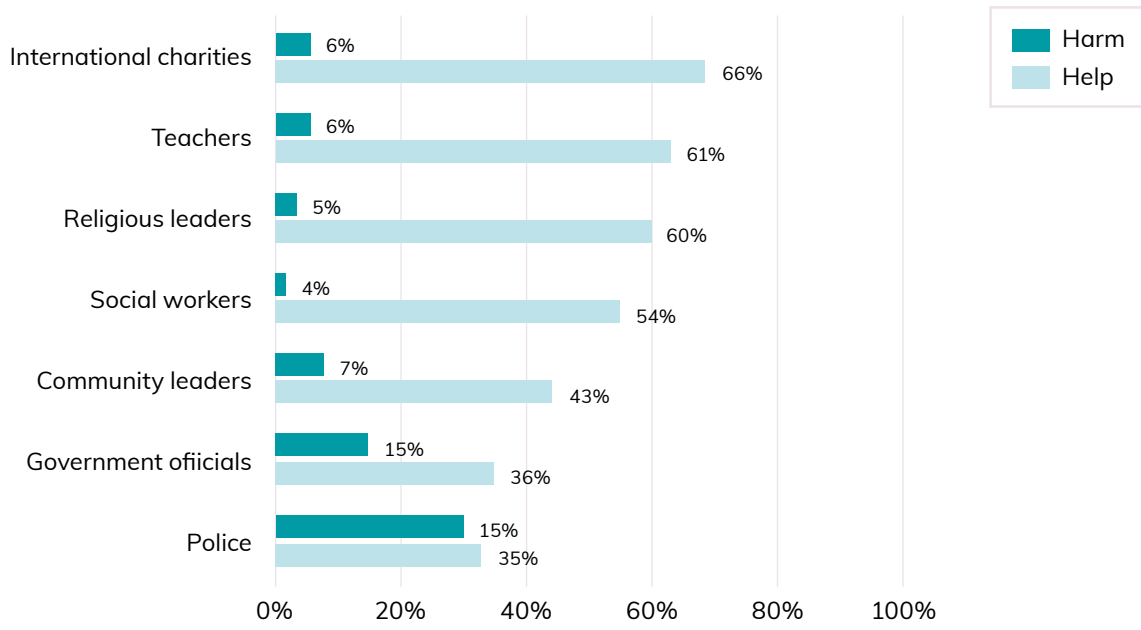
	% of those who had any documentation who were unable to access the service	% of those who had no documentation who were unable to access the service
A health centre or hospital	17	37
A social worker	28	43
A school	31	50
Legal assistance	29	42
A shelter/ temporary accommodation	18	45

Children's trust in services and institutions

The research indicates that many children and young people who move are distrustful of services and institutions that are designed to provide care, protection and basic services. While a majority believed international charities, teachers, religious leaders and social workers would help

them, not all were convinced. More strikingly, only around a third felt government officials or the police would help them. Government officials and police were also among entities associated with a comparatively higher level of expectation of harm, when compared to others.

Figure 8: Whom do children and young people trust? (n=1,634)



Future plans and aspirations

Push and pull factors for staying or moving on. Just over half of respondents¹⁹⁵ (54 percent) said they planned to move somewhere else in the next six months. However, given that the majority had been in their current location for more than six months, responses may indicate more of a desire to move than firm plans for a substantial number. Nevertheless, it is interesting to see that expectations

related to finding or continuing employment play a predominant role in shaping intentions to move and to stay. In addition, for those who want to move, half (51 percent) do so for better school or education opportunities; and for those who plan to stay, safety was the second most important reason for doing so.

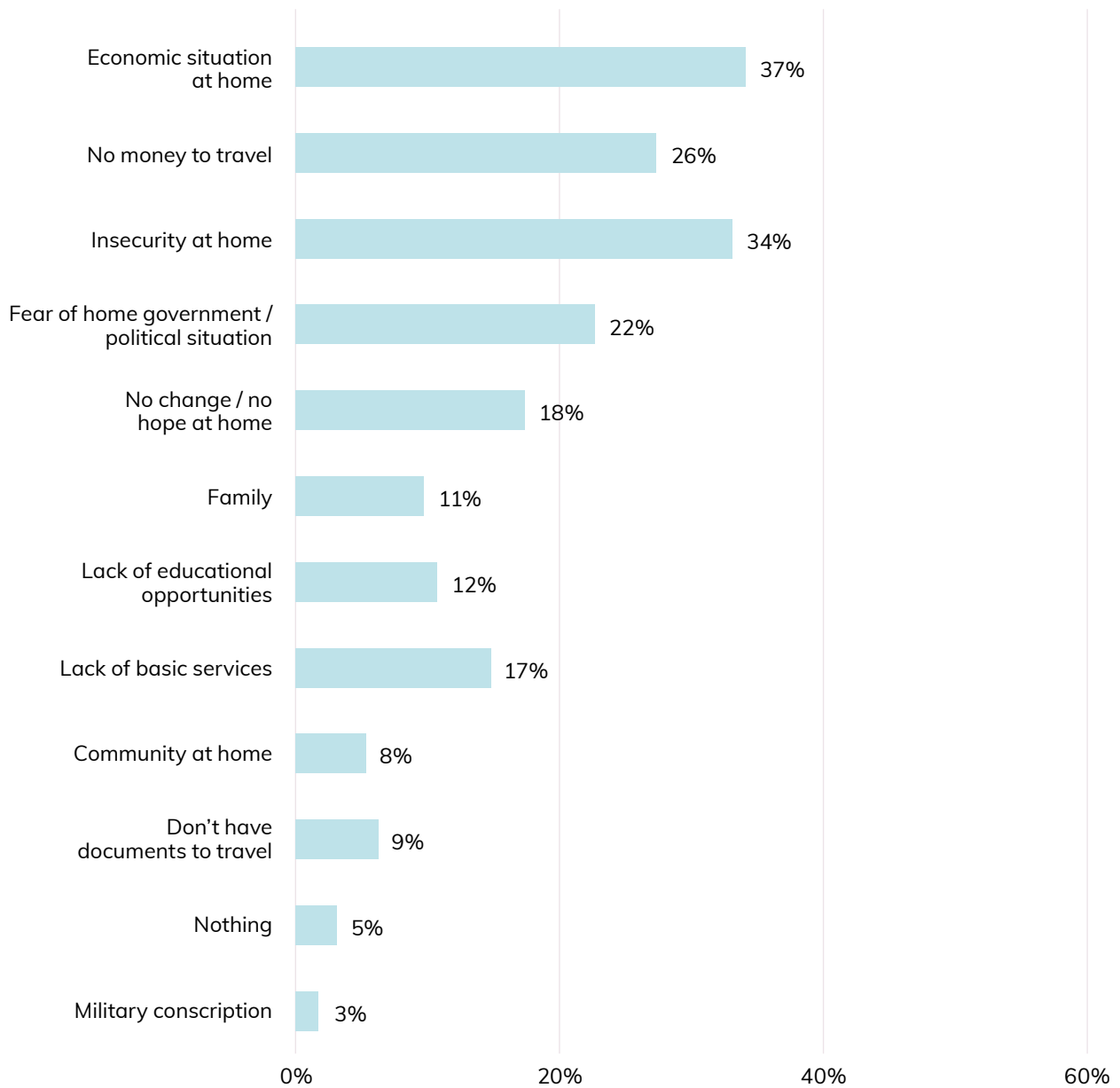
Figure 9: Children and young people's plans in the next six months



Barriers to returning home. When asked about barriers to returning home,¹⁹⁶ economic and security concerns in their home area were most frequently given as the reasons. Furthermore, fear of their home government and political situation, along with a feeling that nothing had changed at home, were also in the top five reasons for

not returning. This suggests that the factors that pushed most migrants to leave their home area persist as barriers to returning. As such, only one in four (26 percent) said that lack of money to travel was a barrier and even fewer (9 percent) identified lack of documentation.

Figure 10: Barriers to returning home (n=1,333)



Conclusion and recommendations

Migration stakeholders should embrace a child-centred understanding of the drivers and characteristics of migration.

Children and young people do not define themselves by formal categories of migration. While categories of migration contained in international frameworks retain validity as a key source of protection – including forced, unforced; regular, irregular; and internal, external – the perspectives of children and young people on the move demonstrate that many of these categories have limited validity in practice. For instance, the vast majority moved for multiple reasons, and there was significant overlap between moving for economic purposes and for security reasons.

Older children and young people show a high degree of agency in making the initial decision to move, as well as during subsequent milestones along their journeys. The vast majority (76 percent) said it was their choice to leave their home area, and nearly all (93 percent) said it would be their choice whether to stay in their current location or move elsewhere in the next few months. This demonstrates that children and young people are not just passive participants in their movement, and their agency is a key factor in understanding their motivations, decisions and attitudes to risk.

Reform and strengthen systems in a way that ensures effective protection according to needs.

Migration can present both risks and opportunities; and both need to be taken into account when assessing the best interests of a child. The majority remain within the region and, as the findings show, more feel safer in their current situation than they did before they left their home area. Therefore, focusing only on the vulnerabilities and harm associated with movement leads to a narrow perspective on those who move.

Policy Notes

Theme 5: Regional policy responses to mixed movement

Photo credit: © UNHCR / Sylvain Cherkaoui

An aerial view of the site in Ouallam, Tillaberi, south-west Niger where houses are being built to accommodate Malian refugees, internally displaced Nigeriens and the host community.

“There is no question that any improvement in protection along the routes needs to be linked to actions and policies within the countries of origin in the Horn of Africa, and that all international and regional actors need to make sure that they have a coherent approach in this regard.”

Laetitia Bader, Horn of Africa Director, Human Rights Watch.

Migration Management in the Time of COVID-19: EU Policies and Libya

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Introduction and rationale

Given the political instability, insecurity and weak health systems in Libya, the country is at a higher risk of the spread of COVID-19.¹⁹⁸ Refugees and migrants find themselves in a particularly precarious situation given their reliance on casual, daily work as well as their vulnerability to arrest and detention.¹⁹⁹ For some, the perceived need to continue their journey onward from Libya, improve their livelihood and seek out protection outweigh the risks involved in undertaking the dangerous sea-crossing to Europe.²⁰⁰ Human rights groups are concerned that the European Union (EU) and its Member States (MS) are using the pandemic as grounds to limit arrivals of refugees and migrants.²⁰¹

This paper examines the impact of EU migration policies and procedures on the conditions of refugees and migrants in Libya since the outbreak of COVID-19. The findings seek to provide European policy actors with evidence to inform such policies and procedures in the Mediterranean, while taking into consideration the impact that they have on the lives and mobility of refugees and migrants. The following section sets out the three objectives of this study:

Objective 1: To understand how COVID-19 has impacted the migration policies and procedures of the EU and EU MS with operations around the Mediterranean.

Objective 2: To examine how migration actors in Libya are managing mixed migration and implementing EU policies and procedures, particularly those enacted in the wake of COVID-19.

Objective 3: To understand how refugees and migrants in Libya are being impacted by migration policies and procedures implemented in the aftermath of COVID-19.

This paper uses a combination of qualitative and quantitative research methods to reach its objectives. It examines existing academic, policy and programmatic literature, and draws upon qualitative data from 15 key informant interviews with Libyan and European officials, humanitarian workers and migrant and refugee community leaders in Libya. This study also draws upon quantitative data collected from 200 surveys with individual refugees and migrants in Libya between October and November 2020.

Continuation of migration policies and procedures aimed at reducing Mediterranean crossings

In March 2020, Operation Sophia – formerly known as the European Union Naval Force Mediterranean (EUNAVFOR Med) – expired and was replaced by IRINI. EUNAVFOR Med was founded in 2015 as a naval mission to disrupt the business model of migrant smuggling in the area, and reduce irregular migration. However, as the mission evolved, it was also taking part in search and rescue operations that saved the lives of thousands of refugees and migrants stranded at sea.²⁰² Nevertheless, this was criticised as a “pull factor” for migration by some member states,²⁰³ although no evidence exists to support such claim.²⁰⁴ IRINI, its successor, is a military mission primarily monitoring the United Nations arms embargo in Libya, but also to train Libyan Coast Guards (LCG) to disrupt human smuggling networks.²⁰⁵ While its vessels are still obliged by international law to rescue migrants and refugees stranded at sea, IRINI does not mention sea rescues as part of its mandate, and is positioned away from Western Libya, where most coastal departures take place and people would need rescuing. Furthermore, some European states have once more stressed the “pull factor” generated by such missions at sea, stating that if IRINI appeared to have any impact on migration, then ships would be withdrawn from the Mediterranean.²⁰⁶

Following the COVID-19 outbreak, April 2020 saw the continuation of approaches aimed at reducing irregular migration across the Mediterranean and combatting migrant smuggling operations in Libya, with IOM and the European Union Border Assistance Mission (EUBAM) Libya signing a new memorandum of understanding to support the Libyan government with security reform and border management.²⁰⁷ Furthermore, in September 2020, the European Commission launched the New Pact on Migration and Asylum, which further strengthens collaboration with countries like Libya: “The EU will strengthen cooperation with countries of origin and transit to prevent dangerous journeys and irregular crossings, including through tailor-made Counter Migrant Smuggling Partnerships with third countries.”²⁰⁸ The impact of this pact, however, is not yet evident. In a key informant interview, EU Member of Parliament Clare Daly maintained that:

“The unspoken but foundational policy of ‘keeping migrants out of Europe at any cost,’ without question has the greatest impact on the migration dynamics in the Mediterranean and in Libya today. This policy will be codified and given further energy by the new Migration Pact, with its heavy emphasis on border externalisation

.Border externalisation is the reason migrants are trapped in Libya, it’s the reason for pushbacks... in the Mediterranean, and the reason for the abandonment of state-led search and rescue (SAR).”

These brief examples show that since the outbreak of COVID-19 in early 2020, migration policies and procedures aimed at reducing Mediterranean crossings have continued unabated.

European port closures and returns to halt the spread of COVID-19

To halt the spread of COVID-19, Italy and Malta declared their ports unsafe for disembarkation, followed by Germany calling on humanitarian rescue vessels to halt their operations at sea.²⁰⁹ A limited number of NGO rescue ships continued to operate at sea during the pandemic, some of which were refused disembarkation in Europe. Italian authorities detained some ships five times between May and September 2020.²¹⁰ Rescue operations were conducted by private commercial vessels to help fill the gap and in the absence of SAR capacity. Yet, even private vessels were refused disembarkation when they rescued migrants.

An Amnesty International (AI) report details an incident in which Malta did not rescue refugees and migrants at sea, but instead used “illegal tactics” to return them to Libyan shores. AI adds that Maltese authorities used COVID-19 as a “pretext” to declare their ports unsafe for disembarkation, going so far as to contract a commercial boat to return a group of 51 people stuck at sea to Libya. AI argues that “the abusive practices by Malta are part and parcel of wider efforts by EU Member States and institutions to outsource the control of the central Mediterranean to Libya.”²¹¹ A humanitarian worker interviewed for this study also highlighted a case in May in which a group of 135 Sudanese migrants were returned by the LCG from Maltese waters to Libyan shores, where they would enter Libya’s detention system. This key informant maintained that “this is one of the hypocrisies in their policies – maybe their excuse is that they don’t want to let them in because of COVID-19, but this was a dirty political deal.”²¹²

IOM estimates that 11,891 refugees and migrants were returned to Libya in 2020 and, as of 13 March 2021, this number has already reached 4,129.²¹³ This marks a considerable increase compared to the 9,225 returns in 2019,²¹⁴ and reflects the continued cooperation between the EU and Libyan authorities to prevent refugee and migrant crossings to Europe. Moreover, this rise may also suggest the pandemic has provided EU MS with greater means of refusing entry.

Perception of policy shifts in Libya and Europe

While the pandemic does not appear to have had an impact on the content of policies, which are a result of longer-term political processes, there is evidence to suggest that it has affected the implementation of such policies. Yet, it is being used to strengthen positions in preventing arrivals. Based on the data collected, eight interviewed key informants, including Libyan and European officials, humanitarian workers and one researcher, noted that COVID-19 had not prompted policy change around Libyan maritime and land borders. Instead, a researcher at Statewatch explained that Europe continues to prevent crossings from Libya, and are using COVID-19 as a justification for their actions.

