



Réseau **SOS-Torture**

WORKING GROUP MIGRATION AND TORTURE IN AFRICA

Contribution to the Call for inputs for the Report of the Special Rapporteur on the human rights of migrants

Human rights violations at international borders: trends, prevention and accountability

Submitted to the Special Rapporteur on the human rights of migrants

Members of the Working group:

- **DIEYE Aminata** (Chairperson) Organisation Mondiale Contre la Torture (OMCT)
- **OYAMTA BALDAL** Ligue Tchadienne des Droits de l'Homme /Tchad
- **ALAA TALBI** Forum Tunisien pour les Droits Économiques et Sociaux (FTDES) /Tunisie
- **MWANGI KEVIN** Independent Medico-Legal Unit (IMLU) /Kenya
- **ESTHER NABWIRE** African Centre for Treatment and Rehabilitation of Torture Victims / Uganda
- **ELMEHDI AG WAKINA** Association Malienne pour la Survie au Sahel (AMSS) /Mali
- **BADAMASSI YAHAYA** Alternative Espaces Citoyens/ Niger
- **MOUSAPHA KEBE** Réseau Migration développement (REMIDEV) / Sénégal
- **MOHAMMED BADAWI** Africa Centre for Justice and Peace Studies (ACJPS) /Soudan
- **MAITE PAREJO SOUSA** Asociación Pro Derechos Humanos de España (APDHE)/Spain
- **SUSANNA MARIETTI** Antigone/Italy

The SOS-Torture Migration and torture Working in group in Africa, is a group of 10 experts from the OMCT SOS-Torture network, which aims to analyze first-hand information in order to set out authoritative research and recommendations for the protection of migrants against torture and other punishments or cruel, inhuman or degrading treatment. The group is sponsored by the World Organization Against Torture (OMCT) and the Collectif des Associations Contre l'Impunité au Togo (CACIT).

February 2022

Introduction

1. In his last report to the Human Rights Council (A/HRC/47/30), the Special Rapporteur on the human rights of migrants urged States to put an end to pushback practices, to respect fully the prohibition of collective expulsion and to uphold the principle of non-refoulement. Further, he provided a set of recommendations towards the development of a human rights-based, gender-responsive, age- and child-sensitive approach to migration and border governance, that ensures the human rights of migrants, including those in an irregular situation, are always the first consideration.
2. The OMCT working group on migration and torture in Africa published in December 2021 a report on OMCT, *The Cycle of Abuse against People on the Move in Africa*¹, in which it has identified some of the patterns of torture against migrants during their journey. Some of this are encouraged by pushback practices and collective expulsion in third countries.
3. Members of the working group have reported an increased border control along migration routes leading to further human rights violations either at the said borders or on new irregular routes taken by those escaping stricter controls.
4. Many States including in Africa are adopting increasingly restrictive deterrence-based immigration control practices and policies in response to the arrival of irregular migrants at their borders. These measures include *refoulement*; criminalisation; prolonged detention, often in appalling conditions; the separation of family members; inadequate reception conditions, including medical care; and “pushback” and “pullback” operations, including on the high seas and may amount to torture and or ill-treatment².
5. Several countries (e.g., **Niger, Senegal**) are pursuing these policies with support and funding from the European Union (EU) and individual Member States bilaterally, including Italy and Spain, in an attempt to “externalise” and outsource European border control. Regardless of their legal status or location, migrants have a range of fundamental rights that are undermined by these migration-control and externalisation practices. For instance, the European union has offered in February 2022 to deploy the EU's border agency to Senegal to help combat migrant smuggling, following a surge in perilous crossings to Spain's Canary Islands³. If agreed to by Senegal, it would be the first Frontex deployment outside Europe, and the plan could see drones, vessels, and personnel sent to Senegal as soon as this summer.⁴
6. European Union (EU)⁵ and some of its Member States bilaterally (including Spain and Italy) continue therefore to adopt a range of measures in order to deter and prevent migrants from entering Europe.