While migration policies in Libya and at sea may not have changed, in some European states, migration procedures were modified to respond to the pandemic, such as Italy's regularisation programme for migrant workers.²¹⁵ Moreover, an interviewed EU official also noted that EU MS changed procedures to comply with their health rules during the pandemic, which failed "to guarantee both health security and respect of the rights of migrants."

Migration management by Libyan authorities since the outbreak: Interceptions and detention

Since April 2020, Libyan authorities enacted movement restrictions and other measures to halt the spread of COVID-19, at the same time making changes to migration governance. These changes included the appointment of a new Minister of Interior and new Head of Directorate for Combatting Illegal Migration (DCIM), and committing to operate SAR strictly within Libyan waters and not in European waters.

Similarly, a humanitarian worker highlighted in an interview the improved coordination between the LCG and the General Administration for Coastal Security (GACS), which increased efforts to dismantle smuggling networks. While there is no evidence that Libya's actions are anything but its own, they do represent a continuation and strengthening of objectives it shares with the EU to reduce irregular sea crossings.

In terms of Libya's detention policies, interviewed humanitarian workers noted that following the COVID-19 outbreak, some detention centres were closed, and refugees and migrants were released. However, they underscored that these are largely measures by individual managers of detention centers, utilising their level of authority. On the other hand, there is evidence to suggest

that discussions are taking place with high-level officials in Libya, which shows engagement between ministries despite instability within the Libyan government. A Libyan official from the Ministry of Justice explained in an interview for this paper that the ministry had taken certain coordinated measures in response to the pandemic. Such measures included a decree by the Supreme Judicial Council of Libya to release vulnerable migrants from detention centres during the outbreak, alongside intensified conflict in Tripoli, resulting in the release of 245 refugees and migrants. Demonstrating divergence between Libyan and EU perspectives, the interviewed Libyan official claimed that these were state-led initiatives; on the other hand, an EU official reported this as an achievement led by EU engagement efforts.

In sum, there appears to be engagement by some Libyan and European actors in reducing the detention of refugees and migrants in light of the pandemic, and potentially reducing the number of detention centres in visible coastal areas, moving them further inland. Yet, it is not clear the extent to which agreements by higher-level decision-makers at ministries trickle down to actors involved in the implementation of Libya's migration policies. For instance, due to the general state of insecurity in Libya, it is unclear how effective agreements are in influencing the existence of unofficial detention centres, and in monitoring the conditions inside detention centres.

Impacts on the lives of refugees and migrants in Libya

According to IOM, there are currently 574,146 refugees and migrants in Libya,²¹⁶ including 44,725 refugees and asylum seekers registered with UNHCR.²¹⁷ In 2020, the conflict in Libya escalated, and the humanitarian situation became more complex due to the COVID-19 outbreak. Refugees and migrants have been particularly vulnerable because they are largely reliant on daily or casual work, which has been impeded by COVID-19 restrictions on movement, as well as due to the deteriorating economic situation with less opportunities in the construction and reconstruction sectors, and because of the risks they face in terms of detention and protection violations. Nevertheless, refugees and migrants still embark on the journey to Europe by crossing the Mediterranean. As of November, the Ministry of the Interior of Italy reported a total of 15,136 refugees and migrants reaching Italy and Malta from Libya in 2020.²¹⁸ On the other hand, there have been substantial return movements overland from Libya too, both through forced deportations²¹⁹ and voluntary returns.

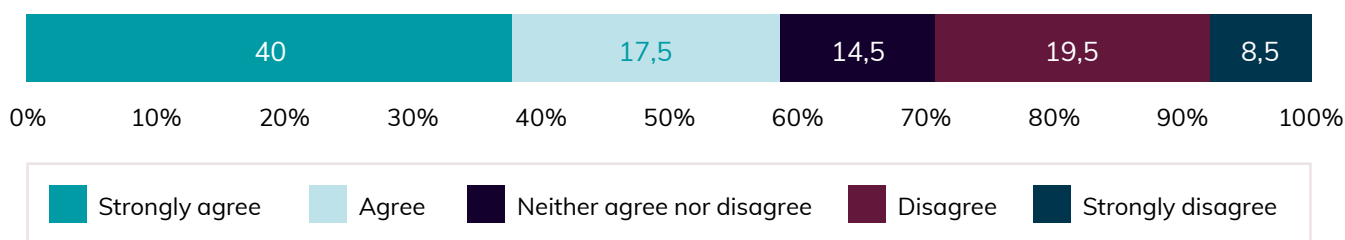
Impact on protection: detention

IOM called 2020 “the worst year” for refugees and migrants in Libya, due to disappearances caused by the continued conflict” and the absence of European SAR operations at sea.²²⁰ An interviewed migrant community leader noted that the COVID-19 situation for refugees and migrants is particularly risky in Libya, given that if

they test positive for COVID-19, they will be taken to a detention centre. Although there have been closures of some centres as a response to the pandemic, some are still running.

When surveyed refugees and migrants were asked if they thought there had been an increase in arbitrary arrest and detention since the outbreak of COVID-19 pandemic, 57.5 percent of respondents (n=115) agreed or strongly agreed with an increased risk (Figure 1).²²¹

Figure 1. There is an increased risk of arbitrary arrest and detention since the outbreak of the COVID-19 pandemic (n=200)



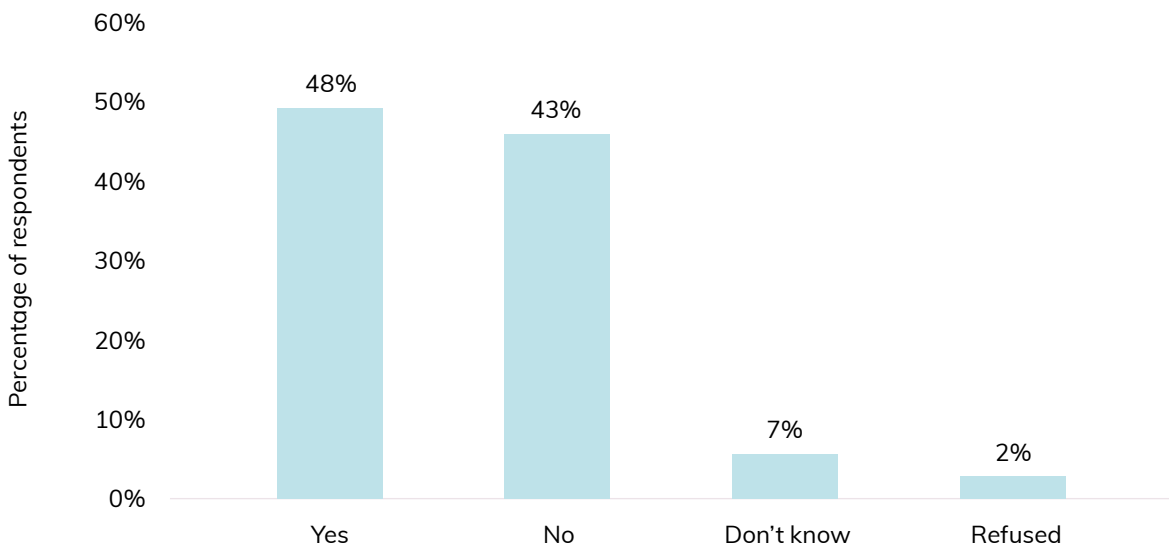
Along with the amplified risk of detention for refugees and migrants, reports suggest no improvement to conditions inside detention centres to protect against COVID-19 exposure.²²² In a key informant interview, a humanitarian worker noted that “overcrowding is still there...also, there’s no respect for the privacy, humanity and dignity of the person.”

Impact on migration journeys and planning

Internal and external border closures in Libya have impacted upon migration journeys and planning, as they have constrained the ability of refugees and migrants to return or move onward (Figure 2). Interviewed refugees and migrants underlined that only those who have legal documentations have the ability to move freely: “It makes life very difficult for undocumented migrants because we don’t always have rest [peace] of mind, most especially when we want to go to a very far place, [and] we are always afraid,” reported a man from Nigeria in Tripoli.

Regarding migration routes within Libya, some surveyed refugees and migrants stated that the tightened security situation inside the country is affecting the number of days spent to reach the Libyan coast, where they plan on departing for Europe. Others spoke of the fact that UNHCR suspended their resettlement and evacuation programmes, and IOM suspended their Voluntary Humanitarian Return (VHR) programme at the start of the pandemic;²²³ both programmes have since resumed operations by August 2020.²²⁴

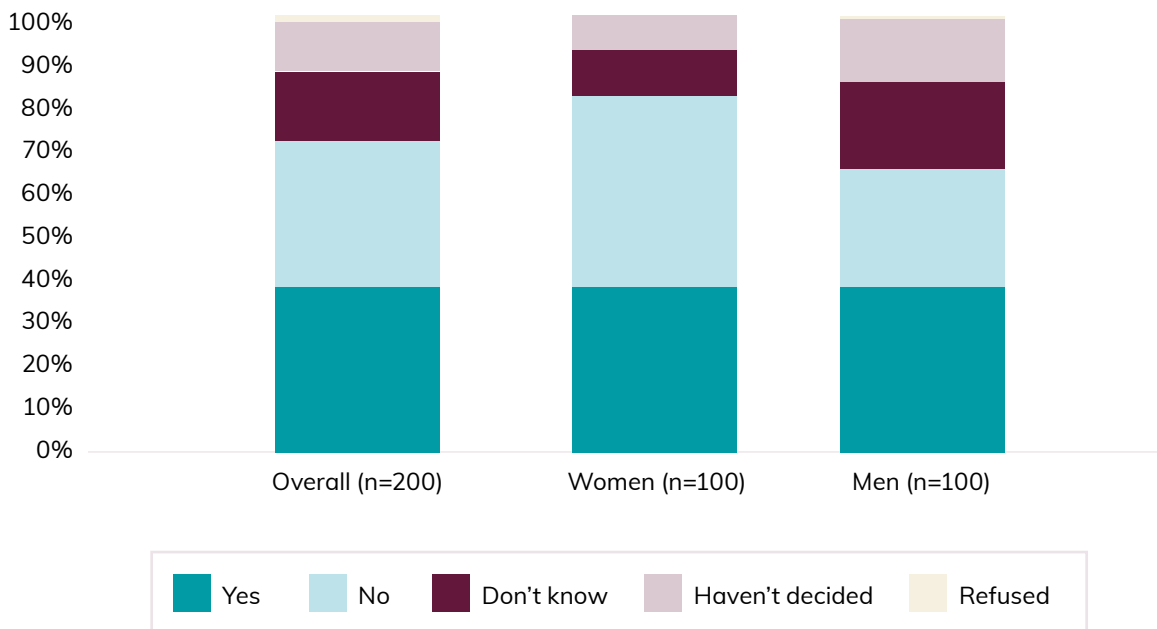
Figure 2. Have recent migration policy changes affected your migration plans? (n=199)



Out of 200 surveys, 40 percent (n=80) noted that they planned to attempt the sea crossing in the next six months, while an additional 9.5 percent (n=19) remained undecided (Figure 3). A Nigerian man in Tripoli stated

that “most of my friends over there [Europe] were also complaining of [a] lack of jobs...I was even told that there are many migrants who are beggars on the streets of Italy.” As a result, he decided not to cross to Europe.

Figure 3. Do you plan to attempt the sea crossing in the next six months? (n=200)



There was gender parity over those who had decided to make the sea crossing. For those who were undecided on undertaking the sea crossing, however, there was a larger portion of men who were undecided (20 percent; n=20) as compared to women (11 percent; n=11).

Key informant interviews with humanitarian workers suggest such decisions related to migration planning vary from one community to another. For example, they find that East Africans, and Eritreans in particular, are more determined to make the sea crossing to Europe. This finding was corroborated in the quantitative data. While these data should be taken with caution, given the small sample size, Eritreans (11/20) were among the nationalities that most often responded with a “Yes” to the question, “Do you plan to attempt the sea crossing in the next 6 months?” Other top nationalities included Nigerians (10/37) and Cameroonians (7/14).

Moreover, key informants suggest that COVID-19 may have impacted the cost of the sea crossing from the Libyan coast to Europe, rising from an equivalent of USD1,095 per person to between USD2,190 to USD3,649. Some have reported that the increase is linked to tightened security along the Mediterranean with active sea patrols, likely on the part of the LCG. It should be noted that most surveyed refugees and migrants cannot differentiate between the various actors at sea, their affiliation and if they were operating in Libyan or European waters.

Understanding of the role of policy in migration journeys and planning

Many of the surveyed refugees and migrants are generally aware of migration policies and practices in Libya, citing interceptions and returns at sea, detention and deportation. A limited number of respondents (44 percent; n=87) noted changes to policies and procedures linked to COVID-19. Furthermore, when looking at access to information on policies, surveyed refugees and migrants emphasised that they most often received information on migration policies and changes in procedures from peers who had successfully arrived in Europe via a Mediterranean crossing (32 percent). Yet, 10 percent of surveyed refugees and migrants noted not having access to information on migration policies or changes in procedures. Moreover, in relation to information about detention centres, interviewed community leaders reported receiving information from their embassies or from detainees who have phones; and, in turn, they share such information with their community through designated Whatsapp groups, face-to-face meetings and phone calls. Few others have reported accessing information through smugglers.

Conclusion

This paper examined how the migration policies and procedures of the EU and EU MS with operations around the Mediterranean have been impacted by COVID-19, including their implementation on the ground. It also assessed their impact on the conditions and experiences of refugees and migrants in Libya, with a special focus on their migration planning and journeys.

Findings suggest that COVID-19 did not impact the development of migration policies in the Mediterranean, but instead affected their implementation and the overall management of migration. Evidence shows that COVID-19 is being used to strengthen positions against a greater acceptance of refugees and migrants, and to prevent irregular arrivals to Europe regardless of their adherence to legal obligations and international law.

In this way, it can be concluded that migration restrictions, particularly those related to COVID-19 health procedures, have had an effect on the lives and human rights conditions of refugees and migrants in Libya, particularly those undertaking the journey across the Mediterranean. However, the need of some to seek protection and better opportunities appears to outweigh the risks of the sea crossing and potential exposure to the virus.

Recommendations

Based on these findings, this study puts forward the following recommendations for authorities, policy actors and programming.

To EU and Libyan authorities

- Implement coherent policies and procedures that align with human rights standards and international law, including the compliance of each State to their own SAR zone at sea.
- Provide alternatives to detention, and ultimately reformulate the Libyan law²²⁵ that uses detention as a policy to fight irregular migration and decrease crossings to Europe.
- Engage wider groups of stakeholders on discussions around the management of migration, including civil society, migrants and refugees, to keep them informed and get their feedback and recommendations.

To EU and EU MS

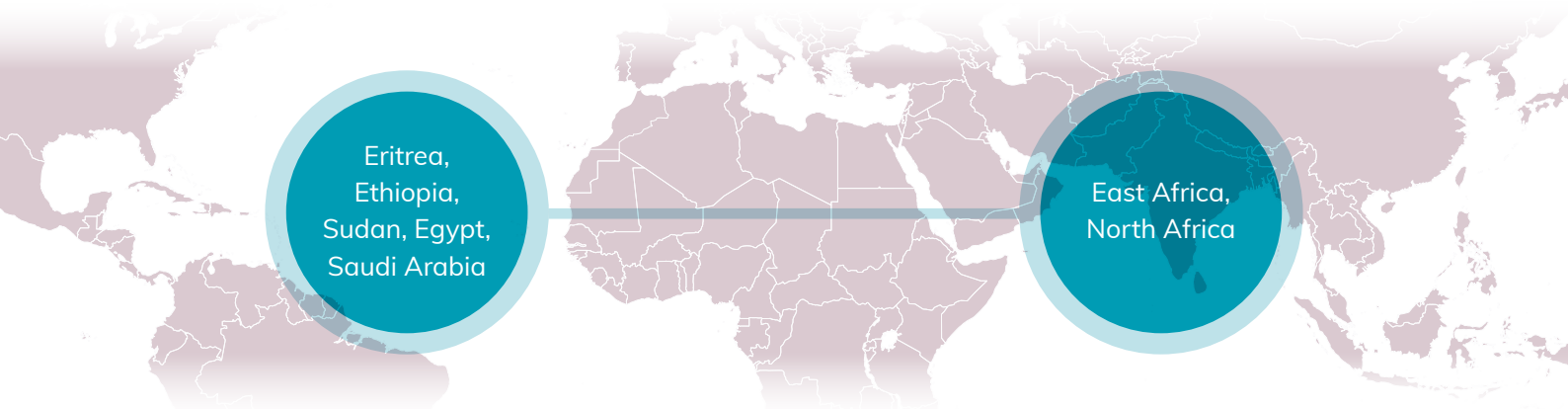
- Support the Libyan government in improving its response to COVID-19, with particular focus on migrants and refugees, as this paper finds them to be among the most vulnerable groups in Libya.
- Support humanitarian programmes that respond to the needs of the people on the ground, rather than direct the funds towards backing certain migration policies by donors.
- Cease providing any assistance or support that contributes to refugees and migrants being intercepted, disembarked and often detained in Libya, which is not a place of safety, and require provided assistance to meet human rights standards and obligations.

For INGOs and UN agencies

- Provide humanitarian assistance to migrants and refugees regardless of their intentions to move onward with their migration journey.
- Improve advocacy efforts to ensure minimum human rights standards are met for migrants and refugees in Libya.

Policy Regions and Migration Routes: Where is the (Mis)alignment?

Author: Dr Georgia Cole,²²⁶ Chancellor's Fellow, University of Edinburgh



Introduction

This short paper responds to the question, “To what extent do ‘policy regions’ correspond with and capture intra- and inter-regional movement patterns and dynamics?” by highlighting the importance of connecting migratory movements across the Red Sea with those towards and across the Mediterranean.

In this context, it argues that we need better answers to the following questions: How do the migratory dynamics of displaced populations within and to the Gulf impact regional and global patterns of forced migration? And how can and might a greater awareness of these interconnected migration systems shape more localised and regional policies towards displaced populations? Drawing upon original empirical research with Eritreans in Uganda and the United Kingdom, it provides some preliminary answers to these questions, as well as raising some of the challenges that emerge in integrating different policy regions that are approached through different migration governance mechanisms and labels. In this context, it discusses the potential value of strengthening an African version of the Abu Dhabi Dialogue in order to protect migrant workers’ rights and opportunities in the Gulf States, given the connections between labour migration in this region and forced migration movements within and from the Horn of Africa.

Empirical context

In 2014, as the number of Eritreans attempting to reach Europe through the ports of North Africa markedly increased, European policy makers and international organisations fixed their gaze on what was happening in Ethiopia, Eritrea and Sudan, assuming that the cause of this rise would be found in these individual’s country of origin or in countries of first asylum. What much of the analysis on this dynamic missed, however, was that Eritreans were at this time ever more effectively barred from entering Israel, a country to which approximately 37,000 Eritreans had travelled between 2006 and 2012 to access employment and remit money to their families in Eritrea.²²⁷ In December 2013, the civil war in South Sudan had also broken out, worsening the country’s security situation and causing a decline in national and foreign investment. A large population of Eritreans who had been establishing a foothold in the country’s hospitality and transport sectors – which had been growing since the country’s independence from Sudan – found their markets drying up and their physical security threatened, causing many to have to at least temporarily relocate. With these two options closed, more Eritreans were thus compelled to travel towards Europe or elsewhere in the Middle East to find opportunities for refuge and/or remittances. A more linear understanding of source and transit countries nonetheless meant that the EU’s response to increased Eritrean arrivals in Europe took the form of policies directed at points on a series of arrows, which sketched almost direct lines from Eritrea through to Libya. The potential impacts of bolstering Eritreans’ asylum and labour rights in Israel, for example, were overlooked.

Similarly, and more recently, the intensification of punitive immigration policies in Saudi Arabia has forced large numbers of long-staying migrants, including Eritreans who had previously fled Eritrea, to leave the country. Since the early 2010s, rising discontent and conflict in the Arab Middle East had fuelled the Saudi government's existing policy agenda of diversifying its economy away from oil dependency, and reducing the unemployment rate among young Saudi nationals. A growing list of occupations are now reserved exclusively for Saudi nationals, lessening employment opportunities for foreign nationals. Other recent measures have included the introduction of several new taxes, such as a tax announced in January 2018 that required companies to pay SAR400 per month per foreign employee, and various fines that encourage businesses to preferentially employ Saudis. With these additional costs for the most part passed on to employees through reductions in their take-home wages, life in Saudi Arabia has thus become prohibitively expensive for large swathes of the country's foreign-born workforce.

From the perspective of the Saudi government, these policies have seemed to be “working” in terms of pushing expatriate workers out of the country. In the first quarter of 2018 alone, one investment firm reported that almost a quarter of a million foreign nationals had lost their jobs due to the introduction of the expat tax, with the impacts felt particularly acutely in the construction sector.²²⁸ Between the first quarter of 2017 and the third quarter of 2018, official reports show that 1.1 million foreigners left Saudi Arabia.²²⁹ By midway through 2019, the number of foreign workers in Saudi had continued to fall, with a net decrease over the preceding two and a half years of 22 percent.²³⁰

Caught up in this mass displacement event are, nonetheless, large numbers of forced migrants who had escaped conflict and repression in their countries of origin by travelling to the Gulf States. Historically, considerable numbers of Eritreans, Palestinians and Yemenis employed this strategy of seeking respite in the labour markets of the Gulf States. More recently, Syrians, Rohingya and Ethiopians have followed in their wake. In recognition of their forced departures from their homelands, the Saudi government has at various points institutionalised minimal concessions in terms of immigration regulations and access to services and employment, albeit only for particular nationality groups.²³¹ During the 1980s, Eritreans who were members of the Eritrean Liberation Front were one of the populations to which Saudi immigration authorities applied a de facto policy of less policing and scrutiny.

Some of those foreign nationals who were forced from their countries of origin to the Gulf upwards of 50 years ago have nonetheless remained there, raising their families into second and third generations despite the absence of opportunities to naturalise or establish long-term legal security within any of these states. The sizeable Eritrean

population who first travelled to Saudi Arabia in the 1970s and 1980s fits this profile, having moved there and stayed there in response to foreign occupation, civil war, repression and economic decline in Eritrea. Unable to now return “home” in the face of these intensifying Saudisation policies, because of the political situation and economic stagnation in Eritrea, these individuals and families are on the move across Africa, seeking opportunities to work or regularise their status through asylum in countries such as Egypt, Sudan and Uganda.²³² Among the Eritreans we interviewed in Kampala in January 2020, all of whom had recently travelled there from the Gulf, almost all were subsisting on money sent from relatives elsewhere while contemplating next steps. These relatives were mainly based in North America and Europe or were, on occasion, individuals who had achieved financial security in places like Addis Ababa, Dubai or Juba. Shifts in the fortunes of migrant workers in the Gulf thus ripple through the transnational networks of care that fill the void created by overstretched and/or repressive governments, with varied implications for the migratory dynamics of family members and friends.

While this study focussed on Eritreans, these taxes and changes have been experienced by all expatriate populations across the Gulf. The same story can be told for Ethiopians, Somalis and Sudanese who have sought work in the Gulf States in the hundreds of thousands, but who, particularly in the last five years, have been exposed to more discriminatory immigration policies and mass deportations. Workers may have initially sought to send their families out of Saudi Arabia in order to minimise the dependents' tax, but increases in the expatriate tax have meant that many workers have now been forced to join them.²³³ Some of these populations will have originally entered the Gulf States having fled conflict, violence and persecution in their countries of origin. Their experiences of “return” following forced departures from Gulf Cooperation Council (GCC) member states may entail rounds of further displacement similar to the Eritreans discussed above.

Policy implications

How shifts in the economic fortunes and policies of migrant-receiving states relate to past and ongoing incidences of displacement in connected migratory systems thus warrants greater attention, not least to help predict and mitigate against future patterns of forced migration. Regional increases in asylum applicants and migrants from the Horn of Africa across Africa and Europe, for example, may indeed relate as much to policy developments in the Gulf as to political developments in their countries of origin.²³⁴ Further restrictions on employment opportunities in Saudi Arabia following the economic recession caused by COVID-19 may be one of these developments.

Similarly, fluctuations in demand for smugglers in the

Horn of Africa or a rise in the numbers of individuals being trafficked across the continent will be tied to the availability of other opportunities for intra- and inter-regional migration. Shrinking opportunities for certain populations to find employment in the Gulf clearly ties into this. Estimates suggest that 300,000 Ethiopians alone were returned to Ethiopia from Saudi Arabia in the two years following March 2017.²³⁵ Assuming that the need or desire to migrate among many of them does not abate upon returning to Ethiopia, this represents a significant population that might seek or be coerced to migrate through the pathways that remain open to them. With the official number of Africans in the Gulf standing at 3 million – but undoubtedly being far more – and with deportation constituting a relatively quick and efficient mechanism for Gulf governments to reduce their numbers, the possible scale of this dynamic should not be underestimated.²³⁶

Platforms such as the Khartoum Process, nonetheless, pay limited attention to this “root cause.” Despite its primary focus on the trafficking and smuggling of migrants on the route between the Horn of Africa and Europe, this significant interplay between the inter and intra-regional migratory dynamics between the Gulf and the Horn is rarely discussed. This leaves the initiative potentially less ready and able to respond to one of the major determinants of increased demand or susceptibility to these pathways.

The situation thus provides a tentative answer to the following question: To what extent do “policy regions” (such as Europe, North Africa and Sub-Saharan Africa) correspond with and capture intra- and inter-regional movement patterns and dynamics? It provides one example of how a policy region with a limited geographical focus on North Africa might be failing to capture a critical determinant of forced migration within the region. It instead highlights the importance of connecting migratory movements within the Red Sea region with both fluctuations in migrant numbers and asylum applications within Sub-Saharan Africa, and with migration dynamics towards and across the Mediterranean. Beyond the physical movement of people, these dense connections also have broader impacts on migrant decision-making: Money remitted from senders in the Gulf, for instance, enables individuals to pay to leave Eritrea or to pay to stay in other locations, and news of opportunities in the Gulf diverts individuals from refugee camps in the Horn of Africa towards those jobs in Saudi Arabia or the United Arab Emirates (UAE).

It is also worth mentioning, however, that the limitations of these policy fields are reinforced through labels as well as geographies. There is a general paucity of material discussing the role of the Gulf States in relation to forced migration. Part of this stems from the fact that none of these states are signatories to certain major human rights treaties, including the 1951 Convention Relating to the Status of Refugees. Due to their ongoing resistance and/or indifference towards adopting the

1951 Convention and the legal-normative vocabulary of “refugeehood” that accompanies it, they have thus, until recently,²³⁷ rarely been acknowledged as hosting forced migrants within their populations of labour migrants. The two labels are indeed almost seen as mutually exclusive in the Gulf context; if individuals have been labelled as labour migrants, they are rarely recognised or analysed as potentially also being forced migrants. As almost all individuals enter the Gulf through the kafala system of employment visas, there is little in official statistics to refute this view. One result of this has been that academics and Western policy makers have largely analysed labour migration to the Gulf in separate policy forums and institutional spaces to those in which mixed and forced migration within Africa are under discussion.²³⁸

Responses by African governments

Governments in the Horn of Africa have of course long recognised the importance of labour markets in the Gulf for the security of their citizens and nations, as well as for regional migration dynamics. More recently, however, they have sought to more explicitly engage with migration initiatives that seek to strengthen and regularise these pathways, such as the Abu Dhabi Dialogue. This initiative dates back to 2003 when a number of labour-sending countries in Asia formed a Regional Consultative Process – the Colombo Process – in order to collectively maximise the benefits of labour migration from the region to the Gulf, while ensuring that their citizens’ rights were upheld in the process. Five years later, the Abu Dhabi Dialogue was established between the 12 labour-sending states in Asia that formed the Colombo Process as well as six Gulf countries of destination, in order to facilitate safe, orderly and regular temporary labour migration between these regions. It aimed to maximise the benefits of migration for the source and destination countries, and for the migrants themselves.

In recent years, observers from within Africa – including from the Egyptian government, African Union, Common Market for Eastern and Southern Africa, Economic Community of Central African States, Economic Community of West African States and Intergovernmental Authority on Development – have attended related meetings in the hope of establishing a blueprint for a similar platform for Gulf-Africa dialogue on labour migration. One goal of boosted dialogue on migration between these two regions is the improvement of conditions for African migrants in the Gulf. Beyond the importance of this for the migrants themselves, African governments have also been keen to avoid situations in which they are forced to respond to serious human rights infractions against their citizens in the Gulf by banning individuals from travelling there. With few other channels through which to protest this mistreatment or lobby for more protections for their citizens, migrant-sending states have indeed resorted to wholesale bans on

labour migration to the Gulf. These have generally inflicted more economic and political damage upon themselves and their citizens than the states that caused the harm, while driving demand for irregular migration given the suspension of legal options.

Ethiopia offers one example where the government has supposedly used quiet diplomacy to engage and leverage Gulf states on these issues. From the Ethiopian government's perspective, they are aware that any blanket migration ban will only push people towards other forms of irregular migration, which have been seen to have devastating consequences for those attempting to enter the Gulf states illegally.²³⁹ States, such as the UAE, have more recently seemed to recognise that they should provide better protection to African labour migrants for reasons including their international reputation and the maintenance of amicable relationships with key geopolitical allies in the Horn of Africa like Ethiopia. In September 2018, the UAE therefore signed a bilateral

agreement with Ethiopia mandating that if someone is going to the UAE as a domestic worker, they will get pre-departure training, official registration through the TADBEER visa system (not the kafala system) and training in situ.²⁴⁰ Bahrain and Qatar have similarly devised alternative bilateral arrangements to the kafala system, though they remain reluctant to make this public. Ethiopia and Kenya in particular are thus pushing ahead with bilateral agreements, while trying to lobby for a forum for a more coordinated regional response within Africa similar to the Abu Dhabi Dialogue.²⁴¹

For these governments, the possible links between labour migration opportunities to the Gulf and forced migration within and from the Horn of Africa have not been lost. The strengthening of these regional multilateral initiatives continues to be seen as a key way to support and safeguard migratory strategies employed by their citizens for decades.

Recommendations

For European governments and international donors

- **Recognise and respond to the limitations of formulating policies that do not reflect the interconnectedness of migratory systems across different regions.** Incidences of trafficking and smuggling will undoubtedly be exacerbated by the closure of intra- and inter-regional migration opportunities; populations of labour migrants in major migrant-receiving states should be connected to historical patterns and future incidences of forced migration in and from their countries of origin. While this policy note highlighted the connections between forced migration in Africa and policies in the Gulf States, similar relationships should be explored in the context of patterns of movement between Central and South East Asia and the Gulf States, and between Central and North American countries.
- **Observe and assist initiatives that are being driven by African governments to safeguard their citizens' rights in the GCC region.** This involves respecting the policy priorities of migrant-sending states in the North, East and Horn of Africa, and supporting these governments in the realisation of national and regional priorities for safe and dignified migration.
- **Engage with the GCC region in its capacity as the host of significant populations of forced migrants, and work with GCC states to strengthen respect for the rights of refugees, migrants and other people of concern.** This includes monitoring migrant populations and labour market policies in major migrant-receiving states, such as the GCC states, to ensure that forced migrants and refugees who reside there are not at risk of being returned or deported to countries (including their countries of origin) where they may face persecution or cruel, inhuman and degrading treatment.