¹ OMCT, *The Torture Roads – The Cycle of Abuse against People on the Move in Africa*, <https://www.omct.org/site-resources/files/The-Torture-Roads.pdf>, December 2021

² See generally, “Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment”; A/HRC/37/50, 26 February 2018; “Unlawful death of refugees and migrants”, Report of the Special Rapporteur of the Human Rights Council on extrajudicial, summary or arbitrary executions; A/72/335, 15 August 2017; OHCHR, “Situation of migrants in transit”, A/HRC/31/35, 2016

³ EU seeks to deploy border agency to Senegal, <https://www.france24.com/en/live-news/20220211-eu-seeks-to-deploy-border-agency-to-senegal>, 11 February 2022

⁴ COVID in the Pacific, a Frontex first, and Latin America’s reopening: The Cheat Sheet. <https://www.thenewhumanitarian.org/news/2022/2/18/COVID-Pacific-Frontex-Latin-America-reopening-Cheat-Sheet>, 18 February 2022

⁵ These include measures to build the capacity of the Libyan coast guard to conduct search and rescue operations in order to prevent irregular sea crossings and return intercepted boats to Libya; restrictions on the ability of NGOs to conduct their own search and rescue operations; and suspending the deployment of EU naval assets (see e.g.

7. This contribution of the migration and torture working group aims to enshrine the reality of migrants facing border control measures in their home country as well as in transit and destination countries. It focuses on the main changes that occurred since 2020 answering to the questions suggested by the special rapporteur on the human rights of migrants.

I. Please provide information on any recently adopted domestic legislation amending border entry, asylum and other international protection procedures for non-nationals since May 2021. Grateful if you could kindly submit the original text of the relevant provisions of the legislation or policy(ies).

8. In 2020 and 2021 there has been some positive moves regarding domestic legislations protecting refugees and asylum seekers in some of the countries covered by our working group notably Kenya, Italy and Chad. The new adopted laws integrate important protective measures for asylum seekers.
9. In **Kenya**, the President has signed the Refugee Bill of 2019 on November 17, 2021, into law. The law compels the State to provide housing and social amenities to asylum seekers⁶. The refugee bill also allows refugees to get education, jobs and integrate into Kenyan society.
10. In **Italy** the last relevant legislation is the Law 173/2020 (converting law of Decree 130/2020) that has significantly changed – at least in theory – two fundamental aspects of the reception system for asylum seekers: Access to the (second) reception system; and the type and level of services provided in first and second accommodation facilities. The new law reforms the existing system, providing for personal services including psychological assistance and Italian language courses, which should be provided for asylum seekers at initial and special reception centers.
11. In addition, the law, through the establishment of the System of Reception and Integration (SAI), returns to the 'widespread' model that over the years showed very positive results in terms of social inclusion. Finally, the right to residency for asylum seekers is restored, ensuring them effective access to essential services.
12. On 23 December 2020, **Chad** adopted its first asylum law⁷ to protect the almost 500,000 refugees living in the country. The new law guarantees refugees' right to work, to move freely in the country, and to access healthcare, education, and justice⁸.
13. **Niger** has adopted in 2021 its national migration policy (2020-2035) with its five-year action plan. This new plan recognises that the legal framework for the protection of migrants is not always compliant with international treaties ratified by the country. It notes obsolescence of certain texts relating to the protection of the rights of migrants. It admits that the quantity and quality of the reception infrastructures as well as the level of

Amnesty International, “Libya’s dark web of collusion, Abuses against Europe-bound refugees and migrants”, 2017).

⁶ Kenya Gazette supplement, The refugee Bill 2019, http://www.parliament.go.ke/sites/default/files/2019-08/Refugees%20Bill%2C%202019_compressed.pdf

⁷ <https://www.refworld.org/pdfid/606334e04.pdf>

⁸ <https://www.unhcr.org/news/press/2020/12/5fe45dc44/news-comment-unhcr-welcomes-new-asylum-law-chad.html>

coordination of the structures responsible for the protection of migrants remain below expectations⁹.