Local Authorities as Allies in Promoting Protection Frameworks for Mobile Urban Populations

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Introduction

In 2018, city representatives participating in the Africities Summit discussed municipal strategies to realise the Global Compact for Migration (GCM) and the Global Compact on Refugees (GCR), adopting the Charter of Local and Subnational Governments of Africa on Migration.²⁴² Reflecting on policy frameworks surrounding questions of migration and displacement on the African continent, the question remains why African cities would engage in such municipal debates and commitments given their lack of legal mandates for migration and refugee protection.²⁴³ In fact, legal protection frameworks for migrants and refugees have traditionally been conceived by states lending predominance to competences and solutions at the national level. However, as more and more migrants and refugees move to urban areas, many African cities are becoming de facto frontline actors addressing interdependencies between mixed movements, urbanisation, housing, health care, social cohesion and local development.²⁴⁴

This policy brief argues that African local authorities, driven by a pragmatic interest in ensuring social cohesion and urban development, could become central allies of humanitarian and development actors, researchers and civil society in advocating for and advancing protection frameworks that favor inclusive solutions for refugees, migrants and host communities. In the first part, we review central challenges for African host and transit cities related to the absence of national protection frameworks, incomplete decentralisation reforms, limited

access to funding and capacity building as well as a lack of local data availability. Confronted with these barriers to engagement, many local authorities do not consider questions of migration and displacement as municipal responsibilities or priorities. In recent years, however, a small but growing number of African local authorities have been aiming to build partnerships with local, national and international actors to overcome central gaps between restricted capacities and resources, on the one side, and the fact that cities are becoming de facto actors in contexts of mixed movements on the other.²⁴⁵ In the second part, we zoom in on action taken by some pro-active cities, showing how their engagement may drive change in local, national and transnational protection frameworks. Building on this analysis of challenges and good practices, we present recommendations to inform the development of advocacy work and the expansion of partnerships between international organisations (IOs), civil society, academia, national and local authorities to improve and reform local, national and transnational protection frameworks for mobile populations along the Central and Western Mediterranean routes.

This policy brief draws on the first-hand experience of the United Cities and Local Governments of Africa (UCLG Africa), a network of African cities, as well as on interview-based research of municipal authorities' local and transnational strategies in addressing migration and displacement conducted by the University of Erlangen-Nuremberg between 2019 and 2020. The interviews

included in this policy brief have been conducted with representatives of Freetown in Sierra Leone, Kampala in Uganda, Oujda and Rabat in Morocco as well as Sfax and Sousse in Tunisia. Cities have been selected based on their interest and engagement on questions of migration and displacement at the local, national and/or transnational levels.

Challenges: Lacking mandates, resources, capacities and data

While it is important to acknowledge that many local authorities in Africa and worldwide do not concern themselves with topics of migration and displacement, this section focuses on challenges faced by African local authorities that do recognise the need for municipal action on questions of human mobility.²⁴⁶ An analysis of contexts where political will for engagement can, in principle, be found allows us to zoom in on factors that would enable interested coalitions to move from local commitments to multi-stakeholder action.

At the 2018 UNHCR High Commissioner's Dialogue on Protection Challenges, as well as during the 2019 Global Refugee Forum, African cities drew attention to their lack of political mandates, capacities and resources to engage on questions of migration and displacement.²⁴⁷ Even in countries like Morocco and Tunisia, where official decentralisation strategies have been adopted, actual transposition remains limited, may not include adequate transfers of human and financial resources or may simply avoid the topics of migration and displacement altogether. In this context, a number of local authorities are cooperating with civil society to offer a minimum of support and protection to migrants and refugees on their territory, thereby cruising on the edge of their legal competences. In a research interview, a representative of the Tunisian city of Sfax emphasised that despite the need for local action to respond to rising conflict, climate and poverty-related human mobility, municipal authorities held only two official competences when it comes to migrants and refugees: Issuing birth and death certificates.²⁴⁸ The absence of legal competences has a direct impact on municipal capacities, resources and access to national and international funding and partnerships.

As long as local authorities hold no official power to address urban displacement they are rarely considered (priority) partners or relevant recipients of funding by national and international actors that engage in urban refugee responses.²⁴⁹ This has direct consequences on municipalities' capacities to respond to mixed movements. One interesting example is provided by the city of Kampala. Even though the Kampala Capital City Authority (KCCA) has started cooperating with a wide range of international actors to systemise urban refugee responses, the administration remains unable to secure national or international funding for establishing

a municipal integration office.²⁵⁰ Such municipal efforts to institutionalise local action and build an interface for migrants and refugees, as well as for (potential) national and international partners, are often impeded by a strict concentration of competences at the national level. Moreover, a prevalent practice exists among donors and humanitarian actors to reserve funding for direct assistance to migrants and refugees through national or international actors, rather than indirect support through municipal capacity building.

Another obstacle to municipal action is a widespread lack of local data on urban migration and displacement. In order to develop evidence-based strategies, and advocate at the national or international levels for adequate funding and capacity-building, local authorities would need to collect or access up-to-date information on (mobile) urban populations. However, official census data is often outdated, at times by several decades, and rarely allows reliable estimations on the number of residents living and working in informal urban areas.²⁵¹ In particular, during the global COVID-19 pandemic, the absence of local data hinders local and national actors in developing migrant and refugee-sensitive crisis responses. During a research interview, a representative from the city of Rabat highlighted a municipal challenge in planning for and meeting the needs of migrant populations who were not officially registered and are, overall, difficult to reach.²⁵²

During the 2020 GFMD-African Union Regional Consultation, local authorities highlighted that the combination of poor national policy guidance, limited municipal capacities and lack of reliable data and resource allocation contributed to the exclusion of migration and displacement issues from public planning processes, and increased the marginalisation and vulnerability of urban migrants and refugees.²⁵³ Therefore, city representatives urged national governments to expand municipal competences by including respective provisions into decentralisation laws, and called upon national and international actors to partner with cities in multi-stakeholder and multi-level cooperation.²⁵⁴

Potentials: Local authorities as drivers of change in local, national and transnational protection frameworks

Quite evidently, local authorities are not necessarily more open to hosting migrant and refugee populations than national governments, as positions at both the local and national levels vary from one government to another. Openness may also depend on the form that hosting mobile populations would take. Municipal opposition to African migration "hotspots" envisaged in European migration policies illustrates the controversy of these

issues. However, local authorities are overall closer to the realities on the ground than their national counterparts. In some African cities, this proximity led municipal authorities to recognise that exclusionary policies and short-term decisions to halt mixed movements do not result in sustainable solutions, and may even spark social unrest and urban conflicts. Rather than conditioning access to social and economic life on a person's legal status, cities like Kampala, Sfax and Freetown have therefore chosen a more pragmatic strategy: Highlighting benefits of inclusive urban approaches for migrants, refugees and host communities, they call upon national and international actors to invest in cities as cooperation partners and to join forces in addressing urban migration and displacement.²⁵⁵ Such inclusive approaches have even gained in importance in the context of the COVID-19 pandemic, during which the GCR and Sustainable Development Goals principles of responsibility-sharing and "leaving no one behind" have become more vital than ever for urban centres in Africa and around the world.²⁵⁶

Local authorities along the Central and Western Mediterranean routes could thus become central allies of civil society and IOs, such as UNHCR and IOM, in developing innovative and sustainable solutions on the ground and advocating for reforms of national and transnational policy protection frameworks – a potential that has been largely overlooked so far. The following analysis spotlights municipal strategies from the regions aiming to drive change in local, national and transnational protection frameworks.

Driving change in local protection frameworks

In 2018, the city network UCLG Africa launched the Charter of Local and Subnational Governments of Africa on Migration. In the charter, signatory cities committed to protecting the rights of migrants and refugees; supporting migrants and refugees in situations of vulnerability; promoting social cohesion and cultural diversity at the local level; and advocating for national policies that ensure safe and regular forms of human mobility. Moreover, these cities pledged to take action against xenophobia and security-biased narratives, and condemned the criminalisation of migrants and the establishment of detention camps for African migrants. To achieve the charter's objectives, local authorities aim to cooperate with IOs, national governments, civil society and migrant/refugee communities.²⁵⁷

Such multi-stakeholder cooperation for inclusive approaches to mixed movements is also the basis of various projects launched by local authorities and civil society actors in North African cities participating in the Mediterranean City-to-City Migration Project (MC2CM). Co-organised by UN-HABITAT, UCLG and the International Centre for Migration Policy Development, the MC2CM network empowers local authorities to create urban migration profiles, and to develop and realise evidence-based local strategies in cooperation with local,

national and international partners.²⁵⁸ Cities make use of such partnerships to address city specific risks for migrants and refugees by strengthening local ecosystems for the protection of mobile populations.²⁵⁹ For instance, the cities of Madrid, Oujda and Rabat have started a cooperation piloting local coordination mechanisms to ensure a permanent two-way communication between the municipality and all stakeholders working on urban migration and displacement responses. This pilot is conducted in collaboration with IOM Spain, UCLG Africa and the Moroccan government.²⁶⁰ Such mechanisms could enable local authorities to establish municipal cartographies of relevant stakeholders, activities and target groups.

Driving change in national protection frameworks

While North African municipalities, such as Sfax and Sousse, could have simply argued that Tunisian local authorities do not have legal responsibility for migrants and refugees, they decided to take a more pro-active stance in the response to the COVID-19 pandemic. Not only did they strive for local whole-of-society solutions, they also stepped up municipal advocacy vis-à-vis the national government.

In this sense, both municipalities have called upon regional and national authorities to include migrants and refugees in COVID-19 responses. They have furthermore joined forces with national non-governmental organisations advocating for the adoption and implementation of national asylum and migration policies, and working on a concrete legislative draft proposal to regularise persons in situations of irregularity.²⁶¹ In states like Mali and Niger, civil society actors are playing an important role in promoting migrant and refugee rights to the city, including access to decent housing, healthcare and education, and opposing closed detention in migration "hotspots" in African cities. Taking a broader perspective on protection frameworks, local authorities could prove to be invaluable allies of IOs and civil society in advocating for ambitious national GCM, GCR and Comprehensive Refugee Response Framework (CRRF) implementation strategies.²⁶²

Driving change in transnational protection frameworks

As a growing number of African cities start engaging in city-to-city exchanges on the continental and international levels, they become aware of a striking paradox: Even though cities around the globe have become de facto actors in urban migration and displacement, their expertise remains mostly excluded from intergovernmental policymaking processes. However, as (inter)national policies impact urban realities, these cooperation gaps risk leading to vertical policy incoherence in the governance of migration and displacement.²⁶³ When it comes to African and European-African dialogues on migration and displacement, UCLG Africa is therefore spearheading efforts to bring municipal perspectives into intergovernmental policy deliberations.

Recent examples include the AU-EU Summit 2017, the EU Cities and Regions for Development Cooperation Forum 2019 and the Global Forum on Migration and Development 2020. Representatives of African cities seized the opportunity offered by these international events to criticise one-sided European strategies focusing on “hotspots” and readmission agreements; the cities called for a re-orientation of the inter-regional governance of human mobility based on respect of human rights, partnerships and decentralised cooperation.²⁶⁴ In parallel, a growing number of European cities linked calls upon their national governments to ensure the safety of persons travelling on the Central and Western Mediterranean routes with concrete offers for local integration.²⁶⁵ We thus perceive a particular potential for alliances between civil society, IOs and local authorities in joint advocacy for improving search-and-rescue (SAR) operations, as well as opening complementary pathways.

Conclusion

For a long time, national governments and international organisations have been the main protagonists shaping and implementing protection frameworks for mobile populations. But rapid urbanisation and the understanding that mixed movements can only be addressed through multi-stakeholder and multi-level approaches (as per the New York Declaration, GCR and GCM) push traditional as well as emerging actors to forge new alliances. As a growing number of cities, located along the Western and Central Mediterranean routes, show ambition to co-shape inclusive approaches to urban migration and displacement, their potentials and challenges should be taken seriously, and their ideas and local solutions taken into account. In this sense, the importance attributed to cooperation with local authorities in the GCR and the GCM is a first step in the right direction.

Recommendations for policy: Building new alliances

Building on this analysis of challenges and good practices, we present recommendations to inform the development of advocacy work, and the expansion of partnerships between IOs, civil society, academia, national and local authorities, towards improving and reforming local, national and transnational protection frameworks.

Local protection frameworks

- African **local authorities** are invited to sign the “Charter of Local and Subnational Governments of Africa on Migration” and use it as a tool to promote inclusive approaches for the benefit of refugees, migrants and local communities, in cooperation and with financial and technical support from **national authorities, development banks and IOs. Humanitarian and development actors, civil society and academia**, in turn, could leverage the charter as an instrument to engage municipal authorities and other local actors in developing and promoting local protection frameworks for migrants and refugees.
- **National authorities** should not only adopt effective national protection frameworks, but should also ensure that such national frameworks include an actionable devolution of competences, resources and capacities to local authorities in order to translate national policies into local realities.
- **UNHCR, IOM and other international organisations** should step up direct cooperation with cities, moving beyond a perspective of local authorities as pure implementers of national or international policies. In this sense, the organisations should explore how international agreements and programmes such as the GCM, the GCR and the CRRF could strengthen municipal capacities and the local-level creation of context-specific strategies for sustainable solutions to urban migration and displacement.

National protection frameworks

- African **local authorities** should cooperate with **civil society, academia, the UN Network on Migration and UNHCR** to advocate for ambitious national GCM, GCR and CRRF implementation strategies that benefit urban migrants, refugees and host communities.
- **UNHCR and the UN Network on Migration** should encourage **national governments** to include local authorities in the planning, implementation and review of national GCM, GCR and CRRF strategies.

Transnational protection frameworks

- The **European Union** and the **African Union** should ensure that cities are included in inter-regional deliberations on mixed movements both in the framework of city-to-city fora and through an institutionalization of municipal participation in EU-AU summits and other intergovernmental debates such as the Rabat and the Khartoum Processes.
- African and European **local authorities** should partner with **IOs, academia and civil society** to call upon states to respect the right to life of every human being by relaunching SAR operations in the Mediterranean, prosecuting and holding accountable actors responsible for and participating in push-back operations, and fighting human trafficking.
- **UNHCR, research institutions and civil society** should launch partnerships with **African and European local authorities** to advocate and pilot complementary pathways such as private sponsorship or university corridor schemes.

Policy Notes

Theme 6: Advocating for improved protection responses



Photo credit: © UNHCR / Hereward Holland
A woman weeps, minutes after being saved by the Sea
Watch search and rescue ship.

“Traumatized migrants naturally have less capability to deal with certain circumstances than those who have not experienced trauma. After an often perilous journey it is hard for them to catch up with “normal” life, unless psychosocial assistance is provided. Many migrants are not able to have such services in Tunisia, since they lack proper documentation. Moreover, some cannot afford psychological assistance and others do not really understand the essence of it.”

Nahom Bruk Gebremeskel, 4Mi Monitor, Mixed Migration Centre North Africa.

Protecting Young Migrants and Refugees in Libya: An Operational Perspective by MSF

Authors: Suha Diab, Lucie Eches and Elsa Laino, Protection Team Libya, Médecins Sans Frontières (MSF) France



Introduction

Over 584,000 migrants are currently in Libya,²⁶⁶ with over 44,000 persons registered with UNHCR. 8 percent of the migrant population and 33 percent of the registered refugee population are children, with nearly 25 percent unaccompanied or separated²⁶⁷ (including 4.6 percent among registered asylum seekers).²⁶⁸

There are severe limitations in Libya for providing a meaningful protection response to migrants due to the lack of sustainable shelters and solutions for community integration.²⁶⁹ This was exacerbated in 2020 with the advent of COVID-19-related restrictions, which limited access to and movement within the country for humanitarian actors. It also increased risks for migrants and refugees living in urban settings, exposing them to COVID-19-related threats, on top of the cycle of kidnapping, abuse and exploitation to which they were already normally exposed. Moreover, resettlement slots and other legal pathways out of Libya for persons in need of protection are lacking, leaving many with no other option than to cross the sea to seek protection and safety.

The Convention on the Rights of the Child (CRC), of which Libya has been a signatory since 1993, establishes that a “child” is every human being below the age of 18 years (Article 1). Children are entitled to certain standards of guarantees and protection, which are not respected in Libya, where it is common practice to hold migrant children in arbitrary detention alongside adults – with no separation or distinct treatment, subjected to torture or

other ill and inhumane treatment, intercepted at sea and forcibly returned to a country that is not safe.

In addition to what they were exposed to as children and upon reaching the age of majority in Libya, young migrants and refugees lose access to the already lacking set of services they would have been entitled to as children. Worse, these young persons are cases likely to be excluded from accessing the already very limited resettlement and evacuation opportunities, because hosting countries tend to prioritise women, families and young children considered to be more easily supported for integration.

Médecins Sans Frontières (MSF) France started its operations in Libya in 2011, and reoriented its activities in 2016 to support migrants in detention. Despite the constraints linked to the restrictions and limited access imposed by the COVID-19 response in the last year, MSF remains committed to supporting populations most in need in Libya. MSF provides primary healthcare, psychosocial support and protection services to migrant and refugee communities living in urban communities or arbitrarily detained in official detention centres, as well as those who have escaped clandestine prisons run by traffickers, including the infamous hangars of Bani Walid. Our teams also offer care to people intercepted at sea by the EU-supported Libyan Coast Guard (LCG) and forced back to Libya. In the Libyan city of Misrata, MSF runs an in-patient clinic for persons affected by

tuberculosis (TB), with services open to both migrants and Libyans.

In this article, we will illustrate cases of unfair exclusion from protection and long-term solutions for young migrants who have turned 18 in detention (Case I), and gaps in the protection response for unaccompanied children affected by multiple vulnerabilities (Case II).

Case I: Access to protection provisions for young adults

There is a consensus among humanitarian actors, and even among some Libyan officials, that the detention of children is wrong on both moral and legal grounds. The detention of children goes against international conventions and treaties. Article 37(b) of the CRC states that “No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.”

In 2012, the CRC committee clarified the meaning of “measure of last resort.” It maintained that the detention of children, whether separated or with families, based on immigration status constitutes a violation and is never appropriate: “The detention of a child because of their or their parents’ status constitutes a child rights violation and always contravenes the principle of the best interests of the child. In this light, States should expeditiously and completely cease the detention of children on the basis of their immigration status.”²⁷⁰

Thus, even if a child entered the country illegally, the denial of liberty is never appropriate.²⁷¹ Despite the clear guidelines of the convention, states continue to detain children based on their immigration status. Libyan law criminalises “illegal” entry regardless of age or protection needs. Refugee claimants, UNHCR’s persons of concern (POC) and migrants are arrested and held under the authority of the Libyan Ministry of the Interior and the Directorate for Combating Illegal Migration.

Operating in detention centres (DC), MSF has witnessed the detention of separated and unaccompanied children as young as 10 years old. At the same time, there has been some flexibility among DC managers who, at times, have agreed to release children under the age of 15, especially if they “looked younger.” Nevertheless, this practice is arbitrary and subject to the compassion of individual DC managers. There is no formal recognition within these institutions that it is illegal and wrong to detain child migrants. Given the slow response to child detention in Libya, a large segment of this population is increasingly forgotten and ignored by UN agencies and other humanitarian actors. Children languish in detention for years, resulting in many growing up into adulthood

while in detention. Daher Al Jabal Detention Centre (DJDC) is a case in point. The DJDC is located roughly 140 km southwest of Tripoli. It opened in 2017 to accommodate migrants and refugees caught in the crossfire in the Sabratha and Gharyan detention centres, along with others who were intercepted by the LCG and brought in from Tripoli. For many detainees, the choice to tuck this detention centre away in the mountains was a deliberate effort to conceal the problem of finding sustainable and long-term solutions for these refugees and migrants. By keeping them out of sight and out of mind, there would be less pressure to find a solution. The UNHCR conducted a handful of visits to DJDC since it opened in 2017 despite the constant appeal of detainees for more visits.

MSF began its operations in June 2019 to serve the medical needs of 700 migrants and refugees, mainly Eritreans and Somalis. Since then, over half of the detainees were either transferred to the Gathering and Departure Facility (GDF) in Tripoli, “voluntarily” repatriated to their country of origin through the work of IOM, or escaped to coastal cities. In October 2020, MSF was informed that the DJDC would be closed, and UNHCR-registered refugees will be transferred to Tripoli to live in urban communities in the Gargarish neighbourhood. Upon starting its verification process for the transfer, UNHCR asked each person to sign a release form, written in English, stating that the UNHCR will not provide shelter or cash assistance, but only food and non-food items (NFIs).

Responding to this development, MSF referred 81 persons, who self-identified as being under 18 and unaccompanied, to UNHCR. Information was collected during brief interviews with detainees to understand their protection needs. Nearly 40 percent of this group indicated that they have family links in Europe, North America and Australia.

Out of this group of 81, UNHCR only considered 10 as children, as they were still under 18 at the time of release. The remaining youths were treated by the UNHCR as adults, despite recognising that they were minors when originally detained; and, thus, they were immediately excluded from any special protection measures available for minors under the CRC. Upon their release in mid-January 2021, MSF received several calls from these individuals, who were disoriented and confused after spending years in detention only to be dropped off in front of the UNHCR office in Saraj with a renewed Asylum Certificate, LYD20 for transportation and a promise of a food parcel and NFIs, which only a few reported to have obtained.

At present, regardless of condition or need, upon turning 18, individuals lose access to services, protection and care to which they were entitled as minors. Worse still, as “young men,” these vulnerable teenagers are very likely to be excluded from resettlement and family reunification programmes²⁷² due largely to their age, as they no longer meet the definition of “childhood.” As a

result, this population of young, distressed males are effectively abandoned with little hope of rehabilitation or reintegration. The only option left is to cross the sea. The lucky few, who succeed in reaching Europe – most often via perilous boat journeys – are subject to adult immigration control standards with little regard given to the extreme deprivation they experienced during childhood.

There is a need to rethink how protection agencies treat these young adults. Given the long state of detention and violence endured, these young adults should be, in fact, prioritised for immediate and long-term protection solutions. When assessing protection needs, age should be considered along with other systematic failures that prevent children from reaching their full potential, rather than trapping them in a space where violence and detention is normalised.

Case II: Access to protection for unaccompanied minors who are survivors of torture and/or recovered from TB

This case study illustrates the challenges in accessing protection and alternative care for unaccompanied migrant minors who have survived torture and recovered from TB. The information shared in this case study is based on the experience of MSF staff in the MSF TB centre in Misrata. In 2020, 49 patients were admitted, with an average of 23.27 percent under 18 years old. The main nationalities of the patients in the clinic are Eritreans, Ethiopians and Somalis.

In 2020, 11 persons (22 percent) have been referred to the TB unit immediately after escaping or being released from the hangars run by criminals in Bani Walid. A further 22 patients mentioned that they passed through such torture hangars at some point in their journey. These persons reported being kidnapped and held against their will by criminals for up to one and a half years, averaging six months – in horrendous conditions, deprived of their freedom of movement, with no access to basic needs and exposed to physical and sexual violence. They are systematically tortured,²⁷³ with their families asked to pay ransoms for their freedom. While all nationalities face similar extortion, some nationalities face longer detention in such conditions as their families are demanded to pay higher ransom amounts (up to USD15,000 according to patients). The nationalities exposed to longer periods of detention match the nationalities seen in our TB unit: Ethiopians, Eritreans and Somalis.

The medical condition of patients referred from Beni Walid in 2020 is extremely severe, some critical.²⁷⁴ In addition to tuberculosis symptoms, more than half of the patients are severely malnourished,²⁷⁵ and all, except one, of the remaining patients are moderately malnourished,

showing signs of a systematic deprivation of food. All patients have scabies and other skin infections, resulting from the deplorable hygiene conditions in which they were detained. All patients show signs of violence in the form of alterations to their skin due to blunt and sharp trauma, thermal injuries and electrical injuries. Some also have impaired walking and persistent pain due to the use of certain torture technics such as falanga.²⁷⁶ They also show signs of psychological responses to the ill treatment they faced with signs of depression, symptoms of post-traumatic stress disorder and somatic symptoms. In 2020, all patients under 18 in the TB unit reported being kidnapped and held in Bani Walid.

“He tortured me day and night. When he understood that no one could pay for me, I hoped he was going to kill me. Instead he used me as ‘example’ to scare the others and threaten them to pay. He was putting me in the middle of the room, beating me with iron sticks and pulling my nails, and telling the others that this is what happens to them if they do not pay. This is what they do with people who cannot pay.”

A., 16 years old, Eritrean

Once admitted in the TB unit, the patients receive (as much as possible) the following holistic care addressing their conditions: Treatment for TB, nutritional follow up, treatment for scabies, the services of a psychologist (and a psychiatrist for the most severe cases), physiotherapy,²⁷⁷ regular psycho-social support session and recreational activities. In addition, a protection case worker follows up their situation to identify protection concerns and to develop a case plan for after discharge.

All patients under 18 years of age in the TB unit were unaccompanied,²⁷⁸ All patients have reported physical abuses and arbitrary detention, while 36 percent (8) have reported being trafficked to Libya. 18 percent (2) reported witnessing the death of a family member while in Libya. Only five say they have a support network at home, and only one mentioned relatives in Libya; the rest do not have any support network in the country.

As long as these children, who are survivors of torture, are in need of care due to their TB, MSF can guarantee safety and mental health support. However, once they are medically recovered from TB we encounter severe challenges in discharging them from our medical clinic due to the lack of reliable solutions, forcing MSF to extend their stay in a medical facility – which is not suitable for non-positive TB cases nor for children.

As per the International Minimum Child Protection Standards, unaccompanied children should be provided with alternative care options to meet their basic needs and safety. However, the options for alternative care in Libya are extremely limited despite their heightened

risk and vulnerabilities. There is only one organisation in Libya providing such services, and they face considerable constraints. In addition, child victims of torture should have access to specialised services for their rehabilitation. However, proper rehabilitation and specialised care cannot be guaranteed in Libya.

The main nationalities of our TB patients, as mentioned above, are not present in the community of Misrata, resulting in difficulties in placing children from Ethiopia or Somalia. The lack of presence of UNHCR in Misrata – no registration or interview services are available in Misrata – is a push factor for POCs to go to Tripoli, where they face amplified risks of violence and abuses. This explains the large community of Ethiopians and Eritreans, among other nationalities, in Tripoli and their absence from Misrata. MSF received reports of individuals, including Unaccompanied Asylum Seeking Children (UASC), asked by UNHCR to come by themselves to Tripoli from Misrata to participate in interviews. Some cases, supported through community-based care in Misrata, decided to leave Misrata for Tripoli thinking they would have faster access to the UNHCR evacuation programme there. Following advocacy by NGOs – including MSF – UNHCR has conducted registration visits in Misrata, with three visits recorded in 2020.

In Tripoli, the number of UASC is higher.²⁷⁹ While options for community-based care are broader due to the presence of communities from the nationalities concerned, the risk of violence towards these communities is also higher,²⁸⁰ and the ability to monitor their placement by the social workers is lower due to security considerations (few NGO staff visit these communities) as well COVID-19 restrictions (with organisations suspending home visits for more than seven months). This results in children being placed in community-based care, but without proper follow up and assurance that their basic needs are met and that they are not exposed to abuse. This is against alternative care standards.²⁸¹

One example is the case of S., a 15-year-old boy from Ethiopia, who after two months in the TB unit was referred to child protection services with various concerns identified: Asylum seeker, unaccompanied minor, survivor of torture, survivor of traumatic experience (witnessing the death of his relative) and signs of psychological distress. A request was made to find alternative care for him in Tripoli as no option in Misrata could be identified. MSF supported his transfer to Tripoli and to the UNHCR Community Day Centre, where he was taken in charge of by a social worker. The social worker then put him in contact with a community leader who helped find a host family. However, no proper follow up was done to assess the condition of the child in the hosting family, resulting in his decision to abscond and to stay with other adult migrants with all his basic needs unaccounted for. A month after his discharge to Tripoli, S. contacted the MSF protection case worker very distressed and worried,

saying: “I am scared, I don’t have money to pay the rent, until now people let me stay but now, I need pay. I have no money for food.” At the time of writing, S. is still in Tripoli and is staying in an urban setting without any support. He is considering crossing the sea as some of his friends did.

Due to the difficulty of identifying a protection solution for unaccompanied minors once they are medically recovered, MSF has no other option than to extend their stay in the clinic, sometimes up to more than a month until a temporary solution could be found. Out of the 13 patients under 18 years old in 2020, seven were referred to UNHCR child protection services and only three were placed in a host family; the rest were referred to a community building with cash or no support. Out of these seven, five are currently in extremely vulnerable conditions following a brief assessment visit of MSF in Tripoli.²⁸² Most report not receiving information on their status, difficulty to access medical services and a lack of resources to meet their basic needs. These findings are corroborated by other organisations conducting protection monitoring.²⁸³ In addition, children recovered from TB face difficulty in pursuing their treatment after discharge, in attending follow-up appointments and in obtaining drug refills in Tripoli, mainly due to security concerns on moving within Tripoli and the lack of adult supervision.

The impact of inappropriate care for survivors of torture, including unaccompanied minors, has irreversible implications on their physical recovery – some relapse into multidrug-resistant tuberculosis – as well as their mental health. This is exacerbated by the lack of information regarding their procedure for evacuation, the inability to access existing medical or mental health services, the lack of adult supervision, the continued exposure to violence and the inability to meet their basic needs.

MSF believes that long-term solutions out of Libya should be the priority for these vulnerable cases; however, considering that most cases will not be evacuated before a minimum of six months after being registered,²⁸⁴ (if evacuated at all, or up to two years for UASC as shown in the first case study), it is imperative that appropriate solutions during this waiting period are supported for this population.

Conclusions and recommendations

Based on the experience of MSF in Libya, this policy note sheds light on the gaps in protection frameworks at the local, national, regional and international levels, which have a negative impact on children and young adults in Libya.

Without underestimating the operational constraints and risks associated – such as security, COVID-19 and access to liquidity – of implementing safe alternative care for children and young adults in Libya, MSF makes the following recommendations to UN protection agencies and partner NGOs:

- **In the Libyan context where the normalcy for migrants is abuse, protection actors must accept taking considered risks** that reduce the overall harm faced by minors in abusive situations or are otherwise at high risk.
- **Improve the possibility for persons of concern to access the services offered by UNHCR** (including registration, urban solutions and assessment for long-term solutions) all over the Libyan territory and not only in the city of Tripoli.
- **Ensure that survivors of torture are prioritised for evacuation and for other legal pathways out of Libya**, considering that there are no appropriate services in Libya for their rehabilitation.
- **Explore alternative care options for youth**, such as opening shelters for protection cases, including survivors of torture, or support individual/group independent living.
- **Ensure that young persons who arrived in Libya as children are not excluded from support solely** on the basis that they have reached the age of majority, and that the trauma and human rights violations that they experienced as children are taken into account in assessing their needs and identifying possible solutions.

Key Gaps in Protection Frameworks for Refugees and Migrants in Libya

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Introduction

Reports from the IOM Displacement Tracking Matrix (DTM) suggest that there are currently 571,464 migrants from over 43 nationalities in Libya,²⁸⁶ including 43,624 asylum seekers and refugees registered by UNHCR.²⁸⁷ Many of them are routinely subjected to torture, sexual violence, abduction for ransom, trafficking in persons, forced labour and unlawful killings throughout Libya, in a climate of near-total impunity.²⁸⁸ Migrants, asylum seekers and refugees are continuously observed by humanitarian organisations as being the most exposed to protection risks, including their exposure to abuse and exploitation. This is confirmed by data from the Mixed Migration Centre (MMC), which reveals that 37 percent of all surveyed individuals experienced one or more protection incidents within Libya, a remarkably high proportion that underlines how critical the situation for refugees and migrants is within the country.²⁸⁹

In 2010, the government of Libya introduced its Law No. 19 on Combatting Illegal Migration to penalise irregular entry,²⁹⁰ coinciding with the adoption of a cooperation agenda with the European Union (EU) to combat clandestine immigration.²⁹¹ It de facto criminalises all migrants by defining the act of “illegal” migration as covering “anyone who enters or stays in the Libyan territories without authorisation or permit from competent authorities with the intention of settling there or crossing to another country.”²⁹² Under this law, all foreigners who violate its migration provisions are criminalised and sanctioned with fines and imprisonment, regardless of their nationality or country of origin. This lack of distinction applicable to asylum seekers and refugees violates their right to international protection.

This paper draws on evidence, observations and first-hand data collected by 25 international non-governmental organisations (INGOs), which are members of the Libya INGO Forum (LIF) – an independent network of INGOs implementing humanitarian programmes or are in the process of setting up operations in Libya. Relying on their combined experience and expertise, this paper focuses on the lack of basic safeguards for migrants and refugees in Libya, and the culture of systematic abuses in the country, with a view towards making recommendations for policy reform and advocacy.