14. This the strategy has adopted a strategic axis that contributes to strengthening the promotion, protection and enjoyment of the human rights of migrants and refugees as well as assistance to migrants, their families and host communities. As such, it encompasses actions aimed at the revision of texts, their popularization and their application. It also includes all the actions of care, social and professional integration, access to social services and resources (land), social protection, elimination of all forms of violence and abuse It recommends durable solutions for migrants, refugees, asylum seekers, their families and host communities.
15. Unfortunately, the situation in **Libya** remains worrisome since it does not have a functioning national asylum system and is still confronted with violence and instability. Restrictive governmental policies, only permit persons of designated nationalities to register with UNHCR. In fact, from January to March 2020, the Libyan authorities have only recognized nine migrants from Ethiopia, Eritrea, Iraq, Palestine, Somalia, Sudan, South Sudan, Syria and Yemen to possibly claim for international protection.¹⁰
16. In Libya the use of immigration detention has dramatically increased. Between January to August 2021 the number of migrants in detention rose from 1000 to close to 6000; of these around 90% are male (IOM & UNCHR Libya figures)¹¹. This can be explained by the decision taken by the Libya's Directorate for Combatting Illegal Migration (DCIM) to suspend all voluntary return for almost a year. Most are detained in Sabha and Tripoli. Detention conditions fall significantly short of international standards, with thousands of individuals being held in warehouses characterised by severe overcrowding, poor ventilation, a lack of sanitation, inadequate food and a lack of access to potable drinking water. Extortion in detention centres, often accompanied by physical violence, is rife¹².
17. The situation did not change for migrants since 2020. The majority of asylum-seekers, refugees and migrants are confronted with the instability of the country, which put them at acute risk of arrest and detention for irregular entry or stay. As a result of the irregular status and lack of legal documents, as well as widespread discriminatory practices migrants do not benefit from social protection mechanisms available to vulnerable Libyans through the Ministry for Social Affairs. They face challenges to access basic services and employment, resulting in poor living conditions and heightened vulnerability.¹³

⁹ Politique nationale de la migration (2020-2035), Avec son plan d'actions quinquennal, <https://www.giz.de/de/downloads/politique-nationale-de-la-migration.pdf>

¹⁰ The International Organization of Migration, "Displacement Tracking Matrix". Full report available at: <https://bit.ly/2ZBhmYZ>. 2020

¹¹ Libya: Humanitarian Access Snapshot - Migrants and Refugees (September 2021), accessed at <https://reliefweb.int/report/libya/libya-humanitarian-access-snapshot-migrants-and-refugees-september-2021>, on 08th November 2021

¹² OMCT, The Torture Roads – The Cycle of Abuse against People on the Move in Africa, <https://www.omct.org/site-resources/files/The-Torture-Roads.pdf>, Decembre 2021

¹³ See OCHA, Libya HNO 2020. Accessible at: www.ecoi.net/en/file/local/2024282/libya_hno_2020-fullen_final.pdf

II. Please provide information on recent or current border management legislation/policies/measures, (including those temporary measures as part of a state of emergency), with the view to control, reduce or prevent migrant arrivals in your country.