Lack of basic legal safeguards for migrants and refugees

While Libya is not a signatory to the 1951 Refugee Convention and its 1967 Protocol, the country has ratified the 1981 African Charter on Human and Peoples’ Rights and the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, both of which recognise the right to seek and receive asylum and prohibit expulsions. Libya’s 2011 interim Constitutional Declaration also embedded this right to asylum in its Article 10. Yet, these Conventions have never been translated into national laws and, as such, have never been enforced. Irregular entry, stay and exit constitute criminal offenses and are punishable by a prison sentence, a fine and, ultimately, deportation.²⁹³

The impact and responsibility of EU migration policies in hardening Libya’s national framework is undeniable: The EU practice of externalisation of its border control

and overall external migration policies have had a huge impact on all neighbouring countries – and Libya is no exception. Historically, Libya was a major destination for labour migrants seeking employment in the country's oil and construction sectors, with 1.2 to 1.5 million foreign workers prior to 2011. The majority of these migrants were from African countries and did not require a visa, enjoying free access to health care, education and other public services.²⁹⁴ In the span of a decade, from 2000 to 2010, the government considerably hardened its migration policies to align with the EU agenda, consecrated in 2007 by the reinstatement of visa requirements for all African nationals – effectively casting thousands of migrants into irregularity, and, in 2010, by the adoption of Law No. 19 on Combatting Illegal Migration.

Neither these repressive measures, nor the political and security instability the country has been facing since 2011, are deterring migrants from coming to Libya as a destination or a transit country. Refugees and migrants still perceive Libya as a viable destination, offering better opportunities for livelihoods than their origin countries.²⁹⁵ In 2019, an IOM study reveals that, of the migrants interviewed, 81 percent identified Libya as their intended country of destination at the time of departure from their country of origin.²⁹⁶ Most of those who intend to stay are drawn to the country's job opportunities, and wish to remain either permanently or temporarily.

Once in the country, migrants and refugees are confronted with widespread abuses and disproportionately affected by several types of protection incidents, as perpetrators are well aware of their vulnerability, lack of support networks and inability to seek justice and redress.²⁹⁷ In a recent assessment, IOM found that a quarter of migrants reported they would not turn to anyone for justice.²⁹⁸ Refugees and migrants from sub-Saharan Africa are reportedly particularly vulnerable to racial discrimination and xenophobia, and detention.²⁹⁹ As a result of their irregular status and lack of legal documents,³⁰⁰ as well as widespread discriminatory practices, most do not benefit from social protection mechanisms available to vulnerable Libyans.³⁰¹ They face challenges to access basic services and employment, resulting in poor living conditions and heightened vulnerability.³⁰²

As Libya does not have a functioning national asylum system, UNHCR has stepped in to conduct refugee status determination (RSD). However, their capacity to operate in the country is heavily constrained, and the protection UNHCR's certificates provide to refugees and asylum-seekers is very limited as there is no official memorandum of understanding between UNHCR and Libya. This means that no specific access to education or health services is granted on the basis of possession of a UNHCR certificate, and that UNHCR letters of attestation are not always recognised by Libyan authorities. UNHCR's ability to fill gaps in the national asylum framework is further limited by Libyan authorities' recognition that only

individuals of nine designated nationalities may have a claim for international protection.³⁰³

Culture of systematic abuses in the country: Arbitrary detention and unlawful deportations

As a direct consequence of these gaps in protection frameworks, migrants and refugees in Libya are highly exposed to arbitrary detention, abuse and exploitation. Elevated numbers of migrants and refugees continue to be arbitrarily detained after arrest for immigration-related reasons in urban and coastal areas, and thousands of migrants and refugees are believed to be held in other sites, such as those run by smugglers or non-state armed groups. Not only do humanitarian partners not have access to those sites to provide critical assistance,³⁰⁴ there is also no exhaustive knowledge on their locations, the number of people detained as well as their situation and needs. A study on determinants of detention by the MMC finds that *“ten percent of people surveyed between May 2017 and June 2019 reported being detained in Libya, and the proportion of respondents experiencing detention increased over time.”*³⁰⁵ The research centre stresses that *“refugees and migrants of East African origin were four times more likely to be detained than those from West, Central and North Africa.”*

These data are confirmed by protection organisations that monitor the situation in their areas of intervention: when surveying vulnerable migrants and refugees they are assisting in urban areas, these organisations found that the proportion of people having experienced detention in Libya is very high, depending on their location of residence and their nationalities. In Tripoli, of the total individuals surveyed between September and November 2020, 44 percent reported having been detained at least once, and up to three times or more.³⁰⁶

The progressively restrictive immigration practices of the EU Member States focused on containment and deterrence, which include interceptions at sea and in the desert of the Sahel, have played a role in effectively trapping migrants and refugees in Libya.³⁰⁷ Since the signing of the Libya-Italy Memorandum of Understanding on Migration in 2017,³⁰⁸ which was renewed in February 2020, Italy and the EU have provided financial and technical support to the Libyan Coast Guard (LCG) to increase its capacity to carry out search-and-rescue operations, while criminalising INGOs conducting much-needed rescue operations as per the international and maritime obligation to assist those in distress at sea. This support amounted to approximately EUR90 million in 2018 and 2019,³⁰⁹ despite reports accusing the LCG of collusion with smuggling networks³¹⁰ and involvement in human rights violations against asylum-seekers, refugees and migrants³¹¹ As a result of

increased LCG operations, with the active support of EU Member States, the proportion of persons intercepted at sea and being returned to Libya has risen,³¹² reaching a cumulative number of 50,417 migrants³¹³ by the end of 2020. As denounced by many humanitarian organisations, the return of these individuals to an unsafe country has resulted in the denial of their right to access asylum and therefore constitutes a violation of the principle of non-refoulement.³¹⁴

The majority of disembarked migrants and refugees are then placed into some form of detention, in either state-run or unofficial centres, without due process.³¹⁵ Since the beginning of 2021, there has been a sharp increase in both the number of departures from Libya, and those systematically and arbitrarily detained after being intercepted at sea and brought back for disembarkation. This year, the number of individuals detained in official detention centres (DCs) rose from just over 1,000 in January to almost 4,000 at the end of February.³¹⁶ The humanitarian aid provided to migrants and refugees in urban settings or those recently released from detention is often insufficient; it also suffers from poor coordination among operational partners and a lack of referral pathways. Thousands of migrants and refugees remain unaccounted for, following their disembarkation or recent release from DCs, having been brought to either unofficial centres or having managed to escape from the authorities. Very few organisations have access to disembarkation points or official DCs whether in the West or in the East of the country, and there is little to no capacity and ability to locate migrants and refugees.³¹⁷ Official declarations of the government in the West stating that they are in the process of closing all DCs are contradicted by the recent influx of arrest and detention of migrants in Tripoli in new centres, while larger structures in the centre of the country are reportedly being re-opened and rehabilitated, and could be presented as “isolation facilities” for migrants and refugees.

Finally, protection organisations have also observed an increase in mass arrests and deportations of migrants and refugees, predominately in the East³¹⁸ – where 29 percent of migrants are recorded – but also increasingly in the West. Between January and April 2020, the Office of the UN High Commissioner for Human Rights (OHCHR) expressed concern about the deportation of at least 1,400 migrants and refugees by land from eastern and southern Libya to Chad, Niger, Somalia and Sudan.³¹⁹ Moreover, since the adoption by the Eastern Ministry of Interior of Resolution No. 241,³²⁰ in July 2020, 36 mass arrest operations have been reported between May and December 2020, leading to a total of 2,298 migrants being arrested through mass operations in urban areas. Protection organisations have also noted an intensification of deportation from Benghazi, with 23 mass deportation operations recorded, resulting in a total of 1,595 migrants being deported to their countries of origin (mainly Chad, Egypt and Sudan). The COVID-19 pandemic increased discriminatory practices and stigma towards migrants

and refugees, with migrants often being presented as carriers of the virus, making it even more difficult for them to access the services they need, and further constraining aid organisations’ access to them.

Conclusions and recommendations

Until the legal framework related to migrants and refugees is broadened and revised, and incorporates ratified and existing international legal frameworks into domestic laws and their applications, the majority of refugees and migrants in Libya will continue to be subjected to human rights violations. Libya is an unsafe country, and none of the migrants and refugees who embark on the journey to Europe should be returned to its shores. The international community must advocate for the improvement of the protection space in Libya, which will require robust, coordinated and high-level engagement with the Libyan authorities and all groups with de facto control of territory, at both national and local levels.³²¹

Since the launch of the Libyan Political Dialogue Forum (LPDF) in November 2020, progress has been made towards Libya's political reunification. The oath of the Government of National Unity, sworn in before the House of Representatives in March 2021, is a positive step forward, and INGOs are calling on Libyan authorities to rapidly address the key gaps in the protection frameworks for migrants and refugees in the country. So far, viable ways out of Libya, other than risking the dangerous crossing of the Mediterranean, are dramatically insufficient; migrants and refugees are in need of assistance and protection, including alternatives to detention for those detained, and prevention of re-detention for those in urban settings. Since 2017, only 6,186 refugees have benefitted from existing resettlement and evacuation programmes. In 2020, this figure was only 811 refugees,³²² of which 490 were transferred to Emergency Transit Mechanisms (ETM) in Niger and Rwanda and will now have to wait for durable solutions to be processed – in some cases, taking years³²³ – and 321 transferred to host countries in Europe and Canada.

The Libya INGO Forum consequently makes the following recommendations:

To Libyan authorities and groups with de facto control of territory

- In line with Article 10 of the Constitutional Declaration, commit to develop a national asylum system that will fairly and efficiently assess asylum claims, and will include adequate reception facilities.
- Commit to end arbitrary detention and gradually close all detention centres for migrants and refugees. All releases should be coordinated with relevant national and international actors to ensure the most vulnerable can access assistance. Pending their release, safe and unimpeded access of humanitarian actors providing life-saving assistance to detained populations must be guaranteed by the competent authorities.
- Ensure that all arrests and detentions are carried out with due process and legislative safeguards, including the right to challenge the detention and expulsion order in front of judicial authorities, and in respect with the human rights and wellbeing of all migrants and refugees.
- Ensure the formal recognition of UNHCR, in the form of a memorandum of understanding that will guarantee the organisation's full access to migrants and refugees across the country, with no restriction on nationality or any other parameters.
- Following the recommendations of the IHL/HR Working Group part of the Berlin Process:
 - Fully cooperate with international accountability mechanisms including the ICC and the Fact-finding mission on Libya mandated by the Human Rights Council;
 - Establish independent, impartial, and transparent monitoring and accountability mechanisms, with the aim of bringing the perpetrators of serious international crimes to justice.
- Ensure non-discrimination in the provision of public health services (beyond emergency assistance), and publicly communicate to all public health care facilities that migrants cannot be denied access because of their nationality or migration status.
- Take measures to enable migrants to report crimes committed against them without fear of being arrested, detained or deported because of their migration status.
- Establish safe and regular channels for migrants to facilitate their entry and work opportunities, in accordance with the right to decent work, including providing work permits to migrants already employed in Libya in order to legalise their status.

To the international community

- Support the Libyan authorities in implementing policies providing legal pathways for migrants, including brokering coordination with other states, and setting up durable alternatives to detention.
- Expand safe and regular entry channels for migrants and refugees, including but not limited to: increased settlement programmes, humanitarian admission programmes, private sponsorships, educational visas, family reunifications, or labour migration at all skill levels. The absence of legal pathways for migrants and the lack of adequate resettlement opportunities for refugees only works to further fuel the trafficking and smuggling industry, exposing already vulnerable people to often horrendous abuse and exploitation. Evidence shows that many refugees, asylum seekers and migrants only turn to smugglers having exhausted all possible legal options available. Currently, UNHCR's Emergency Transfer Mechanism (ETM) is virtually the only legal option for refugees and asylum seekers to leave Libya, so it is vital that there are more pledges from governments, and that the ETM process is streamlined by rapidly increasing the rate at which people are resettled. Last year, only 501 vulnerable refugees were evacuated out of Libya, including just 221 who were resettled to Europe. This barely scratches the surface of those in need;
- Ensure humanitarian interventions and bilateral country agreements are conditional upon adherence to human rights standards and international laws.

To the European Union and Its Member States in particular, including Delegations and Representatives in Libya

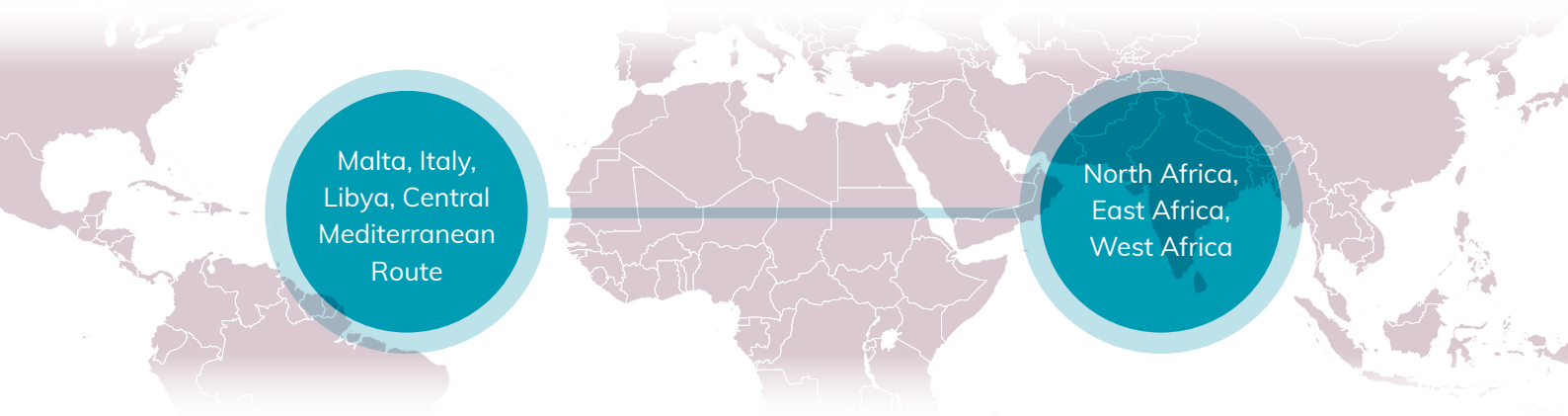
- Fully commit to implement the outcomes of the Berlin Conference, explicitly calling for the European Union support for initiatives to:
 - Amend the Libyan legislative frameworks on migration and asylum to align them with international law and internationally recognized standards and principles;
 - End arbitrary detention, gradually close the detention centres for migrants and asylum seekers and establish alternative procedures to detention.
- As Libya is not a safe port for disembarkation of people intercepted or rescued at sea, urgently re-establish search and rescue capacity in the Mediterranean Sea to prevent loss of life and comply with the principle of non-refoulement.

To the humanitarian community

- Engage in comprehensive and high-level joint advocacy vis-à-vis the Libyan authorities to improve the protection space throughout the country. Consider engaging jointly in a policy dialogue with the Libyan authorities at different levels on a human rights-centred approach to migration management.
- Continue to advocate with the Libyan authorities to establish safe spaces for migrants and refugees and develop alternatives to detention for migrants and refugees in Detention Centres and those intercepted at sea at risk of being brought to detention.
- Renew efforts in effective operational coordination, especially through the development and strengthening of referral pathways and systems between international and national humanitarian actors, and in cooperation with available public services.
- Further develop cross-sectoral initiatives, linking in particular protection, shelter, and multi-purpose cash assistance to allow decent living conditions for migrants and refugees in urban settings.
- Strengthen the accountability frameworks in place in the humanitarian response, including full compliance to the Principled Framework of intervention in Detention Centres, and the United Nations Human Rights Due Diligence Policy (HRDDP). Under these two frameworks, humanitarian actors cannot provide authorities with support in constructing, renovating, or any other work that would facilitate the opening of new detention facilities.