18. In Italy, the government, in continuity with the Minniti and Salvini governments, used last summer 2021, administrative measures to prevent humanitarian ships from being able to rescue people, systematically subjecting them to administrative stops for lengthy technical inspections¹⁴. Administrative stops are unlawful because they are imposed for alleged failure to comply with rules on ship safety - it is alleged that the minimum navigation and safety standards imposed by the International Maritime Organisation (IMO) and International Labour Organisation (ILO) conventions have not been met, despite the fact that in all cases of stops that took place in 2021, the flag states had already certified the safety of the ships. It should be remembered that the competence to certify ship safety, under international and European law, lies primarily with flag states and not with port states.
19. In the vast majority of stops, the Italian authorities have accused the captains of the respective vessels of having rescued more people than those that can be accommodated on the vessels according to the safety certificates in their possession. But as Christian Bubenzer, spokesman for the German Coast Guard's naval safety division, the Bg-Verkehr, explained to the Manifesto, "A ship can never know in advance whether a critical situation will arise at sea and how many people will have to be rescued in that event. If the number of life-saving devices intended for persons in distress were stated in advance in the ship's safety certificate, it would conflict with the captain's unconditional obligation to provide assistance to all persons in distress."
20. We have therefore moved from the era of the Minniti's NGO Code of Conduct (2017) and the era of Salvini's naval blockade (2019) to the era of administrative stops (even of 69 days, as in the case of Open Arms) with the common result of acting against international law and being complicit with the massacre of human lives perpetrated in the Mediterranean by the Libyan coastguard and in Libyan lagers by Libyan militias.
21. As regards the health emergency, as has been the case since 2020, according to letter of the Ministry of Health's order of 22 October 2021, it is not possible to enter Italy from certain countries included in a list unless the people concerned are Italian citizens, their family members and holders of residence permits. Entry into Italy is permitted for athletes, coaches, judges and competition commissioners, foreign press representatives and accompanying persons at competitive sports competitions recognised as being of national interest. If the people concerned do not fall into the above categories, entry into Italy is permitted only for reasons of work, study, health, absolute urgency, and return to own domicile/residence/home in Italy.
22. In Spain the Port Authority of Santander (APS) capital of Cantabria province has begun in August 2021, the installation of fence with large blades that causes serious injuries to migrants in an irregular situation from sneaking onto ships bound for the United Kingdom. The president of the Port requests the withdrawal of the tourist visa and the return to their

¹⁴ <https://english.alarabiya.net/News/world/2021/06/06/Italy-s-coastguard-blocks-German-migrant-rescue-boat>

country of the people who try to jump the gate.¹⁵ The Port of Santander also guards an international border, especially with the restoration of customs barriers with the United Kingdom after Brexit. A vote took place at the regional parliament on February 7, 2022, for the withdrawal of these fences but it was decided to maintain it.

23. Since 2020, Greek authorities have been implementing a very brutal pushback policy against migrants from Syria, Palestine, Afghanistan, and various African countries, among others. The Hellenic Coast Guard have blocked boats heading to Greek islands in the Aegean Sea and pushed them back to Turkish waters, or arrested them in the Evros area, at the land border between Greece and Turkey, before sending them back to Turkey.
24. The testimonies also give accounts of hundreds of men, women, and children arrested by coast guards during different incidents. In some cases, people who had already arrived on the Islands of Lesbos, Samos, Simi or Rhodes were pushed back and left drifting on inflatable life rafts in helpless conditions and without life jackets. In 147 incidents documented by Greek Helsinki Monitor (GHM) and the World Organisation Against Torture (OMCT), members of the Hellenic Coast Guard and police have tortured and forcibly returned more than 7000 migrants, including children, to Turkey without due process despite an ongoing severe global health crisis. The Supreme Court recently ordered 16 first instance prosecutors to start investigations in their respective jurisdictions. We call on the authorities to promptly identify and prosecute the authors and provide adequate protection to all asylum seekers, refugees, and migrants.
25. In many of these cases, even though migrants had reached the Greek territory and clearly requested asylum and international protection, they were systematically transferred to the sea or to a nearby port by Greek army or police officers and handed over to coast guards¹⁶.

III. Please provide information on how the “safe third country” concept is applied and if there is any “safe third country” list in your country with the view to expedite border immigration and asylum procedures, as well as on any bilateral and multilateral agreement on collective/automatic re-admission of migrants of specific nationalities.