When Private Vessels Rescue Migrants and Refugees

Author: Dr. Jean-Pierre Gauci*



Introduction: The Issue

Private vessels are often called to assist vessels in distress – and sometimes the assisted vessels include persons fleeing persecution, war and other human rights violations. Of the 152,343 people rescued at sea in 2015, over 16,000 were rescued by merchant ships and over 20,000 were assisted by rescue boats belonging to non-governmental organisations (NGOs). In 2016, 381 merchant ships were diverted from their routes and 121 ships were involved in the rescue of 13,888 people. In recognition, the International Maritime Organisation commended “all merchant vessels and their crew participating in the rescue of mixed migrants at sea for their bravery, professionalism and compassion embodying the highest traditions of the sea.”³²⁴

The engagement of private vessels carries a number of legal (human rights and commercial) implications. Concerns over the role of private (merchant) vessels when rescuing migrants at sea have been raised by researchers and activists over recent years. Despite their particularities, individual cases often raise similar questions concerning the obligations and responsibilities of commercial vessels, as well as the responsibilities of States involved in such rescues. The key issues include the following: The failure of some vessels to rescue people at sea, delays in the disembarkation of rescued persons and instructions to vessels to return rescued persons to unsafe ports (e.g. Libya).

This policy brief will examine three responsibilities that vessels have in turn – namely, the obligation to rescue, responsibilities under human rights law (in particular the UN Guiding Principles on Business and Human Rights) and commercial responsibilities towards clients. It will then raise the question of state responsibility before presenting eight key recommendations.

Obligation to rescue

The obligation of commercial vessels to rescue people in distress at sea is established in domestic law, customary international law, industry practice and treaty law, with the latter including the 1982 UN Convention on the Law of the Sea (UNCLOS), the 1974 Convention for the Safety of Life at Sea (SOLAS) as well as the 1989 International Convention on Salvage (the “Salvage Convention”). These obligations are directed towards the State through whose legislation it becomes binding on the shipmasters of vessels flagged in that jurisdiction, although the wording of both SOLAS and the Salvage Convention refers directly to the shipmaster. There is a widespread acceptance of the obligation to rescue, at least at the general level, including through the obligation of States to require vessels flying their flag to rescue people in distress under customary international law, and therefore binding on all States.³²⁵ The general duty

*This policy brief is extracted and adapted from a report published by The British Institute of International and Comparative Law in November 2020. The full report is available at: <https://www.biiicl.org/publications/when-private-vessels-rescue-migrants-and-refugees-a-mapping-of-legal-considerations>. Special thanks to Francesca Romana Partipillo for her research assistance on the original project and to Idel Hanley for her assistance in the finalisation of the report and this policy brief.

to rescue may, theoretically, give rise to criminal and civil liability in the case of failure to abide by the obligation. The obligation to rescue is often incorporated into the criminal law provision of flag States, and it often includes criminal penalties in the form of a fine or imprisonment for shipmasters who ignore their duty to rescue.³²⁶

The obligation to rescue, while broad, is not absolute. Indeed, limitations on the obligation have existed since the early days of its development. Under UNCLOS, the provision is limited by “as far as it is reasonable” to do so.³²⁷ Under SOLAS, a shipmaster is given the discretion to decline to provide assistance if “unable or, in the special circumstances of the case, considers it unreasonable or unnecessary to proceed to their assistance.”³²⁸ The stricter limitation on the shipmaster’s discretion is found in the Salvage Convention, which provides that the obligation to rescue stands as long as the shipmaster can rescue “without serious danger to his vessel and persons thereon.”³²⁹

Business responsibility: The UN Guiding Principles on Business and Human Rights

In the context of the rescue of migrants at sea, the responsibility of private vessels to avoid infringing upon the human rights of others as set out in the UN Guiding Principles on Business and Human Rights (UNGPs), includes, at a minimum, two manifestations.

The first relates to those obligations emanating from the right to life, and this includes an obligation to do one’s duty to prevent loss of life at sea. This, in turn, includes responding to situations of distress and to ensuring that the vessel, including its crew, is prepared to undertake the rescue so as to avoid death or injury during the course of a rescue operation. While the extension of positive obligations in human rights law to corporate actors through the UNGPs is a matter of debate, undertaking rescue operations is both a requirement of the law of the sea and a human rights obligation extending from the responsibility of business to respect the right to life. In addition, the duty to rescue applies both to States and to masters of ships.³³⁰ Indeed, under international law, the duty to rescue is personally attributed to the master of the vessel. It may be argued that the shipmaster is the subject of the duty, for instance under SOLAS,³³¹ and that the shipowner is not to be held liable for a breach of the duty to rescue, as under the Salvage Convention.³³²

This obligation is further imbued with other human rights requirements, such as the principle of non-discrimination. This duty applies to all persons in distress without distinction. The nationality of the vessels or of the persons, their legal status and the activity in which they are engaged are irrelevant. Even the fact that the persons are engaged in an unlawful activity should not make any

difference to the duty to rescue. The fact that the persons to be saved are migrants or are in the process of being smuggled should not in any way interfere with the right to be saved.³³³ This is clarified by both the SOLAS and the Search and Rescue Convention.³³⁴

The obligation to rescue also involves being prepared to rescue. Under SOLAS for instance,

“All ships shall have ship-specific plans and procedures for recovery of persons from the water, taking into account the guidelines developed by the Organisation.”³³⁵

This is particularly relevant given that many commercial vessels will have high sides that make recovering persons from the water dangerous.

The second manifestation is that the shipmaster should ensure that they are not party to violations of the principle of non-refoulement. The prohibition of refoulement emanates from multiple sources in both refugee law (notably, Article 33 of the 1951 Geneva Refugee Convention) and human rights law (including the right to life and the prohibition of torture as well as cruel and inhumane treatment or punishment). Addressing the obligation of non-refoulement as applicable to States, UNHCR notes that they

“are bound not to transfer any individual to another country if this would result in exposing him or her to serious human rights violations, notably arbitrary deprivation of life, or torture or other cruel, inhuman or degrading treatment or punishment.”³³⁶

Non-refoulement, as established in the refugee convention and complemented through human rights standards, is a principle of customary international law binding on all States.³³⁷ It includes both direct and indirect refoulement. The prohibition of torture is recognised as *jus cogens*.³³⁸ The application of the principle of non-refoulement³³⁹ in maritime operations, including relating to immigration control, is reiterated in other relevant instruments such as Article 19 of the Protocol against the Smuggling of Migrants.

The application of the principle has been elaborated by courts, including the European Court of Human Rights in the case of *Hirsi Jamaa v. Italy*.³⁴⁰ The 2004 International Maritime Organisation (IMO) Guidelines on the Treatment of Persons Rescued at Sea call on shipmasters to ensure that “survivors are not disembarked in a place where their safety would be further jeopardised.”³⁴¹ While the IMO Guidelines are not directly binding, they are adopted with a view to supporting governments in adhering to

their binding legal obligations. Domestic courts have also determined that actions by rescued persons, in pressuring shipmasters not to return them to countries like Libya, were justified under the principles of self-defence.

Other human rights might also be impacted in the context of rescue operations. Depending on the conditions onboard the vessel, the treatment of rescued persons might be in violation of the prohibition of degrading treatment, for instance. Here, one should note that the obligation of the shipmaster to treat rescued persons with respect is circumscribed by the limitations of the vessel, and must be read in line with the rescue vessel not being a place of safety and the need to facilitate prompt disembarkation. Moreover, the right to physical and mental health of rescued persons may also be impacted, as frequent stories of individuals taking ill and attempting suicide have clearly highlighted.

In this regard, it is also worth noting that adequate planning, preparation, training and support are needed to ensure that the rights of crew members are also safeguarded. This includes, but is not limited to, the right to health. As the International Chamber of Shipping recognises, “seafarers may experience stress or psychological after effects following a rescue operation,”³⁴² and preventive measures must be taken as regards communicable diseases.

According to UNGP 23, “all business enterprises have the same responsibility to respect human rights wherever they operate. Where the domestic context renders it impossible to meet this responsibility fully, business enterprises are expected to respect the principles of internationally recognised human rights to the greatest extent possible in the circumstances, and to be able to demonstrate their efforts in this regard.” This issue becomes particularly fraught when a vessel is faced with instructions by rescue coordination centres to undertake an action that may result in human rights violations. Such instructions may involve disembarking individuals in a country where they face harm or instructions to hand over control of the rescued persons to authorities from those countries, placing a shipmaster in a particularly difficult position. While rescue instructions by the Maritime Rescue Coordination Centre (MRCC) are not enforceable against a vessel on the high seas,³⁴³ especially when the instruction relates to the disembarkation of rescued persons, the coastal State may well be the next port of call for the vessel and will make it impossible for that vessel to sail into its ports. Indeed, there have been situations where ports were closed for vessels who were not allowed to disembark rescued persons.

Put differently, while the instruction as to where to return people is not binding (or enforceable), a vessel will often come within the enforcement jurisdiction of a State if it sails into that State’s contiguous zone waters or territorial sea. Entry into port for the purpose of disembarkation falls squarely within the remit of the coastal State’s decision. Indeed,

“under the Law of the Sea regime, a coastal State is therefore principally entitled to take measures against a vessel that is not authorised to enter its territorial sea. It is submitted that such measures may include an exchange of communications, requiring the vessel to leave, blocking passage by positioning ships in the vessel’s way, and ultimately, the use of forceful means.”³⁴⁴

In practice, therefore, there is significant pressure on the shipmaster to follow the instructions given. Moreover, when a vessel sails into the port of that coastal State, or even as soon as a vessel enters the contiguous zone of a State, “the coastal State may exercise the control necessary to prevent and punish infringement of its immigration laws within its territory or territorial sea” (in line with UNCLOS).³⁴⁵

In practice, the response to such instructions varies and will depend both on the decision of the shipmaster, and the broader organisational culture as reflected in its human rights statements, if available. Two examples stand in stark contrast. Facing relatively similar instructions, the MV Salamis in 2013 and the MV Nivin in 2019 adopted different approaches. The MV Salamis challenged the instruction and continued to sail towards Malta. It was blockaded outside Maltese waters and threatened with legal action. Eventually, after a standoff of four days, the migrants on board were allowed disembarkation in Italy. The MV Nivin, on the other hand, sailed to Libya to disembark the migrants it had rescued.

These situations raise important questions; companies must equip the masters of vessels to make decisions that comply with human rights obligations. Importantly,

“The owner, the charterer or the company operating the ship ... or any other person ... shall not prevent or restrict the master of the ship from taking or executing any decision which, in the master’s professional judgment, is necessary for safety of life at sea.”³⁴⁶

Vessels, and their representatives, should use their leverage with the relevant search-and-rescue and coastal States, and with and through their flag State, to identify solutions that do not render the vessel de facto part of situations of refoulement.

Commercial implications

Deviation and delay linked to rescue will entail significant financial ramifications for the vessel involved and the parties with a financial interest in that journey. Migrant rescue operations tend to be complex, with the allocation of costs involving the shipowner, the charterers, the cargo owners and insurers, at a minimum. Determination of exact costs is subject to the details of any particular situation. The costs can broadly be categorised as direct and indirect.

Direct costs include humanitarian provisions, additional wages and stores, extra fuel consumed during and after the rescue, port charges assessed during disembarkation of rescued persons, repairing, restocking and cleaning the vessel itself.³⁴⁷ Indirect costs comprise issues arising from deviation and delay; implications on the commercial agreements underlying any given voyage; and losses to the money-making potential of the vessel. As Attard notes, “providing assistance may entail loss of profit or damage due to, inter alia, deviation or delayed disembarkation.”³⁴⁸

These are likely to be even more substantial than the direct costs. As the MV Tampa,³⁴⁹ MT Salamis³⁵⁰ and Maersk Etienne incidents illustrate, these delays are likely to be worsened by States’ unwillingness to allow disembarkation. While details of such losses have tended not to be published, stakeholders have reported losses of up to USD500,000 arising out of a single migrant vessel rescue causing the vessel to be delayed for one week.³⁵¹ While insurance may cover some of these expenses (as we will see below) significant costs will be borne by those having a direct financial interest in the voyage.

The determination of costs and, critically, who bears those costs, will depend on the underlying agreements. Identifying the parties responsible for specific costs will allow them to better prepare and seek relevant insurance and related coverage. An important distinction must be drawn here between contracts for the carriage of goods under a bill of lading (used primarily in the liner trade) on one hand, and contracts for the carriage of goods under a charterparty (in the tramp trade) on the other.

On state responsibility

While the focus of this policy brief has been on the role played by private vessels, States retain significant obligations. These obligations include flag State responsibility to ensure that any vessel flying its flag rescues persons in distress; coastal States’ obligations to minimise delay in disembarkations; and the accountability, under international law, for instructions given to private vessels that violate human rights obligations.

Conclusions and recommendations

This briefing has demonstrated that privately-owned vessels have a clear obligation to rescue persons in distress. Yet, it has also shed light on the limitations to, and incomplete nature of, this framework. Based on the research, it is urgently recommended that the following changes be made to ensure rescue by private vessels.

1. **There is a clear need for an integrated approach to boat migration and rescue at sea.** Such an approach requires genuine good faith efforts by States in line with their international obligations; all commercial players involved in shipping; and other actors including NGOs and international organisations. An integrated approach involves adherence to human rights principles as well as law of the sea requirements. Greater accountability under international law – such as the recent decision on jurisdiction by the Human Rights Committee – can go some way towards ensuring good faith implementation of obligations by States. Consumers, shareholders and others can help hold business to account internally, while developments in the business and human rights legal frameworks can further develop accountability mechanisms for shipping companies.
2. **The international community should clarify and formalise rules for disembarkation, and avoid using delayed disembarkation as a lobbying tactic for responsibility sharing.** The rescue of people at sea, across all its stages, should not be used as a bargaining chip.
3. **States must take responsibility for assisting shipmasters having rescued persons in distress at sea.** This can only be achieved if realistic, effective and efficient mechanisms for solidarity are developed between States, including the relocation or resettlement of asylum seekers and other rescued persons, according to a fair and equitable system of responsibility allocation.
4. **Shipping companies should use their individual and collective bargaining power to put pressure on States to better regulate rescue at sea** and to ensure the swift and safe disembarkation of all rescued persons in a place of safety. For example, the current negotiations around the new EU Pact on Migration and Asylum can be used as an opportunity for shipping companies to advocate for clearer guidance in this regard.
5. **Industry organisations should develop model clauses** addressing the sharing of risk between different actors involved, for easy adoption by shipowners and charterers into their agreements.
6. **States and industry bodies should consider developing international public or private mechanisms that allow shipping companies, and any other corporation engaged in maritime activities, to share the financial costs of the rescue of migrants at sea.** The model of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage could provide a basis for these discussions, allowing shipping companies to share the financial risks associated with rescue operations.
7. In order to promote greater engagement with the commercial implications in this area, **relevant parties should facilitate access to information on arbitration decisions** – even if anonymised and summarised – relating to questions addressing the allocation of costs linked to rescues at sea.
8. **Researchers and activists should ensure that the role of private vessels, especially in this field, is mainstreamed** in literature addressing business and human rights, and that business and human rights are mainstreamed in the analysis of merchant vessels involved in maritime rescues.

Voices from the Ground: Protection Risks and Smuggling from the Horn of Africa to Tunisia

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Introduction

My name is Nahom Bruk Gebremeskel, a refugee from Eritrea who is currently residing in Tunis, Tunisia. Since December 2019, I have been a volunteer with Mixed Migration Centre (MMC) North Africa (first while based in Médenine, now in Tunis), conducting a high number of surveys with refugees and migrants located in various cities in Tunisia, as well as in Sudan, through remote surveying. While conducting the surveys, I came across many migrants, asylum seekers and refugees, the majority of whom travelled from or are travelling through the Central Mediterranean Route. This helped me develop a fundamental understanding of the prevailing challenges they encounter, in addition to my learnings from my treacherous personal experiences traversing this route. Given that this contribution covers a broad topic, it is not possible to fully express all of the details of vulnerabilities on the ground. Hence, I will focus mainly on protection risks within the smuggling context in three countries along the route that I am most familiar with – Sudan, Libya and Tunisia.

Sudan

Many West Africans on the move are crossing the border to Sudan from Chad, during which they can become victims of physical violence and robbery at gun point by armed groups and criminal gangs. Furthermore, many reported that, during their stay in Sudan, they experienced an immense struggle to get access to work opportunities and other social services because of the following obstacles: The lack of proper documentation;

a language barrier particularly perceived by this group; a fear of detention and deportation by authorities; and perceived discrimination. Due to these factors, this group is often left without any other choice than engage in underpaid, informal labour jobs.

People on the move from the Horn of Africa – including Ethiopia, Eritrea and Somalia – might enter Sudan with or without the help of smugglers. When dealing with smugglers, however, most of the time, they find themselves locked up and tortured for ransom in areas like El Hajer (in Al Jazirah state, south of Khartoum) or in a warehouse in the middle of a desert. For East African migrants, living in Sudan becomes challenging after facing such extortions, in addition to arbitrary round ups in cities and detention by the authorities. To avoid such round ups or to get released from detention, East Africans might bribe the ones in charge. Nevertheless, bribes are just momentary quick fix, which makes the search for long-lasting solutions inevitable. Hence, smugglers often become the only option for them to escape their precarious situations, since the majority of people on the move from the Horn of Africa do not possess legal documents.

Libya

For the past three or four years, the majority of African people on the move have attempted to cross the Mediterranean Sea embarking from Libya. Almost all respondents I surveyed mentioned having become

victims of violence and abuses in Libya. In particular, I will narrow down the focus on refugees and migrants from the Horn of Africa.

To enter Libya with the help of smugglers, departing either from Egypt or Sudan, one has to travel through the Sahara desert. For a few fortunate ones, the journey will take a few days or weeks, but for the majority it lasts a couple of months. They travel in crowded vehicles, with limited water and food supplies, amid temperatures that rise above 40 °C; not to mention the violent treatment from smugglers they are exposed to. It reduces the possibility of making it alive to Libya. A high number of people on the move lose their lives on this desert journey every year due to factors like hunger, dehydration, car accidents and violent incidents, often involving the burning of vehicles, which happen between smugglers.

Many – if not all – of those who arrived in Libya reported that they were told to pay a higher ransom than the deal they had in the first place. Some also reported that they were brought to Libya after having been kidnapped, and were asked to pay a ransom. Whether someone enters Libya voluntarily or not, once trapped in the hands of smugglers, chances are high that torture might follow, including beatings, rape, starvation, water splashing during cold nights and electric shocks. A lack of medical supplies results in another considerable number not making it out alive from the warehouses before or even after paying the ransom. This is often considered the first link in the succeeding chain of warehouse tortures. Smugglers often extract money multiple times through a cycle of selling migrants more than once.

After passing through this cycle of torture, victims of severe protection incidents, such as those who suffered sexual and gender-based violence,³⁵² and other traumatised refugees and migrants try to cross the Mediterranean Sea. Often, they then end up being intercepted and detained in detention centres run by Libyan authorities from which evacuation to transit countries is carried out by UNHCR. These detention centres are known for their poor management in terms of medical and food supplies as well as safety. Many reported to have been sold to smugglers while being detained there. Some manage to escape and continue their lives in Tripoli, which is a relatively safe city for people on the move compared to any other place in Libya. However, being relatively safe does not make Tripoli a safe place. It is a city where they can still be exploited, robbed at gun point and even murdered in some occasions.

Tunisia

Traumatised refugees and migrants naturally have less capability of dealing with certain circumstances than those who have not experienced trauma. After an often perilous journey, it is hard for them to get back to “normal life,” unless psycho-social assistance is provided. Many

who come to Tunisia from Libya cannot access such services, since they lack the proper documentation. Moreover, some cannot afford such assistance and others do not really understand the essence of it. The absence of both proper documentation and an asylum law also hinders refugees and asylum seekers from obtaining work and study permits, as asylum cards only grant limited authorisation. Attempting to address this problem, humanitarian organisations such as UNHCR advocate for more durable solutions. Thereby, their collaboration with national and international organisations is seen to increase activities that aid refugees and migrants in Tunisia in sustaining their self-esteem. In addition to my personal experiences, the analytical reasoning of the surveys I conducted with many migrants, asylum seekers and refugees for over a year in Médenine, located in the south of Tunisia, enabled me to understand the extent of discrimination that people on the move still face. Hence, it is crucial for the authorities to devise further means for improving the relationship between local communities and people on the move.

I hope to convey this message not just on my behalf, but also for many others like me. In closing, I wish to express my gratitude to MMC North Africa for entrusting me with this task and for giving me the opportunity to broadly spotlight protection risks in the context of smuggling in Sudan, Libya and Tunisia.

“Despite the existence of international organisations, they are hardly known to migrants, asylum seekers and refugees. It is very important for those NGOs to find ways of introducing themselves to these vulnerable populations, because it is usually easier for the NGOs to trace the migrants than for migrants to chase them.”

Nahom Bruk Gebremeskel, 4Mi Monitor, Mixed Migration Centre North Africa

Annex

Live notes from daily wrap-ups during the three days of the workshop

Across the three-day virtual workshop, daily wrap-ups on protection in mixed movement were presented, and key points for advocacy, policy reform and action were co-created by all participants.



Credit: © Ink Factory / UNHCR / MMC
 Visualised by Ink Factory – inkfactorystudio.com

Endnotes

- 1 The views expressed in this section are those of the authors and not of UNHCR or IOM.
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- 279 Approximately 2560, based on Humanitarian Needs Overview 2021 data
- 280 Event of a killing of a 15-year-old reported in December 2020
- 281 Interagency Working Group on Unaccompanied and Separated Children (2013). *Alternative Care in Emergencies Toolkit*
- 282 Additional two are currently pending a placement with a family identified
- 283 DRC Protection Monitoring reports
- 284 Based on observations of cases referred by MSF
- 285 This advocacy note is a product of the Libya INGO Forum and has been endorsed by its members.
- 286 IOM DTM (2021). *Libya Migrant Report - Round 34* (November - December 2020).
- 287 See UNHCR portal, as of March 2021.
- 288 See, for example, Amnesty (2020). 'BETWEEN LIFE AND DEATH' Refugees and migrants trapped in Libya's cycle of abuse. London.
- 289 See MMC (2020). *Sharper Lens on Vulnerability* (North Africa). A Statistical analysis of the determinants of vulnerability to protection incidents among refugees and migrants in Libya, p. 19.
- 290 Provisions for migration-related violations are contained in two specific laws: Law No. 6 (1987) Regulating Entry, Residence and Exit of Foreign Nationals to/from Libya as amended by Law No. 2 (2004) and Law No. 19 of 2010 on Combating Irregular Migration. See MICIC (2017), *An Unending Crisis – Responses of Migrants, States and Organisations to the 2011 Libya Crisis*, p. 20.
- 291 Ibid., p. 18.
- 292 Article 1 of Law No. 19 of 2010 on Combatting Illegal migration. See ICPMD (2020), *The Foreigners' Legal Guide to the Libyan Legislation*, p. 66.
- 293 Article 6 of Law No. 19 of 2010 on Combatting Illegal migration. See ICPMD (2020), Ibid.
- 294 See MICIC. (2017) *An Unending Crisis*, op. cit.
- 295 See for example, Westcott, T. (2019). "In Libya, hard economic times force migrant workers to look elsewhere". *The New Humanitarian*, 18 February 2019.
- 296 See IOM (2019). *Libya - migrant vulnerability and humanitarian needs assessment*, 19.
- 297 See OHCHR & UNSMIL (2018). *Desperate and dangerous: Report on the human rights situation of migrants and refugees in Libya*.
- 298 IOM (2021). *Closely knit. An assessment of migrants' social networks in Libya*, 34.
- 299 MMC (2020). *A Sharper Lens on Vulnerability* (North Africa), op. cit.
- 300 OCHA (2020). *Libya HNO 2021*, 37-71.

- 301 According to some researches, some do, at local level, depending on local migration governance. See for example the case studies of Ghat, Bani Walid and Zawiya in Clingendael & Global Initiative. (2019) From abuse to cohabitation: A way forward for positive migration governance in Libya p. 58.
- 302 A recent study from IOM stresses that 20% of migrants live in a building deemed inhabitable. See IOM-DTM. (2020) A Long Way From Home. Migrant's Housing Conditions in Libya, p. 27.
- 303 Accordingly, UNHCR has registered as persons of concern primarily individuals from these nine countries, namely Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen. Outside of the nine nationalities, UNHCR exceptionally registers small numbers of persons from other refugee-producing situations, including for instance Mali, Burkina Faso and NW/NE Nigeria, and, irrespective of nationality, persons with particular claim profiles such as persons of diverse sexual orientations and/or gender identities, survivors of sexual and gender-based violence (SGBV) and survivors and victims of trafficking. UNHCR continues to advocate for the registration of all persons seeking international refugee protection, regardless of nationality, and seeks cooperation from all partners to ensure quality referrals to UNHCR. See UNHCR (Sept 2020), UNHCR position on the designations of Libya as a safe third country and as a place of safety for the purpose of disembarkation following rescue at sea, footnote 25, pp. 3-4, <https://www.refworld.org/pdfid/5f1edee24.pdf>
- 304 OCHA (2020). Libya HNO 2021, p. 18.
- 305 MMC (2019). What makes refugees and migrants vulnerable to detention in Libya? A microlevel study of the determinants of detention, p. 5.
- 306 Protection organisations monitoring report, September - November 2020.
- 307 See Sabrina Tucci, "Libya and International Refugee and Asylum Law: Addressing the Protection of Refugees and Migrants Displaced by the 2011 Conflict», Oxford Monitor of Forced Migration, Volume 2, Number 2, pp. 48-54.
- 308 Memorandum of Understanding on Cooperation in the Fields of Development, the Fight Against Illegal Immigration, Human Trafficking and Fuel Smuggling and on Reinforcing the Security of Borders Between the State of Libya and the Italian Republic, 2 February 2017.
- 309 Legal opinion on the legality of EU funding for the Libyan coastguard, in GLAN, ASGI & ARCI, Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's 'Support to Integrated Border and Migration Management in Libya' (IBM) Programme, p.2
- 310 See Euronews, EU Funds Libyan Coast Guard but Has Limited Monitoring Capacity, Leaked Report Suggest, 3 November 2019; or AP News, Making Misery Pay: Libya Militias Take EU Funds for Migrants, 31 December 2019.
- 311 UNSC (2019). United Nations Support Mission in Libya: Report of the Secretary-General, 26 August 2019, S/2019/682.
- 312 See updated arrival figures on the UNHCR portal.
- 313 See UNHCR Update Libya from 2017, 2018, 2019 and 2020: their December reports indicate that the numbers of migrants and refugees intercepted at sea by the LCG and brought back to Libya are respectively: 15,238 - 14,949 - 8,965 and 11,265.
- 314 Hirsi Jamaa and Others v Italy [GC] No. 27765/09 (European Court of Human Rights 23 February 2012). See also, in Sea Watch case before the Tribunal of Agrigento, Uff. GIP, judgment of 2 July 2019, Judge Vella; and Criminal proceedings against Gip Catania, Nunzio Sarpietro in Open Arms's case, Decision of 15 May 2019; Mediterraneo's case, Tribunal of Agrigento, 29 January 2020; and Vos Thalassa's case, Tribunal of Trapani, 23 May – 3 June 2019. In GLAN, ASGI & ARCI, Complaint to the European Court of Auditors Concerning the Mismanagement of EU Funds by the EU Trust Fund for Africa's 'Support to Integrated Border and Migration Management in Libya' (IBM) Programme, p. 4.
- 315 See reports from human rights organisations and regular protection agencies. See for example: "UNHCR and its partner, IRC, continued to be present at the disembarkation points to provide urgent medical assistance and core relief items (CRIs) before individuals were transferred to detention centres by the Libyan authorities." in UNHCR Update Libya, 31 December 2020
- 316 UNHCR (2021). Libya Update, 26 February 2021
- 317 In addition to that, a number of DCs are quite porous, and many migrants and refugees get in and out of detention for various reasons, which makes it even more difficult to track them and provide assistance.
- 318 Numbers are communicated on the social media accounts of some DCs. See for example the following Facebook pages: <https://www.facebook.com/جهاز-مكافحة-الهجرة-غير-2259394174314795-الشرعية-بنغازي-التجوي>; <https://www.facebook.com/-619432161465512شحات-فرع-الشرعية-فرع-مكافحة-الهجرة-غير-الشرعية>; https://www.facebook.com/جهاز-مكافحة-الهجرة-غير-الشرعية-اجدابيا-111727730595975/?ref=page_internal
- 319 See OHCHR, Oral update of the United Nations High Commissioner for Human Rights on Libya pursuant to Human Rights Council resolution 40/27, 18 June 2020.
- 320 This Resolution led to the creation of a specific committee and operations aiming at the listing of all foreigners living in Eastern Libya through an electronic system and deporting all those who do not have legal documentation or/and any persons having communicable disease to their Country of Origin, in violation of international protection legal frameworks.
- 321 Some researches provide interesting perspectives such as looking into the private sector, to become a driving force for positive migration governance. In the Libyan context, "one clear opportunity lies in the possibility for local government actors to capitalize on the need for, and the acceptance of, migrant labour – linked to an overall need to strengthen (inclusive) economic growth". See Clingendael & Global Initiative (2019), From abuse to cohabitation: A way forward for positive migration governance in Libya, p. 70.
- 322 UNHCR Update on Libya, dated 31 December 2020
- 323 See ECRE (2020), Refugees in Niger Protest Against Delay of Resettlement and Dire Conditions, 20 December 2020.
- 324 IMO, 'Special Recognition for Merchant Vessels and Their Crew Involved in the Rescue of Mixed Migrants at Sea (Resolution A.1093(29)).' (International Maritime Organisation 2015).
- 325 See: Papanicolopulu, I. (2016). 'The Duty to Rescue at Sea, in Peacetime and in War International Review of the Red Cross' (98 International Review of the Red Cross 491.; Felicity Attard, The Duty of the Shipmaster to Render Assistance at Sea under International Law (BRILL 2020).92–108.
- 326 Attard (n 2).
- 327 Article 98
- 328 Cap V Reg 33.1
- 329 Article 10(1)
- 330 See generally: Bernaz, N. and Pietropaoli, I. (2020). 'Developing a Business and Human Rights Treaty: Lessons from the Deep Seabed Mining Regime Under the United Nations Convention on the Law of the Sea' Business and Human Rights Journal 1.
- 331 Cap v. Reg 33.1
- 332 Salvage Convention Article 10(3)
- 333 Papanicolopulu (n 2) 11.
- 334 SOLAS Cap V Reg 33.1;
- 335 SOLAS Cap III Reg 17-1
- 336 UNHCR, 'Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol' 17.
- 337 See ICJ, Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal); International Court of Justice 20 July 2012
- 338 Ibid.
- 339 Lauterpacht, E. and Bethlehem, D. (2003). 'The Scope and Content of the Principle of Non-Refoulement: Opinion' Refugee protection in international law: UNHCR's global consultations on international protection 87.
- 340 Hirsi Jamaa v Italy (European Court of Human Rights). See in this regard: Mallia and Gauci (n 12).
- 341 IMO, 'Guidelines on the Treatment of Persons Rescued at Sea MSC.167(78)' (2004).
- 342 International Chamber of Shipping, 'Large Scale Rescue Operations at Sea: Guidance on Ensuring the Safety and Security of Seafarers and Rescued Persons' (International Chamber of Shipping 2015) 10.
- 343 Erk Rosaeg, 'The Duty to Rescue Refugees and Migrants at Sea' (Border Criminologies, 25 March 2020) <<https://www.law.ox.ac.uk/research-subject-groups/centre-criminology/centreborder-criminologies/blog/2020/03/duty-rescue>>.
- 344 Lisa-Marie Komp, L. (2017) 'The Duty to Assist Persons in Distress: An Alternative Source of Protection against the Return of Migrants and Asylum Seekers to the High Seas?', 'Boat Refugees' and Migrants at Sea: A Comprehensive Approach. Brill Nijhoff
- 345 Article 33
- 346 SOLAS Cap V Reg 34.1.
- 347 This list is provided in P&I Coverage documentation.
- 348 Attard (n 2) 14.
- 349 Rothwell, D. (2002). 'The Law of the Sea and the MV Tampa Incident' 13 Public Law Review. Attard (n 2). 87.
- 350 Mallia, P. and Gauci, J. (2014) 'Irregular Migration and the International Obligation of Non-Refoulement: The Case of the MV Salamis from a Maltese Perspective' (2014) 2014 Journal of International Maritime Law.
- 351 Kilpatrick, R. 'The "Refugee Clause" for commercial shipping contracts: why allocation of rescue costs is critical during periods of mass migration at sea', <https://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=2409&context=gjicl>
- 352 Sexual and Gender-Based Violence