26. There are several readmission agreements between Italy and other third countries. The agreements that lead to the highest number of returns are those between Italy and Tunisia, Albania, Egypt and Nigeria. Other existing agreements that are not operational are those with Sudan and Libya. In the latter case, the agreement is mainly aimed at conspicuously financing the Libyan coastguard in order to prevent people from reaching Italy by sea. Below is some useful data. According to the data released by the National Guarantor of the rights of people deprived of liberty (NPM), in 2020, the highest number of people

¹⁵ <https://moneytrainingclub.com/the-port-of-santander-installs-concertinas-to-stop-albanian-stowaways-bound-for-the-united-kingdom/>

¹⁶ OMCT. Greece: Pushbacks of over 7000 migrants including children may amount to torture and must be investigated <https://www.omct.org/en/resources/news-releases/greece-pushbacks-of-over-7000-migrants-including-children-may-amout-to-torture-and-must-be-investigated>, 18 June 2021

repatriated have been towards: Tunisia 1,997 Albania 544 Marocco 181 Egypt 91 Georgia 69 Ukraine 54 Nigeria 43¹⁷.

27. The international organizations and UN bodies concerned with migration issues in **Libya** has scaled up in the past years a variety of options for foreigners entering Libya. This includes assistance to migrants for voluntary return to home countries, supporting the evacuation of asylum-seekers to third countries and increased resettlement directly out of Libya. Since 2015, International Organization of Migration (IOM) started to increase its support to migrants through Voluntary Humanitarian Returns programs.¹⁸ UNHCR established Emergency Transit Mechanisms for the evacuation of vulnerable asylum-seekers and refugees from where further resettlement and other legal pathways try to address the overcrowding of detention facilities.¹⁹ UNHCR conducts direct humanitarian evacuations from Libya to third countries, however, these operations can benefit few of the whole effected population of migrants in Libya (either those in detention or outside of detention). UNHCR and IOM were forced to temporarily suspend departures from Libya, from March 2020 till June 2020 due to the COVID-19 outbreak and related travel restrictions. However, in October 2021 voluntary return intervention by IOM and UNHCR started again following public pressures and several horrible incidents where migrants were targeted by a huge unplanned arrest campaign during riots.²⁰

IV. Please provide information on any progress made in developing independent border monitoring mechanism(s) at the national level.

28. In Italy, the National Guarantor of the rights of people deprived of liberty is the Italian NPM and is the authority mandated to monitor the conditions of detention of all people deprived of personal liberty, including repatriation centers, hotspots, other centers and repatriation flights. Even if the mandate did not explicitly state so, the Guarantor visited ships that were not granted access to the harbors and were, therefore, held at sea. The Italian National Guarantor is a truly independent NPM that monitors, reports and advocates for better detention conditions and fair regulations in the management of migration

¹⁷Relazione al Parlamento 2021 Mappe e dati, <https://www.garantenazionaleprivatiliberta.it/gnpl/resources/cms/documents/ed5a1c8e1e34e7a92c1c22ed4d9c4f23.pdf> p. 9

¹⁸ The International Organization of Migration, “More than 50,000 Migrants Benefited from Voluntary Humanitarian Return Assistance from Libya since 2015”. Accessible at: <https://bit.ly/2LFQQHj>.

¹⁹ UNHCR, “A total of 393 refugees were evacuated to Italy; UNHCR Information”. Accessible at: <https://www.unhcr.org/news/press/2019/9/5d7a30584/new-unhcr-evacuation-refugees-libya-italy-tripoli-fighting-continues.html>.

²⁰ The International Organization of Migration, “IOM Resumes Voluntary Humanitarian Return Assistance Flights from Libya After Months of Suspension”. Accessible at: <https://www.iom.int/news/iom-resumes-voluntary-humanitarian-return-assistance-flights-libya-after-months-suspension>.